# Round 6 Emory Open Source

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#### The fifty states and all relevant entities through the **N**ational **A**ssociation of **A**ttorneys **G**eneral Antitrust Task Force should prohibit private sector business practices that violate an antitrust worker welfare standard.

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

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#### Business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97, Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanagbly large.

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#### Antitrust litigation is uniquely complex and resource-intensive---a spike trades-off with judicial functioning in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.”

Intellectual Property in “Interesting Times”

It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative).

The Changes In Intellectual Property Law

Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy.

Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws.

What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.”

Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States.

Patents

The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)).

The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity.

The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements.

The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6.

While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter).

Copyrights

The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection.

Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged.

For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections.

Trademarks

Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights.

Trade Secrets

As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws.

The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations.

There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts.

Privacy Rights

It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena.

America’s Need For Strong Intellectual Property Protection

The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations.

Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison.

All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee.

Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country.

It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved.

In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements.

Conclusion

As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

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#### Dems will reach an agreement on reconciliation---Biden’s final push is key to get both chambers on board---still zero room for error

Clare Foran et al, Manu Raju, Daniella Diaz and Annie Grayer 10-28 [CNN, "House Democrats again delay infrastructure vote amid party divisions ," accessed 10-28-2021, https://www.cnn.com/2021/10/28/politics/biden-agenda-deal-democrats/index.html, hec]

During the closed-door meeting with House Democrats, Biden laid out in person long-awaited details of his $1.75 trillion economic and climate package, trying to convince progressives who are skeptical of anything short of a fully written bill and commitments from all 50 members of the Senate Democratic caucus to back his framework. While Biden's proposal isn't finalized in its entirety, days of negotiations have brought it to a place where the key elements are all locked in. The personal pitch to House Democrats marks a concerted effort by the President to wrest control of an unwieldy process that has led to significant revisions to Democratic goals in the effort to secure the support of centrist Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona. Not all Democrats have signed off on the framework that Biden announced Thursday morning, two people familiar with the plan cautioned, but the President believes it's a consensus all Democrats should be able to support. Neither Manchin nor Sinema explicitly committed to backing the plan Thursday, though they both said they were continuing to negotiate after Biden's meeting with House Democrats. Sinema reacted to the framework by saying in a statement, "We have made significant progress" and "I look forward to getting this done." Manchin was noncommittal when asked by reporters whether he will support the framework agreement. Later on Thursday, he said, "We haven't seen the text yet. Everyone has to see it. I don't think anybody could say they could support it until they see the text." Notably, however, Manchin signaled support for a $1.75 trillion top line for the package. Asked by CNN if that price was too high, he said, "No," adding, "That was negotiated." This is the first public indication that Manchin will accept a price tag higher than $1.5 trillion, which he had previously said was the figure he was willing to settle on. Congressional Progressive Caucus Chairwoman Rep. Pramila Jayapal of Washington state emerged from the meeting with Biden telling reporters that she did not think the framework was enough to get progressives on board. "I would say nothing different than what I what I knew before," she said. Jayapal later said after a separate meeting with House progressives, "We had a very spirited and engaged discussion," and said that "everyone in the room enthusiastically endorsed a resolution that approves in principle the framework the President laid out today." "We intend to vote for both bills when the Build Back Better Act is ready," she said, referring to the larger climate and economic package. But, she added, "we do need the vote on both bills in the House at the same time." Vermont independent Sen. Bernie Sanders told CNN there should not be a vote on the infrastructure bill Thursday. "Well, I think it shouldn't come up," Sanders said. "I think both of the bills are linked and I think the House of Representatives has a right to know before they sign off on the infrastructure bill that the 50 senators are prepared to support a strong reconciliation." Senate Democrats cannot afford to lose a single vote to pass the bill under a process they plan to use known as budget reconciliation. That dynamic has given every single member -- and in particular, moderates including Manchin who have pushed back on a number of the original proposals for the package -- an outsized influence over the process.

#### Antitrust reform requires PC and trades off

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Key to avoid climate catastrophe---most recent ev

Ayelet Sheffey 10-28 [Business Insider, "Biden is heading to a meeting of world leaders with a massive new effort to fight the climate crisis — the biggest investment in his scaled-down $1.75 trillion spending plan," accessed 10-28-2021, https://www.businessinsider.com/biden-climate-plan-biggest-investment-reconciliation-glasgow-summit-2021-10, hec]

When President Joe Biden heads to Scotland for a United Nations' climate summit this week, he'll have a plan to address the climate crisis to unveil in front of other world leaders. Just under the wire on Thursday he unveiled a $1.75 trillion framework for Democrats' social-spending bill — half the cost of the original $3.5 trillion proposal. While many progressive priorities like paid leave and tuition-free community college were dropped from the plan, one major priority received the biggest investment: the climate. The plan came just in time as Biden previously expressed concern that the "prestige" of the US was at stake on the world stage after negotiations with centrist Democrats forced him to cut a major clean-energy program from the bill. According to a White House press release, Biden wants to invest $555 billion to combat climate change and meet the goals of the US, and globally, to reduce global warming. The announcement of this investment comes just as Biden is set to head to the United Nations climate summit in Glasgow this week, where he can present his plans to world leaders as they discuss how countries can come together to tackle the urgent threat of the climate crisis. This investment comes even after West Virginia Sen. Joe Manchin opposed the inclusion of the Clean Electricity Performance Program (CEPP), which would have allowed for Biden to reach his goal to cut carbon emissions in half by 2030. The $555 billion investment is not far off from what Democrats initially wanted — $600 billion — and the White House referred to the investment as the "largest effort to combat climate change in American history." "The framework will set the United States on course to meet its climate targets, achieving a 50-52% reduction in greenhouse gas emissions below 2005 levels in 2030 in a way that grows domestic industries and good, union jobs — and advances environmental justice," the White House said. Specifically, the $555 billion investment will: Deliver consumer rebates and ensure middle class families save money as they shift to clean-energy infrastructure, like solar rooftops; Ensure clean-energy technology is built from American-made materials, creating thousands of jobs in the country; Invest in clean energy projects around the country built by a new Civilian Climate Corps that would provide over 300,000 union jobs for Americans; And invest in coastal restoration, forest management, and soil conservation to help farmers and forestland owners meet climate emission reduction goals. These investments come after a Paris agreement of world leaders set a goal to keep global warming from exceeding 1.5 degrees Celsius by the end of the century. A recent UN report found that unless action is taken quickly, temperatures could rise to about 2.7 degrees Celsius by then. This prompted UN Secretary-General António Guterres to call out countries for "utterly failing" to meet climate goals, saying world leaders needed to work to avoid a "climate catastrophe." To be sure, the investment is just a framework, and it is unclear whether all Democrats will sign on to it, especially since progressive priorities like free community college and paid family and medical leave were left out. But when it comes to climate, most Democrats, and Biden, agree it needs to be passed.

### OFF

Antitrust PIC:

The United States federal government should:

* maintain the current scope of its antitrust laws and announce its intent to do so, and
* establish a worker welfare standard.

#### Regulation solves without ‘antitrust.’

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A. Antitrust and Regulation as Policy Alternatives

A variety of institutions can govern economic competition. Decentralized, capitalist economies generally rely on markets themselves to provide the incentives and discipline necessary to keep prices low, output high, and innovation moving forward. 8 But sometimes market forces alone cannot ensure efficiency and economic welfare--for example, when the market structure has changed due to mergers or the rise of a dominant firm, or when the market is an oligopoly susceptible to parallel conduct or collusion. In such cases, governance of competition by a nonmarket institution might be warranted. Because concentrated markets or even monopolies can arise for good reasons related to efficiency, innovation, and consumer preference, the governance of competition more often involves vigilance than liability or injunctions. Then-Judge Stephen Breyer, long [\*1926] a leading scholar of antitrust and regulation, described the best situation as being an unregulated, competitive market in which "antitrust may help maintain competition." 9

Antitrust law aims to prevent the improper creation and exploitation of market power on a case-by-case basis while avoiding the punishment of commercial success justly earned through "skill, foresight and industry." 10 Thus, competition authorities like the FTC and the DOJ's Antitrust Division review mergers, investigate single-firm conduct, and prosecute collusion. 11 Private plaintiffs can pursue civil antitrust liability through suits in the federal courts. 12 To win their claims, enforcement agencies and private plaintiffs bear the burden of showing that the effect of a firm's activity is "substantially to lessen competition, or to tend to create a monopoly," 13 or to constitute a "contract, combination, . . . or conspiracy" in restraint of trade, 14 or to "monopolize, or attempt to monopolize" any line of business. 15

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

### OFF

#### Anti-trust pacifies the working class, buys time to mystify unsustainable accumulation, and maps competition onto subjectivity, devaluing life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Collapse soon due to ecological overshoot which causes multiple avenues for extinction. Err neg—breaching carrying capacity turns every impact.

Martenson 1/25/19 (Chris Martenson – PhD, Co-Founder of Peak Prosperity, Economic Researcher, writer and trend forecaster interested in macro trends regarding the economy, energy composition and environment. “Collapse is Already Here” <https://www.peakprosperity.com/blog/114741/collapse-already-here>, DOA: 2/1/19, kbb)

Many people are expecting some degree of approaching collapse -- be it economic, environmental and/or societal -- thinking that they’ll recognize the danger signs in time. As if it will be completely obvious, like a Hollywood blockbuster. Complete with clear warnings from scientists, politicians and the media. And everyone can then get busy either panicking or becoming the plucky heroes. That's not how collapse works. Collapse is a process, not an event. And it's already underway, all around us. Collapse is already here. However, unlike Hollywood's vision, the early stages of collapse cause people to cling even tighter to the status quo. Instead of panic in the streets, we simply see more of the same -- as those in power do all they can to remain so, while the majority of the public attempts to ignore the growing problems for as long as it possibly can. For both the elite and the majority, their entire world view and their personal sense of self depends on things not crumbling all around them, so they remain willfully blind to any evidence to the contrary. When faced with the predicaments we warn about here at PeakProsperity.com, getting an early start on prudently shifting your own personal situation is of vital strategic and tactical importance. Tens of thousands of our readers already have taken wise steps in their lives to position themselves resiliently. But most of the majority won't get started until it’s entirely too late to make any difference at all. Which is sad but perhaps unavoidable, given human nature. If everybody around you is saying “Everything is awesome!”, it can take a long time to determine for yourself that things in fact aren't: Real collapse happens slowly, and often without any sort of acknowledgement by the so-called political and economic elites until its abrupt terminal end. The degree of rot within the Soviet Union went undetected until its final implosion, catching pretty much everyone in the West (as well as in the former USSR!) by surprise. Similarly, one day people woke up and passenger pigeons were extinct. They used to literally darken the skies for hours as they migrated past, numbering in the billions. Nobody planned on their demise and virtually nobody saw it coming. Sure, just as there always are, a few crackpots at the fringes noticed, but they were ignored until it was too late. Our view is that collapse of our current way of life is happening right now. The signs are all around us. Our invitation is for you to notice them and inquire critically what the ramifications will be -- irrespective of whatever pablum our leaders and media are currently spewing. While the monetary and financial elites strain to crank out one more day/week/month/year of “market stability”, the ecosystems we depend on for life are vanishing. It's as if the Rapture were happening, but it's the insects, plants and animals ascending to heaven instead of we humans. Committing Ecocide Be very skeptical when the cause of each new ecological nightmare is ascribed to “natural causes.” While it’s entire possible for any one ecological mishap to be due to a natural cycle, it’s weak thinking to assign the same cause to dozens of troubling findings happening all over the globe. As they say in the military: Once is an accident. Twice is a coincidence. But three times is enemy action. Right now, Australia is in the middle of the summer season and being absolutely hammered by high heat. Sure it gets hot during an Australian summer, but not like this. The impact has been devastating: Australia's Facing an Unprecedented Ecological Crisis, But No One's Paying Attention Jan 9, 2019 It started in December, just before Christmas. Hundreds of dead perch were discovered floating along the banks of the Darling River – victims of a "dirty, rotten green" algae bloom spreading in the still waters of the small country town of Menindee, Australia. Things didn't get better. The dead hundreds became dead thousands, as the crisis expanded to claim the lives of 10,000 fish along a 40-kilometre (25-mile) stretch of the river. But the worst was still yet to come. This week, the environmental disaster has exploded to a horrific new level – what one Twitter user called "Extinction level water degradation" – with reports suggesting up to a million fish have now been killed in a new instance of the toxic algae bloom conditions. For their part, authorities in the state of New South Wales have only gone as far as confirming "hundreds of thousands" of fish have died in the event – but regardless of the exact toll, it's clear the deadly calamity is an unprecedented ecological disaster in the region's waterways. "I've never seen two fish kills of this scale so close together in terms of time, especially in the same stretch of river," fisheries manager Iain Ellis from NSW Department of Primary Industries (DPI) explained to ABC News. The DPI blames ongoing drought conditions for the algae bloom's devastating impact on local bream, cod, and perch species – with a combination of high temperature and chronic low water supply (along with high nutrient concentrations in the water) making for a toxic algal soup. ([Source](https://www.sciencealert.com/up-to-a-million-fish-killed-in-unprecedented-australian-environmental-disaster)) Watching the video above showing grown men crying over the loss of 100-year-old fish is heartbreaking. This fish kill is described as “unprecedented” and as an “extinction level event", meaning it left no survivors over a long stretch of waterway. We can try to console oursleves that maybe this was just a singular event, a cluster of bad juju and worse waterway management that combined to give us this horror -- but it wasn’t. It's part of a larger tapestry of heat-induced misery that Australia is facing: How one heatwave killed 'a third' of a bat species in Australia Jan 15, 2019 Over two days in November, record-breaking heat in Australia's north wiped out almost one-third of the nation's spectacled flying foxes, according to researchers. The animals, also known as spectacled fruit bats, were unable to survive in temperatures which exceeded 42C. "It was totally depressing," one rescuer, David White, told the BBC. Flying foxes are no more sensitive to extreme heat than some other species, experts say. But because they often gather in urban areas in large numbers, their deaths can be more conspicuous, and easily documented. "It raises concerns as to the fate of other creatures who have more secretive, secluded lifestyles," Dr Welbergen says. He sees the bats as the "the canary in the coal mine for climate change". ([Source](https://www.bbc.com/news/world-australia-46859000)) A two-day heatwave last November (2018) was sufficient to kill up to a third of all Australia's known flying foxes, a vulnerable species that was already endangered. As those bats are well-studied and their deaths quite conspicuous to observers, it raises the important question: How many other less-scrutinized species are dying off at the same time? And the death parade continues: [More than 90 wild horses die in Australia's heat wave](https://tribune.com.pk/story/1895741/3-90-wild-horses-die-australias-heat-wave/) (Jan 24, 2019) [Australia heatwave: Mass animal deaths and roads melting as temperatures reach record high](https://www.independent.co.uk/news/world/australasia/australia-heatwave-latest-temperature-heat-records-stress-new-south-wales-bushfires-a8735541.html)(Jan 19, 2019) [Australia's Heatwave Responsible for Deaths of Horses, Camels](https://weather.com/news/news/2019-01-24-australia-extreme-heat-kills-horses-camels-0) (Jan 24) Are these data points severe enough for you to recognize as signs of ongoing collapse? Last summer was a time of extreme drought and heat for Australia, and this summer looks set to be even worse. This may be the country's 'new normal' for if the situation is due to climate change instead of just an ordinary (if punishing) hot cycle. If so, these heat waves will likely intensify over time, completely collapsing the existing biological systems across Australia. Meanwhile, nearby in New Zealand, similar species loss is underway: 'Like losing family': time may be running out for New Zealand's most sacred tree July 2018 New Zealand’s oldest and most sacred tree stands 60 metres from death, as a fungal disease known as kauri dieback spreads unabated across the country. Tāne Mahuta (Lord of the Forest) is a giant kauri tree located in the Waipoua forest in the north of the country, and is sacred to the Māori people, who regard it as a living ancestor. The tree is believed to be around 2,500 years old, has a girth of 13.77m and is more than 50m tall. Thousands of locals and tourists alike visit the tree every year to pay their respects, and take selfies beside the trunk. Now, the survival of what is believed to be New Zealand’s oldest living tree is threatened by kauri dieback, with kauri trees a mere 60m from Tāne Mahuta confirmed to be infected. Kauri dieback causes most infected trees to die, and is threatening to completely wipe out New Zealand’s most treasured native tree species, prized for its beauty, strength and use in boats, carvings and buildings. “We don’t have any time to do the usual scientific trials anymore, we just have to start responding immediately in any way possible; it is not ideal but we have kind of run out of time,” Black says, adding that although there is no cure for kauri dieback there is a range of measures which could slow its progress. ([Source](https://www.theguardian.com/world/2018/jul/14/like-losing-family-time-may-be-running-out-for-new-zealands-most-sacred-tree)) People are rallying to try and save the kauri trees, although it’s unclear exactly how to stop the spread of the new fungal invader or why it's so pathogenic all of a sudden. It could be due to another natural sort of cycle (except the fungus was thought to have been introduced and spread by human activity) or it could be a another collapse indicator we need to finally hear and heed. It turns out that New Zealand is not alone. Giant trees are dying all over the globe. [2,000-year-old baobab trees in Africa](https://blogs.scientificamerican.com/extinction-countdown/climate-change-is-killing-these-ancient-trees-but-thats-just-part-of-the-story/) are suddenly and rather mysteriously giving up the ghost. These trees survived happily for 2,000 years and now all of a sudden they're dying. Are the deaths of our most ancient trees all across the globe some sort of natural process? Or is there a different culprit we need to recognize? In Japan they're [lamenting record low squid catches](https://www.telegraph.co.uk/news/2019/01/21/japans-squid-industry-crisis-amid-record-low-catches/). Oh well, maybe it’s just overfishing? Or could it be another message we need to heed? To all this we can add the numerous scientific articles now decrying the 'insect Apocalypse' unfolding across the northern hemisphere. The Guardian recently issued this warning: [“Insect collapse: ‘We are destroying our life support systems’”](https://www.theguardian.com/environment/2019/jan/15/insect-collapse-we-are-destroying-our-life-support-systems?CMP=share_btn_tw). Researchers in Puerto Rico's forest preserves recorded a 98% decline in insect mass over 35 years. Does a 98% decline have a natural explanation? Or is something bigger going on? Meanwhile, the butterfly die-off is unfolding with alarming speed. I rarely see them in the summer anymore, much to my great regret. Seeing one is now as exciting as seeing a meteor streak across the sky, and just as rare: Monarch butterfly numbers plummet 86 percent in California Jan 7, 2019 CAMARILLO, Calif. – The number of monarch butterflies turning up at California's overwintering sites has dropped by about 86 percent compared to only a year ago,according to the Xerces Society, which organizes a yearly count of the iconic creatures. That’s bad news for a species whose numbers have already declined an estimated 97 percent since the 1980s. Each year, monarchs in the western United States migrate from inland areas to California’s coastline to spend the winter, usually between September and February. “It’s been the worst year we’ve ever seen,” said Emma Pelton, a conservation biologist with the Xerces Society who helps lead the annual Thanksgiving count. “We already know we’re dealing with a really small population, and now we have a really bad year and all of a sudden, we’re kind of in crisis mode where we have very, very few butterflies left.” What’s causing the dramatic drop-off is somewhat of a mystery. Experts believe the decline is spurred by a confluence of unfortunate factors, including late rainy-season storms across California last March, the effects of the state’s years long drought and the seemingly relentless onslaught of wildfires that have burned acres upon acres of habitat and at times choked the air with toxic smoke. ([Source](https://www.usatoday.com/story/news/nation/2019/01/07/monarch-butterfly-numbers-drop-86-california/2499761002/)) Note the “explanation” given blames the decline on mostly natural processes: late storms, droughts and wildfires. I believe that's because the article appears in a US paper, so no mention was permitted of neonicotinoid pesticides or glyphosate. Both of these are highly effective decimators of insect life -- but they're highly profitable for Big Ag, so for now, any criticism is not allowed. Sure a 97% decline since the 1980’s might be due to fires, droughts and rains. But that’s really not very likely. There have always been fires, droughts and rains. Something else has shifted since the 1980’s. And that “thing” is human activity, which has increased its willingness to destroy habitat and spray poisons everywhere in pursuit of cheaper food and easier profits. The loss of insects, which we observe in the loss of the beautiful and iconic Monarch butterfly, is a gigantic warning flag that we desperately need to heed. If the bottom of our billion-year-old food web disintegrates, you can be certain that the repercussions to humans will be dramatic and terribly difficult to ‘fix.’ In scientific terms, it will be called a “bottom-up trophic cascade”. In a trophic cascade, the loss of a single layer of the food pyramid crumbles the entire structure.

