# 1NC

## OFF

#### The United States federal government should

#### - increase the budgets of the Federal Trade Commission and the Department of Justice

#### - pass legislation creating guidelines for Antitrust enforcement in Courts

#### - create a new Digital Authority to enforce privacy laws, protect digital identities and consumer data, and create baseline conditions conducive to competition in digital marketplaces

#### Solves the whole aff and avoids politics

Scott Morton, 20

(Fiona M., Theodore Nierenberg Professor of Economics at the Yale University School of Management, “Reforming U.S. antitrust enforcement and competition policy”, *Vision 2020: Evidence for a stronger economy*, Washington Center for Equitable Growth, 2-18-2020, https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/)\\JM

Overview Competitive markets deliver to consumers a variety of benefits: higher productivity, lower prices, better quality products, and more innovation. Yet firms have a financial incentive to restrain competition in order to obtain monopoly profits. There are three main harmful methods of limiting competition: colluding with rivals in a market, merging with rivals or potential rivals, and using anticompetitive techniques to exclude existing or potential entrants. U.S. antitrust laws are designed to prevent these behaviors by making price-fixing, bid-rigging, and similar behavior illegal, requiring government review of mergers to prevent those that lessen competition, and prohibiting anticompetitive conduct by an incumbent with market power that tends to exclude entrants and rivals. Unfortunately, over the past few decades, these laws have not been operating in a way that generates and preserves vigorous competition in U.S. markets. It is well understood that market power decreases innovation, productivity, and the efficient use of resources. Market power, however, also contributes to growing inequality. Shareholders and senior executives who benefit from increased market power through higher salaries and increased stock prices are disproportionately wealthier than consumers, on average. Furthermore, consumers, suppliers, and workers may be harmed by paying higher prices for monopoly products or services and receiving lower compensation for the products and services (inputs or wages) they supply to monopsonists (buyers with market power).1 Consumption, by contrast, is not nearly so concentrated. Joshua Gans at the University of Toronto’s Rotman School of Management and his co-authors report that the consumption of the top 20 percent of the wealth distribution in the United States is approximately equal to that of the bottom 60 percent, but their equity holdings are 13 times larger. Thus, if a dollar of monopoly profit is transferred to lower prices, most of that dollar moves from benefitting the top 10 percent through the value of their stock or dividends to instead benefitting the bottom 90 percent through lower costs of purchases. Therefore, antitrust enforcement redistributes wealth without incurring the traditional shadow costs arising from taxation and, indeed, is an actively beneficial form of redistribution for the economy.2 Because antitrust enforcement both redistributes income and wealth to the bottom 90 percent of the population, as well as increases efficiency, it should be the first choice of policymakers concerned with equity. The standard for anticompetitive harm that courts use today is the protection of consumer welfare—meaning price, quality, and innovation, now and in the future. Antitrust enforcement using the best available economic tools—developed, in some cases, decades ago—generates the evidence needed to show where such anticompetitive conduct is present. The underenforcement described below is the fault neither of this standard nor of the economic tools themselves—though they could, of course, be better. The antitrust underenforcement we see today is primarily the result of decisions made over the past 40 years in the courts. The four policies I recommend to reverse this harmful trend are: Dramatically increase the budgets of two federal antitrust agencies, the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice, which would be less expensive than it might appear because the two agencies collect disgorgement and restitution awards that flow back to consumers. Appoint leaders of these two agencies who are committed to using the best tools available to reverse the decline in competition. Aggressive but appropriate enforcement will either lead to good results or will identify failures in the law or by the judiciary to protect competition and consumers. Support and pass new legislation so that Congress can make it clear to the courts how it would like federal antitrust laws to be enforced and require courts to adopt up-to-date economic learning. Create a new “Digital Authority” to enforce privacy laws, protect digital identities and consumer data from being monopolized by private firms with market power, and create baseline conditions conducive to competition in digital marketplaces. This essay will first address the “hot” topics in antitrust today, such as technology markets and digital platforms, as well as important everyday markets such as agriculture, transport, and pharmaceutical products, and then turn to my recommended reforms. Key Takeaways The evidence: Competitive markets deliver higher productivity, lower prices, better-quality products, and more innovation, yet firms often seek to restrain competition to obtain monopoly profits. Today, there is increasing evidence that many firms are unrestrained by antitrust enforcement and engage in anticompetitive mergers, anticompetitive exclusion, and collusion with rivals. The solutions: U.S. antitrust laws need to be strengthened, particularly in the area of mergers and exclusionary conduct, and a new digital regulatory authority that would enforce privacy laws and create conditions conducive to competition would improve outcomes in digital markets. Market power has increased The evidence for the failure of current U.S. antitrust policy is detailed in my report from May 2019 titled “Modern U.S. antitrust theory and evidence amid rising concerns of market power and its effects,” and its accompanying database.3 Economic evidence of rising market power comes from large samples of firms and industries. One widely discussed study of all publicly traded firms finds that markups (the difference between the price charged to a consumer and the cost to make an additional unit) have risen sharply since 1990 among firms in the top half of the markup distribution.4 Macroeconomists have further documented a declining share of national incoming going to workers and a rising share going to profit.5 New theories whose empirical implications are only now being explored also are possible contributors to rising market power. For instance, the huge growth in overlapping equity ownership of rival firms by diversified financial investors over the past four decades has plausibly led to less aggressive competition in many industries.6 Still more evidence of market power comes from labor markets—in this case monopsony power, which is exercised by a buyer with market power (such as an employer) to pay less for its inputs (such as workers). Because workers have specialized skills and are often geographically constrained, monopsony power is common. Recent studies find that employers have monopsony power over college professors and nurses.7 Wages for nurses may stagnate after hospital mergers for this reason. The extensive use of noncompete agreements in employment contracts involving low-wage fast-food workers and the no-poach agreements between a number of high-tech firms over software engineers and between rail equipment suppliers over their workers, provide additional examples of anticompetitive conduct that harms workers.8 Evidence that antitrust laws are falling short is plentiful. Many cartels go undiscovered, and tacit collusion is probably even more prevalent because it is harder for antitrust enforcers to prosecute and deter.9 Anticompetitive horizontal mergers (between rivals) appear to be underdeterred.10 A variety of clever strategies used by incumbents to exclude entrants, either by purchasing them when they are nascent or using tactics to confine them to a less threatening niche or forcing them to exit have been successfully deployed in recent years, often when antitrust enforcement is late or absent.11 Each of these sources of concern can be critiqued, but together they make a compelling case. Some of the evidence may have benign explanations in part, such as the growing importance of fixed costs, for example, when creating software or pharmaceuticals that leads naturally to higher markups, or the increasing benefit of being on the same platform with other users (known as “network effects” in the case of a social media site). Firms in industries with high fixed costs or large network externalities may exhibit high profits and productivity and low labor shares, and may earn high profits because they had a good idea early and executed well, thereby getting adoption from many consumers.12 Nonetheless, the overall picture is clear that market power has been growing in the United States for decades. Moreover, even where the explanation for growing market power is benign, we must ensure that companies do not use anticompetitive tactics to protect their position. Firms with market power need not compete aggressively to sell their products, so they tend to raise prices, reduce quality, and/or innovate less. Market power can also contribute to slowed economic growth by, for example, suppressing productivity increases.13 Theoretical and empirical economic studies convincingly show that innovation is harmed by anticompetitive conduct.14 This is why antitrust enforcement is such a terrific policy tool to strengthen competition—it does not come with an efficiency downside, as do most policies that redistribute income. Policies that enhance competition are unambiguously beneficial for efficiency, as well as inclusive prosperity, with minor qualifications.15 Other policies for addressing inequality, in particular, such as labor market and tax policies, may create disincentives or allocative efficiency losses that must be weighed against their distributional benefits. Policies to enhance competition, by contrast, offer what is close to a free lunch.16 An agenda to confront market power An antitrust enforcement policy agenda to confront rising market power has four parts: increase enforcement resources; appoint agency leaders committed to using the best tools to combat the decline in competition; reform statutes to deter and prevent anticompetitive conduct more effectively; and use regulatory tools to foster competition. Let’s look at each of these policy components in turn. Increase resources for enforcement The resources expended on enforcing the antitrust laws in the United States are lower as a proportion of Gross Domestic Product than they were for most of the mid-1900s and have experienced a notable decline since 2000. Interestingly, this decline coincides with a rise in markups by firms, an increase in U.S. Supreme Court opinions protecting monopolists, and increasing policies that benefit incumbents. These patterns are consistent with the interests that favor corporate profits over consumers and those firms gaining more control of the political process to achieve all of these goals. Approximately doubling the budget of both federal antitrust agencies would restore resources to a level where the agencies would be able to combat much more of the anticompetitive conduct present in the economy. In increasing resources, Congress should also consider whether it should provide funds to bolster the enforcement efforts of state attorneys general. Appoint leaders committed to using the best tools available to enforce competition rules Effective antitrust enforcement requires the appointment of enforcers who will vigorously protect consumers using modern economic tools. This will inevitably require litigation in the face of hostile legal rules, and possibly losses. Yet aggressive but appropriate enforcement will either lead to good results or identify failures by the judiciary to protect competition and consumers. Leadership at the two agencies that is committed to reversing the decline in competition could take full advantage of existing antitrust laws. The game theory revolution (creation of tools to understand strategic interactions) in microeconomics beginning in the 1980s and the development of empirical techniques from the 1990s onward provide underutilized tools to identify and quantify harmful practices that can be attacked under the current antitrust rules.17 The enforcement agencies already use econometric methods, sophisticated simulations, bargaining theory, and other tools to identify harmful conduct and choose which cases to bring to court, yet in some instances, courts have trouble understanding these tools and resist accepting them as state of the art. Too often, court decisions, such as in the merger of AT&T Inc. and Time Warner Inc., reject modern economic ideas.18 Rather than change strategies, enforcers must continue to rely on the best arguments and evidence even if there is a chance that in the short run a court will not understand. Sound economics is critical to this approach: It shows where there is harm to consumers and explains how that conduct is harming consumers. Over time, the economic arguments can educate all of society, both the public and the courts. This is not an easy task but generates broad-based benefits. The history of pharmaceutical pay-for-delay litigation amounts to a long string of losses in court for the Federal Trade Commission against drugmakers, eventually followed by success.19 This history shows that the agencies are capable of convincing courts to change their views when they rely on sound economics and persevere. Moreover, publicly demonstrating the harm through an ultimately unsuccessful court challenge can clarify to the public and to Congress when a court is ideologically opposed to protecting consumers from that harm. One of today’s significant challenges is convincing courts to do more to protect potential competition from anticompetitive conduct.20 When markets become more concentrated because of network effects or economies of scale, the primary locus of competition shifts from competition in the market to competition for the market. In that setting, consumers rely on competitors who are about to enter, could potentially enter, or who are nascent competitors in the market to put pressure on oligopolists or dominant firms, making potential competition a critical source of consumer welfare. While antitrust enforcers have had some success in attacking conduct by a monopolist that excluded nascent competition, as in high-profile litigation involving Microsoft Corp. two decades ago, doing so is particularly challenging when the excluded product poses a future competitive threat but has not yet had substantial marketplace success.21 The next leaders at the antitrust agencies must understand the need to bring cutting-edge cases to protect potential competition even in the face of legal hurdles. Reform antitrust statutes to deter and prevent anticompetitive conduct more effectively. Increasing resources and more aggressive enforcement alone will not solve the problem. Judicial decisions interpreting the antitrust laws have significantly crippled antitrust enforcement. These decisions reflect, at best, an archaic economic understanding of competition or, at worst, simply bad economic reasoning. Under a series of U.S. Supreme Court decisions over the past decade, for example, it is doubtful that the government could have successfully broken up AT&T’s phone monopoly in the 1980s. That break up, arguably the government’s most successful monopolization prosecution, focused on AT&T’s refusal to allow MCI, a long-distance competitor, to connect its long-distance service to local phone monopolies. In Verizon Communications v. Trinko, the Supreme Court dramatically expanded a monopolists’ ability to avoid antitrust liability when it refuses to deal with competitor or potential competitor, and also implied that antitrust concerns are subordinate in an industry subjected to the regulation.22 More recently, the Supreme Court misapplied basic economic reasoning in a case that, under some interpretations, has the potential to almost exempt technology platforms from antitrust enforcement: Ohio v. American Express.23 Since technology platforms comprise an ever-increasing share of economic activity, this situation is of grave concern.24 Even where the antitrust plaintiffs have been successful, the difficulty and cost of those successes suggest systematic underweighting of the benefits of competition and deference to the desire of the corporation for increased market power. The government’s long battles over stopping pay-for-delay deals and anticompetitive hospital mergers are notable examples of this misalignment, as is the approval by the government of the Sprint-T-mobile merger. In all of these cases, the corporations did not seek that market power on the merits, but through regulation (Trinko or state-supervised hospital mergers), exclusion (pay for delay and American Express), or merger (AT&T-TimeWarner or Sprint-T-mobile). Despite the government’s success in some merger litigation, this success only occurs in transactions that most clearly violate the law.25 The fact that the two antitrust agencies must litigate cases that are clearly anticompetitive—rather than the parties not even considering the deal in the first place or abandoning it after the government makes its concerns known—speaks to the limitations of current antitrust legal doctrine. It would likely take decades to reverse this body of accumulated legal doctrine, even if every future case that was litigated were decided with perfect accuracy. Fortunately, Congress is the final arbiter on competition law and can change it to reflect the desire of society for competitive markets. Congress has not substantively amended those laws in more than 60 years. A broad foundation of economic research supports retooling our antitrust laws for the 21st century and restoring the vigor that was originally intended. Although legislation can take many forms, successful antitrust reform legislation should accomplish four goals: Overturn Supreme Court precedent that has inoculated exclusionary conduct from antitrust scrutiny even when it harms competition by eliminating or harming competitors Prohibit courts from assuming that some aspect of a market is competitive or will become competitive rather than assessing the evidence in the case Create simple rules (known as presumptions) that will lower the resource cost of enforcement for conduct and acquisitions that economic research shows are likely to raise competitive problems Clarify that the antitrust laws are designed to protect competition that may manifest itself across a broad range of outcomes such as higher prices, reduced quality, harm to innovation, lower input prices, and elimination of potential competition Lastly, Congress could consider two ways to raise the expertise level of judges. One is to require the court to hire its own economic expert in an antitrust case, paid by the parties. The neutral expert’s task would be to help the court understand the economics presented by each side. A second option is to create a specialized trial court to hear cases brought under the federal antitrust laws.26 Doing so would allow antitrust cases to be heard by judges with experience in evaluating complex economic evidence. A sophisticated judge would encourage litigants to rely on the best economic arguments and modern economic tools applied to the facts in the case, improving the accuracy of judicial decisions and discouraging judicial acceptance of the erroneous general economic assumptions that have supported relaxed antitrust enforcement.27 A term on such a specialized court should be of relatively short duration to limit the possibility of capture or entrenchment. Complementary regulation that promotes competition: Create a federal digital authority There is a real need for federal agency to regulate digital businesses. This new agency could create a baseline level of competition in an area that lacks it. Regulations under its purview could enhance competition by, for example, facilitating digital-data portability that would allow a consumer to take her own data in a usable format from one provider to a competitor (such as moving purchase history from Amazon.com to Jet.com). A new agency also could define and regulate “interoperability” in the digital arena; for example, a Verizon phone can call an AT&T phone because they are interoperable. A digital authority could ensure social media sites were also interoperable so that a person who uses Snap, for example, could follow her friends who post content on Instagram or another site. And it could consider the creation of open standards that promote competition, such as a standard for micropayments. These payments in fractions of a cent cannot practically be made today because the transaction cost is higher than the amount being paid. But micropayments may be critical in compensating consumers for their attention, may be an important dimension of competition between platforms, and may aggregate to significant benefit to consumers. By creating one system, a regulator could enable price competition in attention markets. In addition, this new regulator could be tasked with enforcing somewhat stricter antitrust laws for those digital platforms or sectors that Congress felt required additional scrutiny and speed, or where competition was particularly valuable for society. This would allow a faster, more specialized agency to protect small entrants into digital marketplaces from exclusion or discrimination by the incumbent platform. It would also allow for review of even the smallest acquisitions when those small firms are being acquired by the largest incumbents. In general, the agency could have a mandate to protect and facilitate entry to address competition problems in the digital sector.