Carefully-tuned food webs a billion years in the making are suddenly destabilized. Life cannot adapt quickly enough, and so entire species are quickly lost. Once enough species die off, the web cannot be rewoven, and life … simply ends. What exactly would a “trophic cascade” look like in real life? Oh, perhaps something just like this: Deadly deficiency at the heart of an environmental mystery Oct 16, 2018 During spring and summer, busy colonies of a duck called the common eider (Somateria mollissima) and other wild birds are usually seen breeding on the rocky coasts around the Baltic Sea. Thousands of eager new parents vie for the best spots to build nests and catch food for their demanding young broods. But Lennart Balk, an environmental biochemist at Stockholm University, witnessed a dramatically different scene when he visited Swedish coastal colonies during a 5-year period starting in 2004. Many birds couldn’t fly. Others were completely paralyzed. Birds also weren’t eating and had difficulty breathing. Thousands of birds were suffering and dying from this paralytic disease, says Balk. “We went into the bird colonies, and we were shocked. You could see something was really wrong. It was a scary situation for this time of year,” he says. Based on his past work documenting a similar crisis in several Baltic Sea fish species, Balk suspected that the birds’ disease was caused by a thiamine (vitamin B1) deficiency. Thiamine is required for critical metabolic processes, such as energy production and proper functioning of the nervous system. This essential micronutrient is produced mainly by plants, including phytoplankton, bacteria, and fungi; people and animals must acquire it through their food. “We found that thiamine deficiency is much more widespread and severe than previously thought,” Balk says. Given its scope, he suggests that a pervasive thiamine deficiency could be at least partly responsible for global wildlife population declines. Over a 60-year period up to 2010, for example, worldwide seabird populations declined by approximately 70%, and globally, species are being lost 1,000 times faster than the natural rate of extinction (9, 10). “He has seen a thiamine deficiency in several differ phyla now,” says Fitzsimons of Balk. “One wonders what is going on. It’s a larger issue than we first suspected.” ([Source](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6196476/)) This is beyond disturbing. It should have been on the front pages of every newspaper and TV show across the globe. We should be discussing it in urgent, worried tones and devoting a huge amount of money to studying and fixing it. At a minimum, we should stop hauling more tiny fish and krill from the sea in an effort to at least stabilize the food pyramid while we sort things out. If you recall, we’ve also recently reported on the findings showing that phytoplankton levels are down 50% (these are a prime source for thiamine, by the way). Again, here's a possible “trophic cascade” in progress: ([Source](http://www.roperld.com/science/peakfish.htm)) Fewer phytoplankton means less thiamine being produced. That means less thiamine is available to pass up the food chain. Next thing you know, there’s a 70% decline in seabird populations. This is something I’ve noticed directly and commented n during my annual pilgrimages to the northern Maine coast over the past 30 years, where seagulls used to be extremely common and are now practically gone. Seagulls! Next thing you know, some other major food chain will be wiped out and we'll get oceans full of jellyfish instead of actual fish. Or perhaps some once-benign mold grows unchecked because the former complex food web holding it in balance has collapsed, suddenyl transforming Big Ag's "green revolution" into grayish-brown spore-ridden dust. To add to the terrifying mix of ecological news has been the sudden and rapid loss of amphibian species all over the world. A possible source for the culprit has been found, if that’s any consolation; though that discovery does not yet identify a solution to this saddening development. Ground Zero of Amphibian 'Apocalypse' Finally Found May 10, 2018 MANY OF THE world's amphibians are staring down an existential threat: an ancient skin-eating fungus that can wipe out entire forests' worth of frogs in a flash. This ecological super-villain, the chytrid fungus Batrachochytrium dendrobatidis, has driven more than 200 amphibian species to extinction or near-extinction—radically rewiring ecosystems all over Earth. “This is the worst pathogen in the history of the world, as far as we can tell, in terms of its impacts on biodiversity,” says Mat Fisher, an Imperial College London mycologist who studies the fungus. Now, a global team of 58 researchers has uncovered the creature's origin story. A groundbreaking study published in Science on Thursday reveals where and when the fungus most likely emerged: the Korean peninsula, sometime during the 1950s. From there, scientists theorize that human activities inadvertently spread it far and wide—leading to amphibian die-offs across the Americas, Africa, Europe, and Australia. ([Source](https://news.nationalgeographic.com/2018/05/amphibians-decline-frogs-chytrid-fungi-bd-animals-science/)) Frogs, toads and salamanders were absolutely critical parts of my childhood and I delighted in their presence. I cannot imagine a world without them. But effectively, that’s what we’ve got now with so many on the endangered species list. This parade of awful ecological news is both endless and worsening. And there is no real prospect for us to fix things in time to avoid substantial ecological pain. None. After all, we can’t even manage our watersheds properly. And those are dead simple by comparison. Water falls from the sky in (Mostly) predictable volume and you then distribute somewhat less than that total each year. Linear and simple in comparison to trying to unravel the many factors underlying a specie's collapse. But challenges like this are popping up all over the globe: Fear And Grieving In Las Vegas: Colorado River Managers Struggle With Water Scarcity Dec 14th, 2018 On stage in a conference room at Las Vegas's Caesars Palace, Keith Moses said coming to terms with the limits of the Colorado River is like losing a loved one. "It reminds me of the seven stages of grief," Moses said. "Because I think we've been in denial for a long time." Moses is vice chairman of the Colorado River Indian Tribes, a group of four tribes near Parker, Arizona. He was speaking at the annual Colorado River Water Users Association meeting. The denial turned to pain and guilt as it became clear just how big the supply and demand gaps were on the river that delivers water to 40 million people in the southwest. For the last six months Arizona's water leaders have been experiencing the third stage of grief: anger and bargaining. Of the seven U.S. states that rely on the Colorado River, Arizona has had the hardest time figuring out how to rein in water use and avoid seeing the river's largest reservoirs — Lakes Mead and Powell — drop to extremely low levels. Kathryn Sorenson, director of Phoenix's water utility, characterized the process this way: "Interesting. Complicated. Some might say difficult." One of the loudest voices in the debate has been coming from a small group of farmers in rural Pinal County, Arizona, south of Phoenix. Under the current rules those farmers could see their Colorado River supplies zeroed out within two years. The county's biggest grower of cotton and alfalfa, Brian Rhodes, is trying to make sure that doesn't happen. The soil in his fields is powder-like, bursting into tiny brown clouds with each step. "We're going to have to take large cuts," Rhodes said. "We all understand that." ([Source](http://www.kunc.org/post/fear-and-grieving-las-vegas-colorado-river-managers-struggle-water-scarcity#stream/0)) Oh my goodness. If we’re having trouble realizing that wasting precious water from the Colorado River to grow cotton is a bad idea, then there’s just no hope at all that we'll successfully rally to address the loss of ocean phytoplankton. That’s about the easiest connection of dots that could ever be made. As [Sam Kinison](https://www.youtube.com/watch?v=bjO7QMP4h-Y), the 1980’s comedian might have yelled – IT’S A DESERT!! YOU’RE TRYING TO GROW WATER-INTENSIVE CROPS IN THE FREAKING DESERT! CAN’T YOU SEE ALL THE SAND AROUND YOU?!? THAT MEANS "DON’T GROW COTTON HERE!!" A World On The Brink The bottom line is this: We are destroying the natural world. And that means that we are destroying ourselves. I know that the mainstream news has relegated this conversation to the back pages (when they covered it at all) and so it's not “front and center” for most people. But it should be. Everything we hold dear is a subset of the ecosphere. If that goes, so does everything else. Nothing else matters in the slightest if we actively destroy the Earth’s carrying capacity. At the same time, we're in the grips of an extremely dangerous delusion that has placed money, finance and the economy at the top spot on our temple of daily worship. Any idea of slowing down or stopping economic growth is “bad for business” and dismissed out of hand as “not practical”, "undesirable" or "unwise". It’s always a bad time to discuss the end of economic growth, apparently. But as today's young people are increasingly discovering, if "conducting business" is just a lame rationale for failed stewardship of our lands and oceans, then it’s a broken idea. One not worth preserving in its current form. The parade of terrible ecological breakdowns provided above is there for all willing to see it. Are you willing? Each failing ecosystem is screaming at us in urgent, strident tones that we’ve gone too far in our quest for "more". We might be able to explain away each failure individually. But taken as a whole? The pattern is clear: We’ve got enemy action at work. These are not random coincidences. Nature is warning us loudly that it's past time to change our ways. That our "endless growth" model is no longer valid. In fact, it's now becoming an existential threat The collapse is underway. It’s just not being televised (yet).

#### Vote Neg for anti-capitalist commons.

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

## Adv 1

### Solvency---1NC

#### The plan will be circumvented by the courts

Crane 21 (Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205, y2k)

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes - the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts - each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases, and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case. Given that neither [\*1252] statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a "this time we mean it" statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

Again, it would be an overstatement to claim that statutory words have no consequences or that antitrust reform statutes are doomed ab initio to judicial culling. But the courts' pattern of antitrust antitextualism and their perennial insistence that the antitrust statutes are delegations of common-law power rather than textually actionable injunctions in all of their particulars provide a cautionary tale for future legislatures: the dynamic of antitrust legislation, enforcement, and adjudication plays out against a longstanding backdrop of contestation over bigness, power, and efficiency that has muted the ordinary importance of statutory language. Writing more definite statutes will not necessarily curb these habits of mind.

### A2: Econ---1NC

#### Economy is surging and sustainable---due to corporate gains and favorable fed policy.

---high optimism, deficits declined, and profits increased

Lerman ’10-22 [David; October 22; Editor of Budget Tracker, a daily compendium of all issues related to federal spending and the budget, B.A. in Political Science and International Relations from Brown University; Roll Call, “Economic growth helps cut fiscal 2021 deficit to $2.8 trillion,” <https://www.rollcall.com/2021/10/22/economic-growth-helps-cut-fiscal-2021-deficit-to-2-8-trillion/>]

Surging tax revenues as the U.S. economy rebounded from the coronavirus-driven downturn helped reduce the budget deficit for the fiscal year that ended Sept. 30, the Treasury Department and White House budget office announced Friday.

The fiscal 2021 deficit clocked in at a still-massive $2.8 trillion, although that’s down $360 billion from the previous year’s shortfall and it’s $897 billion less than the Biden administration predicted in February.

Before the COVID-19 pandemic, a $2.8 trillion deficit would have sent shock waves through Capitol Hill, where fiscal hawks had expressed alarm at trillion-dollar shortfalls. But the modest decline from a $3.1 trillion fiscal 2020 deficit reflects renewed optimism that the worst days of the pandemic are in the rearview mirror.

“Today’s joint budget statement is further evidence that America’s economy is in the midst of a recovery,” Treasury Secretary Janet L. Yellen said in a statement, calling the better-than-expected numbers “a direct result” of the administration’s COVID-19 management and a big aid package enacted in March.

The decline from the previous year’s shortfall was due partly to a surge in federal revenues. Tax receipts, which swelled past $4 trillion, reached their highest level as a share of the economy in 20 years. Revenue exceeded White House budget estimates by $465 billion.

And corporate tax revenue surged to almost $372 billion, topping the previous high reached in fiscal 2007. Officials attributed the overall revenue gains to increases in business and personal income from a rebounding economy, pandemic relief and the vaccination rollout.

#### Reforming the consumer welfare standard destroys economic growth.

-it’s a bolt from the blue for companies, makes them think there will be lots of overenvforcement and worker welfare is definitionally vague so they they don’t know what they shouldn’t do, which causes compliance with regs which

Muris ‘19 [Timothy; 3/20/19; Foundation Professor of Law at George Mason University, former Chairman of the Federal Trade Commission, J.D. from University of California, Los Angeles; Jonathan E. Nuechterlein; former General Counsel at the Federal Trade Commission, J.D. from Yale Law School. Partner and Co-Lead of Telecom & Internet Competition Practice at Sidley Austin LLP; "Antitrust in the Internet Era: The Legacy of United States v. A&P," Review of Industrial Organization, Volume 54, p. 651-681]

Increasingly one hears that current antitrust doctrine is ill-equipped to address the competitive dynamics of the internet age and should be fundamentally altered to address the putative “monopoly” power of large technology companies: The Economist, normally a beacon of journalistic sobriety, worries that internet “titans— Alphabet (Google’s parent company), Amazon, Apple, Facebook and Microsoft— look unstoppable.… Old ways of thinking about competition, devised in the era of oil, look outdated in what has come to be called the ‘data economy.’… A new approach is needed.”1 Various advocacy groups call for a dramatic overhaul of antitrust doctrine.2 Senate Democrats vow to “revisit our antitrust laws to ensure that the economic freedom of all Americans—consumers, workers, and small businesses— come[s] before big corporations.”3 And on the other end of the political spectrum, the American Conservative urges its readers “to break from the principles of free market fundamentalism” and join “in a bipartisan war” against “modern-day robber barons” on the West Coast.4

These proposals to overhaul antitrust doctrine share a few key attributes: First, advocates of radical change express nostalgia for 1960s antitrust, when the field had no clear objectives and cases were decided on impressionistic notions of “fairness.” During that pre-economic era, conduct was punished and mergers blocked simply because they disadvantaged competitors, even if they also increased consumer welfare.5

Second, the critics identify modern antitrust with “the Chicago School,” which they lampoon and excoriate. Barry Lynn writes in the Nation: “A generation ago, when a small crew within the Reagan administration set out to clear the way for a radical reconcentration of power, they did so not by openly assailing our antimonopoly laws but by altering the intellectual frames that guide how we enforce them.… [T]he new goal was ‘efficiency.’ Rather than protect the ‘opportunity’ of the citizen producer, the new goal was to promote the ‘welfare’ of the ‘consumer.’”6 According to Lynn, these developments were somehow malign.

Third, the adherents of this new movement argue that so-called “tech giants need to be cut down to size, immediately,” because they are “killing competitors and other industries” and are poised to “destroy … democracy itself.”7

This article exposes the intellectual void at the heart of this populist antitrust movement. In Part 1, we begin by following Justice Holmes’ tenet that “a page of history is worth a volume of logic.”8 More than 80 years ago, the A&P grocery chain was a vertically integrated retailer that made use of unprecedented scale and innovation to offer consumers a wider range of products than the competition and at lower prices. Like today’s leading online companies, A&P was exceptionally popular with consumers, which made it harder for smaller rivals to maintain their margins.

Yet A&P’s very popularity triggered a backlash. First, Congress passed the nownotorious Robinson–Patman Act to handicap A&P and other growing chain stores. Then the Justice Department criminally prosecuted A&P and its senior executives for offering consumers too good a deal; and, having secured their convictions, the Justice Department filed another case to break up the largest and most innovative retailer in American history. Although that case was ultimately unsuccessful, A&P’s management spent years fending off the government’s relentless pursuit, while new companies—not so burdened—ultimately eclipsed it.

This article recounts the attacks on A&P in some detail because, as discussed in Part 2 below, they bear an eerie resemblance to attacks today on leading online innovators. Increasingly integrated and efficient retailers—first A&P, then “big box” brick-and-mortar stores, and now online retailers—have challenged traditional retail models by offering consumers lower prices and greater convenience. For decades, critics on the right and left have reacted to such disruption by urging Congress, the courts, and the enforcement agencies to stop these American success stories by revising antitrust doctrine to protect small businesses rather than the interests of consumers. Using antitrust law to punish pro-competitive behavior makes no more sense today than it did when the government attacked A&P for offering consumers too good a deal on groceries.

Finally, as discussed in Part 3, antitrust doctrine does not need an overhaul. It is shaped by many economic perspectives, follows no one “School,” and is flexible enough to address any monopoly abuses in the twenty-first century.9 It is also well calibrated to serve its central function: promoting consumer welfare. It does so not only by prohibiting conduct that harms consumers in the long run, but also by avoiding interference with conduct that might appear problematic to non-economists but that demonstrably benefits consumers over time.

The advocates of doctrinal overhaul cannot show that consumers would benefit if we ripped up the current antitrust rulebook and replaced it with a more impressionistic “big is bad” doctrine. They argue instead that antitrust should be redesigned to promote objectives in addition to (and often in conflict with) consumer welfare, such as protecting existing jobs from dislocation, preserving the profit margins of inefficiently small businesses, and shielding the political system from influence by large corporations. But it is folly to pursue those non-consumer-oriented objectives, whatever their policy merits, through case-by-case antitrust litigation. Doing so would harm consumers, offer little guidance to successful businesses, hinder economic growth, and make antitrust enforcement more subjective and susceptible to charges of political manipulation.

### A2: War Inev---1NC

#### No diversionary war.

---war is a gamble would be a political risk for Biden, and Afghanistan pull out proves he wants to pull out not start new wars

Walt 20 – Stephen Walt, International Relations Professor at Harvard University. [Will a Global Depression Trigger Another World War? 5-13-20, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

### Inequality---1NC

#### Antitrust can’t solve inequality---empirics and stats

Jonathan Klick et al. 19—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the 1st and 5th quintile households by income. For brevity, we only present the specifications with 2 lags and the time trend.

Table

Description automatically generated

On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income

### Marked

and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

Table

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As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.16

#### Inequality has not increased---also stats.

Wright et. al ’19 [Joshua D., Elyse Dorsey, Jonathan Klick, and Jan M. Rybnicek; University Professor and Executive Director, Global Antitrust Institute at Scalia Law School; Attorney Advisor to Commissioner Noah Joshua Phillips, United States Federal Trade Commission; Professor of Law, University of Pennsylvania; Counsel in the antitrust, competition, and trade practice of Freshfields, Bruckahus Deringer LLP; Arizona State Law Review, “REQUIEM FOR A PARADOX: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” vol. 51; KP]

2. The Empirical Evidence: Is Inequality Really Growing?

All of the papers discussed above assume that inequality has increased in recent years. This view is fairly common among economists and would seem to be borne out as seen in Figure 2 below, which presents the Gini coefficient for U.S. incomes for the last fifty years.166

Chart, line chart

Description automatically generated

Figure 3, which plots the ratio of the share of US income among the fifth quintile of income-earning households to the share among the first quintile of households167 tells a similar story.

Chart, line chart

Description automatically generated

Robert Kaestner and Darren Lubotsky underscore the point that inequality measures can be significantly affected by a failure to account for government transfers and employee benefits that presumably substitute for cash income.168 Given that healthcare costs have grown faster than inflation in recent years, a failure to account for health insurance benefits could significantly affect economic inequality measures. Reviewing estimates from the literature, Kaestner and Lubotsky find that including health insurance substantially reduces the gap between incomes at the high end of the distribution and those at the low end.169 Interestingly, however, the authors find that there is still an upward trend in inequality over time when the cash equivalent of health insurance and government transfers are included.170 The trend, however, is substantially muted.171 Specifically, including government transfers and the imputed value of employer subsidized health insurance, Kaestner and Lubotsky indicate that the ratio of income between households at the ninetieth percentile and the tenth percentile was about five in 1995, growing to 5.2 in 2004 and to 5.6 in 2012.172

Although yearly estimates of this more complete measure of income inequality are not available, and the time series span is somewhat limited, another approach might be to examine consumption inequality since consumption will be a function of effective income, and consumption data are more readily available. Also, consumption might be a better measure of welfare as argued by Bruce Meyer and James Sullivan.173 When determining the desirability of antitrust enforcement to address economic inequality, presumably one not only wants to examine the indirect effects on people’s incomes and wealth, but also the direct effect on consumer welfare, for which consumption might be a useful proxy.

Considering the arguments raised above regarding the desirability of using antitrust to fight inequality, one might reason that higher prices coming from increased concentration make both the well-off investors and executives and the lowly consumer worse off, but the investors and executives are compensated through high incomes due to their monopoly profits. Under these arguments, we should see an upward trend in the consumption ratio between the haves and the have-nots. Figure 4, which uses data on average consumption by households in the various income quintiles from the Bureau of Labor Statistics Consumer Expenditure Survey,174 shows that while the ratio has grown over time, the growth is much smaller than that found for income itself. Further, unlike income, the growth is not nearly as consistent with periods of increasing inequality and decreasing inequality alike.

Chart, line chart

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## Adv 2

### FTC Turn

#### Courts have gutted FTC anti-fraud measures---Congress will pass a legislative fix now, BUT it’ll be a referendum on FTC overreach.

Christopher Olsen & Stephen Schultze 21, Olsen is a partner in the privacy and cybersecurity practice at Wilson Sonsini and Vice Chair of the Privacy and Information Security Committee of the ABA Antitrust Law Section, and former Deputy Director of the FTC’s Bureau of Consumer Protection; Schultze is an Associate in the privacy and cybersecurity practice at Wilson Sonsini, “FTC Authority Under Siege: Monetary and Injunctive Relief at Risk in Courts as Congress Contemplates a Response,” The Antitrust Source, April 2021, ABA

It is hard to imagine a favorable outcome for the FTC after this oral argument. The Court will prob- ably limit 13(b) relief to injunctions, requiring the Commission to resort to cumbersome administrative proceedings to get any monetary relief. That would dramatically undermine the Commission’s work over several decades to build a robust fraud program.40 It would leave Section 5 and 19 as the only avenues for monetary relief under the FTC’s general consumer protection authority. Under Section 5, the Commission may impose monetary civil penalties under some limited circumstances.41 Under Section 19, the Commission may obtain monetary consumer redress or disgorgement but only after obtaining a final cease-and-desist order through administrative litigation and only after demonstrating that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”42 Moreover, Section 19 includes a statute of limitations whereas Section 13(b) does not.43 Thus, the FTC has strongly favored Section 13(b) actions. At oral argument, the FTC conceded that going directly to court is “more attractive in certain instances” and that the Commission brings “far more [consumer protection] cases” in court than through its own administrative proceedings.

An Unlikely Out for the FTC. It is worth noting that the Court could also rule against the FTC in a more limited way, although there was little indication at oral argument that it would. Last term, the Court held 8-1 in Liu v. SEC that even where a statute permitted “any equitable relief that may be appropriate,” the government’s equitable monetary relief could not exceed the wrongdoer’s net profits.44 Justice Sotomayor wrote for the court that the government cannot impose a “penalty” under equity; therefore actual net profits is all that restitution or disgorgement allows.45

If the FTC could still obtain “net profits,” AMG would not be a total loss for the agency. AMG argued in the briefs that the Ninth Circuit “did not limit the Commission’s recovery to anything close to net profits” when it awarded the FTC $1.27 billion, which was more than triple the amount that petitioners had allegedly received.46 But the textual difference between 13(b)’s “permanent injunction” and the SEC statute’s “any equitable relief that may be appropriate” makes it unlikely that the FTC will win even this less-than-half a loaf. Instead, the FTC will likely lose any ability to obtain monetary relief under 13(b). And limits to its ability to obtain even injunctive relief may also soon bubble up to the Supreme Court.

Even for Injunctive Relief, Lower Courts Are Reconsidering Whether Past Misconduct Is Actionable Under 13(b)

As noted above, Section 13(b) gives the FTC the authority to obtain injunctions in federal court only where a defendant “is violating, or is about to violate” the law. It is hornbook law that injunctive relief cannot be based solely on past conduct.47 Instead, there must be a present violation or some prospect of future violation. But the circuits differ on how likely the future violation must be.

The majority view has been that 13(b) requires the typical injunction predicate—“some cogniza- ble danger of recurrent violation, something more than the mere possibility.”48 The Ninth Circuit is a good example, having long embraced this standard in Section 13(b) cases.49 Most of the lower courts continue to rely on the “cognizable danger” standard, with the Ninth Circuit showing no signs of altering its view.50 This is a “likelihood of recurrence” standard, based on a factual analy- sis of the totality of the circumstances. On this reading, 13(b)’s “about to violate” language adds nothing to the inherent injunctive relief requirements.

Shire Leads the Way. The Third Circuit recently adopted a more demanding threshold. In Shire Viropharma, the court held that the “about to violate” provision plainly limited injunctive relief to “impending conduct.”51 The court reasoned that 13(b) “was not designed to address hypothetical conduct or the mere suspicion that such conduct may yet occur”; that it is not enough for the FTC to allege a “vague and generalized likelihood of recurrent conduct.”52 Moreover, the court held that the 13(b) requirement applies “right out of the gate” at the pleading stage, rather than at a later stage when the court is considering appropriate remedies.53 The Third Circuit thus upheld the trial court’s conclusion that the FTC failed to meet the 13(b) threshold when it merely alleged that the defendant had the “incentive and opportunity” to commit violations like it had in the past.54 The FTC did not petition for certiorari, presumably out of concern that the Supreme Court might adopt the Shire view.55

No other circuit has squarely addressed the Third Circuit’s view. Some lower courts in other cir- cuits have at least acknowledged Shire’s holding without explicitly rejecting it.56 Procedurally, we should expect more of these challenges to occur at the pleading stage, creating early opportunities for appellate review and Supreme Court cert petitions.57 Indeed, even some district courts in the Shire-hostile Ninth Circuit have nevertheless entertained 13(b) challenges “right out of the gate” at the motion to dismiss stage.58 Moreover, regardless of whether courts go so far as to adopt the Shire test, violators may sometimes be able to avoid any action under 13(b) by ceasing their violations before the FTC files suit. For example, a district court in the Ninth Circuit granted summary judgment where Amazon had ceased the alleged practice after the FTC began an administrative investigation but before the suit was filed, and the court could find no “cognizable danger of a recurring violation.”59

A Shire-style defense is not just permitted at the pleading stage, it likely must be raised early oth- erwise it will be forfeited. The Shire court held flatly that “13(b)’s ‘is’ or ‘is about to violate’ requirement is non-jurisdictional.”60 This is no academic distinction. It means that a Shire argument might have to be raised on a motion to dismiss. The sometimes obtuse and varied rules of waiver and forfeiture may control whether a Shire defense has fallen out of the case.61 While circuits do not have uniform rules, they all agree that “waiver and forfeiture rules . . . ensure that parties can determine when an issue is out of the case, and that litigation remains, to the extent possible, an orderly progression.”62

Failure to timely raise a Shire argument has already tripped up one prominent defendant. In FTC v. Vyera, the Southern District of New York recently rejected a 13(b) challenge framed as an affirmative defense because “Defendants had a full opportunity to challenge the sufficiency of the pleading at the motion to dismiss stage.”63

The potential impact of Shire has not gone unnoticed by consumer protection advocates. In a recent congressional hearing, one advocate argued that, under Shire, “wrongdoers that line their pockets with money they have illegally obtained can sail off into the sunset just as long as they retire their scams before the FTC catches up with them.”64 Jessica Rich, former Director of the FTC’s Bureau of Consumer Protection, similarly noted that Shire limited the FTC’s authority to remedy past conduct and called for Congressional action.65

Whether under Shire in the Third Circuit or under less-restrictive standards in the Ninth Circuit and elsewhere, courts’ limitations on injunctive relief under Section 13(b) increasingly curtail the availability of the FTC’s go-directly-to-court approach of the past few decades. Nobody would dispute that— as the Chief Justice observed at AMG oral arguments—an agency only has the authority delegated to it by Congress.66 Of course, Congress may yet delegate more authority than the FTC already has.

Congressional Activity in the New Administration

In light of the incursions into the FTC’s Section 13(b) authority, Congress may well expressly legislate to broaden or clarify the Commission’s authority. In the last Congress, Senator Roger Wicker (R-MS) introduced a bill that would have both allowed the FTC to bring a 13(b) suit even where the offender merely “has violated” the law, and expressly allowed for “restitution for consumer loss,” “rescission or reformation of contracts,” and “the refund of money or return of property.”67 Such an approach would, in one fell swoop, end any uncertainty about the FTC’s authority to go directly to court even for past violations and obtain monetary relief. The prospects of any such legislation are unclear, but there can be no doubt that if the Supreme Court rules in favor of AMG, some in Congress will seek to give the FTC more express authority. The trend in Shire—and even in courts with less stringent standards for injunctive relief—only adds fuel to that fire.

Back in October 2020, all five then-Commissioners urged Congress to pass legislation to “swiftly []clarify the statutory text and allow us to continue to protect consumers.”68 They warned that “13(b) is a critical tool in our enforcement mission” but that AMG and Shire were “grave” “judicial threats” to “the FTC’s ability to protect consumers.”69 With a Democratic-majority FTC and the Biden administration expected to take a forward-leaning approach on consumer protection, Congressional “clarification” would likely garner broad executive branch support.70

In February, the Subcommittee on Consumer Protection and Commerce of the Committee on Energy and Commerce held a hearing ostensibly focused on “Fighting Fraud and Scams During the Pandemic.”71 Discussion of AMG, Shire, and 13(b) dominated the hearing. Subcommittee Chair Jan- ice D. Schakowsky stated that “[u]nder 13(b), the FTC can require defrauders to provide restitution (money) to individuals who have been defrauded. Unfortunately, this authority is under assault at the Supreme Court, and the FTC may find itself deprived of a critical tool.”72 She argued that “reaffirming the FTC 13(b) authority is a bipartisan issue at the Commission as it should be everywhere.”73

While Congressional activity and interest may be easy to predict if the Court rules in AMG as anticipated, the outcome of that activity is entirely uncertain. Opening the FTC Act to amendment is likely to lead to a broader Congressional referendum on the Act as a whole, with various members of Congress seeking to amend the Act in ways unrelated to the 13(b) issues currently in dispute. For example, some members are likely to seek broader FTC rulemaking authority while others may use the opportunity to press for the transfer of powers from the agency to a new agency empow- ered to address privacy concerns or even digital markets as a whole. This will undoubtedly complicate the ability of Congress to address the relatively narrow issue teed up in AMG and leaves the future of FTC monetary—and potentially injunctive—relief in jeopardy. ●

ADDENDUM

On April 22, 2021, a day after this article was published, the United States Supreme Court unanimously decided AMG Capital Management v. FTC. That decision marks the end of the FTC’s broad exercise of Section 13(b) authority to get money back from those who violate the FTC Act—for now.

In a unanimous decision written by Justice Breyer, the Supreme Court held that the statute does not authorize the FTC to seek “equitable monetary relief such as restitution or disgorgement.” In essence, the Court decided that Section 13(b)’s reference to a “permanent injunction” means just that and no more. So, for monetary relief, the FTC is now left with its existing authority under Section 19 of the FTC Act.