## OFF

#### The 50 states and all relevant sub-federal territories should

#### expand the scope of their antitrust laws by prohibiting stock-based ownership in the agricultural private sector and restrict the exemptions created by the Capper-Volstead Act

#### pass stringent labor laws regulating conditions in the agricultural industry and raise the minimum wage

#### guarantee basic income

#### Offer substantial personal financial rewards to prosecutors who win antitrust suits

#### Enact substantial personal financial punishment to prosecutors who fail to pursue antitrust litigation

#### Direct vastly supernormal resources to antitrust state prosecutors

#### implement a slew of policy solutions to climate change and biodiversity, including regulated geoengineering and funding carbon negative technology.

#### Solves the entire aff—Congress has devolved antitrust authority to the states

Harvard Law, 20

(Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” JUN 10, 2020 133 Harv. L. Rev. 2557 NL)

Both the United States government and the governments of the fifty states use antitrust principles to regulate firms. A collection of federal statutes, first and foremost the Sherman Act,1 outlaws anticompetitive behavior under federal law. The federal executive branch, through the Federal Trade Commission (FTC) and the Department of Justice's Antitrust Division (DOJ), enforces the federal statutes.2 Meanwhile, each state has its own antitrust statutes outlawing anticompetitive behavior.3 The states' agencies enforce their own antitrust laws, and they can enforce federal antitrust law as parens patriae 4 for full treble damages thanks to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 5 (Hart-Scott-Rodino). However, when state legislation itself produces anticompetitive effects that seem to violate federal antitrust principles, the state gets a free pass: "[A]nticompetitive restraints are immune from antitrust scrutiny if they are attributable to an act of 'the State as sovereign.' 6 Wherever the federal and state governments share regulatory authority, federalism concerns naturally follow. Federalism refers to the division, overlap, and balance of power between the federal and state governments in our federal system.7 The emergence of a strong national government since the New Deal has turned federalism into a statecentric concept about protecting the states' role in that balance.8 This state-centric federalism is partially baked into the Constitution: for example, the Tenth Amendment confirms that the Constitution reserves powers not delegated to the United States for the fifty states, 9 and some scholars have attributed a state-centric view of federalism to the Guarantee Clause.10 However, when, as with antitrust, the federal and state governments share concurrent regulatory authority, the Constitution alone cannot resolve the federalism-nationalism balancing act. Even when it is not a constitutional hurdle, federalism is still a relevant constitutional value. The Framers embraced federalism for its policy virtues,11 and contemporary judges and scholars laud federalism for its modern-day policy perks. 1 2 The Supreme Court often invokes federalism in the form of a presumption that Congress does not lightly intrude on state sovereignty.13 One example is the Court's presumption against preemption: a party alleging federal preemption of state law faces a judicial presumption that Congress did not intend to make that choice.14 That presumption is validated by Congress's choice to refrain from preempting state law in the antitrust arena: state and federal antitrust laws have coexisted since the federal government's first steps into the arena in 1890.15 This congressional restraint is controversial, and likely to grow more so. Some scholars have argued powerfully that Congress should preempt state antitrust laws. 16 These arguments may gain renewed prominence, as antitrust as a whole has recently achieved greater political salience than it has enjoyed in a century.1 7 In the state context, attorneys general have increasingly taken antitrust action in high-profile matters the federal government has declined to pursue. In 2019, states opposed the merger between Sprint and T-Mobile,18 and many began to investigate potential antitrust violations in Big Tech. 19 While some recent, high profile state antitrust actions have been brought under federal antitrust laws, 20 others have been brought under state law.21 Moreover, a number of the current state antitrust actions are at the investigatory stage22 \_ states could potentially bring federal claims, state claims, or both. Newsworthy state involvement in antitrust policing is bringing attention to the states' antitrust role more generally, and that attention will likely bring scrutiny to the oddity of America's competing antitrust systems. This Note argues that, in considering its position within this debate, Congress should grapple with federal antitrust law's peculiar status as a largely judicially created regulatory regime. Congress should be wary of allowing federal judge-made law to preempt state legislative power. Even when the federal government preempts state legislation, the federalism balance is partially preserved by democratic checks on federal power. Yet, when a nondemocratic branch is making the law, those checks disappear. Moreover, the federal judiciary is a uniquely poor policymaking body; its lack of policymaking chops does not support overriding states' policy choices. These factors highlight the need for Congress to account for the degree to which current antitrust law is largely judge made. Part I outlines the general landscape of antitrust federalism. It first describes antitrust federalism's three components and then surveys arguments for and against maintaining one of those components: the coexistence of state and federal antitrust laws. Following this survey, Part II offers a new defense of the current system: federal antitrust law's judge-made status makes it particularly unsuitable to preemption. Finally, Part III compares antitrust's judge-made law to other preemptive federal common law, concluding that federal antitrust preemption would be uniquely susceptible to Part II's criticism. I. THE ANTITRUST FEDERALISM LANDSCAPE Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords"- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws - and one "shield" - immunity from federal antitrust law for state actions. 23 The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action. All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages - the first sword - was granted to the states by Congress in Hart-Scott-Rodino. 24 On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions - the shield - in Parker v. Brown,25 noting that the Sherman Act did not explicitly mention its application to state action. 26 Finally, when the Court confirmed that states' ability to make their own antitrust laws - the second sword and the one discussed in this Note - was not preempted in California v. ARC America Corp.,2 7 it considered the same Sherman Act silence. 28 This is all to say that antitrust's federalism tools are congressionally, not constitutionally, given rights and are therefore congressionally rescindable. Congress could amend Hart-Scott-Rodino or make explicit that the Sherman Act applies to state action. 29 And, crucially for this Note's discussion, although state antitrust law is not judicially preempted, Congress could choose to expressly preempt it in the future.30 There are strong policy arguments for express congressional preemption of state antitrust law. The remainder of this Part attempts to outline the general pros and cons of congressional antitrust preemption but is not meant to be exhaustive or to cover new ground. The intent is to situate Part II's argument about federalism and preemption by judgemade law within the broader policy landscape. A. The Patchwork Regime Problem First, critics of the status quo argue that a patchwork regime of state antitrust laws can make it expensive for companies that operate across state borders to comply. State and federal regimes share similar philosophies regarding most of antitrust law.31 But state antitrust laws do not perfectly mirror their federal counterparts - and the antitrust laws of the different states are heterogeneous themselves. 32 Disputes are concentrated in a few areas of the doctrine, like vertical restraints and mergers. 33 For example, states often focus on damage to intrabrand competition when enforcing limits on vertical restraints, whereas federal antitrust law focuses primarily on interbrand competition.34 Additionally, state merger guidelines often materially differ from federal guidelines, 35 and states are likelier to define markets "more narrowly," "refus[e] to consider efficiencies" favored by federal agencies, and show a concern for local jobs and competitors that does not "enter . . . the [federal] calculus."3 6 An inconsistent antitrust regime that may conflict between states could cause economic inefficiency, for example by discouraging companies from undertaking what might otherwise be an economically efficient merger.37 This critique relies in part on the federal government having a better approach to vertical restraints and mergers, and that is anything but clear. The classic federalism argument that states function as laboratories of democracy 38 applies here: antitrust law is far from settled, and having multiple regimes allows for testing different theories. For example, some scholars argue that the states are correct to consider intrabrand competition's effects on price, especially in certain markets.39 Similarly, in the merger context, there is support for both the states' refusal to consider only economic efficiency40 and their push for heightened antimerger enforcement. 41 Of course, the laboratories of democracy might not work so well in the antitrust context: because of the interwoven economic effects of federal and state antitrust laws and enforcement in an interconnected national economy, determining the effects of one state's slightly different antitrust regime would be difficult.4 2 But federalism can still offer benefits by breaking the antitrust orthodoxy: by putting different policies on the table, a multilevel regime reminds us both that there are different possible "best" antitrust policies and that antitrust law has a variety of potential goals.43 B. The One-State Dominator Problem Closely related to the patchwork regime problem is the one-state dominator problem: because national firms may not always be able to maintain different business practices in each state, firms could be forced to follow the law of whichever state has the strictest antitrust policy nationwide. For example, a single state could use its own antitrust laws to "challenge the largest nationwide transactions so long as it can show that the state itself, its citizens, or its economy is affected in a way that provides standing." 4 4 If a nationwide merger is illegal under one state's laws, it may not be worth it for the firm to restructure the transaction in order to merge in all but one jurisdiction. This reality could allow for the state with the strictest antitrust policy to dominate the policy decisions of every other state and of the federal government.45 The one-state dominator problem is exacerbated by unrecognized interstate externalities: in making its antitrust laws, a state is not forced to consider the harm or benefit to businesses based outside of its borders. 46 These uninternalized externalities make it more likely that a state will overregulate. The laboratory-of-democracy defenses to the patchwork regime problem, with their variety-is-the-spice-of-life flair, fail to explain why an individual state's antitrust regime should be allowed to dominate the policy of the entire nation. Consider a recently passed Maryland law regulating wholesale pharmaceutical prices. The law prohibited manufacturers or wholesalers from "price gouging," defined as "an unconscionable increase in the price of" certain drugs.47 Federal antitrust law does not prevent monopolists from receiving the reward of monopoly prices, under the theory that potential future monopoly profits encourage present investment.4 8 The Maryland law can be viewed as a limit on this monopolist tolerance in the pharmaceutical space, preventing pharmaceutical companies from taking advantage of their dominant market position in the treatment of certain diseases. Not all states had decided to regulate drug prices, with most hewing more closely to the general rule of monopoly tolerance.49 Based on its drafting, however, Maryland's law could have had significant implications nationwide: even assuming the law required some sort of connection to an eventual consumer sale in Maryland,5 0 the law regulated a wholesaler's initial sale, whether or not that sale occurred in Maryland, so long as the drug was eventually resold in Maryland.5 1 As such, any manufacturer who sold drugs to a Maryland retailer would have to set their initial prices in consideration of Maryland's law. Pricing is a core antitrust issue; why should Maryland be able to set the nation's pricing policy? Or consider the ability of indirect purchasers to sue under antitrust laws. In Illinois Brick Co. v. Illinois,52 the Supreme Court held that only direct purchasers of a price-fixed good or service, not subsequent indirect purchasers, could sue for treble damages under the Clayton Act.5 3 In response, twenty-six states passed "'Illinois Brick-repealer laws' authorizing indirect purchasers to bring damages suits under state antitrust law."5 4 But these twenty-six states have an impact even on the residents of nonrepealer states. In a class action currently on appeal in the Ninth Circuit, a district court applied California antitrust law – including California's repealer law - to a nationwide class that included class members from nonrepealer states.55 The defendant-appellant has argued that this application undermines the nonrepealer states' interest in choosing their own consumer-business balance.5 6 The Maryland and Ninth Circuit examples may be more bogeymen than real threats to federalism. First, alternate doctrines aside from antitrust preemption work to keep individual state interests in check. For example, the Fourth Circuit enjoined enforcement of the Maryland law on dormant commerce clause grounds.5 7 Where one state intrudes too much on other states' ability to regulate antitrust - where "[t]he potential for 'the kind of competing and interlocking local economic regulation that the Commerce Clause was meant to preclude' is ... both real and significant" 58 - the Constitution, rather than Congress, can prevent the onestate dominator problem's greatest harms. Dormant commerce clause challenges are not limited to the Maryland case's facts. In fact, the Fourth Circuit dissent complained that the majority's logic would invalidate other state antitrust laws, including Illinois Brick-repealer laws.5 9 Second, the trouncing of federalism in cases like these is often overstated. Take the defendant-appellant's depiction of the interests in the Ninth Circuit case as an example of exaggerated federalism costs. The district court found that the nonrepealer states had no interest in having their laws applied because the defendant-appellant was a California company; California's more consumer-friendly law would only help nonrepealer-state residents, not hurt nonrepealer-state businesses.6 0 If the nonrepealer states have an interest in denying their own consumers access to relief when there is no benefit to their own businesses, it seems tangential to an interest in striking their own consumer-business balances. Instead, a choice to prioritize foreign defendants over in-state consumers appears more like an attempt to govern the national consumer-business balance, a choice imbued with far less federalism oomph than the defendant-appellant portrayed. Whether exaggerated or not, a worry that antitrust federalism allows one state to dominate national antitrust policy weighs in favor of congressional antitrust preemption. This problem, however, is not unique to antitrust. Any area of law in which states fail to internalize the harms of overregulation, meaning any law that regulates businesses with a national footprint, could be dominated by one state. 61 If Congress were to take the one-state dominator problem too seriously, it would swallow up huge swaths of state regulation, excluding states from their traditional role in consumer protection, at least where the largest (and potentially most worrisome) industries are implicated. C. The Overdeterrence Problem Third, critics argue that a multilevel antitrust regime threatens to overdeter procompetitive conduct. The policy behind much of preemption is to prevent state law from interfering with detailed, well-balanced federal regulation: obstacle preemption exists to prevent states from "stand[ing] as ... obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress,"6 2 and field preemption exists to prevent state interference where Congress "left no room for lower-level regulation."6 3 Although it is not field or obstacle preempted, 64 antitrust law exhibits the type of detailed regulatory balance that the preemption doctrines attempt to prevent states from damaging. Much of antitrust law is built on finding the perfect balance of standards and remedies: the law must properly deter anticompetitive acts without deterring healthy competition. 65 A state law that shifts remedies or standards can upset this careful balancing, thus overdeterring desirable private action. Critics can point directly to ARC America as evidence of this overdeterrence threat. The Court's decision in Illinois Brick, which limited suits by indirect purchasers, relied in large part on a belief that concentrating suits in direct purchasers would avoid overdeterrence. 66 By allowing for additional suits, ARC America created extra deterrence not envisioned by the federal antitrust scheme. 67 Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues. 68 Moreover, many scholars argue that the U.S. antitrust balance is off and that more enforcement is needed.6 9 Even if U.S. antitrust policies are getting the balance generally right, it is unlikely that the federal regime is so finely tuned that any added deterrence will destroy the balance. D. The Misaligned Incentives Problem7 Fourth, in the misaligned incentives problem, critics argue that states do not have proper incentives when they enforce state antitrust laws. Although state antitrust laws are supposed to mainly target intrastate antitrust violations, courts have refused to police that limit too strictly. 7 1 In an interconnected economy where seemingly hyperlocal activity can have national implications, 72 courts have admitted that limiting state antitrust laws to cases that do not touch the national economy would "fence[] off" "a very large area .. . in which the States w[ould] be practically helpless to protect their citizens."7 But, even though suits under state laws may have nationwide consequences, state attorneys general lack nationwide incentives. Critics of the status quo worry that elected attorneys general are more susceptible to lobbying by state interests than are appointed federal enforcers and that a cost-benefit analysis is flawed where a state can attack a company headquartered out of state in order to protect one headquartered in state.74 These fears seem mostly imagined. The idea that elected attorneys general are bringing antitrust suits to hurt competitors of state businesses "appears to [have] little empirical support[,] ... and none has been provided by the advocates of this position."7 5 Past state antitrust enforcers have stated that, while they considered state-specific factors when deciding where to spend their limited resources, those factors would be used only to choose "from among those cases that also made sense on traditional economic grounds."7 6 And there is reason to believe that these enforcers are telling the truth. For one thing, states often make antitrust decisions that seem to go against the interests of major state employers. For example, New York antitrust enforcers have taken antitrust positions adverse to both Verizon and IBM, top New York employers.7 7 For another, a state that is only minutely affected by an antitrust action is unlikely to bring that action alone. If a state is only trivially affected by allegedly anticompetitive conduct, "that state is very unlikely as a practical and political matter to spend the enormous sums of money required to sustain a challenge." 78 If a state is majorly affected but is the only state affected, then the misaligned incentives critique does not apply because there is no competing set of national incentives. And in a case that actually has major impacts in multiple states, it is unlikely that one state could act without other states wanting to join in on the enforcement.79 When states work together on antitrust enforcement, they tend to cooperate closely with one another, especially through the National Association of Attorneys General's (NAAG) antitrust group.o Even if an individual state might be swayed by state-specific concerns, it is unlikely that it could convince a multistate coalition to act on those concerns - the group would be forced to evaluate the action on its more national merits.81 E. The Incompetent States Problem Finally, critics argue that state enforcers will make error-ridden antitrust choices due to a lack of resources, experience, and expertise. Whereas federal enforcers have significant budgets for antitrust enforcement, the percentage of funding set aside for antitrust enforcement by state attorneys general is minute. 2 Because of this lack of resources, state enforcers have been accused of staffing antitrust cases with senior attorneys who, while experienced in civil litigation generally, are antitrust novices.83 These factors have led critics to argue that state attorneys general handle antitrust suits poorly, clogging the judicial pipeline with questionable suits. 84 State attorneys general are accused of acting as free riders on federal actions and of making settlements more difficult rather than undertaking useful enforcement.1 5 But there is reason to dispute critics' claims. The critique of individual attorneys general ignores the states' ability to work in unison. Cooperating through NAAG, states are able to build on each other's experiences in antitrust enforcement.1 6 Thus, worries about inexperienced antitrust divisions working alone may be overstated. Although interstate coordination may weaken their point, critics can retort that most state actions are not coordinated: according to NAAG's State Antitrust Litigation Database, only nineteen of the fifty-six civil antitrust actions brought by states between 2014 and 2019 were brought by multiple states working together,8 7 although many of the noncooperative suits regarded intrastate anticompetitive conduct. 8 This same dataset, however, also undermines the critics' argument that states act only as free riders: only nineteen of the fiftysix suits included federal participation.8 9 Finally, much of the criticism leveled at state attorneys general occurred before a renaissance in state law enforcement. Since Judge Posner derided the skill of state attorneys general in 2001,90 lawyers and judges, including Chief Justice Roberts, have recognized a marked improvement in state attorney offices' advocacy.9 1 Whether or not Judge Posner's critiques were valid at the turn of the century, it is unclear that the landscape remains the same today. Finally, this critique undermines the arguments, noted earlier, that state law enforcement is overdeterring competition or creating a patchwork of antitrust law. If states are nothing but free riders, then we need not worry about overdeterrence.

#### The incentives planks checks solvency deficits

Rauch, 20

(Daniel E. Rauch, JD Yale School of Law, “Sherman's Missing Supplement: Prosecutorial Capacity, Agency Incentives, and the False Dawn of Antitrust Federalism,” 68 CLEV. St. L. REV. 172 (2020) NL)

(2020).State attorneys general are having a moment. In recent years, they have been main players in some of the country's most important legal and political dramas. They have checked the Trump Administration on abortion rights,3 air quality,4 and the United States Census.5 They have checked the Obama Administration on water rights, 6 immigration policies,7 and the Affordable Care Act.8 They have formed a (very public) front line on issues from the opioid epidemic9 to net neutrality.10 And in a time of federal-level gridlock, they are increasingly seen as critical sites of governance offices that can still "get things done."" As their profile grows, many suggest state attorneys general ought to take a more central role in antitrust enforcement. Sometimes, these calls are motivated by concerns that the federal government is not vigorously enforcing antitrust laws, leaving a "void" to be filled. 12 Sometimes, the calls are motivated by the suggestion that states enjoy institutional advantages in antitrust enforcement, such as superior knowledge of "market-specific information," that make them superior enforcers.13 And sometimes, the calls are motivated by doctrinal differences between state and federal antitrust statutes, differences that might afford states greater freedom of action.14 In any case, these calls point in the same direction: when it comes to American antitrust law, state attorneys general can, and should, be leaders. Rhetorically, the suggestion that states should "step up" as leading antitrust enforcers is a powerful one. It is not, however, new. When the Sherman Act was passed in 1890, the states (as opposed to the federal government) were widely expected to take the lead in antitrust enforcement. John Sherman himself asserted that his Act's "single object" was to "supplement the enforcement of the established rules of the common and statute law by the courts of the several States."1 5 Nor was he alone: at the time of the Act's passage, scholars, politicians, and shareholders all shared Senator Sherman's prediction that state enforcement agencies would be a central, if not decisive, force in American antitrust policy.16 What happened next defied this expectation. In the years following the Sherman Act's passage, from 1890 until the First World War, state antitrust enforcement had remarkably little impact or efficacy. Many scholars have noted this unexpected failure.1 7 None, however, have accurately or rigorously explained it.1 This Article does. Using novel historical and empirical research, I contend that the best explanation for the early failure of state antitrust enforcement was prosecutorial incapacity: state attorneys general and local prosecutors without the incentives or resources to handle antitrust cases. Along the way, I also provide a rigorous rejection of the leading alternative explanations for the states' early failure to act, including those based on doctrinal constraints, statutory text, and contemporary politics. Finally, I close by suggesting some implications that this first, failed era of antitrust federalism has for our own times, times where, once again, state enforcement agencies are held out as promising leaders in American antitrust enforcement. The remainder of this work proceeds as follows. Part II provides historical context for the passage of the Sherman Act and for early state antitrust statutes, the role state enforcement was expected to play, and its unexpected failure to do so. Part III then turns to the historical and empirical record to discern why state enforcement, widely expected to assume a central role, took almost no role at all. Analyzing a comprehensive and novel data set of state antitrust prosecutions, this Part quantitatively underscores the absence of state antitrust enforcement during this period. However, the data also reveals a critical nuance: a set of "high-enforcement states" in which state antitrust law was, in fact, enforced with at least some vigor. Armed with this insight, Part IV returns to the initial question: why, as a general matter, did early state antitrust enforcement fail to take root? This Part assesses four prominent explanations that have been suggested as answers to the question: (1) doctrinal arguments on the legality of state-level enforcement; (2) economic arguments based on the practical efficacy of state-level enforcement; (3) institutional arguments that the federal government's Sherman Act authority somehow "displaced" state activity; and (4) political arguments that public opinion or elected officials lost interest in antitrust enforcement after passing their initial state statutes. Ultimately, this Part rejects each of these explanations. Part V, however, considers and rigorously tests a different explanation: that the cost and complexity of antitrust litigation was simply beyond the capabilities of state prosecutors. On this account, the crucial factor was a lack of "prosecutorial capacity." To date, this explanation has never been systematically explored, examined or established. 19 This Part does so, analyzing the novel data set of state antitrust caselaw, the text of the states' early antitrust laws, the structure of each state's prosecutorial bureaucracy, and the workings of each state's budget processes. Through this empirical and documentary analysis, a striking pattern emerges. In overwhelming measure, the "high-enforcement" states, those where at least some antitrust enforcement took place: (1) offered substantial personal financial rewards to prosecutors who won antitrust suits; (2) offered substantial personal financial punishment to prosecutors who failed to pursue antitrust litigation; (3) directed vastly supernormal resources to antitrust state prosecutors; or (4) pursued some combination of these strategies. In short, these states offered incentives or capabilities that would make it personally easier (or more lucrative) for resource-limited prosecutors to act. By contrast, where such direct prosecutorial incentives and resources were absent, so was enforcement. Even in states that were politically progressive antitrust bastions. Even in states that imposed draconian statutory penalties for antitrust violations. Thus, the best explanation for the failure of early state antitrust enforcement was insufficient prosecutorial enforcement incentives and capacity.

#### Final Plank solves environment.

Pearce ’19 [Fred; May 29; Environmental journalist and author, citing former British Government Chief Scientist David King, Harvard University Physicist David Keith, Kelly Wanser for the Marine Cloud Brightening Project, and other academics; Yale Environment 360, “Geoengineer the Planet? More Scientists Now Say It Must Be an Option,” <https://e360.yale.edu/features/geoengineer-the-planet-more-scientists-now-say-it-must-be-an-option>]

Once seen as spooky sci-fi, geoengineering to halt runaway climate change is now being looked at with growing urgency. A spate of dire scientific warnings that the world community can no longer delay major cuts in carbon emissions, coupled with a recent surge in atmospheric concentrations of CO2, has left a growing number of scientists saying that it’s time to give the controversial technologies a serious look.

“Time is no longer on our side,” one geoengineering advocate, former British government chief scientist David King, [told a conference last fall.](https://www.edie.net/news/9/Sir-David-King--Policy-and-business-action-needed-on-climate--restoration-/) “What we do over the next 10 years will determine the future of humanity for the next 10,000 years.”

King helped secure the Paris Climate Agreement in 2015, but he no longer believes cutting planet-warming emissions is enough to stave off disaster. He is in the process of establishing a Center for Climate Repair at Cambridge University. It would be the world’s first major research center dedicated to a task that, he says, “is going to be necessary.”

Technologies earmarked for the Cambridge center’s attention include a range of efforts to restrict solar radiation from reaching the lower atmosphere, including spraying aerosols of sulphate particles into the stratosphere, and refreezing rapidly warming parts of the polar regions by deploying tall ships to pump salt particles from the ocean into polar clouds [to make them brighter.](https://www.bbc.co.uk/news/science-environment-48069663)

United States scientists are on the case, too. The National Academies last October launched a study into [sunlight reflection](http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=10162018) technologies, including their feasibility, impacts and risks, and governance requirements. Marcia McNutt, president of the National Academy of Sciences, said: “We are running out of time to mitigate catastrophic climate change. Some of these interventions… may need to be considered in future.”

The study’s prospective authors held their [first meeting](http://nas-sites.org/dels/studies/reflecting-sunlight-to-cool-earth/meetings-and-events/) in Washington, D.C., at the end of April. Speakers included David Keith, a Harvard University physicist who has developed his own patented technology for using chemistry to remove CO2 directly from the atmosphere, and Kelly Wanser of the [Marine Cloud Brightening Project](http://www.geoengineeringmonitor.org/2018/04/marine-cloud-brightening-project-geoengineering-experiment-briefing/), which is studying the efficacy of seeding clouds with sea salt and other materials to reflect more sunlight back into space. The project is preparing for future field trials.

China too has an active government-funded research program. It insists it has no current plans for deployment, but is looking, among other things, at how solar shading might [slow the rapid melting](https://royalsocietypublishing.org/doi/full/10.1098/rsta.2012.0086) of Himalayan glaciers.

Geoengineering the climate to halt global warming has been discussed almost as long as the threat of warming itself. American researchers back in the 1960s suggested floating billions of white objects such as golf balls on the oceans to reflect sunlight. In 1977, Cesare Marchetti of the Austria-based International Institute for Applied Systems Analysis discussed ways of catching all of Europe’s CO2 emissions and injecting them into [sinking Atlantic Ocean currents.](https://link.springer.com/article/10.1007/BF00162777)

In 1982, Soviet scientist Mikhail Budyko proposed filling the stratosphere with sulphate particles to reflect sunlight back into space. The first experiments to test the idea of fertilizing the oceans with iron to stimulate the growth of CO2-absorbing algae were carried out by British researchers in 1995. Two years later, Edward Teller, inventor of the hydrogen bomb, proposed putting [giant mirrors](https://www.newscientist.com/article/mg18124403-700-a-mirror-to-cool-the-world/) into space.

Still, many climate scientists until recently regarded such proposals as fringe, if not heretical, arguing that they undermine the case for urgent reductions in greenhouse gas emissions. A group of scientists writing in Nature as recently as April last year, called solar geoengineering “outlandish and unsettling… [redolent of science fiction](https://www.nature.com/articles/d41586-018-03917-8).”

But the mood is shifting. There is broad, international scientific agreement that the window of opportunity to avoid breaching the Paris climate target of staying “well below” 2 degrees Celsius (3.6 degrees Fahrenheit), is narrowing sharply. A pause in the rise in CO2 emissions that brought hope in 2015 and 2016 has ended; the increase has resumed at a time when we should be making progress toward a goal of [halving emissions by 2030](https://report.ipcc.ch/sr15/pdf/sr15_headline_statements.pdf), says Johan Rockstrom, science director of the Potsdam Institute for Climate Impacts Research. CO2 concentrations in the atmosphere — the planetary thermostat — are now at 415 parts per million (ppm) and rising by almost 3 ppm each year, reaching levels that have not been seen in 3 million years. “We have two years left to bend the curve” downward, says Rockstrom.

Some experts contend we may be approaching a moment when nothing other than geoengineering can meet the international community’s promise — made when signing the UN Climate Change Convention at the Earth Summit in 1992 — to prevent “dangerous anthropogenic interference with the climate system.” Myles Allen of Oxford University’s Environmental Change Institute says: “Every year we are not even trying to reduce emissions is another 40 billion tons of CO2 dumped into the atmosphere that we are blithely committing future generations to scrub out again.”

## OFF

#### Infrastructure will pass but it’s razor thin—Biden’s PC is key

Carney, 9/13

(Jordain, reporter for the Hill, 'Democrats brace for battle on Biden's $3.5 trillion spending plan," 9/13/21 <https://thehill.com/homenews/senate/571905-democrats-brace-for-battle-on-bidens-35-spending-plan> NL)

Democrats are bracing for battle as they try to unify their slim majorities behind a sweeping social spending package at the heart of [President Biden](https://thehill.com/people/joe-biden)’s economic and political agenda. Democratic leaders are vowing to plow forward: They have a soft deadline on Wednesday for roughly a dozen Senate committees to finish drafting parts of the bill and want to pass the $3.5 trillion spending plan in the House by the end of the month. But they face a number of sticking points, including over the total cost of the package and how to pay for it. “At the end of the day there will be 50 votes, but I think we’re going to go through a very healthy, loud family discussion at times,” said Sen. [Tammy Duckworth](https://thehill.com/people/tammy-duckworth) (D-Ill.), who described Democrats as “marking out their territory right now.” Lawmakers have a full plate even without the massive package, including funding the government, as they return to Washington. And they have little time: While the Senate returns Monday, the House doesn’t come back until next week. Senate Democrats have been holding weekly committee talks, with Senate Majority Leader [Charles Schumer](https://thehill.com/people/charles-schumer) (D-N.Y.) calling up individual members and holding calls with committee chairs during the August break. They hope to get a deal between the House and all 50 Senate Democrats that allows them to avoid a lengthy conference between the two sides. “Our goal is to have a joint proposal that the president, that the House Dems and the Senate Dems can all pass and support,” Schumer told reporters, while acknowledging that “there are some disagreements.” Complicating their task are the razor thin majorities. House Speaker [Nancy Pelosi](https://thehill.com/people/nancy-pelosi) (D-Calif.) can lose no more than three members of her caucus, and Schumer can't lose a single Democratic vote. Tensions have been building between moderates and progressives, putting pressure on party leaders and Biden. As part of a deal worked out last month with centrists, Pelosi agreed to bring the roughly $1 trillion Senate-passed infrastructure bill to the floor for a vote by or on Sept. 27. That’s putting pressure on Democrats to have the $3.5 trillion spending bill, a priority of progressives that is to include top party goals such as expanding Medicare, combating climate change and long-sought immigration reform, ready to go in the same timeline. But there’s skepticism from lawmakers and aides that they’ll be able to hit an end-of-the-month mark. And Rep. [Stephanie Murphy](https://thehill.com/people/stephanie-murphy) (D-Fla.) knocked Democratic leadership during a House Ways and Means Committee hearing, calling the Wednesday deadline “artificial.” “I don't think it is asking too much to want to see this bill in its entirety before voting on any part of it,” Murphy said of the $3.5 trillion package, adding that lawmakers “need more time.” Any move to delay the Senate-passed bill would risk angering the moderates Pelosi cut the agreement with. But progressives are warning that they will sink it if it comes to the floor without the $3.5 trillion plan. Chris Evans, a spokesman for Rep. [Pramila Jayapal](https://thehill.com/people/pramila-jayapal) (D-Wash.), the chairwoman of the Congressional Progressive Caucus, told The Hill that the Senate bill and the $3.5 trillion spending plan are “integrally tied together” and that House progressives “will only vote for the infrastructure bill after passing the reconciliation bill.” Rep. [Alexandria Ocasio-Cortez](https://thehill.com/people/alexandria-ocasio-cortez) (D-N.Y.) predicted during an interview with CNN that she and “many, many members of the progressive caucus simply will not vote for Sen. Manchin’s infrastructure bill unless it is tied together with the Build Back Better Act.” Sen. [Joe Manchin](https://thehill.com/people/joe-manchin) (D-W.Va.) backs the infrastructure bill but has called for a pause to work on the $3.5 trillion package amid reports he only supports a much smaller bill. Both the House and Senate passed a budget resolution last month that greenlights a spending package of up to $3.5 trillion by a simple majority in both chambers. The budget rules prevent the GOP from filibustering the measure in the Senate, though those rules could also limit what Democrats put in it. Manchin and other moderates have warned privately and publicly for weeks that they are uneasy about the price tag, which Democrats are pitching to pay for, in part, by raising taxes on corporations and some high-income earners. Manchin and Sen. [Kyrsten Sinema](https://thehill.com/people/kyrsten-sinema) (D-Ariz.) have both said they can’t back the $3.5 trillion figure. Manchin reiterated during an interview on Sunday with CNN’s Dana Bush that Schumer “will not have my vote” for $3.5 trillion “and Chuck knows that." Democratic leaders are vowing to move forward, but some aren’t ruling out that the top-line figure could get lowered. Asked about going below $3.5 trillion, Schumer acknowledged that there was a split within the caucus about if it was too much or too little. While he predicted Democrats would unify, he didn’t specify a number. House Majority Whip James Clyburn (D-S.C.) opened the door during an interview with CNN’s [Jim Acosta](https://thehill.com/people/james-jim-acosta) to going lower, describing $3.5 trillion as a “ceiling” and saying there was “a lot of room for people to sit down and negotiate.” Rep. [Rashida Tlaib](https://thehill.com/people/rashida-tlaib) (D-Mich.), a member of the House “squad” of progressive lawmakers, disagreed: “3.5T is the floor.” Progressive have warned for weeks that trying to scale back the plan would backfire because it would shed votes from the left. But Democrats still need to iron out many of those details amid a push and pull between not only moderates and progressives, but also House and Senate Democrats.