While the Supreme Court settled an important issue in AMG, the law around FTC enforcement authority is in flux. Indeed, on the day before the decision, the FTC testified before Congress that “Section 13(b) is a critical tool in support of our enforcement missions, but its effectiveness is cur- rently imperiled [by AMG and further curtailments by circuit courts], and this uncertainty is hurting our ongoing enforcement efforts.” The Commission called for legislation, and a bill that would reverse the effect of AMG was introduced that same day in the House.

#### The plan derails it

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

### Turn---1NC

#### Realigning antitrust beyond consumer welfare undermines global and domestic rule of law---turns case

---consumer welfare key to certainty, predictiability and consistency, realigning it causes global hostility against US businesses because foreign nations don’t want it applied

Wright ’19 [Joshua D, Elyse Dorsey, Jonathan Klick, and Jan M. Rybnicek; Spring; Law Professor at George Mason University; Attorney Advisor to Commissioner Noah Joshua Phillips at the United States Federal Trade Commission; Law Professor at the University of Pennsylvania; attorney at Freshfields, Bruckahus Deringer LLP; Arizona State Law Journal, “Requiem for A Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” vol. 51]

III. BENEFITS OF THE CONSUMER WELFARE STANDARD

The adoption of the consumer welfare standard as antitrust's lodestar has come with numerous benefits that have reoriented antitrust jurisprudence over the last fifty years to more effectively protect competition. At its core, the consumer welfare standard provides a coherent, workable, and objective framework to replace the multiple, and often contradictory, vague social and political goals that governed antitrust prior to the modern era. By providing a disciplined framework for antitrust analysis, unified under a singular objective, the consumer welfare model fosters the rule of law and helps prevent arbitrary or politically motivated enforcement decisions. Similarly, promoting the use of the consumer welfare approach by competition authorities worldwide reduces the opportunity for enforcers to use their domestic competition laws to pursue non-economic objectives, including a protectionist agenda that targets U.S. and other foreign businesses. 238

But if clarity and consistency were the only virtues offered by the consumer welfare standard we could identify any number of plausible alternatives. The most significant feature of the consumer welfare standard thus is that it tethers competition analysis, and therefore the outcome in any particular antitrust case, to modern economic learning and evidence. In doing so, the consumer welfare approach rejects the simplistic focus on market structure and concentration as a proxy for identifying anticompetitive effects. Indeed, courts and enforcers today use a broad set of economic tools to examine a variety of factors in assessing whether a specific transaction or business arrangement is likely to harm consumers. Despite claims by opponents to the contrary, consumer welfare analysis is robust and scrutinizes market factors beyond just a narrow focus on short-term [\*352] price effects, including quality and innovation. The consumer welfare model also has the added benefit of allowing antitrust analysis to evolve alongside developments in economics to address new types of business models and emerging industries. As our understanding of the economics of a business arrangement improves, so too does the antitrust analysis.

By realigning antitrust under a singular objective grounded in economics, the consumer welfare standard heralded the advent of the modern antitrust revolution that squarely rejects populist desires to balance multiple non-economic factors in favor of a consistent and coherent framework focused on the straightforward, but elegant, question of whether a transaction or commercial arrangement makes consumers better off. The virtues that originally motivated the adoption of the consumer welfare standard remain its most salient features and the reason why it continues to be the best model for antitrust analysis.

A. Creating a Coherent and Consistent Framework for Antitrust Law

It is widely acknowledged by commentators across the political spectrum that prior to the antitrust revolution, antitrust jurisprudence was an incoherent and unpredictable body of law that frequently showed hostility to business. 239 Before the adoption of the consumer welfare standard, courts would attempt to weigh an array of social and political goals that often were at odds with one another and also with modern economics. 240 This paradoxical approach weaponized the antitrust laws against the competitive process and, as a result, antitrust doctrine was internally inconsistent and counterproductive. Antitrust not only failed to promote competition, but it [\*353] actively dissuaded competitors from becoming more efficient and bringing consumers lower prices, greater innovation, and other benefits.

The consumer welfare standard offered antitrust a way out of this quagmire. Today, the consumer welfare standard provides antitrust jurisprudence a disciplined method of analyzing competition that starts and ends with the straightforward question: "Is the challenged conduct likely to make consumers better or worse off?" Rather than issuing decisions that may hinge upon any number of socio-political goals, courts today predictably answer--and their analyses turns solely upon--this question in every antitrust case. This singular focus avoids the internal inconsistencies of the socio-political approach to antitrust, within which various courts would condemn both procompetitive and anticompetitive conduct depending upon the discrete social or political end the court sought to foster in a given case and not based upon whether the conduct actually promoted competition.

### A2: Democracy---1NC

#### Dem decline is thumped---they can’t solve all these countries---we’re yellow

---Brazil, India, Mexico, Poland, Hungary, Philippines, Turkey, and Venezuela are already authoritarian---no reverse causal ev plan shifts them back

---precedent is thumped by capitol riots, 4 years of Trump shitting on democracy, and fringe extremists

Larry 1AC 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.**

More Alt causes:

Internationally---repression in Turkey, Russia, and Hungary.

Domestically---gerrymandering, domestic surveillance, and police brutality.

### Emerging Tech---1NC

#### No emerging tech impact.

---takes decades to develop, history with nukes and past tech disproves, countries don’t want to hurt their citizens so won’t risk because they fear retaliation

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

### Terror/Scams---2NC

#### Can’t solve scams --- hackers still exist and they don’t create cybersecurity – there card is about the capitol riots which thumps – we’re yellow

Casey 1AC Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.)

It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it:

“I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.”

And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further.

Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again.

After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

#### FTC doesn’t solve scams

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

A review of current areas of FTC activity suggests limited possibilities. Most deep fakes will not take the form of advertising, but some will. That subset will implicate the FTC’s role

#### Marked

in protecting consumers from fraudulent advertising relating to “food, drugs, devices, services, or cosmetics.”[247] Some deep fakes will be in the nature of satire or parody, without intent or even effect of misleading consumers into believing a particular person (a celebrity or some other public figure) is endorsing the product or service in question. That line will be crossed in some instances, however. If such a case involves a public figure who is aware of the fraud and both inclined to and capable of suing on their own behalf for misappropriation of likeness, there is no need for the FTC or a state agency to become involved. Those conditions will not always be met, though, especially when the deep-fake element involves a fraudulent depiction of something other than a specific person’s words or deeds; there would be no obvious private plaintiff. The FTC and state attorneys general (state AGs) can play an important role in that setting.

### Solvency

#### Antitrust fails---lobbyists and judges ruin enforcement

Jones and Kovacic 20 [Alison Jones and William E. Kovacic, Alison Jones is Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; William Evan Kovacic is an American lawyer and legal scholar who was a commissioner of the U.S. Federal Trade Commission from 2006 to 2011. Kovacic is a professor at George Washington University Law School and the director of their Competition Law Center, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", The Antitrust Bulletin 2020, Vol. 65(2) 227-255 [https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]LPAL](https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884%5dLPAL)

\*this card has been modified for ableist language

-firms lobby congress to stop any new FTC enforcement---control of their budget/political sway

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125 The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or ~~muted~~ [silenced] if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder. Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

# 2NC/1NR

## Regs CP

#### Counterplan is more durable and enforceable

Shelanski 18, Professor of Law @ Georgetown (Howard, “Antitrust and Deregulation,” Yale Law Journal)---sex edited

Regulation can also be comparatively slow to adapt to new market condi- tions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than anti- trust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transi- tion to more competitive structures.126 As Michael Boudin, a former DOJ anti- trust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congress[people] and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

#### Detterence solves this card’s warrants.

Fleisher 20, analyst @ American Economic Association (Chris, “Regulation by shaming,” <https://www.aeaweb.org/research/regulation-shaming-osha-enforcement>)

A paper in the June issue of the American Economic Review says that publicly shaming one rule breaker can have spillover effects, causing nearby peer companies to improve more than if they’d been targeted themselves. The paper offers insights into how information can be used to encourage regulatory compliance and generally deter bad behavior. “Regulators enact regulatory standards and they enforce them, but one of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there,” author Matthew Johnson said in an interview. “And that's fully in line with the mission of many of these agencies.” There are all kinds of contexts where information is used to hold companies accountable, like requiring restaurants to post hygiene cards or companies to disclose their toxic emissions. And it often works. Johnson wondered whether this “shaming” would be effective in the labor market. [O]ne of the complementary goals of regulation should be to provide information to the world knowing that there's imperfect information out there. The question is important not only for economists who want to know how employers respond to the threat of disclosing information, but also for public welfare and safety. There were 3.7 million work-related injuries and illnesses in 2015, costing the United States an estimated $250 billion per year. Johnson dug into data from the Occupational Safety and Health Administration, “the poster child” of under-resourced agencies, he said. OSHA’s ten regional offices routinely inspect workplaces for health and safety standards. But with just 2,000 inspectors responsible for 130 million workplaces, the agency can’t visit every site. So it’s important for OSHA to get the maximum impact from each inspection. One way is to publicize the most egregious offenders. When penalties rise above a certain threshold—$40,000 to $45,000, depending on the region—OSHA sends out a press release to local news outlets and trade publications. Spreading word of bad actors The number of news articles about OSHA violations increased after the watchdog agency created a cutoff rule for when a press release would be sent out. Penalties that exceeded $40,000 or $45,000 would be publicized. Regions 1 and 4 had adopted that cutoff rule in 2002, while other regions adopted the policy in 2009 (noted by the vertical plotline). News Articles Region 1 Region 4 Region 5 Region 6 Region 7 2002 2004 2006 2008 2010 2012 0 20 40 60 80 100 120 140 Source: author data Sending out press releases led to substantial improvements in workplace safety and health, not just at the site of the violation but also at other nearby facilities. After the shaming of one company, there were 73 percent fewer violations at other companies within a roughly three-mile radius. The threat of being outed was enough to force surrounding workplaces to make changes even though they were not actually inspected.

#### Regulation is more predictable and solvent than incorporating labor into antitrust.

Greenfield et al. ’20 [Leon; 12/31/20; Partner at Wilmer Hale, J.D. from the University of Chicago Law School, Adjunct Professor at the Georgetown University Law Center, Senior Editor of the Antitrust Law Journal, Co-Editorial Chair of the Section of Antitrust Law Mergers and Acquisitions, formerly served as an Editorial Board Chair of the Annual Review of Antitrust Law Developments; Perry A. Lange; J.D. from the Georgetown University Law Center; Nicole Callan; J.D. from the Georgetown University Law Center, Attorney at the Federal Trade Commission; "Antitrust Populism and the Consumer Welfare Standard: What Are We Actually Debating?" Antitrust Law Journal, Vol. 83, No. 2, p. 393-428]

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, Diana 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 everything that is affected by a merger or abusive conduct: employment, health and safety, and even environmental concerns.”168

But proposals to use public interest as the actual rule of decision are rare.169 Rather, antitrust populists typically argue that as a descriptive matter, antitrust under-enforcement harms the public interest (for example, by increasing income inequality, depressing wages, and reducing economic opportunities for workers), without advocating for public interest as a decisional benchmark.170

Applying public-interest considerations in merger reviews would represent a dramatic departure from existing antitrust enforcement, and could sacrifice consumer welfare, including long-term consumer welfare, to pursue other, non-market, performance-based goals. Insofar as antitrust populists advance a public interest test, they must devise objective standards to ensure that the test does not transform into a broad power to regulate the economy for political ends and that the test proves predictable and administrable in practice. Those arguing for such a test must also respond to criticism that they are seeking to overextend antitrust law to address public-policy gaps and regulatory failures in other regimes.171 And they must explain why using antitrust for this purpose is preferable to employing sector-specific regulation or other mechanisms to address concerns outside the consumer welfare realm.

#### Regulation is ‘more effective.’

D. Daniel Sokol 20, Assistant Professor at the University of Florida Levin College of Law, Senior Advisor at White & Case LLP, LLM from the University of Wisconsin Law School, JD from the University of Chicago Law School, MSt in History from Oxford University, AB from Amherst College, “Antitrust's "Curse of Bigness" Problem, The Curse of Bigness: Antitrust in the New Gilded Age”, Michigan Law Review, Volume 118, Issue 6, 118 Mich. L. Rev. 1259, April 2020, Lexis

CONCLUSION

Antitrust works well because it is technocratic in that a singular (but flexible within its economics) goal is administrable institutionally. To introduce the world of political imperfections into a technical process that examines markets would create further distortions affecting consumers. 152Antitrust does well dealing with antitrust problems. To the extent that there are other related problems, the right answer is not to create an antitrust that lacks democratic accountability (because antitrust becomes regulation via the backdoor) and exceeds its mandate of the past forty years. Rather, the better solution is to identify the underlying problem and solve it with more effective tools. If the problem is one of redistribution, tax is a better choice than antitrust. 153 If the problem is one of privacy, strengthen privacy laws. 154 If the problem is one of financial institutions or sector regulators not doing what they need to do, correct structural problems with sector regulators. Antitrust has increasingly moved out of sector regulation 155 and toward advocacy. 156The advocacy budget of the antitrust agencies is tiny, and to the extent that the problem is the rules of the game for particular industry sectors, Wu falls short by not suggesting greater competition advocacy.

Wu's concern with big tech companies because they are big (p. 126) is as misplaced now as it was earlier in antitrust history. Antitrust has gone through various moments in which it had reevaluated whether it has the proper tools to combat anticompetitive behavior in technology-related markets. 157It does have such tools and can bring important cases in these markets. 158 [\*1281] It was just a decade ago that we were told that Walmart was taking over shopping, that eBay was the largest online marketplace, or that Facebook was the primary way in which users shared information. Today, Uber competes with Lyft, Amazon has eclipsed eBay, Facebook is a legacy service, and younger people use any other set of applications to share information--such as Pinterest, Twitter, or Snapchat. In a world of continuous change, antitrust is what remains constant. It has the tools to police against unlawful exercise of monopoly power and adapts to changes in economic theory and empirics. To ask antitrust to go beyond its institutional capacity sets up antitrust to fail, because Wu's deeper concern is with how society is structured. That structure can be changed through elections to the presidency and Congress and through changes as to the makeup of the Supreme Court. Antitrust history shows that it is the Supreme Court that changes antitrust law and policy the most because of antitrust's common law-like nature. 159

#### The FTC fails at successful enforcement but Regs Solve---their ev

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

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

The best thing Khan can do? Nothing.

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

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

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

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

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

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

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

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

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

But the FTC’s levers are limited.

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

#### Regulations actually grow stronger over time---antitrust is unenforced.

Shelanski ’18 [Howard; May 2018; Professor of Law at Georgetown University, Ph.D. and J.D. from the University of California at Berkeley; Yale Law Journal, “Antitrust and Deregulation,” vol. 127]

Certain characteristics of competition-enforcing rules might make them particularly vulnerable to repeal or non-enforcement. Notably, competition-oriented rules might have fewer fixed costs but higher recurring costs for firms than other kinds of regulation, which more likely require companies to make initial investments to meet regulatory standards. Rules such as those governing emissions reductions, toxic chemicals, workplace safety, transportation safety, agricultural standards, and the like often require companies to invest upfront in new technologies, compliance systems, or ways of doing business when a standard changes. To the extent such investments are fixed rather than recurring, repeal of the underlying regulation might not save much for the regulated firms going forward compared to what the rule has already cost them.69 In such cases, the constituency for repeal of the rule will be much weaker than the constituency that might have existed to prevent initial promulgation of the rule. Indeed, regulated firms, having already sunk the costs of compliance, might want to keep the rule in place so that new competitors would have to incur the same regulatory costs to enter the market. This is particularly true for rules that require regulated firms to invest in new technology or other capital improvements. The OECD reports that “[i]n regulated sectors, licensing procedures, territorial restrictions, safety standards, and other legal requirements may unnecessarily deter or delay entry. In some cases, these regulations seem to be the result of lobbying efforts by incumbent firms to protect their businesses.”70

The economic logic that can drive incumbent firms to accept existing rules or even lobby for additional regulation no longer holds for rules that do not impose upfront costs and that increase rather than reduce competition for incumbent firms. Because such rules erode rather than protect incumbent firms’ market positions, it seems likely that such rules will have a much stronger constituency for repeal. Regulated firms have much greater incentive to seek removal of rules that cause rather than impede competition.

#### ‘Antitrust laws’ are Sherman, Clayton, and FTC.

FTC ’13 [Federal Trade Commission; first saved on the Wayback Machine’s Internet Archive on December 14, 2013; “The Antitrust Laws,” https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws]

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

#### Antitrust cannot be regulation.

Babette Boliek 11, Associate Professor of Law at Pepperdine University School of Law, “FCC Regulation versus Antitrust: How Net Neutrality is Defining the Boundaries,” Boston College Law Review, Vol. 52, 2011, pg 1627-1686.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times. 2 But it is the current iteration of the FCC's "net neutrality" regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service. 4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose-to protect consumers and to promote allocative efficiencies in production-the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws "typically aim at similar goals-i.e., low and economically efficient prices, innovation, and efficient production methods" -regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about."5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive marketsregulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

#### Allowing both regimes on the books produces false positives, chills lawful activity, and turns the case. *AND no net benefit to the perm.*

Richard M. Brunell 12, Director of Legal Advocacy, American Antitrust Institute, Washington, D.C, “, In Regulators We Trust: The Supreme Court's New Approach to Implied Antitrust Immunity,” Antitrust Law Journal, Vol. 78, 2012, pg 279-312.