#### The plan drains PC

Carstensen, 21

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

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.

#### Infrastructure solves extinction – grid, climate, and econ all independently escalate

Humpton, 21

(Barbara, president and CEO of Siemens USA, and Mark A. Weinberger, former global chairman and CEO of EY, “The infrastructure bill is vital to America’s economic future”, Fortune, 08-25-2021, https://fortune.com/2021/08/25/infrastructure-bill-us-economy-jobs-inclusion-green-energy/)\\JM

On July 7, 1930, at the start of the Great Depression, workers laid down the first of 5 million barrels of concrete and 45 million pounds of steel to build the Hoover Dam. Today, 1.3 million Americans still access water and power thanks to a project completed nearly 90 years ago. Our history is full of such infrastructure stories, each one woven into America’s can-do spirit. And thanks to bipartisanship in the Senate, it can soon be our turn to write a new chapter. The infrastructure bill now moving ahead in the House provides us with an opportunity to create high-paying jobs today and to build for the next century of American growth and leadership. As a current and a former CEO of large global businesses, we know how modern infrastructure makes it easier for businesses like ours to strengthen our operations, benefiting employees, future hires, and the supply chain. This is a generational opportunity to make investments in infrastructure that can help keep the U.S. economy competitive globally, make our economic system more inclusive, and rebuild the resiliency our society needs to face future crises. Our responsibility when it comes to infrastructure is twofold. Yes, we need to boldly invest in our future. But, more than previous generations, we also need to develop the fortitude not to be overwhelmed by the job of just maintaining what we’ve been given. Our charge is to build what is necessary to meet future challenges while also reinventing our inherited physical infrastructure so that future generations benefit from it as much as we have. These efforts must start by addressing a major gap in infrastructure spending. In its most recent evaluation, the American Society of Civil Engineers gave the United States a C-grade and identified a $2.59 trillion shortfall in government spending on infrastructure projects, the impact extending well beyond crumbling roads and bridges. We need to act now to make U.S. infrastructure resilient enough to be an asset to us in addressing the existential threat posed by climate change, a threat seen in severe storms and raging wildfires. A federal analysis found that the U.S. electric grid lost power 285% more often in 2013 than it did in 1984, costing American businesses as much as $150 billion per year. Around the world countries and businesses are taking climate change seriously, and we risk falling further behind. The investment levels established in the bill would deliver the largest long-term investment in U.S. infrastructure in nearly a century, with four times the infrastructure investment unlocked by the 2009 Recovery Act. Critically, the bill’s priorities go well beyond roads and bridges. If the House passes this bill, we’ll not only make historic investments in repairing America’s road network, but in areas that are vital to our future. Making the largest investments in public transit and in passenger rail in our nation’s history would have an outsize impact on job creation, economic growth, and greening the transportation sector, the biggest source of emissions. Rail investment will improve equity and connect cities more efficiently than highway expansions. Let’s also not miss out on the opportunity proposed in the framework to modernize our electric grid and start building a nationwide network of electric vehicle chargers. The nation that built the interstate highway system and ushered in the automobile industry must lead the way forward. This is the step we need to catch up to other countries. There’s still another reason we should roll up our sleeves and get to work, though. Studies show that every dollar invested in infrastructure generates nearly $4 in economic growth. Economists also agree that infrastructure investment will create jobs and increase participation in the labor force. One study looking at the impact of infrastructure investment found that, of the millions of jobs created, 85% of positions will not require a four-year college degree. In 1935, by the time the final block was put down 726 feet above the canyon floor, more than 21,000 workers had been a part of making the Hoover Dam a reality. They stood up not only the then-tallest dam in the world, but, with its hydroelectric generation, a first-of-its-kind clean power project that reminds us of what’s possible today: workers nationwide building the infrastructure we need for a changing tomorrow, activating a nationwide supply chain. This decade started in darkness and disruption, but it can ultimately be known for transformation and bold action as we work together to shape the future we want. The choice is ours. We hope that bipartisanship will again prevail and that an infrastructure bill will become a reality. Let’s act now to reverse decades of underinvestment in America’s infrastructure and add to our remarkable legacy of construction, engineering, and innovation.

**Grid collapse causes extinction – it’s a threat buffer and the impact are understated.**

**Greene 19** – Sherrell, received his B.S. and M.S. degrees in Nuclear Engineering from the University of Tennessee, matter expert in nuclear reactor safety, nuclear fuel cycle technologies, and advanced reactor concept development, widely acclaimed for his systems analysis, team building, innovation, knowledge organization, presentation, and technical communication skills, During his career at ORNL, he served as Director of Research Reactor Development Programs and Director of Nuclear Technology Programs, "Enhancing Electric Grid, Critical Infrastructure, and Societal Resilience with Resilient Nuclear Power Plants (rNPPs)”, Nuclear Technology, Volume 205, 397-414, https://ans.tandfonline.com/doi/pdf/10.1080/00295450.2018.1505357?needAccess=true, 03-xx-2019

Societies and **nations are examples of large-scale,** **complex social-physical systems**. Thus, **societal resilience** **can be defined as the ability of a nation**, population, or society **to anticipate and prepare for major stressors or calamities and then to absorb, adapt to, recover from, and restore normal functions** in the wake of such events when they occur. **A nation’s dependence on its Critical Infrastructure** systems, **and the resilience of those systems, are therefore major components** **of national and societal resilience**. **There are a variety of events that could deal ~~crippling~~ [hindering] blows to a nation’s Grid**, **Critical Infrastructure**, **and** **social fabric**. The types of **catastrophes** under consideration here **are “very bad day” scenarios** **that might result from severe GMDs induced by solar** **CMEs**, **HEMP** attacks, **cyber** attacks, etc.5 As briefly discussed in Sec. III.C, the probability of a GMD of the magnitude of the 1859 Carrington Event is now believed to be on the order of 1%/year. The Earth narrowly missed (by only several days) intercepting a CME stream in July 2012 that would have created a GMD equal to or larger than the Carrington Event.41 Lloyd’s, in its 2013 report, “Solar Storm Risk to the North American Electric Grid,” 42 stated the following: “A Carrington-level, extreme geomagnetic storm is almost inevitable in the future…The total U.S. population at risk of extended power outage from a Carrington-level storm is between 20-40 million, with durations of 16 days to 1-2 years…The total economic cost for such a scenario is estimated at $0.6-2.6 trillion USD.” Analyses conducted subsequent to the Lloyd’s assessment indicated the geographical area impacted by the CME would be larger than that estimated in Lloyd’s analysis (extending farther northward along the New England coast of the United States and in the state of Minnesota),43 and that the actual consequences of such an event could actually be greater than estimated by Lloyd’s. Based on “Report of the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack: Critical National Infrastructures” to Congress in 2008 (Ref. 39**), a HEMP attack over the Central U.S. could impact virtually the entire North American continent.** The consequences of such an event are difficult to quantify with confidence. Experts affiliated with the aforementioned Commission and others familiar with the details of the Commission’s work have stated in Congressional testimony that **such an event could “kill up to** **90 percent of the national population through** **starvation**, **disease**, **and** **societal collapse**.” 44,45 **Most of these consequences are either direct or indirect impacts** **of the predicted collapse** **of virtually the entire U.S**. **Critical Infrastructure system** in the wake of the attack. Last, recent analyses by both the U.S. Department of Energy46 and the U.S. National Academies of Sciences, Engineering, and Medicine47 have concluded that **cyber threats** to the U.S. Grid from both state-level and substatelevel entities **are likely to grow in number and sophistication** in the coming years, **posing a** **growing threat** to the U.S. Grid. **These three “very bad day” scenarios are not** **creations** **of** **overzealous science fiction writers**. A variety of mitigating actions to reduce both the vulnerability and the consequences of these events has been identified, and some are being implemented. However, the fact remains that events such as those described here have the potential to change life as we know it in the United States and other developed nations in the 21st century, whether the events occur individually, or simultaneously, and with or without coordinated physical attacks on Critical Infrastructure assets.

## OFF

#### ‘Prohibition’ must ban all instances of anticompetitive behavior

James Lane Buckley 91, Judge on the United States Court of Appeals for the District of Columbia Court, BA and JD from Yale University, Former Undersecretary for Security Assistance at the State Department, Former United States Senator from New York, “Hazardous Waste Treatment Council v. Reilly”, United States Court of Appeals for the District of Columbia Circuit, 938 F.2d 1390, 1395-1396, 1991 U.S. App. LEXIS 16095, 7/26/1991, Lexis

Petitioners claim that the EPA considers a state law to "act as a prohibition" under the regulation only when it bans all treatment, storage, and disposal within a State, and they point to the ALJ's statement, based on his reading of the preamble to the regulations, 45 Fed. Reg. at 33,395, that the EPA "appears to have construed the phrase 'act as a prohibition' in [paragraph (b)] as equivalent to an outright ban or refusal to accept hazardous waste for treatment, storage, or disposal." ALJ Decision at 112. Petitioners contend that the regulation must embrace any law that would even indirectly, as in the instant case, prohibit any treatment facility; otherwise, a State could accomplish a total ban one facility at a time. Senate Bill 114, they charge, epitomizes the "NIMBY" syndrome: In response to the needs of the nation for treatment of hazardous waste, North Carolina has simply said, "Not in my backyard." By refusing to respond, petitioners urge, the EPA ignores its duty to monitor state programs.

Although, at oral argument, government counsel [\*\*13] attempted to defend the "ban on all treatment" position that petitioners ascribe to the EPA, that is not the basis on which the agency concluded that Senate Bill 114 did not act as a prohibition within the meaning of section 271.4(b). In explaining why the second condition of paragraph (b) had not been met, the Regional Administrator emphasized that of the 485 riparian miles available in North Carolina for a facility of the kind proposed by GSX, 333 remained available under the Act, and noted that a smaller plant could be built at the Laurinburg site. Final Decision at 2. We therefore construe the EPA's decision to mean that a state law "acts as a prohibition" on the treatment of hazardous wastes when it effects a total ban on a particular waste treatment technology within a State, and nothing more.

[\*1396] Such a construction is reasonable and merits deference. The language of paragraph (b), which uses the word "prohibit[]" rather than "impede[]" or "restrict[]" as in the case of paragraph (a), suggests that the former allows States greater latitude in regulating particular treatment facilities before a prohibition is found to exist. This is consistent with the preamble's expression of [\*\*14] a desire to encourage the development of state programs by avoiding the establishment of "very tight standards." See 45 Fed. Reg. at 33,385. Second, defining prohibition in terms of the ban of a particular technology falls well within the language of paragraph (b). Finally, we see nothing inconsistent between this construction and the language of the underlying statute, 42 U.S.C. § 6926(b), which merely asserts that a state program may not be authorized if "such program is not consistent with the Federal and State programs applicable in other States." This language allows the agency enormous latitude in structuring its own implementing regulations and in interpreting them.

#### The plan is regulation, not a prohibition.

#### Vote neg:

#### Limits---each case is multiplied by hundreds of conditions, standards, or modifications, overstretching research

#### Extra T – even if the first part of the plan is T, changing the Capper-Volstead Act is not – voter for predictability

## OFF

#### The President of the United States should prohibit international anticompetitive business practices under an executive order administered by the Office of Foreign Asset Control.

#### OFAC can prohibit any dollar transaction anywhere in the world.

Paul Marquardt & Chase D. Kaniecki, Counsel @ Cleary Gottlieb, ‘20, “President Trump Authorizes Restrictions on WeChat and TikTok; Details to Come” https://www.clearytradewatch.com/2020/08/president-trump-authorizes-restrictions-on-wechat-and-tiktok-details-to-come/

Last night, President Trump issued two Executive Orders establishing a framework for prohibiting transactions involving popular Chinese-owned communications apps WeChat and TikTok.[1] Contrary to some press reports, the Executive Orders do not prohibit all transactions with their respective parent companies; they do not in fact set out the scope of the restrictions. Rather, they give the Commerce Department authority to prohibit any transaction involving a U.S. person or within the jurisdiction of the United States involving the two services; each of the Executive Orders clearly states “45 days after the date of this order, the Secretary shall identify the transactions subject to subsection (a) of this section [which contains the broad authority to prohibit].”[2] Furthermore, the scope of Commerce’s authority is subtly (and no doubt intentionally) different in the two Executive Orders: with respect to TikTok, the authority covers any transaction with ByteDance, TikTok’s parent; with respect to WeChat, the authority covers any transaction relating to WeChat involving its parent, Tencent Holding. Commerce will, within 45 days, take further action specifying exactly which transactions will be prohibited; it is even possible, particularly with respect to TikTok if the mooted divestiture of U.S. operations occurs, that no restrictions will be imposed.[3] Unless and until Commerce implements the Executive Orders, no restrictions are in place and their precise future scope is unknown.

To speculate on the possible shape of the ultimate restrictions, it appears unlikely that they will be quite as broad as the authorizing language suggests. The language identifying the transactions that may be prohibited is familiar from U.S. economic sanctions. Furthermore, as with the previous Executive Order relating to the information technology and communications supply chain permitting Commerce to review transactions with foreign suppliers on a case-by-case basis (to which the new Executive Orders refer),[4] the Executive Orders rely upon the framework statute underlying most sanctions programs administered by the Treasury Department’s Office of Foreign Assets Control (OFAC).[5] If taken to its maximum extent, this language would permit Commerce to prohibit any U.S. person or U.S. company anywhere in the world, and any person physically within the United States, from engaging in any transaction directly or indirectly involving or benefiting Tencent, if the transaction related to WeChat, or ByteDance—including processing any U.S. dollar payment clearing through the U.S. financial system (as the vast majority of global interbank U.S. dollar payments do).

However, the sanctions analogy is likely misleading. If the Administration intended to prohibit all transactions with ByteDance and TikTok, it would have been far simpler and more usual to designate them under an executive order administered by OFAC, as the United States has done in the past with parties considered malicious cyber-actors.[6] The Administration’s public statements hint at a narrower scope. The prefatory language of the Executive Orders emphasizes “the spread in the United States of mobile applications developed and owned by companies in the People’s Republic of China” and “access to Americans’ personal and proprietary information.” Furthermore, two days ago Secretary of State Michael Pompeo announced the “Clean Network” policy initiative, which includes the “Clean Store” effort to ”remove untrusted applications from U.S. mobile app stores.”[7] While there is no guarantee, it appears that the primary focus of the initiative may be blocking the use and availability of the apps within the United States, rather than prohibiting ordinary-course commercial transactions with ByteDance or (to the extent they relate to WeChat) Tencent generally to the extent they relate to operations outside the United States.

Ultimately, though, until Commerce takes implementing action any discussion of scope is educated guesswork. We will continue to monitor and report on developments.

#### OFAC action does not expand “core” antitrust legislation and avoids political controversy.

Ortblad 8 — Vanessa, J.D. Candidate, Northwestern University School of Law, May 2009; B.A., University of Washington, 2002, “THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY,” Northwestern University, School of Law, <http://www.law.northwestern.edu/journals/jclc/backissues/v98/n4/9804_1439.Ortblad.pdf>, “CRIMINAL PROSECUTION IN SHEEP’S CLOTHING: THE PUNITIVE EFFECTS OF OFAC FREEZING SANCTIONS,” ADM

Unfortunately, U.S. courts have not considered any of the policy implications of OFAC’s actions because of its extreme deference to executive actions. Furthermore, Congress has amplified the Executive’s current powers through the USA PATRIOT Act and IEEPA, so no argument can be made that the President is acting “in a zone of twilight.”156 Congress currently seems most concerned with verifying that OFAC’s blocking actions are actually effective in countering terrorism financing by demanding better quantitative and qualitative measures for assessing OFAC’s efforts.157 But Congress should especially take note of the effect of OFAC’s actions on civil liberties. In the face of the expansion of executive power to combat the war on terror, it is particularly important for Congress to also focus its attention on safeguarding civil liberties, especially in light of past excesses during wartime. OFAC sanctions tend to fly below the radar when competing for attention with abuses at Abu Ghraib, debates over whether water-boarding is actually torture, and discussions regarding the possible closure of Guantanamo Bay. In light of these other pressing policy concerns, OFAC has largely escaped the media scrutiny and public policy discussion it merits.

## OFF

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to prohibit stock-based ownership in the agricultural private sector and restrict the Capper-Volstead Act's exemptions to one member, one vote cooperatives.

#### Solves + engages notice and comment

Rebecca Haw 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." Texas Law Review, vol. 89, no. 6, May 2011, p. 1247-1292. HeinOnline.

Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC. A. The Agency Solution Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large. Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests. Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246 The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy. CONCLUSION Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Democracy solves war

Christopher Kutz 16. PhD UC Berkeley, JD Yale, Professor, Boalt Hall School of Law @ UC Berkeley, Visiting Professor at Columbia and Stanford law schools, as well as at Sciences Po University. “Introduction: War, Politics, Democracy,” in On War and Democracy, 1.

Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

## OFF

**The aff’s faith in the law obscures legalistic violence—that reintrenches military dominance that creates interventions—turns the aff—the alt is to reject their legalistic notions of reformism**

**Smith, 02**

Thomas SMITH Gov’t & Int’l Affairs @ South Florida 2 [“The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence” Int’l Studies Quarterly, 46, p. 367-371] This ev is gender modified

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, **the Pentagon wields law with technical precision**. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. **Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems**, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Ruppert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shotwell, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombudsmen either. The article acknowledged that the JAG faces pressure to demonstrate that he **can be a “force multiplier” who can “show the tactical and political soundness of ~~his~~[their] interpretation of the law**” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade **the focus has shifted visibly from restraining violence to legitimizing it.** The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “**judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept**” ~The Guardian, 2001!. **Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law.** As noted, humanitarian law is firmest in areas of marginal military utility. When operational demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that **civilian discrimination is “one of the least codified portions” of the law of war** ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” munitions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collateral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report **carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack”** ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. **Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology**. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding anticipated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calculated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that **this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.**” **Legal fine print,** hand-in-hand with new technology, **replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.**” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. **The crowning irony** is that NATO **went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure.** Perhaps **the most powerful justification was provided by law itself**. **War is often dressed up in patriotic abstractions**—Periclean oratory, jingoistic newsreels, or heroic memorials. **Bellum Americanum is cloaked in the stylized language of law**. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. **Most striking is the use of legal language to justify the erosion of noncombatant immunity.** Hewing to the legalisms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Harvard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic wordplay, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” **The Pentagon’s legal narrative is certainly detached from the carnage on the ground,** but **it** also **oversimplifies and even actively obscures the moral choices involved in** aerial **bombing. Lawyers and tacticians made very deliberate decisions** about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. **By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians.** While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? **International law certainly has** helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has **mirrored wartime practice**. On the ad bellum side, the erosion of right authority and **just cause has eased the path toward war**. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. **If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted**. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. **By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war”** ~Woollacott, 1999!. “We’ve come to expect the immaculate,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “**Precision-guided munitions make it very much easier to go to war than it ever has been historically.**” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “**standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do**” ~Belsie, 1999!.¶ Conclusion **The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications.** The aspirations of humanitarian law are sound. Rather, **it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences**,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. **This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script.** While the attack on the World Trade Center confirmed a thousand times over the illegality and inhumanity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. **Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor**. **A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage.** Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 **No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law.** But these disputes have only underscored the ambiguities of humanitarian law. **As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.**

## Workers

#### Competing rights claims collapse- only ethical option is to minimize unnecessary deaths

Greene 2010 – Joshua, Associate Professor of Social science in the Department of Psychology at Harvard University (The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings, accessed: www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf)

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is any rationally coherent normative moral theory that can accommodate our moral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstood what Kant and like-minded deontologists are all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b). This is, no doubt, how many deontologists see deontology. But this insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are not distinctively deontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people as mere objects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get characteristically deontological answers. Some will be tautological: "Because it's murder!" Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about them because they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

#### Extinction outweighs.

Ord ’20 [Toby Ord, Senior Research Fellow in Philosophy at Oxford University & world-renowned risk-assessment expert who’s advised the World Health Organization, the World Bank, the World Economic Forum, the US National Intelligence Council and the UK Prime Minister’s Office. (3-3-2020, “The Precipice: Existential Risk and the Future of Humanity,” Hachette Book Group & Bloomsbury Publishing, <https://www.google.com/books/edition/The_Precipice/3aSiDwAAQBAJ?hl=en&gbpv=0>, Google Books]

UNDERSTANDING EXISTENTIAL RISK

Humanity’s future is ripe with possibility. We have achieved a rich understanding of the world we inhabit and a level of health and prosperity of which our ancestors could only dream. We have begun to explore the other worlds in the heavens above us, and to create virtual worlds completely beyond our ancestors’ comprehension. We know of almost no limits to what we might ultimately achieve.

Human extinction would foreclose our future. It would destroy our potential. It would eliminate all possibilities but one: a world ~~bereft~~ [lacking] of human flourishing. Extinction would bring about this failed world and lock it in forever—there would be no coming back.

The philosopher Nick Bostrom showed that extinction is not the only way this could happen: there are other catastrophic outcomes in which we lose not just the present, but all our potential for the future.

Consider a world in ruins: an immense catastrophe has triggered a global collapse of civilization, reducing humanity to a pre-agricultural state. During this catastrophe, the Earth’s environment was damaged so severely that it has become impossible for the survivors to ever reestablish civilization. Even if such a catastrophe did not cause our extinction, it would have a similar effect on our future. The vast realm of futures currently open to us would have collapsed to a narrow range of meager options. We would have a failed world with no way back.

Or consider a world in chains: in a future reminiscent of George Orwell’s Nineteen Eighty-Four, the entire world has become locked under the rule of an oppressive totalitarian regime, determined to perpetuate itself. Through powerful, technologically enabled indoctrination, surveillance and enforcement, it has become impossible for even a handful of dissidents to find each other, let alone stage an uprising. With everyone on Earth living under such rule, the regime is stable from threats, internal and external. If such a regime could be maintained indefinitely, then descent into this totalitarian future would also have much in common with extinction: just a narrow range of terrible futures remaining, and no way out.

[FIGURE 2.1 Omitted]

Following Bostrom, I shall call these “existential catastrophes,” defining them as follows: 3

An existential catastrophe is the destruction of humanity’s longterm potential.

An existential risk is a risk that threatens the destruction of humanity’s longterm potential.

These definitions capture the idea that the outcome of an existential catastrophe is both dismal and irrevocable. We will not just fail to fulfill our potential, but this very potential itself will be permanently lost. While I want to keep the official definitions succinct, there are several areas that warrant clarification.

First, I am understanding humanity’s longterm potential in terms of the set of all possible futures that remain open to us. 4 This is an expansive idea of possibility, including everything that humanity could eventually achieve, even if we have yet to invent the means of achieving it. 5 But it follows that while our choices can lock things in, closing off possibilities, they can’t open up new ones. So any reduction in humanity’s potential should be understood as permanent. The challenge of our time is to preserve our vast potential, and to protect it against the risk of future destruction. The ultimate purpose is to allow our descendants to fulfill our potential, realizing one of the best possible futures open to us.

While it may seem abstract at this scale, this is really a familiar idea that we encounter every day. Consider a child with high longterm potential: with futures open to her in which she leads a great life. It is important that her potential is preserved: that her best futures aren’t cut off due to accident, trauma or lack of education. It is important that her potential is protected: that we build in safeguards to make such a loss of potential extremely unlikely. And it is important that she ultimately fulfills her potential: that she ends up taking one of the best paths open to her. So too for humanity.

Existential risks threaten the destruction of humanity’s potential. This includes cases where this destruction is complete (such as extinction) and where it is nearly complete, such as a permanent collapse of civilization in which the possibility for some very minor types of flourishing remain, or where there remains some remote chance of recovery. 6 I leave the thresholds vague, but it should be understood that in any existential catastrophe the greater part of our potential is gone and very little remains.

Second, my focus on humanity in the definitions is not supposed to exclude considerations of the value of the environment, other animals, successors to Homo sapiens, or creatures elsewhere in the cosmos. It is not that I think only humans count. Instead, it is that humans are the only beings we know of that are responsive to moral reasons and moral argument—the beings who can examine the world and decide to do what is best. If we fail, that upward force, that capacity to push toward what is best or what is just, will vanish from the world.

Our potential is a matter of what humanity can achieve through the combined actions of each and every human. The value of our actions will stem in part from what we do to and for humans, but it will depend on the effects of our actions on non-humans too. If we somehow give rise to new kinds of moral agents in the future, the term “humanity” in my definition should be taken to include them.

My focus on humanity prevents threats to a single country or culture from counting as existential risks. There is a similar term that gets used this way—when people say that something is “an existential threat to this country.” Setting aside the fact that these claims are usually hyperbole, they are expressing a similar idea: that something threatens to permanently destroy the longterm potential of a country or culture.

Third, any notion of risk must involve some kind of probability. What kind is involved in existential risk? Understanding the probability in terms of objective long-run frequencies won’t work, as the existential catastrophes we are concerned with can only ever happen once, and will always be unprecedented until the moment it is too late. We can’t say the probability of an existential catastrophe is precisely zero just because it hasn’t happened yet.

Situations like these require an evidential sense of probability, which describes the appropriate degree of belief we should have on the basis of the available information. This is the familiar type of probability used in courtrooms, banks and betting shops. When I speak of the probability of an existential catastrophe, I will mean the credence humanity should have that it will occur, in light of our best evidence.9

There are many utterly terrible outcomes that do not count as existential catastrophes.

One way this could happen is if there were no single precipitous event, but a multitude of smaller failures. This is because I take on the usual sense of catastrophe as a single, decisive event, rather than any combination of events that is bad in sum. If we were to squander our future simply by continually treating each other badly, or by never getting around to doing anything great, this could be just as bad an outcome but wouldn’t have come about via a catastrophe.

Alternatively, there might be a single catastrophe, but one that leaves open some way for humanity to eventually recover. From our own vantage, looking out to the next few generations, this may appear equally bleak. But a thousand years hence it may be considered just one of several dark episodes in the human story. A true existential catastrophe must by its very nature be the decisive moment of human history—the point where we failed.

Even catastrophes large enough to bring about the global collapse of civilization may fall short of being existential catastrophes. While colloquially referred to as “the end of the world,” a global collapse of civilization need not be the end of the human story. It has the required severity, but may not be permanent or irrevocable.

In this book, I shall use the term civilization collapse quite literally, to refer to an outcome where humanity across the globe loses civilization (at least temporarily), being reduced to a pre-agricultural way of life. The term is often used loosely to refer merely to a massive breakdown of order, the loss of modern technology, or an end to our culture. But I am talking about a world without writing, cities, law, or any of the other trappings of civilization.

This would be a very severe disaster and extremely hard to trigger. For all the historical pressures on civilizations, never once has this happened— not even on the scale of a continent.10 The fact that Europe survived losing 25 to 50 percent of its population in the Black Death, while keeping civilization firmly intact, suggests that triggering the collapse of civilization would require more than 50 percent fatality in every region of the world.11

Even if civilization did collapse, it is likely that it could be reestablished. As we have seen, civilization has already been independently established at least seven times by isolated peoples.12 While one might think resource depletion could make this harder, it is more likely that it has become substantially easier. Most disasters short of human extinction would leave our domesticated animals and plants, as well as copious material resources in the ruins of our cities—it is much easier to re-forge iron from old railings than to smelt it from ore. Even expendable resources such as coal would be much easier to access, via abandoned reserves and mines, than they ever were in the eighteenth century. 13 Moreover, evidence that civilization is possible, and the tools and knowledge to help rebuild, would be scattered across the world.

There are, however, two close connections between the collapse of civilization and existential risk. First, a collapse would count as an existential catastrophe if it were unrecoverable. For example, it is conceivable that some form of extreme climate change or engineered plague might make the planet so inhospitable that humanity would be irrevocably reduced to scattered foragers.14 And second, a global collapse of civilization could increase the chance of extinction, by leaving us more vulnerable to subsequent catastrophe.

One way a collapse could lead to extinction is if the population of the largest remaining group fell below the minimum viable population—the level needed for a population to survive. There is no precise figure for this, as it is usually defined probabilistically and depends on many details of the situation: where the population is, what technology they have access to, the sort of catastrophe they have suffered. Estimates range from hundreds of people up to tens of thousands.15 If a catastrophe directly reduces human population to below these levels, it will be more useful to classify it as a direct extinction event, rather than an unrecoverable collapse. And I expect that this will be one of the more common pathways to extinction.

We rarely think seriously about risks to humanity’s entire potential. We encounter them mostly in action films, where our emotional reactions are dulled by their overuse as an easy way to heighten the drama.16 Or we see them in online lists of “ten ways the world could end,” aimed primarily to thrill and entertain. Since the end of the Cold War, we rarely encounter sober discussions by our leading thinkers on what extinction would mean for us, our cultures or humanity. 17 And so in casual contexts people are sometimes flippant about the prospect of human extinction.

But when a risk is made vivid and credible—when it is clear that billions of lives and all future generations are actually on the line—the importance of protecting humanity’s longterm potential is not, for most people, controversial. If we learned that a large asteroid was heading toward Earth, posing a greater than 10 percent chance of human extinction later this century, there would be little debate about whether to make serious efforts to build a deflection system, or to ignore the issue and run the risk. To the contrary, responding to the threat would immediately become one of the world’s top priorities. Thus our lack of concern about these threats is much more to do with not yet believing that there are such threats, than it is about seriously doubting the immensity of the stakes.

Yet it is important to spend a little while trying to understand more clearly the different sources of this importance. Such an understanding can buttress feeling and inspire action; it can bring to light new considerations; and it can aid in decisions about how to set our priorities.

## BioD

#### No impact to biodiversity---rebound and resilience.

Halstead ’19 [John; April 2019; Ph.D. from the University of Oxford, researcher at Founders Pledge, citing Dr. Peter Kareiva, a Ph.D. in ecology and evolutionary biology at Cornell University and Director of UCLA’s Institute of the Environment and Sustainability; Centre for the Study of Existential Risk, “Centre for the Study of Existential Risk Six Month Report: November 2018 - April 2019,” <https://forum.effectivealtruism.org/posts/zbZxisJRJBCdtYvh9/centre-for-the-study-of-existential-risk-six-month-report>]

[-]Halstead2y

49

Can you explain what the mechanism is whereby biodiversity loss creates existential risk? And if biodiversity loss is an existential risk, how big a risk is it? Should 80k be getting people to go into conservation science or not?

There are independent reasons to think that the risk is negligible. Firstly, according to wikipedia, during the Eocene period ~65m years ago, there were thousands fewer genera than today. We have made ~1% of species extinct, and we would have to continue at current rates of species extinctions for at least 200 years to return to Eocene levels of biodiversity. And yet, even though significantly warmer than today, the Eocene marked the dawn of thousands of new species. So, why would we expect the world 200 years hence to be inhospitable to humans if it wasn't inhospitable for all of the species emerging in the Eocene, who are/were significantly less numerous than humans and significantly less capable of a rational response to problems?

Secondly, as far as I am aware, evidence for pressure-induced non-linear ecosystem shifts is very limited. This is true for a range of ecosystems. Linear ecosystem damage seems to be the norm. If so, this leaves more scope for learning about the costs of our damage to ecosystems and correcting any damage we have done.

Thirdly, ecosystem services are overwhelmingly a function of the relations within local ecosystems, rather than of global trends in biodiversity. Upon discovering Hawaii, the Polynesians eliminated so many species that global decadal extinction rates would have been exceptional. This has next to no bearing on ecosystem services outside Hawaii. Humanity is an intelligent species and will be able to see if other regions are suffering from biodiversity loss and make adjustments accordingly. Why would all regions be so stupid as to ignore lessons from elsewhere? Also, is biodiversity actually decreasing in the rich world? I know forest cover is increasing in many places. Population is set to decline in many rich countries in the near future, and environmental impact per person is declining on many metrics.

I also find it surprising that you cite the Kareiva and Carranza paper in support of your claims, for this paper in fact directly contradicts them:

"The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia.

While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al., 2013, Vellend et al., 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk."