B. CREDIT SUISSE CONTINUES THE TREND

In Credit Suisse, the Supreme Court applied the substance of Trinko's "soft immunity" analysis in determining that conduct was immune from antitrust challenge even if it violated both the antitrust laws and the federal securities laws." A class of investors sued ten large investment banks engaged in joint underwriting, alleging that the banks had conspired not to sell shares in hundreds of initial public offerings unless the customers also committed to make aftermarket purchases of the shares at inflated prices (a practice called "laddering") and to purchase other less desirable securities from the underwriters (a practice referred to as "tying").' In an opinion for seven Justices written by Justice Breyer, the Court found that the "securities law and antitrust law are clearly incompatible," even though the alleged conduct violated both laws, because the risk of false positives in this area was unusually high and threatened to chill lawful joint underwriting activities.72 At the same time, "any enforcement-related need for an antitrust lawsuit [was] unusually small" because the SEC actively enforced the rules prohibiting the conduct at issue, the agency was required to take into account competitive considerations, and injured investors could bring lawsuits and obtain damages under the securities laws.73 While the Court purported to apply the "clear repugnancy" standard in its implied immunity analysis, many commentators justifiably argue that the standard has implicitly been overturned.7 4

Once again the Bush DOJ did not support the approach followed by the Court. Rather, in a brief to the Court of Appeals the Antitrust Division took the position that immunity was appropriate "for conduct expressly or implicitly approved by the securities laws or SEC regulations," but "the allegations of tying and laddering-practices that are strictly prohibited under the securities laws and that the SEC has never permitted or proposed to permit-should not be dismissed on implied immunity grounds."" The Antitrust Division emphasized that "the enforcement of the antitrust laws as to [this proscribed conduct] does not interfere with the SEC's ability to regulate or exempt from regulation."' 6

In the Supreme Court, the Solicitor General proposed a position that was a compromise between the Antitrust Division and the SEC. The Solicitor General rejected the "view that anticompetitive conduct that is and always has been forbidden under the securities laws is nonetheless categorically immune from liability under the antitrust laws," and noted that "the antitrust laws ... address, in a way that the securities laws do not, the distinct evil of a conspiracy across underwriters and across IPOs."n7 At the same time, the Solicitor General would have extended implied immunity to conduct that, although not permitted by the SEC, is "inextricably intertwined" with permitted conduct, and would have precluded plaintiffs from relying on such conduct to prove their antitrust violation.78 The Supreme Court rejected the Solicitor General's proposal as insufficient to avoid "the serious risk that antitrust courts will produce inconsistent results that, in turn, will overly deter syndicate practices important in the marketing of new issues."7

#### Inclusion of antitrust encourages regulators to promulgate sub-optimal regs.

Jacob A. Kling 11, partner in Wachtell Lipton's Corporate Department, Yale Law School, J.D., “Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine,” Yale Law Journal, 120, 2011, pages 910-953.

III.THE OPTIMAL IMPLIED IMMUNITY STANDARD

Accepting the premise, defended in Part II, that antitrust courts are likely to prohibit too much conduct and impose too much liability in the securities context, what are the implications for the optimal implied immunity standard? Consider three possible standards in descending order of breadth. The first and broadest is the active review standard under which antitrust suits are impliedly precluded whenever the SEC has jurisdiction over a particular activity and is actively engaged in reviewing the merits of that activity, regardless of whether the SEC has promulgated an applicable regulation. The second is the some regulation standard, which would preempt antitrust suits only when the SEC has jurisdiction over a particular activity and has promulgated a regulation concerning the activity, whether permitting or prohibiting it. The third and narrowest possible standard is the affirmative approval standard, according to which an antitrust suit is only precluded when the SEC has promulgated a regulation permitting the activity in question. Billing clearly rejected the affirmative approval standard proposed by a number of commentators.'6 " Since the SEC had promulgated a regulation and had issued guidance covering the alleged tying and laddering arrangements at issue, 6 ' the Court did not have occasion to distinguish between the active review standard and the some regulation standard, both of which are consistent with the outcome of the case. However, the Court's decisions in both Gordon and NASD suggest that the SEC need not affirmatively promulgate a regulation to preclude application of the antitrust laws,'6 6 which supports the active review standard.

This Part argues that a broad implied immunity standard predicated on the SEC's jurisdiction over, and active review of, a particular activity is efficient. But whereas in Billing the Court justified its implied immunity analysis by reference to the chilling effects of erroneous antitrust judgments ex post, this Part shifts the focus to ex ante regulatory action by the SEC. It argues that, from an ex ante perspective, the principal concern with a narrower implied immunity doctrine is that it might distort the SEC's regulatory decisions. In particular, if the SEC has three regulatory choices -prohibit a class of conduct entirely, permit it entirely, or adopt a nuanced rule that permits some forms of the conduct but prohibits others -and if a nuanced approach is optimal but a blanket authorization is preferable to a complete prohibition, then under either a some regulation standard or an affirmative approval standard the SEC might opt to permit the conduct in its entirety simply in order to preempt antitrust suits.167

The SEC can be expected to choose such a second-best solution in two situations. First, the SEC might opt for such a rule if it believes that it will not have time to study the activity at issue before an antitrust suit is resolved and that an antitrust court, if left to its own devices, might prohibit too much conduct or impose excessive liability for antitrust violations. Second, the SEC might choose to permit the entire class of conduct if it believes that, even if it were able to adopt a nuanced rule in time, a court might misapply that rule and prohibit conduct that the SEC would permit or award excessive damages for activities that the SEC prohibits. In combination, these two scenarios, which are modeled in the following Sections, suggest that an active review standard is optimal because it enables the SEC to regulate without solicitude for the possibility of erroneous decisions in antitrust cases. 68

#### Regulations don’t link to the net benefit---they resolve spillover fears by signaling that regulated industries are the exception.

Dr. Babette E.L. Boliek 14, Ph.D. in Economics from the University of California, Davis, J.D. from the Columbia University School of Law, Professor of Law at Pepperdine University, “Antitrust, Regulation, and the "New" Rules of Sports Telecasts”, Hastings Law Journal, 65 Hastings L.J. 501, February 2014, Lexis

I. The Current Relationship of Antitrust, Regulation, and Sports Broadcast

As noted, antitrust and industry-specific regulation are two distinct means to achieve much the same social goal - to protect consumers and encourage efficiencies in production and distribution. 38 However, the two regimes are by no means interchangeable, and the choice between them is itself imbued with certain social policy preferences. 39

[FOOTNOTE] As then-Chief Judge Stephen Breyer stated, while regulation and the antitrust laws "typically aim at similar goals - i.e., low and economically efficient prices, innovation, and efficient production methods," regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." Town of Concord, Mass. v. Bos. Edison Co., 915 F.2d 17, 22 (1st. Cir. 1990). [END FOOTNOTE]

Antitrust law is an enforcement regime that preserves competition across all private industries by condemning anticompetitive conduct only after it occurs. 40 In contrast, industrial regulation is inherently a social admission that, in a given industry, market forces are too weak to produce the consumer benefits that are realized in competitive markets. 41 Therefore, regulated industries are an exception to the economy at large and are subject to preemptive, regulatory rule that may actively engineer industry conduct far beyond that permitted under antitrust law. 42

## Adv 1

#### Antitrust itself is an ineffective legal basis---it’s inherently weak and consistent.

Sipe ’16 [Matthew; December 2016; Assistant Professor of Law at the University of Baltimore, JD from Yale Law School, BA in Mathematics and Economics from the University of Virginia; American University Law Review, “Patents v. Antitrust: Preempting Conflict,” vol. 66]

As the Court recognized in *Credit Suisse*, "antitrust courts are likely to make unusually serious mistakes" in areas of law where expertise is necessary. 250 In addition, allowing generalist antitrust courts to encroach upon and shape patent law would effectively squander the considerable collective expertise of the PTO, the ITC, and the Federal Circuit. This expertise mismatch strongly suggests the need for a minimally overlapping role for antitrust law and patent law, if not preemption entirely under Credit Suisse.

D. The Risk of Inconsistency

The Credit Suisse Court additionally noted the risk that antitrust courts, "with different nonexpert judges and different nonexpert juries" will find it difficult to "reach consistent results" as a reason why antitrust law and securities law, if simultaneously applicable, would be likely to produce conflicting guidance and requirements. 251 This risk looms large in the patent context as well. As outlined above, the need for expertise in adjudicating patent disputes is substantial; 252 as a result, nonexpert judges dealing with cases involving patents are apt to produce inconsistent results. But there is also uncertainty and inconsistency built into the applicable antitrust doctrine itself: in antitrust cases involving patents, courts have increasingly abandoned predictable rules and eliminated useful presumptions that might otherwise create consistency.

#### Growth is stable and pessimists are historically wrong---no coming recession.

Barbera ’21 [Robert J; July 20; Director of the Center for Financial Economics, PhD from John Hopkins University, 30 years as a Wall Street economist; Center for Financial Economics, “Does the 2021 Boom Lock the U.S. into 2023-2025 Gloom?” https://krieger.jhu.edu/financial-economics/2021/07/20/does-the-2021-boom-lock-the-u-s-into-2023-2025-gloom/]

Is it *likely*? The CBO forecasters had to acknowledge the reality of recent surging labor productivity. But rather than view that change as significant, they chose to insist that their earlier guess for sustainable productivity gains was correct. That completely arbitrary decision led them to forecast meagre prospective productivity growth ahead, and is central to their forecast of a swoon for 2023-2025 real GDP growth.

CBO’s insistence on this dour view forces them into pretty improbable territory. Glance at the chart below. It reveals that the flow of output, second half 2021, is deemed to already be well above the economy’s potential. With unemployment still close to 6% and with labor force participation still quite depressed, declaring that the economy is already in excessive territory, seems hard to support. I think it is flat out wrong.

Real GDP forecast and real potential GDP for 2020 to 2025

Deconstructing CBO’s Potential Output estimate

CBO’s characterization of potential is driven by three assumptions. Sustainable annual gains for U.S. labor productivity will average around 1.8%. Full employment for the U.S. economy is centered a bit above 4%. At full employment U.S. labor force growth is capped at around 0.3% per year. Combine these three items and you end up sketching out CBO’s version of the upside boundary for U.S. real GDP.

Again, however, embracing these assumptions forces you to assert that the economy, as we enter the second half of 2021, is already operating above its sustainable level, strikingly at odds with common sense amid very high joblessness, very low labor force participation and very low levels of capacity utilization for our industrial sector.

How might we modify an estimate of potential, so that it squares with the notion of ample excess labor and production capacity, mid-2021? Simply acknowledge that the spurt for productivity, over the past 6 quarters, need not be followed by a productivity swoon.

Additionally, we can revisit the question of full employment. CBO asserts that employment levels extended beyond safe levels, throughout 2018 and 2019. But there was little evidence of wage and or price pressures in late 2019. Labor force conditions then may have been at, but not beyond full employment after all, at that time.

Consider those two factors, and a post-boom 2%, not 1%, real GDP growth performance is easy to pencil in.

Productivity’s Trajectory Need Not Mean Revert.

CBO embraces the pre-pandemic consensus view on sustainable productivity gains, 1.8% per year. But over the 6 quarters ending in 2021:Q2, labor productivity wildly outstripped this performance, rising at around a 3.4% annualized pace, nearly double CBO’s sustainable rate.

Does it make sense to be adamant about sustainable productivity levels? Not really. Since 1950, long run average growth rates for labor productivity are neither stable nor predictable. They range anywhere from 1.6% to 2.6%, putting CBO’s figure on the very low end of post war history.

Histogram showing rolling average of productivity growth, 1952-2018.

Where did CBO come up with 1.8%? That is the bad news performance of the previous expansion. But CBO’s insistence on continued poor performance, despite nearly two years of boom, seems awfully conservative. Indeed, it amounts to insisting that good productivity news today, rather than a reason to revise up expectations for prospective productivity, necessitates a forecast of dastardly productivity performance and depressing economic growth news tomorrow.

CBO could have taken a somewhat less dour approach. They could have stuck to their guns about full employment levels and sustainable long-term productivity and labor force trajectories. But they could have attached theses trend trajectories to the elevated output levels achieved amid the boom. Simply allowing the economy to pocket the gains delivered by recent great productivity news would put 2025:Q4 3% higher than CBO’s current forecast.

Optimists could go further. They could envision an important upshift in the longer run trajectory for economic growth. Can two years of boom help us break out of the doldrums of piddling productivity growth and depressed labor force participation—the U.S. economic reality of the past two decades? Lift labor productivity to the mid-point of its post war range, 2.3% per year, and real GDP, 2025:Q4, is 5% higher than CBO’s current projection.

Reconsidering Full employment Levels

Similarly, CBO identifies 2018:Q1 as the period in which the U.S. economy slightly eclipsed full employment. At that time the jobless rate was at 4% and 25-to-54-year-old—prime age—workers’ participation rates stood at 82%. By 2019:Q4 the jobless rate had fallen to 3.5% and prime age participation had rebounded to 83%, and amid these further gains for employment no discernable wage acceleration appeared. If we choose to identify 2019:Q4 as full employment, then the potential labor force, 2025:Q4 is roughly 1% higher than CBO’s estimate, offering more room for growth before hitting labor market ceilings.

Worshipping at the Altar of No Free Lunches.

Why does CBO insist that short term gains require outyear pains? Take a step back and the message embedded in the updated CBO forecast is clear. CBO, and many conventional analysts will not allow short-term stimulus to change their guesses about the economy’s long-term trajectory. They must embed today’s stimulus supported boom, because we are knee deep in it. But they marry to it mean reverting arithmetic that force the economy back to their pre-boom guess for its sustainable level. The economist mantra, there is no such thing as a free lunch, is a powerful notion, and it leads many economists to insist on dangers that they simply should acknowledge are largely speculative.

#### Growth is the strongest in months.

Smart ’10-22 [Tim; October 22; Reporter; U.S. News and World Report, “Survey: U.S. Economic Growth Accelerated in October, Led by Services,” <https://www.usnews.com/news/economy/articles/2021-10-22/survey-us-economic-growth-accelerated-in-october-led-by-services>]

Growth in U.S. economic activity accelerated in October, overcoming supply chain snafus and shortages of labor and materials, according to the flash composite Purchasing Managers Index released Friday by IHS Markit.

The overall index now stands at 57.3, up from 55 last month, with the services sector index at 58.2, a three-month high and up from 54.9 in September. Manufacturing slipped to 59.2 from 60.7 in September, registering a seven-month low.

Economists projected the services index at 55.2, with the manufacturing index estimated at 60.7.

"U.S. Private sector businesses recorded a sharp and accelerated upturn in output led by the service sector during October," the report said, "with growth the strongest for three months, albeit still much weaker than earlier in the year."

The report noted companies struggled with a backlog of orders, constrained by a lack of workers and key parts. Prices rose at a record pace, reflecting rising inflation across many categories of goods.

The report mirrors many other recent readings on the economy, which show strong demand from customers running head-on into shortages and higher prices.

#### Inequality hasn’t changed in nine decades and isn’t related to the aff

Atkinson ‘21 [Robert; 3/10/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine," https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new]

Myth 7: Market Concentration Has Caused Labor’s Share of Income to Fall26

Neo-Brandeisians have argued that increased market concentration has reduced the share of national income going to labor. The idea is that as companies gain more market power, they take an increased share of economic output, with workers getting less.

But according to the U.S. Bureau of Economic Analysis, virtually none of labor’s lost share of income goes to increased profits, as a theory of market power might predict. Rather, the gains are almost totally from increases in both rental income—imputed rent (the value an owner would get from renting the home they occupy at market rates) homeowners receive and actual rent renters pay—and to some extent the mismeasurement of self-employment income. And when looking at the change in combined worker, rental, and self-employment income as a share of net national income, versus combined profits and net interest income, the former ratio is essentially unchanged over the last 90 years. (See figure 4.) In other words, the declining share of labor income has almost nothing do with monopoly power.

#### COVID thumps econ BUT it’s resilient

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc., “Resilient US Economy Has Overcome the COVID-19 Recession”, Independent Institute, 10/9/20, <https://www.independent.org/news/article.asp?id=13290>

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

#### ‘Slow growth’ is inevitable AND is proof of a strong economy.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

Chart, line chart

Description automatically generated

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

Chart, line chart

Description automatically generated

This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

## Adv 2

#### It’s inevitable because of Europe even in spite of U.S. democratization.

Stelzenmueller ’20 [Constanze; December 2; Kissinger Chair on Foreign Policy and International Relations at the Library of Congress, Senior Fellow in the Center on the United States and Europe at the Brookings Institution; Financial Times, “The west must live up to its own principles on democracy,” <https://www.ft.com/content/19d44ecb-152e-4db7-b2c6-de5928712cca>]

One of President-elect Joe Biden’s promises is that the US will recommit itself to defending democracy in the world, together with other democratic allies. The EU, it appears, plans to firmly embrace this proposal, with a particular focus on presenting a united front to China.