#### Squo solves food insecurity – genetic modification sustainable

Pachapur et al., 20

(Preetika Kuknar, INRS, Université du Québec, Vinayak Laxman Pachapur, Department of Civil Engineering and Water Engineering, Université Laval, Department of Civil Engineering, Lassonde School of Engineering, York University, Satinder K. Brar, INRS, Université du Québec, Department of Civil Engineering, Lassonde School of Engineering, York University, Rosa Galvez, Centre de recherche industrielle du Québec, Yann Le Bihan, Department of Civil Engineering, Lassonde School of Engineering, York University, and Rao Y. Surampalli, Global Institute for Energy, Environment and Sustainability, “Food Security and Sustainability”, Sustainability: Fundamentals and Applications (2020): 357-374, https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781119434016.ch17)\\JM

17.8 Genetically Modified Foods for Food Security The application of biotechnology using genetically modified (GM) organisms in the field of agriculture has resulted in sustainable productivity and developed strategies for improved farming (Dibden et al. 2013). The rapid global spread of GM crops increased from 2 million ha (in 1996) to 120 million hectares (in 2006), and presently around 100 million farmers grow GM crops across 25 developed and developing countries (Qaim 2010). The choice of GM crops differs among developing countries: insect‐resistant cotton is grown in Asia and Africa, with herbicide‐ and insect‐resistant soybean grown across Latin America (Qaim 2010). The impact of GM crops in India has been to deliver 89% of profit, with a 42% decrease in insecticide usage, contributing 90% of total cotton production, providing employment opportunities, supporting agricultural laborers’ income and boosting regional transport with inter‐state trading business with the USA (Qaim 2010). GM tomatoes gain the nutritional quality with ripening, can be harvested simultaneously and tolerate increased storage time. GM rice, also called “golden rice,” is rich in vitamin A, provides 80% of daily caloric uptake and is a staple food for half of the world’s population (Mathur 2018). GM seeds/food crops possess improved quality, extended shelf‐life, and are farmer, consumer and environmentally friendly. GM food crops deliver a potential solution to food security now and even for the future. GM seed/food technology companies promote food products claiming to be healthier, cheaper, stable, tastier and high quality with essential nutrients. The introduction of GM technology in developing countries will decrease the growth duration with higher yields, decrease the amount of fertilizers required, and allow plant breeding for new crop varieties, antibiotic resistance to drought conditions and elevated vitamin/nutrient quality (Azadi and Ho 2010). GM crops in developing countries will ensure a stable, sustainable food supply, increase production, improve livelihoods and enhance food quality (Dibden et al. 2013). The introduction of GM seeds/food in several countries still needs public acceptance for several reasons, such as public risk perceptions, varied responses, socio‐political attitudes, the methodologies adopted, risk involved, trust in institutions, public worry, acceptability and concerns over GM foods (Frewer et al. 2004). There are some disadvantages of GM foods, such as potential toxicity and allergenicity, unintentional gene transfer to non‐GM crops, synthesis of new toxins/viruses, limited access to patented GM seeds, the possibility of new as‐yet‐unrealized concerns and religious/cultural/ethical concerns (Azadi and Ho 2010). The food safety system has introduced different regulations, principles and guidelines for more transparency on the safety of GM crops for public acceptance. The food safety system has introduced regulatory frameworks, defined principles of risk analysis, elaborated safety assessment, and introduced guidelines for toxicity measurement, investigating potential adverse effects, as well as developing an animal testing and monitoring system for post‐marketing of food products from GM crops. The introduction of safety assessments on GM crops and food products in comparison with traditional counterparts has determined a high level of safety assurance for human food use (König et al. 2004; Qaim and Kouser 2013). The use of GM technology has reduced food insecurity by 25–40% among farmers, will help to solve the food security problem and is also an important element for sustainable food security across the world.

#### Warming is past the tipping point – and alt causes deck solvency

Cooke, 21

(Kieran, founding editor of Climate News Network, former correspondent for the BBC and Financial Times, "Greenhouse gas levels surge despite slow economy", Climate News Network, 4-13-2021, https://climatenewsnetwork.net/greenhouse-gas-levels-surge-despite-slow-economy/)\\JM

The global economy has been hard hit by the Covid pandemic. But greenhouse gas levels have worryingly shot upwards.

It’s a set of statistics likely to send shivers down the spine of any climate scientist – or everyone concerned about the future of the planet. Despite a slowing world economy due to pandemic shutdowns and other Covid-related factors, climate-changing greenhouse gas levels in the atmosphere surged last year.

The US government’s National Oceanic and Atmospheric Administration (NOAA), one of the world’s leading scientific institutions, says the global rate of increase in CO2 (carbon dioxide) levels in 2020 was the fifth highest on record. If there had been no economic slowdown, NOAA says, the increase in CO2 levels last year would have been the highest since records began.

“Human activity is driving climate change”, says Colm Sweeney, assistant deputy director of NOAA’s global monitoring laboratory. “If we want to mitigate the worst impacts, it’s going to take a deliberate focus on reducing fossil fuel emissions to near zero – and even then we’ll need to look for ways to further remove greenhouse gases from the atmosphere.”

Levels of CO2 in the atmosphere are measured on a parts per million (ppm) basis. Based on measurements gathered at various monitoring stations around the world, NOAA calculates that CO2 levels increased by 2.6 ppm in 2020 to 412.5 ppm, an increase of 12% since 2000 and a concentration level believed to have last been present during the mid-Pliocene Warm Period around 3.6 million years ago.

Methane prompts concern

At that time global sea levels were more than 20 metres higher than they are today, and vast forests are believed to have covered many Arctic regions.

Of even more concern than the surge in CO2 is a jump in levels of methane (CH4) in the atmosphere last year.

Methane is generated from various sources besides fossil fuels, including decaying organic matter, rice paddies, livestock farming and landfill sites.

The worldwide fracking industry is also a significant source of methane emissions. The gas is not as longlived in the atmosphere as CO2, but it is more than 30 times as potent.

NOAA says atmospheric concentrations of methane increased last year by the largest level since records began nearly 40 years ago. Scientists have described this jump as surprising – and disturbing. “It is very scary indeed”, Euan Nisbet, professor of earth sciences at Royal Holloway University in the UK told the Financial Times.

NOAA says the recent increase in methane levels is likely to have more to do with biological sources such as wetlands and livestock than with emissions from fossil fuels.

One theory is that, as temperatures rise and rainfall increases in many tropical regions, more methane is released from wetlands, crops and vegetation: a climate change “tipping point” is reached, as one warming event encourages and reinforces another.

Gas plumes detected

A new generation of highly sophisticated satellites is able to target with ever-increasing accuracy separate incidents of methane escape around the world. In recent days unusually large releases of methane – known as plumes – have been recorded over Bangladesh, a densely populated low-lying country among those most at risk from changes in climate. The Bangladesh government says the plumes are likely sourced from rice paddies, rubbish dumps and landfill sites.

Earlier this year satellites monitored large amounts of methane escaping from gas pipelines in Turkmenistan in central Asia. Similar plumes were detected over the country last year.

In May 2020 a massive methane plume was detected by satellite over Florida. Investigations are ongoing, but it is thought to have come from the state’s gas pipeline system.

## Rural Farms

#### No i/l between plan and increase in coops – they have card zero saying that antitrust is the only reason why coops don’t exist

#### Small businesses are strong and increasingly confident.

Magats ’21 [Jim; June 22; Senior Vice President of Omni Payments at PayPal, M.B.A. from Indiana University; PayPal Newsroom, “Small Business Confidence Index Finds SMBs More Optimistic and Focused on Digitization,” <https://newsroom.paypal-corp.com/2021-06-21-Small-Business-Confidence-Index-Finds-SMBs-More-Optimistic-and-Focused-on-Digitization>]

It’s been well over a year since the coronavirus began spreading around the globe, devastating economies and communities and impacting local businesses and populations. While many local economies are beginning to open back up, the impact of the pandemic continues to be felt, especially among the small business community.

As a partner to millions of small businesses around the world, PayPal understands the critical role they play in giving opportunity to the underserved, in developing communities and in driving local economic growth. To understand their needs and how we can work to move toward an inclusive recovery, PayPal partnered with Morning Consult for its second wave of the [PayPal Small Business Index by Morning Consult](https://publicpolicy.paypal-corp.com/sites/default/files/MC_PayPal_SMB_Confidence_Index_Report_Wave_2.pdf)1.

The survey of 500 U.S. small businesses 2, fielded in April 2021, found increased optimism of small business owners, as compared to the [inaugural index](https://newsroom.paypal-corp.com/2020-01-19-Introducing-the-PayPal-Morning-Consult-Small-Business-Confidence-Index) fielded in November 2020. The survey also found that even as economies begin to reopen, SMBs are looking to digitize even further, begin selling across channels, and invest in their businesses by upgrading their technology. What is now clear to SMBs, after seeing many [digital businesses grow during the pandemic](https://newsroom.paypal-corp.com/2020-10-29-new-paypal-study-finds-two-sources-of-resilience-and-growth-for-smbs-amidst-the-global-pandemic), is that digital payments and commerce are now table stakes, and that businesses need to enable these experiences to meet customer expectations.

The survey revealed three important themes:

1. There is optimism about the future of the economy. Small business confidence is growing across the board, but digital SMBs are more confident than their physical-only counterparts.

* The PayPal Small Business Confidence Index by Morning Consult has increased from 128 to 157 (+29 points)3 since the previous survey was fielded in November, showing that small businesses are increasingly optimistic about the future.
* In April 2021, there were 22% more small business owners who felt increased optimism about economic conditions impacting their businesses in the next year, as compared to November 2020.
* Growing optimism around the COVID vaccine has contributed to small business optimism for the future. Nearly three in five small business owners say the vaccine will improve economic conditions, and approximately two-thirds of currently closed SMBs say they will likely reopen in the next six months.

2. SMBs indicate that digital payments and ecommerce are now critical to their success.

* In both November 2020 and April 2021, small businesses that sell online-only or across channels scored higher on the confidence index compared to those who sell only in-person. SMBs that sell only in-person were as confident in April 2021 as their counterparts that sell online-only or across channels were in November 2020, during the height of the pandemic. It’s clear that digital commerce, and especially omnichannel commerce, is the future.
* While in-person commerce will likely increase moving forward, online selling will continue to be a critical channel for SMBs. All of the small business respondents reported a significant increase in online selling during the pandemic compared to prior to the pandemic. Additionally, they expect to conduct 43% of their business online when the pandemic ends, compared to only 37% prior to the pandemic.
* Interestingly, 31% of currently closed SMBs said they will change to operating entirely online if they reopen.
* SMBs are now 18% more likely to say they will invest in their businesses. Minority SMBs specifically have an interest in investing by upgrading technology. Additional changes SMBs plan to make include, improving their website, accepting more payments from apps, and conducting more business online.

#### Antitrust harms competition and growth---numerous economic studies.

Jamison ’20 [Mark; September 2; Nonresident Senior Fellow at the American Enterprise Institute, Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, former member of the FCC transition team, Ph.D. in Economics from the University of Florida; American Enterprise Institute, “Debunking three common antitrust myths,” <https://www.aei.org/technology-and-innovation/debunking-three-common-antitrust-myths/>]

Sometimes antitrust seems like an evidence-free zone. As with any topic, some writers on antitrust are happy to announce their opinions without explanation or evidence. More troubling are those who support their opinions with arguments that are known to be flawed. These unsupported arguments take the forms of myths that, if repeated enough, become part of antitrust folklore. Here are three examples of such myths.

Myth 1: Increased regulation would limit market power.

Reality: More often than not, regulation protects incumbents and harms consumers.

Belief in this myth has two steps. The first step is to falsely equate market power with business size. Economist Franklin Fisher [explained](http://economics.mit.edu/files/1383) in 1979 that this is false, but it is still a prominent belief held by [journalists](https://www.axios.com/the-growing-antitrust-concerns-about-u-s-tech-giants-2433870013.html?utm_medium=linkshare&utm_campaign=organic), [think tank experts](https://www.brookings.edu/blog/techtank/2020/07/31/big-tech-and-antitrust-pay-attention-to-the-math-behind-the-curtain/), [academics](https://www.foreignaffairs.com/articles/2020-02-10/too-big-prevail), and members of [Congress](https://www.rpc.senate.gov/policy-papers/big-tech-faces-antitrust-scrutiny).

The second step is to falsely believe that government interventions would result in smaller companies. In his book “A Conflict of Visions: Ideological Origins of Political Struggles,” Thomas Sowell explained that governments are largely unable to directly create their desired results. And, as Jeff Eisenach and Kevin Caves showed in a [2012 paper](https://www.aei.org/wp-content/uploads/2012/09/-eisenach-cato-phone-deregulation-paper_09341082848.pdf?x91208), deregulation in telecommunications resulted in lower prices, not higher, implying that deregulation decreased market power.

Myth 2: Lax antitrust enforcement has resulted in increased market power.

Reality: Regulation tilts markets toward large firms.

This myth results partly from ideology, bias, and misspecified research. I have written about the ideology and bias issues in the past ([here](https://www.aei.org/technology-and-innovation/big-tech-and-the-backwards-logic-of-the-neo-brandeisians/) and [here](https://www.aei.org/technology-and-innovation/proponents-of-hipster-antitrust-fail-to-understand-economic-history-and-business-realities/)). Regarding the research, a favorable summary can be found [here](https://econfip.org/policy-brief/confronting-rising-market-power/).

But the research has at least two misspecifications: It largely measures business size, not market power, and it omits the effects of regulation. The figure below shows how these mistakes matter. The blue line shows the growth of regulations in the US since 1998, the first year that these regulation data were available. The red line shows large firms’ share of business establishments. This is almost a perfect correlation, but the research trying to establish that market power has grown in the US omits anything about the rise of regulation.

As I wrote in a recent [bl](https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/)[o](https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/)[g](https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/) post:

More regulation results in industries having larger firms, not smaller ones, and it also lowers labor productivity. This has been confirmed in several economic studies (see examples [here](https://www.jstor.org/stable/pdf/2555465.pdf), [here](https://www.aeaweb.org/articles?id=10.1257/aer.20130232), and [here](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3169332)). Regulations raise the cost of a firm being in business, which means firms need to be larger to cover those fixed costs.

Myth 3: People should follow their gut instincts on antitrust.

Reality: Growing complexity means more careful analyses are needed.

This myth shows up in appeals to [lived experiences](https://promarket.org/2020/08/27/we-are-more-than-our-amazon-prime-accounts/?mc_cid=2608a684c8&mc_eid=3e3e4546cf) and to [phobias](https://www.aei.org/technology-and-innovation/three-fears-hamper-tech-progress/). The lived experience argument relies on [availability bias](https://www.behavioraleconomics.com/resources/mini-encyclopedia-of-be/availability-heuristic/), [illusion of truth](http://www2.psych.utoronto.ca/users/hasher/PDF/Frequency%20and%20the%20conference%20Hasher%20et%20al%201977.pdf), and other cognitive biases that lead people to draw conclusions that are unsupportable with careful analyses. This reliance on people’s biases explains why the practitioners of this approach rely heavily on stories, which are easy to slant.

#### Big ag saves the environment and stimulates innovation.

Nordhaus & Blaustein-Rejto ’21 [Ted and Dan; April 18; Leading global thinker on energy, environment, climate, human development, and politics. He is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto; Director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition; Foreign Policy, “Big Agriculture Is Best,” <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>]

In some ways, it is not surprising that many of the best fed, most food-secure people in the history of the human species are convinced that the food system is broken. Most have never set foot on a farm or, at least, not on the sort of farm that provides the vast majority of food that people in wealthy nations like the United States consume.

In the popular bourgeois imagination, the idealized farm looks something like the ones that sell produce at local farmers markets. But according to our research, while small farms like these account for close to half of all U.S. farms, they produce less than 10 percent of total output. The largest farms, by contrast, account for about 50 percent of output, relying on simplified production systems and economies of scale to feed a nation of 330 million people, vanishingly few of whom live anywhere near a farm or want to work in agriculture. It is this central role of large, corporate, and industrial-style farms that critics point to as evidence that the food system needs to be transformed.

But U.S. dependence on large farms is not a conspiracy by big corporations. Without question, the U.S. food system has many problems. But persistent misperceptions about it, most especially among affluent consumers, are a function of its spectacular success, not its failure. Any effort to address social and environmental problems associated with food production in the United States will need to first accommodate itself to the reality that, in a modern and affluent economy, the food system could not be anything other than large-scale, intensive, technological, and industrialized.