Yet criticising Beijing’s mass internment of Muslim Uighurs — or the Kremlin’s attempts to manipulate elections — draws accusations of hypocrisy at a time when many western governments struggle to convince their citizens that representative democracy remains the most trustworthy way to deliver good governance. If the transatlantic alliance is to hold its own in competition with illiberal authoritarian rivals, its members had better fix their democratic problems at home. But how?

Granted, in the context of a decade of global democratic recession, the US and Europe still look quite respectable on the surface. The US presidential election last month was in many ways a triumph of democracy: Americans saw historic voter turnout, a process that broadly worked and officials and judges who refused to be intimidated. In Europe, populists hoping to exploit the Covid-19 pandemic to stoke fear and polarisation have instead seen voters support centrist governments and fact-based policies.

Yet it is also true that the widespread commitment to liberal democracy — a foundational value of the west — is under fire. The fact that, in some cases, the attacks come from opposition parties within the political system is no cause for complacency.

In Germany, for example, the hard-right Alternative for Germany has been plateauing in the polls at around 10 per cent, and its leadership is mired in shambolic infighting. But it continues to wage a quiet and disciplined campaign to undermine and delegitimise democratic institutions. In France, Marine Le Pen, the leader of the far-right National Rally, remains a serious contender in the 2022 presidential election.

Elsewhere, in Hungary, Poland and Turkey, the authoritarians are in government and have used their positions to change the rules of governance in order to expand or perpetuate their hold on power. And in the US, the alliance’s anchor democracy, an outgoing president is claiming against all evidence and with the support of his party’s leadership that a massive fraud has denied him an election victory.

This democratic backsliding undercuts the cohesion of NATO at a time when conflicts around the world are heating up. It undermines trust between allies, limits intelligence sharing and reduces the effectiveness of diplomacy, deterrence and operations.

As for the EU, which the incoming US administration (unlike its predecessor) sees as a key provider of diplomatic and economic leverage, its budget is being blocked by Budapest and Warsaw in a fight over the rule of law. All this allows adversaries to exploit the west’s divisions — and gives them a welcome pretext to dismiss critiques of their own failings.

The transatlantic alliance, born out of the crucible of the second world war and the Holocaust, always had liberal democracy at its heart. For decades, the American security umbrella enabled the conditions for stable representative governance to take root in Europe: functioning states, open market economies, inclusive social contracts. Yet when some NATO member states took authoritarian turns — as happened in Greece, Portugal and Turkey — others turned a blind eye. Our allies’ domestic affairs, it was held, were none of our business.

This has to change. The alliance is based on the principle that the security of one member is the security of all. The 2008 financial crisis and its long aftermath taught us a hard lesson: in an interdependent world, the vulnerability of one is the vulnerability of all. And security today begins with resilient domestic governance.

#### It’s resilient, but irrelevant.

Doorenspleet ’19 [Renske; 2019; Professor of Politics at the University of Warwick; Palgrave Macmillan, “Rethinking the Value of Democracy: A Comparative Perspective,” p. 239-243]

Key Findings: Rethinking the Value of Democracy

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an enormous academic database for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes.

The first finding is that a reverse wave away from democracy has not happened (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed.

Another finding is that the instrumental value of democracy is very questionable. The field has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘no consensus’ in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a huge amount of literature which rejects their own point of view. After undertaking a large-scale analysis of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefts are not as strong as they seem. Hence, we should not overstate the links between the phenomena.

The overall evidence is weak. Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a flourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is quite weak. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations for war and peace, and even that the impact of democracy is a spurious one (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, we cannot defend the idea that democracy has instrumental value.

Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are confusing, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly difficult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifically, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the conflict is more cruel leading to more victims, destruction and killings (see Chapter 4).

A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fghting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically signifcant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats).

The perceived impact of democracy on development has been highly contested as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-ftsall approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not sufficient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5).

Overall, the instrumental value of democracy is—at best—tentative, or—if being less mild—simply non-existent. Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefits—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy do not make a distinctive difference. Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favourable economic factors in a country—are much more powerful to explain the expected benefits, at least compared to the single fact that a country is a democracy or not. The impact of democracy fades away in the powerful shadows of the economic factors.8

#### Finishing---FTC doesn’t solve scams

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

A review of current areas of FTC activity suggests limited possibilities. Most deep fakes will not take the form of advertising, but some will. That subset will implicate the FTC’s role

in protecting consumers from fraudulent advertising relating to “food, drugs, devices, services, or cosmetics.”[247] Some deep fakes will be in the nature of satire or parody, without intent or even effect of misleading consumers into believing a particular person (a celebrity or some other public figure) is endorsing the product or service in question. That line will be crossed in some instances, however. If such a case involves a public figure who is aware of the fraud and both inclined to and capable of suing on their own behalf for misappropriation of likeness, there is no need for the FTC or a state agency to become involved. Those conditions will not always be met, though, especially when the deep-fake element involves a fraudulent depiction of something other than a specific person’s words or deeds; there would be no obvious private plaintiff. The FTC and state attorneys general (state AGs) can play an important role in that setting.

#### Can’t solve scams --- hackers still exist and they don’t create cybersecurity – there card is about the capitol riots which thumps – we’re yellow

Casey 1AC Newton 20. Verge contributing editor. "The massive Twitter hack could be a global security crisis". Verge. 7-15-2020. https://www.theverge.com/interface/2020/7/15/21325708/twitter-hack-global-security-crisis-nuclear-war-bitcoin-scam

And that makes you wonder what contingencies the company has put into place in the event that it is someday taken over not by greedy Bitcoin con artists, but state-level actors or psychopaths. After today it is no longer unthinkable, if it ever truly was, that someone take over the account of a world leader and attempt to start a nuclear war. (A report on that subject from King’s College London came out just last week.)

It is in such a world that I find myself in the unusual position of agreeing with Sen. Josh Hawley, the Missouri Republican who among other things wants to end content moderation. He wrote a letter to Twitter CEO Jack Dorsey, and I found myself agreeing with all of it:

“I am concerned that this event may represent not merely a coordinated set of separate hacking incidents but rather a successful attack on the security of Twitter itself. As you know, millions of your users rely on your service not just to tweet publicly but also to communicate privately through your direct message service. A successful attack on your system’s servers represents a threat to all of your users’ privacy and data security.”

And yet even Hawley doesn’t go far enough. The threat here is not simply user privacy and data security, though those threats are real and substantial. It is about the striking potential of Twitter to incite real-world chaos through impersonation and fraud. As of today, that potential has been realized. And I can only worry about how, with a presidential election now less than four months away, it might be realized further.

Twitter will likely spend the next several days investigating how this incident took place. A criminal investigation seems likely, during which the company may not be able to fully describe Wednesday’s events to our satisfaction. But it is vital that as soon as possible, Twitter share as much about what happened today as it can — and, just as importantly, what it will do to ensure that it never happens again.

After Wednesday’s catastrophe, it hardly seems like hyperbole to suggest that our world could hang in the balance.

#### Market solutions prevent the impact

Chesney & Citron 19 --- Bobby Chesney and Danielle Citron, California Law Review, “Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security”, https://www.californialawreview.org/print/deep-fakes-a-looming-challenge-for-privacy-democracy-and-national-security/#clr-toc-heading-3

We anticipate two types of market-based reactions to the deep-fake threat. First, we expect the private sector to develop and sell services intended to protect customers from at least some forms of deep fake-based harms. Such innovations might build on the array of services that have emerged in recent years in response to customer anxieties about identity theft and the like. Second, we expect at least some social media companies to take steps on their own initiative to police against deep-fake harms on their platforms. They will do this not just because they perceive market advantage in doing so, of course, but also for reasons including policy preferences and, perhaps, concern over what legislative interventions, including amendments to Section 230 of the Communications Decency Act, might occur down the road if they take no action. Both prospects offer benefits, but there are both limits and risks as well.

#### Emerging tech regulation fails AND no impact.

Allenby 16 – Brad Allenby, an American environmental scientist, environmental attorney and Professor of Civil and Environmental Engineering, and of Law, at Arizona State University. [Emerging technologies and the future of humanity, Bulletin of the Atomic Scientists, 71(6), https://journals.sagepub.com/doi/full/10.1177/0096340215611087]

It is thus highly likely that the first implicit assumption of the dystopian perspective is correct: Things are indeed different today, and the difference is fundamental and qualitative, not simply one of degree. Emerging technologies are making everything from individual molecules, to the human, to the planet itself, design spaces. Moreover, it is also likely that technological evolution, and all the concomitant changes in coupled institutional, social, economic, and cultural systems, will be more challenging and complex than anything humans have yet experienced. The remaining two issues, then, are: First, what can we do about it; and second, is this the end of humanity?

What can we do about it?

Precisely because new technologies are disruptive, they inevitably call forth opposition, both by conservative social forces and by threatened economic interests. Historical examples abound. With railroad technology, for example, conservative states such as the Austro-Hungarian Empire and Russia resisted rapid deployment, in part because it was feared that railroads might create social unrest in the still somewhat feudal and highly stratified cultures that characterized such countries; the French held back because of concerns it would destroy rural culture. The predictable result was that modernizing states that realized the commercial and military potential of railroad technology, such as Prussia, rapidly overtook the laggards in building rail infrastructure, with an eventual shift in geopolitical stature. In the United States, railroads were bitterly opposed by river transportation interests; in fact, Abraham Lincoln, when still a practicing lawyer, argued and won the seminal case for the Rock Island Railroad.4 (River shippers at the time were arguing that any railroad bridge over a river was an unlawful obstruction of commerce; had they been successful, railroads would have been limited to operating between rivers and streams, but not crossing them.) A more recent example is provided by the thousands of people sued by the Recording Industry Association of America in its vain effort to defend a technologically obsolete business model for the distribution of music. There are plenty of reasons, in other words, why emerging technologies might be regarded as dangerous and disruptive, and thus worth stifling.

History, however, indicates that while local opposition can be successful, it will not halt the evolution of technology. Consider, for example, the Japanese attempt to limit gunpowder technology to preserve traditional Samurai culture; successful in the short term, it left Japan open to subjugation by Western naval forces with gunpowder technology. Similarly, environmentalists and governments in Europe have aggressively opposed genetic engineering (GMOs, or “genetically modified organisms”) in agriculture. Outside Europe, however, GMO technology has been one of the most rapidly adopted agricultural technologies in history. Efforts to regulate the proliferation of nuclear weapon technology have been somewhat successful, but it appears unrealistic to assume that the technology can be uninvented.

Especially given today’s globalized culture, and the strategic and military advantages that emerging technologies can provide, it is highly unlikely that meaningful constraints on technological evolution, whether derived from cultural, competitive, or religious foundations, will be successful. That is particularly true as all players in the global Great Game understand that leadership in science and technology domains is a necessary, if not sufficient, prerequisite for dominance. Moreover, given the complexity of many emerging technology systems, especially as they co-evolve with other natural, built, and human systems, it is unfortunately also likely that projecting their effects and evolutionary paths before they are actually adopted and become embedded in their social and cultural context is not just hard, but for all practical purposes impossible. One can, and should, generate scenarios. But exhortations that purport to elevate hypotheticals to predictions and implications of certainty about future states are misplaced.

In short, there is no certainty, and the genie is well and truly out of the bottle. However, that doesn’t necessarily imply that we can’t modulate future technological evolution, but that the way we think about it today may be too simple, and our institutions too slow and maladaptive, to be up to the task.

Beyond simplistic dystopianism

This analysis suggests that, as dystopians might argue, emerging technologies are indeed potent, and that, especially as the human is becoming an active design space, if AI doesn’t destroy humanity, something will. But this is a grossly incomplete perspective.

Humanity, as it appears at any particular time, is always doomed. Foragers and hunter-gatherers were doomed, as were the serfs of medieval Europe with their small plots and lives lived within a radius of a few miles of where they were born. And so, in our turn, are we. Doom is, in other words, evolution, and it is unlikely that we will stop it—or, really, that we should want to. In fact, the images that we cling to, personally and institutionally and culturally, are already obsolete. The ethics and values that we insist we will impose on the future are not only historically and culturally contingent, but already obsolete as well. We want the physical and cultural landscape we live in now to propagate into tomorrow, because we all unconsciously privilege the present, but that is not how complex systems work. They evolve, and indeed our world is evolving at a remarkable and accelerating clip.

The fallacy of the dystopians, then, is not in their analysis of the power of technology, or the accelerating and destabilizing rates of change. The fallacy is in equating evolution with dystopia, and, without admitting it, privileging the present over the promise and inevitability of the future. What is at risk is the limited mental model of “human” that all of us carry with us, not “humans” as an ongoing process. This is actually a common category mistake in modern discourse: Sustainability advocates and environmental activists often claim that “the planet is at risk,” but of course it is not. The planet is a large mass of rock and a film of various carbon compounds, and that is not at risk at all. What is at risk is a particular mental model of what the world should look like, a constructed snapshot. That does not mean that there aren’t many environmental issues that require attention; of course there are. But, as in the case of the emerging technology discourse, it does mean that existential catastrophe language is not only invalid, but can actually prevent seeking constructive adaptations to accelerating change.

Our only recourse is neither technological fatalism nor ethical relativism. It is true that we have not yet appreciated, much less begun to respond to, the challenge of a future that will indeed be more complex and difficult than anything we have experienced as a species. Nonetheless, we can already identify several important principles. For example, we need to stop thinking of “problems” with “solutions,” and think more in terms of “conditions” that will require long-term, adaptive management. Challenges such as ISIS and climate change will not be solved, but they can and must be managed in light of other relevant goals. In this, the experience with nuclear weapons is instructive: They are not a problem that can be unmade, but they are a condition that can be, and has so far been, relatively successfully managed.

We also need to focus on creating option spaces—portfolios of social, institutional, and technological choices that can be adaptively and flexibly deployed in complex environments. Similarly, we need to play with scenarios: If dystopian pronouncements are instead taken as scenarios—“What would you do if…?”—they are far more useful and informative than suggestions of doom.

Socially and institutionally, we need to become more agile and adaptive. This is uncomfortable for many, because it implies a degree of contingency and uncertainty, but that is precisely why such skills are necessary. The rate of technological change is unforgiving and has already decoupled to a large extent from traditional governance mechanisms. So we need to develop new ones.

Individually, we need to become far more humble about our ability to visualize and prognosticate on a complex and dynamic future. Cautionary scenarios and hypotheticals are welcome exercises in practicing to adjust to the unknowable that lies in front of us, but they are not appropriate foundations for policy or legal action in the present. Nightmares are seldom reality, and when bad things do happen they are seldom the ones we thought about. Fear and anger in the face of change are popular responses—witness the rise of far right and far left factions, and fundamentalisms of all stripes, around the world—but they are maladaptive, and those in responsible positions at least cannot afford such luxuries.

## DA

#### Turns all their impacts---it’s the most existential risk---this card answers everything

Dan Brook &, Richard H. Schwartz September 30, 2020 [Dan Brook, sociology PhD, Richard H. Schwart, PhD, September 30, 2020, "Climate change: An existential threat to humanity and how we can survive," 9-30-2020, https://www.jpost.com/jerusalem-report/climate-change-an-existential-threat-to-humanity-and-how-we-can-survive-643267, hec]

Climate change goes way beyond “an inconvenient truth.” We are overheating our planet to alarming levels with catastrophic consequences. According to NASA, “Nineteen of the 20 warmest years all have occurred since 2001, with the exception of 1998” and 2020 is on a sizzling pace to be one of the hottest years. Every decade since the 1970s has been hotter than the previous decade. Picture an overheated car (and what we drive), an overcooked dinner (and what we eat), and someone sick with a fever (and how we act). Now imagine that on a planetary scale. Our climate crisis is the biggest social, political economic and environmental problem facing our planet and its inhabitants, affecting every country and every species, mostly in negative ways. Climate change refers to the increasing average surface temperature of the Earth’s air and water, and its various environmental effects. People are becoming increasingly aware of, and concerned about, the climate crisis and its consequences, despite corporate misinformation and some media obfuscation, due to frequent reports regarding record heat, droughts, wildfires, an increase in the number and severity of storms and other extreme weather events, the melting of glaciers – about 80% of the world’s glaciers are rapidly shrinking – permafrost, and polar ice caps, as well as decreasing snow on Mt. Kilimanjaro and other tropical mountains, shrinking lakes, rising sea levels, flooding, submerged islands, changes in wind directions, acidification of the oceans, endangered species and extinctions, spreading diseases, environmental refugees, and other ominous signs of disaster. Greenhouse gas levels in the atmosphere continue to rise and there are fears of “tipping points” from which we could not come back. Climatologists have asserted that concentrations of 350 parts per million (ppm) of atmospheric CO2 is a threshold level of atmospheric carbon dioxide, which had hovered below 285 ppm for thousands of years prior to the Industrial Revolution, yet surpassed 418 ppm on June 1, 2020, the highest value in human history, indeed the highest level in about three million years. As Jerry Brown, the former governor of California, a state subjected to many severe climate events, commented, “Humanity is on a collision course with nature,”calling this era “the new abnormal,” and warning that various environmental disasters will only “intensify” over the coming years. “Right now, we are facing a \*person\*~~man~~-made disaster of global scale,” says David Attenborough. “Our greatest threat in thousands of years. Climate change. If we don’t take action, the collapse of our civilizations and the extinction of much of the natural world is on the horizon.” Global climate change is also endangering polar bears, penguins, seals, walruses, salmon, elephants, giraffes, frogs, butterflies, birds, bees and many other animals, threatening up to one-third of all fauna species. In contrast, increases in carbon dioxide and heat levels will lead to an increase in the number and range of mosquitoes, further spreading discomfort and disease. Additionally, there is an increase in food insecurity, terrorism, ethnic violence and war, according to various militaries and intelligence agencies, especially in Central America, South Asia, Africa, and the Middle East, including Syria. In December 2019, World Meteorological Organization secretary-general Petteri Taalas lamented that we will witness “ever more harmful impacts on human well being” if we do not substantially reverse course. In August 2010, an “ice island” four times the size of Manhattan calved from the Petermann Glacier in Greenland into the sea (in addition, the Ayles Ice Shelf calved entirely in August 2005 and the Markham Ice Shelf broke up in 2008, to mention just a couple of other such alarming events). Recent years have marked the “historic minimum” of Arctic Sea ice. “Such a path is not merely unsustainable,” according to Harvard Prof. John P. Holdren, former president of the American Association for the Advancement of Science, “it is a prescription for disaster.” Yet, a 2019 UN report wrote that, despite many nations’ pledges to reduce them, greenhouse gases are still rising perilously, growing an average of 1.5% per year in the past 10 years. On June 20, 2020, the temperature in the Arctic Circle soared to 100.4º Fahrenheit (38ºC) for the first time in recorded history, hotter than any June day ever recorded in Miami, Florida, while it was snowing in other parts of Siberia. Houston, Texas, has been ravaged by five “500-year storms” in the last five years. Something projected to happen only once in half a millennium happened five times in a row. None of this is normal. These and various other extreme weather events and other eco-spasms have become more frequent, more intense, and are projected to multiply with dire consequences for the world. Tragically, new records are being set each year. Humanity is threatened as never before and major changes need to occur to put our imperiled planet onto a sustainable path – and as soon as possible. Even though a small number of individuals still deny the reality of climate change, there is strong scientific and environmental consensus across a wide range of disciplines that climate change is real, serious, worsening, and caused by human activity (anthropogenic) among all major scientific and environmental organizations, journals, magazines, and museums, and nearly all peer-reviewed scholarly articles, in addition to all reputable colleges and universities and most governments and large corporations. The evidence is overwhelming and continuing to pile up. A further indication of how serious climate threats are is that in the two weeks prior to the final submission of this article, the following occurred: Israel experienced a major, long-lasting heat wave, with temperature records broken in many cities; California and several other US western states experienced massive wildfires along with some record temperatures; the Koreas were struck by two severe typhoons; the US state of Louisiana was hit by a category four hurricane; there were reports that melting of ice in Greenland had passed a point of no return and that rapid melting of Arctic permafrost is releasing ’shocking amounts of dangerous gases.” This is truly an Earth emergency and earthlings are standing at a global precipice. The 2019 Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report on global warming was written by about 100 climate scientists from 40 countries, based on 6,981 scientific studies and over 42,000 expert and governmental comments. The IPCC has 195 member states. The report carefully delineates clear trends and potentially catastrophic consequences associated with climate change, warning of irreversible change, unless we very soon make radical and unprecedented efforts to counter global warming. According to the United Nations Foundation, “Overall, it is expected that every degree of warming will likely reduce crop yields, productivity and livestock production globally, while food demand continues to rise. And even worse, hunger and water crises – either caused or exacerbated by climate change – may generate ripple effects across society, leading to poverty, conflict, and migration.” “One action that the IPCC recommends,” it continues, “is to change what’s on our plates: swap out meat for more plant-based foods. While we need collective policy changes, individual actions do add up and send an important message to leaders.” Acting conservatively, the IPCC makes it plain that the current and projected climate change is not simply “natural variation” or “solar activity,” and certainly not a “Chinese hoax,” but “extremely likely” (meaning 95%-100% confidence) the result of human activity. The case is closed on the problem of anthropogenic climate change, with only the extent, mitigations, and solutions to still debate. It therefore should not be surprising that the US Pentagon states that global warming is a larger threat than even terrorism. “Picture Japan, suffering from flooding along its coastal cities and contamination of its fresh water supply, eyeing Russia’s Sakhalin Island oil and gas reserves as an energy source,” suggests a Pentagon memo on global warming. “Envision Pakistan, India and China – all armed with nuclear weapons – skirmishing at their borders over refugees, access to shared river and arable land.” The former secretary-general of the UN, Ban Ki-moon, has said that climate change needs to be taken as seriously as war and, further, that “changes in our environment and the resulting upheavals from droughts to inundated coastal areas to loss of arable land are likely to become a major driver of war and conflict.” Fighting global climate change may be one way to prevent future wars and genocides, simultaneously increasing energy security and physical security. There are additional causes for concern. The people disproportionately affected by climate chaos are the poor and socially disadvantaged, since they are in the weakest position to guard against environmental damages and will likely suffer the most harm. In the underdeveloped world, and perhaps especially in China, India and Southeast Asia, as well as much of Africa, the Middle East and Latin America, climate change is negatively affecting urban drinking water systems, agricultural output, and commercial and other transport on rivers. Further, increased suffering and increasing numbers of environmental refugees, along with greater anxiety over access to food, water, land, and housing – the material essentials of life – often lead to unstable conditions that give rise to anger, ethnic violence, gangs, terrorism, fascism, and war. “It’s the poorest of the poor in the world, and this includes poor people even in prosperous societies, who are going to be the worst hit,” states former IPCC Chair Rajendra Pachauri. Those who needlessly degrade and destroy the environment to satisfy their own selfish pleasures are like the pre-revolutionary Queen Marie Antoinette, declaring, “Let them eat carbon dioxide!” Israel is especially threatened by climate change. The coastal plain, where much of Israel’s population and infrastructure are located, could be inundated by a rising Mediterranean Sea. Climate experts project that the Middle East as a whole will become significantly hotter and drier, and military experts believe that this makes instability, terrorism, ethnic violence, and war more likely. The gravity of the climate threats to Israel was captured in the December 4, 2019 headline in The Jerusalem Post: “Hot and dry: Climate report spells disaster.” Don’t we want our children, grandchildren, and future generations to not only survive, but to thrive? To have a world that is at least as good, and hopefully better, than the one we do? Yes, we need our governments, corporations, schools, religious institutions, and other organizations to get actively involved in fighting climate change. Yes, we need to stop deforestation and increase reforestation. Yes, we need more resource conservation and more energy-efficient vehicles, appliances, electronics, batteries, and light bulbs. And, yes, our society needs to switch away from dirty and dangerous fossil fuels and toward renewable energy, such as solar, wind, tidal, wave, biomass, hydrogen, geothermal, algae and others. But while we are struggling for these important and positive large-scale social changes, we also need to say “yes!” to personal changes.

#### Nuclear winter theory false---we’d survive it

McDonald ‘19 [Samuel Miller McDonald is a writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition; 1/4/19; “Deathly Salvation”; The Trouble; https://www.the-trouble.com/content/2019/1/4/deathly-salvation]

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### Most significant investment in history---meets Paris goals

Kate Sullivan 10-28 [CNN, "Here's what's in the $1.75 trillion economic plan Biden will try to sell to his party," accessed 10-28-2021, https://edition.cnn.com/2021/10/28/politics/president-joe-biden-economic-agenda/index.html, hec]

Combating the climate crisis

The largest portion of the framework focuses on climate and would include the largest legislative investment in combating climate change in US history, according to the White House. White House officials say the framework Biden is set to lay out will put the US track to Biden's Paris Agreement goal: a 50-52% reduction in greenhouse gas emissions below 2005 levels by the end of the decade. $320 billion for clean energy tax credits. This includes 10-year expanded tax credits for utility-scale and residential clean energy, transmission and storage, clean passenger and commercial vehicles and clean energy manufacturing. $105 billion to address extreme weather, pollution in communities and the creation of a Civilian Climate Corps to conserve public lands and bolster community resilience. $110 in investments and incentives for clean energy technology, manufacturing and supply chains. $20 billion to provide incentives for the government to purchase next generation technologies, including clean construction materials.

#### Major climate provisions remain

Christian Datoc 10-27 [Yahoo News, "White House maintains reconciliation package will be 'biggest investment in addressing the climate crisis in history'," accessed 10-27-2021, https://news.yahoo.com/white-house-maintains-reconciliation-package-201000709.html, hec]

The White House shook off a Wednesday suggestion that President Joe Biden's climate agenda had been "watered down" throughout the budget reconciliation negotiations and maintained the package will be the "biggest investment in addressing the climate crisis in history by the United States." "The president admires the activism, the energy of the young people who are out there advocating for what they believe in, and the changes that he agrees should be made to how society functions to long-overdue investments in our climate," White House press secretary Jen Psaki told reporters Wednesday afternoon. "We are on track now to move forward. Once we get it in agreement, which we are confident, we are going to move ahead to have the biggest investment in addressing the climate crisis in history by the United States." Psaki claimed the climate investments are "five times bigger than the second — what would be the second-largest, which would be the Recovery Act." "This is would be a historic investment, and something that would make an enormous, have enormous impact on addressing these issues," she continued. "What we're talking about here is creating targeted manufacturing credits that will help grow domestic supply chains for solar [and] offshore and onshore wind, expanding access to rooftop solar and home electrification, expanding grants and loans to rural co-ops to boost clean energy and energy efficiency, expanding grants and loans in the agricultural sector, and we are talking about a historic effort to make critical investments in environmental justice, something that is long overdue."

#### Infrastructure bill key to cyber security

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

A Senate bill intended to shore up the nation’s roads, pipes and electric grid includes billions to protect that aging infrastructure from cyberattacks. With a series of high-profile ransomware attacks fresh in their minds, U.S. Senate negotiators wove cybersecurity investments throughout the bipartisan $1 trillion infrastructure proposal, which passed the Senate in a 69-to-30 vote on Tuesday and now moves to the House for a vote. The allocations are a reflection of the growing realization in Congress that a computer attack could leave Americans without water, power or other essentials. “This is an incredibly serious threat to this country that’s only growing more serious,” said Sen. Angus King (I-Maine). The Colonial Pipeline ransomware attack in May was a wake-up call that gave lawmakers and the public “a taste of what is potentially in store,” King said. The attack disrupted fuel supplies in the eastern United States, prompting gasoline shortages and panicked buying that affected millions for days. The Colonial hack was just one in a series of attacks on lawmakers’ minds. King said he is particularly wary of attacks on the more than 100,000 public water systems in the United States, especially after a hacker in February took control of a water treatment facility in Oldsmar, Fla. The intruder raised the levels of sodium hydroxide to a hazardous point that could have sickened residents. An operator noticed the rising levels and was able to quickly intervene, but the incident highlighted the broader weaknesses at the facilities responsible for ensuring Americans have clean drinking water. To King, one of the Senate negotiators, these incidents underlined that cybersecurity has to be a part of any work the government does on infrastructure, from broadband to power grids. The bill directs the Federal Highway Administration to create a new tool to help transportation authorities better detect and respond to cyber attacks, which could range from ransomware attacks on transportation departments or hacks of traffic lights and road signs. It makes emergency funding available to respond to digital attacks on public water systems and makes grants available that can be used to help some water systems increase their ability to deal with cyberattacks as well as natural hazards and extreme weather. It also calls on the Federal Energy Regulatory Commission to develop incentives to ensure that electric utilities are investing in cybersecurity and sharing data about potential threats. The bill also authorizes nearly $2 billion in spending for specific cybersecurity initiatives, such as the creation of a $1 billion grant program to provide federal cybersecurity assistance to state and local governments, which experts say are among the most vulnerable institutions to ransomware attacks. The bill also would fund a new cyber director office, so that the federal government can better coordinate its response to major hacks, and would create a $100 million response and recovery fund, which the Department of Homeland Security could use to support both private companies and governments’ recoveries from cyberattacks.

#### Cyberattacks go nuclear.

Michael T. Klare 19. Professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation

Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response.

Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1

The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2

Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response.

That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea.

For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing.

The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

#### PC is key---Biden can sway the party to align with his goals---he scored key wins this week and is in the final stretch

Tony Romm et al 10-29 [WaPo, " Democrats race to finalize $1.75 trillion spending bill and hold House vote by next week,” accessed 10-30-2021, https://www.washingtonpost.com/us-policy/2021/10/29/biden-democrats-spending-deal/, hec]

With a once-elusive legislative victory now squarely in their sights, congressional Democrats on Friday continued the arduous task of writing a $1.75 trillion bill to overhaul the nation’s health care, education, climate, immigration and tax laws, hoping to hold votes on President Biden’s broader economic agenda as soon as next week. Spanning nearly 1,700 pages — and with still more to add and revise — the legislative wrangling on Capitol Hill marked a new stage in the debate a day after Biden offered the broad outlines of a compromise to satisfy warring liberals and moderates in his own party. In a positive sign for the president, lawmakers from both Democratic factions largely have praised the plan, which would expand Medicare, invest anew to combat global warming, offer universal prekindergarten and impose new taxes on the ultrawealthy. Biden has heralded the investments as transformational even though they are in many cases smaller than what Democrats initially envisioned. [Here's what is in Biden's $1.75 trillion budget plan.] By late Friday, lawmakers had not issued any policy ultimatums, offering an encouraging sign about the road ahead. But the flurry of activity also masked some of the still-simmering policy divisions — and the lingering feelings of distrust — that continue to plague the party’s narrow-yet-powerful congressional majority.

#### Toss our all their ev about Thursday’s vote---Progressives will inevitably pass infra and had the votes last week according to inside sources---DA is about the Senate

Tony Romm et al 10-29 [WaPo, " Democrats race to finalize $1.75 trillion spending bill and hold House vote by next week,” accessed 10-30-2021, https://www.washingtonpost.com/us-policy/2021/10/29/biden-democrats-spending-deal/, hec]

Speaking directly to House Democrats, Biden a day earlier had tried to defuse the tension. In a message geared toward liberals, he said the framework, which was the result of months of protracted negotiations, had enough votes to pass the Senate. That comment came even as Manchin and Sinema, the two key moderate senators, stopped short of explicitly saying they would vote for the bill. But Biden did not explicitly call for House Democrats to pass the bipartisan infrastructure bill, a move that surprised lawmakers who were eager for him to pressure their colleagues into supporting the legislation before he left for Europe and ahead of Tuesday’s gubernatorial election in Virginia. Two House leadership sources, who later spoke on the condition of anonymity to discuss the private nature of negotiations, acknowledged Friday that a vote on the bipartisan infrastructure bill could have succeeded Thursday had Biden firmly said that he wanted it held immediately. Instead, Biden’s plea was softer than expected, as he told Democrats they all “badly need a vote on both of these measures,” a third leadership source recalled.

#### Manchema have privately committed---PC is key to public

Lisa Mascaro and Farnoush Amri 10-29 [AP, "Big, messy, complicated: Biden's plan churns in Congress," accessed 10-30-2021, https://whyy.org/articles/big-messy-complicated-bidens-plan-churns-in-congress/, hec]

"It's only 90% done," said Rep. Joyce Beatty, D-Ohio, the chair of the Congressional Black Caucus. "So you got to get through the complicated — the last 10%, as you know, is always the most difficult."

The fast-moving — then slow-crawling — state-of-play in Congress puts the president and his party at significant political risk.

Biden's slipping approval rating and the party's own hold on Congress are at stake with the 2022 midterm election campaigns soon underway. Democrats are struggling in governor's races next week in Virginia and New Jersey, where safe victories might have been expected.

"It's sort of stunning to me that we're in this place," exasperated Stephanie Murphy, D-Fla., told reporters late Thursday as the House adjourned.

Biden arrived that morning on Capitol Hill triumphant in announcing a historic framework on the bill that he claimed would get 50 votes in the Senate. But the two Democratic Senate holdouts Manchin and Sinema responded — maybe, maybe not.

Manchin and Sinema's reluctance to fully embrace Biden's plan set off a domino series of events that sent Biden to overseas summits empty handed and left the party portrayed as in disarray.

House Speaker Nancy Pelosi was forced to abandon plans to pass the related measure, the $1 trillion bipartisan infrastructure plan, that has become tangled in the deliberations. Progressives have been refusing to vote for that public works package of roads, bridges and broadband, withholding their support as leverage for assurances that Manchin and Sinema are on board with Biden's big bill.