An abandoned tenant house is seen across fields in Hall County, Texas, in June 1938. The Library of Congress caption notes: “Many tenants who have filled the land on the family-farm basis were made landless, forced by the machine into the towns, or reduced to day labor on the farms. Large numbers who have gone to the towns have fallen on relief, or even have sought refuge in distant parts. Not only is their security gone, but the opportunity even to rise to ownership is diminished, for profitable operation of mechanized farms requires more land and more capital equipment per farm.” Library of Congress

Not so long ago, farming was the principal occupation of most Americans. More than 70 percent labored in agriculture in 1800. As late as 1900, some 40 percent of the U.S. labor force still worked on farms. Today, that figure is less than 2 percent.

The consolidation of U.S. agriculture has been underway for more than 150 years. First came irrigation and ploughs, then better seeds and fertilizers, and then tractors and pesticides. With each innovation, farmers were able to produce larger harvests with fewer people and work larger plots of land. Better opportunities drew people to cities, where they could get jobs that provided higher wages and, thereby, produced greater economic surplus—that is, profits and ultimately societal wealth. The large-scale migration of labor from farms to cities pushed farmers to invest even more in labor-saving and productivity-enhancing practices and technologies in a virtuous cycle of urbanization, agricultural intensification, and economic growth that is the hallmark of all affluent societies.

It is not a stretch to say that the United States is wealthy today because most of its people work in manufacturing, services, technology, and other sectors of the economy. In this, the country is not alone. No nation has ever succeeded in moving most of its population out of poverty without most of that population leaving agriculture work.

That transition often isn’t easy. Millions of Black Americans made the difficult journey from tenant farming in the South to factory work in the North, where they faced new forms of racism even as they escaped the tyranny of sharecropping. More recently, small farmers have struggled to survive as increasingly high agricultural productivity and falling commodity prices tilted the playing field toward large farms. Rural communities have likewise suffered as dramatic improvements in labor productivity have shrunk employment in agriculture.

But over the long term, the living standards and life opportunities offered in the modern knowledge, service, and manufacturing economies have proved vastly greater than anything possible under the agrarian social and economic arrangements that most Americans over the last two centuries happily abandoned—and that too many Americans today romanticize.

Modern life required not only liberating most Americans from agrarian labor but also the development of a food system capable of getting food from farms to the cities where increasing numbers of Americans lived and worked. A food system that lost much of its harvest to pests and spoilage needed to dramatically cut losses even as its bounty needed to travel farther and farther. For this reason, the rise of modern agriculture is as much a story of railways and highways as combines and tractors, refrigeration and grain elevators as pesticides and fertilizer.

The development and growth of feedlots followed a similar path. As the historian Maureen Ogle recounts in her magnificent history of the beef industry, In Meat We Trust, the first feedlots grew out of the stockyards of Chicago and Kansas City in the late 19th century. The most efficient way to get beef to burgeoning markets in America’s cities was to drive cattle to these new rail centers, where they were finished, slaughtered, and then shipped throughout the country by rail. After World War II, beef production and feedlots expanded massively, driven not so much by corporate greed as by rising demand for beef from the United States’ newly prosperous middle class and by a scarcity of labor as ranch hands returning from the battlefields of Europe and the Pacific chose to pursue better economic opportunities in the postwar economy.

Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.

#### Agricultural innovation is societal insurance against any existential threat.

Meyer ‘16 [Robinson; 2016; associate editor at The Atlantic, citing a report by the Global Challenges Foundation; The Atlantic; “Human Extinction Isn't That Unlikely,” <http://www.theatlantic.com/technology/archive/2016/04/a-human-extinction-isnt-that-unlikely/480444/>]

Nuclear war. Climate change. Pandemics that kill tens of millions.

These are the most viable threats to globally organized civilization. They’re the stuff of nightmares and blockbusters—but unlike sea monsters or zombie viruses, they’re real, part of the calculus that political leaders consider everyday. And according to a new report from the U.K.-based Global Challenges Foundation, they’re much more likely than we might think.

In its annual report on “global catastrophic risk,” the nonprofit debuted a startling statistic: Across the span of their lives, the average American is more than five times likelier to die during a human-extinction event than in a car crash.

Partly that’s because the average person will probably not die in an automobile accident. Every year, one in 9,395 people die in a crash; that translates to about a 0.01 percent chance per year. But that chance compounds over the course of a lifetime. At life-long scales, one in 120 Americans die in an accident.

The risk of human extinction due to climate change—or an accidental nuclear war—is much higher than that. The Stern Review, the U.K. government’s premier report on the economics of climate change, estimated a 0.1 percent risk of human extinction every year. That may sound low, but it also adds up when extrapolated to century-scale. The Global Challenges Foundation estimates a 9.5 percent chance of human extinction within the next hundred years.

And that number probably underestimates the risk of dying in any global cataclysm. The Stern Review, whose math suggests the 9.5-percent number, only calculated the danger of species-wide extinction. The Global Challenges Foundation’s report is concerned with all events that would wipe out more than 10 percent of Earth’s human population.

“We don’t expect any of the events that we describe to happen in any 10-year period. They might—but, on balance, they probably won’t,” Sebastian Farquhar, the director of the Global Priorities Project, told me. “But there’s lots of events that we think are unlikely that we still prepare for.”

For instance, most people demand working airbags in their cars and they strap in their seat-belts whenever they go for a drive, he said. We may know that the risk of an accident on any individual car ride is low, but we still believe that it makes sense to reduce possible harm.

So what kind of human-level extinction events are these? The report holds catastrophic climate change and nuclear war far above the rest, and for good reason. On the latter front, it cites multiple occasions when the world stood on the brink of atomic annihilation. While most of these occurred during the Cold War, another took place during the 1990s, the most peaceful decade in recent memory:

In 1995, Russian systems mistook a Norwegian weather rocket for a potential nuclear attack. Russian President Boris Yeltsin retrieved launch codes and had the nuclear suitcase open in front of him. Thankfully, Russian leaders decided the incident was a false alarm.

Climate change also poses its own risks. As I’ve written about before, serious veterans of climate science now suggest that global warming will spawn continent-sized superstorms by the end of the century. Farquhar said that even more conservative estimates can be alarming: UN-approved climate models estimate that the risk of six to ten degrees Celsius of warming exceeds 3 percent, even if the world tamps down carbon emissions at a fast pace. “On a more plausible emissions scenario, we’re looking at a 10-percent risk,” Farquhar said. Few climate adaption scenarios account for swings in global temperature this enormous.

Other risks won’t stem from technological hubris. Any year, there’s always some chance of a super-volcano erupting or an asteroid careening into the planet. Both would of course devastate the areas around ground zero—but they would also kick up dust into the atmosphere, blocking sunlight and sending global temperatures plunging. (Most climate scientists agree that the same phenomenon would follow any major nuclear exchange.)

Yet natural pandemics may pose the most serious risks of all. In fact, in the past two millennia, the only two events that experts can certify as global catastrophes of this scale were plagues. The Black Death of the 1340s felled more than 10 percent of the world population. Eight centuries prior, another epidemic of the Yersinia pestis bacterium—the “Great Plague of Justinian” in 541 and 542—killed between 25 and 33 million people, or between 13 and 17 percent of the global population at that time.

No event approached these totals in the 20th century. The twin wars did not come close: About 1 percent of the global population perished in the Great War, about 3 percent in World War II. Only the Spanish flu epidemic of the late 1910s, which killed between 2.5 and 5 percent of the world’s people, approached the medieval plagues. Farquhar said there’s some evidence that the First World War and Spanish influenza were the same catastrophic global event—but even then, the death toll only came to about 6 percent of humanity.

The report briefly explores other possible risks: a genetically engineered pandemic, geo-engineering gone awry, an all-seeing artificial intelligence. Unlike nuclear war or global warming, though, the report clarifies that these remain mostly notional threats, even as it cautions:

[N]early all of the most threatening global catastrophic risks were unforeseeable a few decades before they became apparent. Forty years before the discovery of the nuclear bomb, few could have predicted that nuclear weapons would come to be one of the leading global catastrophic risks. Immediately after the Second World War, few could have known that catastrophic climate change, biotechnology, and artificial intelligence would come to pose such a significant threat.

So what’s the societal version of an airbag and seatbelt? Farquhar conceded that many existential risks were best handled by policies catered to the specific issue, like reducing stockpiles of warheads or cutting greenhouse-gas emissions. But civilization could generally increase its resilience if it developed technology to rapidly accelerate food production. If technical society had the power to ramp-up less sunlight-dependent food sources, especially, there would be a “lower chance that a particulate winter [from a volcano or nuclear war] would have catastrophic consequences.”

# 2NC

## States

#### States solve the whole aff—the past 30 years prove the states can farther than the feds and that there’s no preemption

Arteaga, 21

(Juan A Arteaga is a partner in Crowell & Moring’s antitrust and white-collar groups. His practice focuses primarily on advising companies, boards of directors, and executives in a broad range of civil and criminal antitrust matters, including litigation, merger reviews, governmental and internal investigations, and counselling regarding various business practices. Between 2013 and 2017, Mr Arteaga was a senior official in the Antitrust Division of the US Department of Justice. During this period, he served as the Deputy Assistant Attorney General for Civil Enforcement, where he worked on and oversaw numerous civil merger and non-merger investigations and litigations involving various industries. Mr Arteaga also served as the chief of staff and senior counsel to the Assistant Attorney General for the Antitrust Division. While at the Antitrust Division, Mr Arteaga worked on various high-profile merger litigations, including the DOJ’s challenges to the Aetna/Humana, US Airways/American Airlines, Halliburton/Baker Hughes, Electrolux/General Electric, Energy Solutions/Waster Control Specialists and National Cinemedia/Screenvision transactions. Mr Arteaga regularly represents Fortune 500 companies and financial institutions in connection with complex transactions and high-stakes litigation and government investigations. Mr Arteaga has been recognised as a leading practitioner by numerous professional publications and bar associations, including the American Bar Association, New York City Bar Association, Hispanic National Bar Association, New York Law Journal, Law360 and the Ethisphere Institute. He has also received numerous awards for his pro bono work and civic service. & Jordan Ludwig is a counsel in the antitrust group in Crowell & Moring’s Los Angeles office, where he focuses on antitrust litigation, civil and criminal antitrust investigations, and appeals. Jordan has extensive experience litigating high-stakes cases in the state and federal courts under the Sherman Act, Cartwright Act, the California Unfair Competition Law, and the California Unfair Practices Act. As a dynamic litigator, Jordan regularly represents both plaintiffs and defendants across a diverse array of industries, including healthcare, telecommunications, hospitality, financial services, and consumer products. "The Role of US State Antitrust Enforcement," Jan 28 2021 <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement> NL)

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

.

### Solvency---reg and reform planks

#### Labor laws solve.

1AC FoodPrint,19, 4-10-2019, Labor and Workers in the Food System, FoodPrint is a flagship program of GRACE. The purpose behind the program is to give consumers educational tools. <https://foodprint.org/issues/labor-workers-in-the-food-system/> // wwu ljh

\*UGA READS GREEN\*

¶ Meanwhile, farming was becoming big business from coast to coast. The US turned to workers from China, Japan and the Philippines to meet the demand for labor — until the1882 Chinese Exclusion Act, the first law to ban an ethnic group, banned immigration of Chinese workers. As the Chinese workforce decreased in the following decades and labor demand swelled into the period of World War I, growers increasingly turned to labor from Mexico, including lobbying for creation of the first guest worker program. ¶Industrialization of Agriculture and Labor Demands ¶As agriculture became more industrialized, related sectors like food processing did as well. The horrors of the rapidly-expanding meatpacking industry were revealed in Upton Sinclair’s 1906 novel The Jungle, subsequent public outcry and union organizing brought about food safety laws and greatly improved worker conditions in meatpacking plants. ¶ During the Great Depression and the Dust Bowl of the 1930s, white farmers from the Midwest and elsewhere were forced to sell or abandon their farms and become migrant workers. With thousands of white farmers now in need of work, one-half million Mexican-Americans were deported or pressured to leave. A package of important federal labor laws protecting worker rights also passed in this period, but they excluded farmworkers and domestic laborers. Not coincidentally, these jobs were most commonly held by African-Americans and immigrants. ¶A series of temporary guest worker programs began in the 1940s. The most well-known of these, the Bracero program, recruited workers from Mexico. It was eventually ended due to widespread worker abuses and wage theft. Organizing by the United Farm Workers (UFW) contributed to the program’s end. Founded by Cesar Chavez and Dolores Huerta, the UFW united Filipino and Mexico workers in a movement that brought national attention to the struggles of workers in California fields – and built models still used by farmworker organizers today. ¶In the meatpacking industry, union victories kept wages high from the 1960s through the early 1980s – as much as 18 percent higher than in other manufacturing jobs. 2 In the 1980s, however, packing plants began to move out of cities and into rural areas closer to livestock feedlots, transforming the jobs from middle-class employment with a predominantly white and African-American workforce to again being a dangerous, low-wage job relying mostly on undocumented immigrants. ¶Farm and Food Workers Today ¶ Today, immigrants produce the majority of our food, from farm to processing plant to restaurants and grocery stores. Wages are low, conditions are often harsh or dangerous, and immigrants not legally allowed to work in the US are often afraid to report abuses for fear of deportation.¶ According to the most recent Department of Labor National Agricultural Workers Survey, as of 2014, 80 percent of US farmworkers were Hispanic, which included 68 percent born in Mexico and 27 percent born in the US. The foreign-born farmworkers interviewed had been in the US an average of 18 years, and 53 percent were authorized to work. Eighty-four percent of farmworkers were settled workers and 16 percent were migrants. Farmworkers’ median annual farm incomes in the previous year were just over $17,000. 3 ¶The 47 percent of farmworkers who are undocumented and not authorized to work — and the many similar workers in meatpacking plants and elsewhere across the food chain — face struggles. While most federal and state labor laws, including those regarding wages and safety training, protect all workers equally, regardless of immigration status, many undocumented workers either do not know these rights or are afraid to assert them. 4¶ Many farms hire workers under the H-2A guestworker program, which grants visas for temporary or seasonal work. The program is costly for employers, who must provide housing, transportation, wage guarantees and other benefits, though these requirements do not necessarily guarantee better working and living conditions on the ground. In recent years, administration of the program, which provides up to 45,000 visas per year, has been delayed, which can have significant consequences for farmers left without labor to plant or harvest on time. 56¶ Year-round food and farm industries such as dairy farms and poultry processing plants are not eligible for H-2A workers, and many of these have come to rely on undocumented labor. Recent investigative reporting has revealed that the meatpacking and poultry industries, in particular, have developed illegal or questionable strategies to recruit vulnerable foreign workers, including targeting refugees, who cannot return home, and co-opting a little-known immigration program intended for businesses facing legitimate labor shortages. 78 As in decades and centuries past, the industries treat these workers as dispensable, knowing that if they speak up, get injured, deported or even killed, there will always be someone else to fill the job.