"Everyone is very clear that the biggest problem we have here is Manchin and Sinema," Rep. Ruben Gallego of Arizona told reporters. "We don't trust them. We need to hear from them that they're actually in agreement with the president's framework."

Still, step by step, Pelosi and Senate Majority Leader Chuck Schumer are edging their caucuses closer to resolving their differences over what would be the most ambitious federal investments in social services in generations and some $555 billion in climate change strategies.

"We will vote both bills through," said Rep. Pramila Jayapal, D-Wash., the chairwoman of the progressive caucus, after endorsing Biden's plan.

Lawmakers are expected to spend the weekend negotiating final details on text that’s swelling beyond 1,600 pages. Some are trying to restore a paid family leave program or lower prescription drug costs that fell out of Biden’s framework. Manchin and Sinema, the two holdouts, now hold enormous power, essentially deciding whether Biden will be able to deliver on the Democrats’ major campaign promises. Both have privately indicated that they are on board, according to Democratic Sen. Chris Coons of Delaware, a Biden ally. “I have new optimism,” tweeted Sen. Brian Schatz, D-Hawaii, who was part of a small entourage that met privately with Sinema at the Capitol. “Same,” responded Rep. Joe Neguse, D-Colo., who served as a bridge between progressives and the Arizona senator. But it won’t be easy, if past congressional battles are any measure. Legislating is work that takes time and rarely happens on schedule.

#### They had significant influence over the package and are determined to get it done

Alexander Bolton 10-29 [The Hill, "Manchin, Sinema put stamp on party, to progressive chagrin," accessed 10-30-2021, https://thehill.com/homenews/senate/579031-manchin-sinema-put-stamp-on-party-to-progressive-chagrin, hec]

Manchin and Sinema “were very influential” in shaping the framework, Senate Majority Whip Dick Durbin (D-Ill.) acknowledged, before adding after a pause: “for better or worse.” The centrist duo were on speed dial with White House aides and the president in the stretch leading up to Thursday, underscoring their influence on the final product. Sen. Ed Markey (D-Mass.), a leading progressive, observed that the two centrists “were in the room right from the very beginning.” And in the 50-50 Senate, each effectively had a veto on the final bill. Democrats are passing the measure through budget rules that prevent a GOP filibuster. But that means they can’t afford a single defection in their caucus. Manchin and Sinema left their fingerprints all over the framework.

#### Progressives and moderates are working in good faith to get it done and believe it will pass next week---trust statements from party leaders

Jacqueline Alemany 10-29 [WaPo, "There is reason for optimism yet on Biden's agenda," accessed 10-30-2021, https://www.washingtonpost.com/politics/2021/10/29/there-is-reason-optimism-yet-biden-agenda/, hec]

But there was some reason for optimism he could return home with a victory on an agenda he predicted would determine the fate of his presidency and whether Democrats continue to control Congress. One of the leading House progressives, Rep. Pramila Jayapal (D-Wash.), told Hill reporters yesterday she expected to pass both the infrastructure package (a vote was delayed on it yet again yesterday because of progressives) and the $1.75 trillion social spending package in the next week. House Appropriations Committee Chair Rosa DeLauro (D-Conn.) echoed Jayapal's optimism the House would move “quickly” in an interview with The Early. But she was less certain about persuading Manchinema — the Senate duo of Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — of restoring progressive priorities to the spending package, including family leave.

#### Biden is confident he’ll get it done

Sabrina Escobar 10-28 [Barrons, "Biden Unveils Social Spending Plan," accessed 10-30-2021, https://www.barrons.com/articles/president-biden-revised-social-spending-bill-51635422396, hec]

In a statement, the White House said Thursday Biden was “confident this is a framework that can pass both houses of Congress.” “I think we have a historic — I know we have a historic — economic framework,” Biden said in a speech Thursday. “It’s a framework that will create millions of jobs, grow the economy, invest in our nation and our people.”

#### It all hinges on PC---has enough now

Shear 10-29 - veteran White House correspondent and two-time Pulitzer Prize winner   
[Michael D and Jim Tankersley, "Biden Implores Democrats to Support His Transformative Agenda," https://www.nytimes.com/2021/10/28/us/politics/infrastructure-bill-spending-plan.html]

WASHINGTON — President Biden was blunt. Democrats had to rally behind his $1.85 trillion economic and environmental spending bill, he told them on Thursday, because nothing less than his presidency was at stake.

“I don’t think it’s hyperbole,” he said as he unveiled a revised proposal and pleaded with Democratic lawmakers to support it during a last-minute morning meeting at the Capitol, hours before he left for a six-day trip to Europe to meet with world leaders.

“The House and Senate majorities and my presidency will be determined by what happens in the next week,” Mr. Biden told the lawmakers during the hourlong session, according to a person who was at the meeting.

The president’s proposals, while about half as costly as his original plan, still amount to a transformative agenda that would touch the lives of millions of Americans and serve as the core of his party’s argument to stay in power through the 2022 midterm elections and the 2024 presidential contest.

And even as party members have engaged in a fierce, ideological debate among themselves, the monthslong negotiation has thrown into stark relief the differences between Democrats and Republicans, almost all of whom have refused to back spending on child care, climate change, preschool, expanded Medicare services, free community college or higher taxes on corporations and the wealthy.

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

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

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

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

Senior White House officials shrugged off the setback, saying the president’s formal request on Thursday set in motion the final act of a monthslong political drama. They expressed confidence that votes on both bills would happen soon. The bickering among Democrats would fade, one senior official said, when Americans started seeing the benefits of Mr. Biden’s plans, like when the administration breaks ground next year on new electric vehicle charging stations. The official asked for anonymity to speak about closed-door negotiations.

Administration officials also said they were not surprised by the public comments from Senators Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, moderate Democrats who had forced the original $3.5 trillion proposal to be halved. The two delivered halfhearted statements that pointedly did not promise that they would support the president’s new framework for a deal on the spending bill.

But White House officials concluded that it was time for Mr. Biden to put down his final marker, explicitly asking Democratic lawmakers for their support on a specific proposal. Having the president leave for a week on his trip without doing so would have left the process in limbo, administration officials said.

And yet, the legislative disarray of the moment had the potential to leave Mr. Biden no better off than he had been 24 hours earlier. He was set to arrive in Rome without tangible evidence that he could break the political logjam that has stalled progress on his promises. He had only the outlines of an agreement, with no firm proof that it would pass. It will fall to him in several days of meetings this weekend to persuade world leaders that he will prevail with his plans for corporate taxation, climate change and more.

The president’s agenda might eventually make its way to his desk. Lawmakers said they planned to continue working throughout the weekend toward votes on both bills. But in the meantime, Mr. Biden is left without a concrete plan that has the support of Congress to present at the G20 gathering or the climate change summit next week.

Still, he appeared to reach a critical juncture on Thursday on the strategy for his agenda, which he has pursued for months. The president initially proposed trillions in spending to overhaul the government’s role in the economy, but he has consistently said he is willing to compromise.

That challenge has required a delicate balance in his own party, which controls Congress by razor-thin margins. Mr. Biden first had to negotiate with Republicans on an infrastructure bill, largely to unlock support from Senate centrists on a larger spending bill that was meant to carry the portions of his agenda that could not win bipartisan support. He then had to balance the concerns of centrists, who worried about spending and taxing too much in the larger bill, with the complaints of progressives who wanted him to spend trillions more than he was ultimately able to get.

Bringing the Democratic Party together took months. Mr. Biden pushed centrists to come up from their original demands that the bill cost $1.5 trillion or less. He also pushed progressives to compromise for far less than they had hoped, and to jettison programs that Mr. Manchin and Ms. Sinema opposed.

Officials suggested that shortly before leaving for Europe, Mr. Biden had reached a natural conclusion of those discussions: He had pushed the centrists to come up as far as they could, they said, and was making the case to progressives that there would not be a better possible deal.

#### The vote is set to be held Tuesday but new fights can derail that

Sahil Kapur 10-30 [NBC News, "House Democrats eye Tuesday vote on infrastructure and safety net bills," accessed 10-30-2021, https://www.nbcnews.com/politics/congress/house-democrats-eye-tuesday-vote-infrastructure-safety-net-bills-n1282782, hec]

WASHINGTON — House Democratic leaders are telling lawmakers they hope to vote on President Joe Biden's "Build Back Better" and infrastructure bills on Tuesday, multiple sources tell NBC News. They want to finish writing a revised $1.75 trillion bill by Sunday, then send it to the Rules Committee for approval on Monday, and hold final votes in the full House on Tuesday, the sources said. The timeline is ambitious, as lawmakers are still revising the safety net package to win the support of nearly every Democrat in the House and all 50 Democrats in the Senate. It is unclear they can resolve the lingering differences and achieve the near-unanimity they need by then. But the new self-imposed deadline is an attempt to hasten the negotiations and finish the bill quickly. It would require the sign-off of centrist Sen. Joe Manchin, D-W.Va., and Sen. Kyrsten Sinema, D-Ariz., who have forced significant cuts to the package to win their votes. It would also need support from progressive Sen. Bernie Sanders, I-Vt., who said Biden's framework is missing some key pieces. Still, competing House coalitions gave a thumbs up to the new timeline on Saturday, just two days after the White House released a $1.75 trillion framework in the hope of breaking the logjam. House progressives are on board with the Tuesday target, a Democratic aide said.

#### Progressives are locked in, despite the failed House vote – only question is whether Manchin and Sinema publicly commit

Sargent 10-29 (Greg Sargent, columnist covering national politics at The Washington Post, former political analyst at Talking Points Memo, New York Magazine and the New York Observer, BA English, Hunter College, “Opinion: Inside Biden’s surprising confidence that he’s on the cusp of a big victory,” The Washington Post, 10-29-2021, <https://www.washingtonpost.com/opinions/2021/10/29/biden-framework-reconciliation-pathway/>) [modified for language]

Looked at in one way, the failure of the House to pass the bipartisan infrastructure bill on Thursday was a major setback for President Biden. It means he heads into the international climate conference without being able to say the United States took a big leap toward delivering on its climate agenda, which could complicate his ability to lead.

That is obviously something we’d hoped to avoid. And let’s be clear: It’s still very uncertain whether Biden’s agenda will ultimately succeed or implode.

But the White House seems strangely, eerily confident about what’s happening right now. If you read between the lines of the doomscrolling coverage, what emerges is this: Improbably, Biden and his advisers seem to think the latest events have placed them on the brink of securing his agenda.

This is despite the fact that this week, in some ways, things went badly awry. When Biden introduced his framework for the Build Back Better reconciliation bill Thursday, Sens. Joe Manchin III (D-W.Va.) and Kyrsten Sinema (D-Ariz.) conspicuously failed to endorse it. That raised questions about whether the White House seriously miscalculated.

Then, when House Speaker Nancy Pelosi (D-Calif.) tried to hold a vote on the bipartisan infrastructure bill that already passed the Senate — to deliver Biden a victory before going abroad — progressives refused to support it, fearing Manchin and Sinema would ultimately renege on the reconciliation bill. Then everyone left to regroup, raising more questions about who’s running the show.

That looks like a big legislative mess and a spectacular failure at managing the Democratic coalition, right? Well, the White House sees it differently. Punchbowl News explains why:

Administration officials argue that no one will care in the end that the infrastructure bill got pushed back again. They say they are closer than ever to passing two transformative pieces of legislation. That’s mostly true.

That’s mostly true, and it’s pretty important!

Let’s also note that something big happened because of the release of this framework. It made it official that major progressive priorities — such as paid leave, the billionaires’ tax, the Medicare expansion to dental and vision — will be jettisoned. Yet the Congressional Progressive Caucus overwhelmingly and strongly endorsed it, anyway.

That locks in the left’s willingness to accept those concessions while enthusiastically backing the package. As Politico Playbook correctly noted, Rep. Pramila Jayapal (D-Wash.) provided the key quote revealing this: “We wanted a $3.5 trillion package, but we understand the reality of the situation.”

And don’t overlook this: Putting out the framework was the hook for numerous progressive and environmental groups to put out statements hailing its transformative potential, which further shores up the left flank behind it.

The trouble here is that highly visible speed bumps and glitches — like Manchin and Sinema not yet endorsing the framework — get magnified in day-to-day coverage into the latest sign of doom. That’s because everyone is training microscopes on every detail to divine where things are going.

Indeed, when various factions and players make such feints to increase leverage or realize some other goal — such as not wanting to appear jammed to preserve the aura of independence — it might magnify the impression of messiness and chaos. But as Jonathan Bernstein points out, this is how the legislative process works: Legislating inherently involves reconciling a lot of complicated moving parts. That’s messy and chaotic.

Which is why, from the White House perspective, the fact that the progressive caucus and a range of liberal groups are rallying behind the package shows that we’re seeing big general movement in the right direction. The left is one of those big moving parts — and it moved pretty dramatically.

“Every corner of the Democratic Party is coalescing around a vision that would be transformative and overwhelmingly popular right now,” one White House official tells me. “And it’s within reach.”

In fact, all that movement should focus our attention on the fact that there’s really one big missing piece left: getting Manchin and Sinema publicly on board behind the framework.

To be clear, that is a very big missing piece. We still don’t know whether Sinema supports some of its various revenue raisers, such as the surtax on income over $10 million. We don’t know whether Manchin will support things like the expanded child tax credit in its current form. The Senate is currently debating text and may allow changes to such things.

But regardless, here’s how all this would now have to unfold. Sinema and Manchin would have to indicate their support for the framework in a persuasive enough public way to get progressives in the House to pass the two bills. After that, the Senate could pass the reconciliation one.

Another way this might work out is via private talks among Manchin and Sinema on one hand, and House progressives on the other. If a solid enough understanding is reached, that could allow the House to pass both bills, and Senate action might follow.

All this might still collapse. Manchin and Sinema might pull the plug on the reconciliation framework. Or progressives might insist that the Senate go first on the reconciliation bill, and Manchin and Sinema might balk at that. Or lingering disagreements among House Democrats over things like prescription drug pricing and state and local tax deductions could upend matters.

But the key point here is that the final missing piece is within view: Getting Manchin and Sinema to yes on a concrete framework that the rest of the party has endorsed. We were not at this point 24 hours ago.

So if you squint, you can see a path to success. And it’s not [unthinkable] ~~crazy~~ for the White House to think that in the end, this just might all work out.

#### Dems not focusing on anti-trust now---no thumper AND it requires significant PC---we control link UQ

Sagers 21[Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” accessed 5-21-21, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>]

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305]

#### Empirically---it causes intra-party fights

Scher 7-19 (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism. Yet intra-party tensions remain. During a recent Congressional Progressive Caucus conference call, a heated dispute broke out as Congresswoman Zoe Lofgren criticized the authors of aggressive antitrust legislation for hasty work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to succeed where his predecessors fell short, he will need to be mindful of his party’s history.

#### Link turns case---It causes the plan to be ignored AND external war

Jennifer Sensiba 20, Author at Clean Technica, Long Time Efficient Vehicle Enthusiast, Writer, and Photographer, “It’s All About Political Capital”, Clean Technica, 11/6/2020, https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/

In short, political capital is a way to think about political power in democratic countries. Yes, winning elections does give some political power, but you can’t effectively use it unless you have coalitions, alliances, trust, goodwill, and influence. Your earned trust and connections are like money (capital). You can work hard to earn it and build it up, but it’s easy to spend it and even waste it, just like money.

If you get power from an election and then quickly spend all of the political capital impressing loyalists, you’ll get to the point where you can’t win future elections (Trump is a great example of this), can’t get votes together for legislation, and can’t get people to help you in a variety of other ways. At worst, a political leader who has run completely out of political capital might not even be able to get normal citizens to follow laws. As the consent of the governed is withdrawn, you see protests, riots, violence, terrorism, and even war.

#### The trade-off with infrastructure is 1:1---so specific

McNamee 21 (Roger McNamee, the founding partner of the venture capital firm Elevation Partners, America Can't Wait for Legislators to Rein in Big Tech. The Biden Administration Must Focus on Antitrust, https://time.com/5952229/biden-big-tech-antitrust/&hl=en&gl=us&strip=1&vwsrc=0, y2k)

President Biden faces challenges greater than any president since FDR. The country is struggling with a deadly pandemic that has shaken the economy and exposed its structural flaws. His political opponents refuse to engage with those challenges, choosing instead to focus their efforts on undermining democracy. Powerful business interests in technology, health care, finance, energy, and agriculture are pursuing agendas that make President Biden’s job all the more difficult. But perhaps the most uniquely destabilizing force in America today is the major internet platforms. Their business models fundamentally reduce human agency, and, in some cases, threaten democracy and public health, as we have seen during the COVID-19 pandemic.

Even if Republicans were willing to cooperate, there would not be enough time in the congressional calendar to address all of these issues through legislation. As things stand, the legislative calendar prior to the 2022 midterms is likely to be dominated by infrastructure and voting rights. Fortunately, there is much that the executive branch can do. Given the scope and novelty of the challenges, President Biden will be best served by appointees who share his bold vision and are willing to embrace new approaches to large and difficult problems.