#### AND workplace reform.

Mooney, Pat - IPES-Food, 2017, “Too big to feed: Exploring the impacts of mega-mergers, concentration, concentration of power in the agri-food sector” PM has worked in the field of agriculture, biodiversity, biotech trade (both international and national) for almost 50 years. PM has been awarded multiple well-respected awards for the work and publications, such as from: Swedish Parliament, Canadas Governor General, and the Giraffe Heros project. They are cofounder and executive director of ETC an international civil society organization headquartered in Canada with offices in Mexico, Philippines, Nigeria and USA. ETC group has consultative status with ECOSOC, FAO, UNCTAD, UNEP, UNFCCC, IPCC and the UN Biodiversity Convention. IPES is an organization that has a panel of experts from 16 countries. The organization goal is to transition to sustainable agriculture. They receive no government or corporate funding. [www.ipes-food.org](http://www.ipes-food.org) /// wwu ljh

¶ IMPACT 7 ¶ Allowing labor abuses and fraud to slip through the cracks ¶ **Industry consolidation has failed to eradicate endemic abuses and malpractice in food systems - and may exacerbate the risks by reinforcing current supply chain models, with their highly dissipated responsibility and persistent blind spots.** Some of the world’s largest processing companies, including Nestlé and Kraft, have admitted to finding **child and slave labor conditions within their coffee and cacao supply chains** (Clarke, 2015; Hodal, 2015). Surveys demonstrate that leading chocolate companies cannot always guarantee that human rights are respected along their supply chains, despite vertical integration of ownership (SwedWatch, 2006). More specifically, Nestlé stated that it is impossible to “fully guarantee” against human rights abuses when sourcing from countries with limited labor law enforcement – in response to allegations of slave labor on Brazilian coffee plantations, cacao plantations in the Ivory coast, and fisheries in Thailand (Hodal, 2015; Kelly, 2016). Nestlé, Kellogg’s and Reckitt Benckiser have all also cited a limited ability to trace the practices of their millions of palm oil suppliers (Davies, 2016). The coffee sector faces similar challenges, with 25 million small-scale coffee producers around the world and more than 40% of the global retail market share controlled by two companies (Nestlé and JAB Holding Co.) (Bailey, 2015). ¶ Forced labor in global seafood operations involving tens of thousands of workers— mostly impoverished migrants, women and children—was also the subject of in-depth reports in 2015. **Associated Press journalists traced shrimp produced by forced labor from Thailand in products sold in virtually all major US and European supermarket chains (including Walmart, Carrefour, Costco, Kroger, Safeway, Sysco, Whole Foods and more**) (Mason et al., 2015). Restaurant supply chains, well-known seafood brands and best-selling pet foods were also involved. Investigative journalism also exposed that the majority of fish caught around the world are filleted in China, **where low-waged female workers provide cheaper labor than machines** (Lawrence, 2013). ¶ A recent investigation in the US further exposed the dangerous working conditions of those working in slaughterhouses and meat-processing plants across the country (Harvest Public Media, 2016). Reports found that the four largest poultry processors in the US — Tyson Foods, Sanderson Farms, Perdue Farms and Pilgrim’s Pride — **recurrently violate workplace safety rules** (US Department of Labor, **2017;** Human Rights Watch, 2005). ¶ Large scale retailers typically require suppliers to fulfill a set of private standards and to comply with national laws and regulations. In response to growing consumer concern and pressure from civil society groups for more ethical supply chains, Nestlé, Walmart and many other processing companies have developed codes of conduct to protect workers from exploitive labor practices, and have made some efforts to inform their suppliers of these ethical codes. However, the same suppliers also face the reality of downward cost pressures, high volume requirements - and few alternatives (see Impacts 1 and 2). Furthermore, major retailers continue to source disproportionately from countries and regions with lower labor regulations (Rioux, 2015; Food Chain Workers Alliance, 2015). In this context, **corners get cut and malpractice arises** - **and is therefore built into the system, even if not officially condoned by the most visible, public-facing actors,** i.e. food and beverage processors and retailers

#### Banning exploitative conditions solves.

FoodPrint,19, 4-10-2019, Labor and Workers in the Food System, FoodPrint is a flagship program of GRACE. The purpose behind the program is to give consumers educational tools. <https://foodprint.org/issues/labor-workers-in-the-food-system/> \*TW: card discusses sexual harassment- not in detail\* // wwu ljh

¶ Dangerous Working Conditions¶ Whether in vegetable fields or meatpacking plants, farm and food workers face hard, often dangerous working conditions.¶ Conditions in the Fields ¶ Planting and harvesting crops, from asparagus to zucchini, involves repetitive motions, often being stooped or bent for many hours, lifting heavy buckets of produce and operating machinery such as tractors that can lead to injuries. The work is performed outdoors in hot weather, often without shade or adequate water. ¶ Breaks are infrequent — sometimes workers are punished for taking a bathroom break, and the common method of paying workers by the piece penalizes those who do take breaks, because they’ll make less money. Workers often face nausea, dizziness, heat exhaustion, dehydration and heat stroke, which is the leading cause of farmworker death. 11¶ Farmworkers are also regularly exposed to toxic chemicals from applying pesticides or herbicides (often done without adequate protection), from handling produce that has been recently sprayed, or, in some instances, from being directly in the path of a pesticide application. The apparently strict rules about aerial or other large-scale chemical application, including what is not to be done when people are in the vicinity, are not always followed, because fines are low. 12 And many female farmworkers are sexually harassed and abused by their supervisors or other workers. 13 Wage theft is also standard practice. 14 ¶ Conditions on Factory Farms ¶ Conditions at concentrated animal feeding operations (CAFOs), also known as factory farms, are no better. Gases from manure pits including hydrogen sulfide, ammonia and methane fill the air, along with dust and irritants known as endotoxins. 1516 ¶ One quarter of CAFO workers experience chronic bronchitis and nearly three quarters suffer from acute bronchitis during the year. 17 Chronic exposure to hydrogen sulfide can cause brain damage and heart problems, and even at low levels can be deadly. 18 Regular inhalation of particulate matter such as dust can cause both respiratory and heart problems, while high levels of ammonia can cause asphyxiation. From 1992 to 1997, there were twelve documented cases of worker deaths in US manure lagoons. 1920 ¶ Meatpacking Plant Conditions ¶ For several decades of the mid-20th century, meatpacking jobs were some of the best paid in the manufacturing sector and lifted a diverse workforce into the middle class. Today, however, jobs in meat and poultry processing plants are some of the most dangerous and poorly compensated. ¶ Workers kill, eviscerate and cut up thousands of animals every day, working in conditions that are humid, slippery, loud, hot or below freezing. Respiratory problems, skin infections and falls are common. ¶ Work is determined by the speed of the processing line; at poultry plants, for example, line speeds have doubled in the last forty years, from 70 birds per minute in 1979 to 140 in 2015. Breaks are discouraged or denied, even for the bathroom; an Oxfam America report on poultry plants reports that many workers resort to wearing diapers. 21 ¶ On the fast-moving line, workers make the same cutting, pulling or hanging motions thousands of times a day; these repetitive motions cause crippling musculoskeletal injuries. 22 Workers also wield sharp knives and work with fast-moving heavy machinery. A 2017 report by the National Employment Law Project found that an average of 27 poultry workers a day suffer work-related amputations or hospitalizations in the US, and in a survey of severe injuries reported at over 14,000 companies, two that process poultry and beef rank fourth and sixth. 23

### Solvency---Biodiversity

#### Carbon negative technology restore natural biological resilience.

Pearce ’19 [Fred; May 29; Environmental journalist and author, citing former British Government Chief Scientist David King, Harvard University Physicist David Keith, Kelly Wanser for the Marine Cloud Brightening Project, and other academics; Yale Environment 360, “Geoengineer the Planet? More Scientists Now Say It Must Be an Option,” <https://e360.yale.edu/features/geoengineer-the-planet-more-scientists-now-say-it-must-be-an-option>]

Geoengineering is defined by the Oxford Geoengineering Program as “the deliberate large-scale intervention in the Earth’s natural systems to counteract climate change.” There are two main types. One is shading the earth from solar radiation, of which the shroud of sulphates in the stratosphere is emerging as the quickest, most effective, and least costly. The other is to remove more CO2 or other greenhouse gases from the atmosphere than nature currently achieves — so-called negative emissions.

Right now the oceans absorb a lot of CO2. One way of helping them take more is likely to be on the Cambridge unit’s agenda. It involves seeding the oceans with iron to stimulate growth of marine algae. The resulting algal blooms would, the theory goes, soak up CO2 from the water and cause more to be absorbed from the atmosphere. Concerns range from the effects that such blooms of algae could have on the marine food web to uncertainty about whether such local absorption would actually increase the ocean’s total uptake of carbon.

A second, more measurable idea involves removing carbon from the atmosphere, either by the massive deployment of devices to [extract CO2 from the ambient air](https://e360.yale.edu/features/negative-emissions-is-it-feasible-to-remove-co2-from-the-air) — known as direct air capture —or by more natural methods. One of those would be to turn large areas of land over to carbon-absorbing crops, probably trees. The harvested biomass could then be used as fuel in power stations, and the emissions from burning them reabsorbed by new crops. The net emissions could be zero.

If biomass burning were combined with technology to capture and bury the carbon emissions from the power plants — delivering a technological combo known as Bioenergy with Carbon Capture and Storage (BECCS) — emissions could be negative. In theory, the more you burned, the more CO2 you would suck from the air.

The UN’s Intergovernmental Panel on Climate Change (IPCC) enthusiastically adopted BECCS in its fifth assessment, published in 2014. It said most scenarios for keeping warming below 2 degrees would require “the availability and widespread deployment of BECCS and afforestation in the second half of the century.”

It could happen. Biomass burning is increasingly popular in power stations. And carbon capture and storage (CCS) is a proven technology, though not yet adopted at scale. That could soon change, following the announcement this month that industrial emitters in the European ports of Rotterdam, Antwerp, and Ghent plan to join forces to pump [10 million tons of CO2 a year](https://www.theguardian.com/environment/2019/may/09/empty-north-sea-gas-fields-bury-10m-tonnes-c02-eu-ports) into adjacent offshore gas fields.

But critics say the problems with BECCS [are manifold.](https://www.sciencedaily.com/releases/2019/04/190402081533.htm) The land requirement would be huge. And the forests created to provide the fuel would be monocultures of fast-growing tree species like eucalyptus and acacia. If the land were taken from farmers, then who would feed the world? And if it were taken from existing natural forest areas, the carbon benefits of BECCS would largely disappear, says Simon Lewis of University College London. That’s because plantation forests typically hold [only 5 percent as much carbon](https://www.sciencedaily.com/releases/2019/04/190402081533.htm) as mature natural forests.

Maybe there is a simpler solution. Maybe the most promising answer lies in going back to nature — in restoring natural forests. A broad coalition of environmentalists – from those who embrace corporate environmentalism, such as The Nature Conservancy (TNC), to the British anti-capitalist columnist George Monbiot – have recently endorsed this “natural” climate solution.

Their touchstone is a 2017 paper by Bronson Griscom of TNC and 24 others, which concluded that a third of the measures required between now and 2030 to keep the world on track to stabilize climate could be achieved cost-effectively by boosting natural ecosystems. They could take an extra 11 billion tons more CO2 out of the air each year. This could be done mostly by reforestation, but also by better soil management, the protection of carbon-rich wetlands such as peatlands, and growing more trees on farmland.

Proponents see this not as a substitute for emissions reductions, but as a “biological bridge… to a zero-emissions economy.” The plan fits the Oxford definition of geoengineering, though they avoid using the term.

The scientific case for this route is compelling. Most of it could be achieved on existing damaged and degraded forests. The World Resources Institute estimates that globally there are 7.7 million square miles of forests degraded by logging or shifting cultivation [that could be restored.](https://www.researchgate.net/publication/297301426_Mapping_opportunities_for_forest_landscape_restoration) That is an area twice the size of Canada.

Some planting, especially of nitrogen-fixing species in poor soils, could help speed up the restoration, says Robin Chazdon, an ecologist at the University of Connecticut and author of an influential book called [Second Growth.](https://www.press.uchicago.edu/ucp/books/book/chicago/S/bo17407876.html) But mostly, given the chance, forests will regrow naturally.

In fact, natural regrowth is usually better than planting, since “allowing nature to choose which species predominate during natural regeneration allows for local adaptation and higher functional diversity,” she says. A study published in March by 87 researchers, including Chazdon, concluded that “secondary forests recover remarkably fast” with 80 percent of their species typically back in 20 years and [100 percent in 50 years.](https://advances.sciencemag.org/content/5/3/eaau3114)

It looks like it could be a win-win, delivering a climate payoff on the scale of geoengineering without any of the downsides. Tim Lenton of Exeter University, a [proponent of research into geoengineering](http://blogs.exeter.ac.uk/climatechangemooc/), says it could be an ideal solution. “I am against introducing new forcings such as sulphate aerosol injection in the stratosphere,” he says. “But I am in favor of emulating and enhancing natural feedback loops and cycles, such as regenerating degraded forests.”

It would, he says, strengthen the biosphere’s natural forces of self-regulation that British scientist James Lovelock has termed Gaia. Lenton has a new term for what is required. Not geoengineering, but Gaia-engineering.

#### States solve the whole aff—creates regulatory regimes which constrain powerful agrobusinesses

Bowen, 17

(Kathryn Bowen, Law Clerk to Judge John T. Noonan, Jr., United States Court of Appeals for the Ninth Circuit. J.D. 2016, University of California, Berkeley Former consultant, Food and Agriculture Organization of the United Nations. “Protecting Regulatory Expressions of Food Populism Through Interstate Cooperation,” Tennessee Law Review [Vol. 85.1 2017] Hein Online NL)

Food populism rests on a rich tradition of "distinct, yet overlapping" alternative food movements.2 33 These coalitions comprise advocates of organic, local, and slow food, who share a desire for a "more socially and environmentally just food system." 2 34 Food populism is distinct, however, in that it highlights a redistributive political economy element only implicit in some of these alliances. That normative core is founded upon a dual-pronged principle, which respectively seeks greater democratic control over food structures, and to minimize the negative consequences of modern industrial food production. "[D]emands for economic democracy have had a renaissance in food-but not in law." 2 3 5 Historicizing the rise of agricultural industrialization, Amy Cohen observes that "agrarians and other 'decentralist intellectuals"' have long critiqued the aggregation of economic and political power in the hands of twentieth century corporate elites. 2 36 Cohen notes that modern food progressives are tapping into a contemporary discontent with political and economic dispossession.2 37 Attention to the democratic implications of largescale industrialization is critical to re-ceding some degree of decision making autonomy to consumers and small food producers. 238 At the heart of this agenda is a concern with disproportionate corporate influence over government decisions on food and agriculture. Recent qualitative accounts suggest that legislative capture by integrators trades off with policies that enhance public welfare. 239 Deregulatory preemption raises distributive concerns about the role of government in providing public accountability and transparency on food issues. While issues of capture predate the Trump presidency, the administration's deregulatory efforts have brought debates over corporate control into the mainstream, including in the food and agriculture realm. As with other areas of the administrative state, food policy has been subject to executive actions by the Trump Administration that are designed to scale back corresponding efforts by the Obama Administration. 240 To advance that agenda, "deregulation teams" have been formed in both USDA and the Environmental Protection Agency (EPA).241 Many believe that these efforts will work to the financial benefit of large food and agriculture companies. 242 It is not surprising, then, that these entities are pursuing their policy priorities with renewed vigor. In addition to pushing back against concerns over corporate capture, food populism roots in a second, albeit related, value: reducing negative consequences attendant to industrialized food and agriculture production. Volumes have been written on the socioeconomic harms of consolidation, automation, and concentration in the food sector. I therefore provide but an overview of some of IAA's harmful effects, grouping illustrative examples into the areas of public health and disease, employment (including wage, labor and safety concerns), rural communities, environment and natural resources, and animal cruelty. Public health considerations have emerged as a leading cause for concern in debates over IAA. This attention is driven by the livestock industry's prolific use of antibiotics in animals.243 Animal agriculture consumes about eighty percent of antibiotics sold in the United States, with high-density livestock operations responsible for the bulk of this trend. 244 Antibiotics are administered to promote animal growth, and to reduce the risk of disease that results from customary farming practices, including intensive confinement. 245 At current volumes, industry's use of antibiotics contributes to the evolution and spread of antibiotic resistant bacteria.246 The emergence of antibiotic resistant bacteria in turn reduces the efficacy of antibiotics in humans. 247 The Center for Disease Control estimates that antibiotic resistant infections cause at least 23,000 deaths and two million illnesses per year.2 4 8 In addition to antibiotic resistance, other public health considerations attendant to IAA include animal-to-human disease transmission, food-borne illnesses, and diffuse harm to workers at IAA facilities and nearby communities. 249 Indeed, those groups proximate to sites of production often face the most debilitating aspects of IAA. Several features of IAA, including high animal density, accelerated processing, and automation, create dangerous working conditions.250 These conditions result in high rates of accidental injury, and chronic physical stress disorders. 251 Occupational hazards are compounded by other public health harms, including cognitions of acute and prolonged respiratory illness. 252 IAA engenders problematic labor issues like low wages, lack of unionization, and the absence of health benefits.253 Exploitative conditions are part and parcel of industry's reliance on immigrant communities. 254 This dependence has itself been the subject of criminal investigation. 255 IAA operations also trade off with the economic, physical, mental, and social well-being of surrounding communities. 256 The integratorgrower contract model reduces financial capital in agricultural areas, as compared to regions that retain more locally owned farms. 2 5 7 Communities proximate to IAA operations suffer from relatively greater cognitions of depression and posttraumatic stress disorder.258 IAA sites reduce quality of life for surrounding residents, and can create destructive social rifts when individuals express their opposition to integrators. 259 IAA facilities are disproportionately located in low-income areas, or those populated primarily by people of color.2 6 0 Manifestations of environmental injustice have been an increasing focus of both activists and academics. 2 6 1 The environmental implications of industrial meat production are similarly alarming. Consolidation and concentration of feeding operations creates unique obstacles for disposing of animal waste. IAA facilities typically store manure in large lagoons, adversely impacting water quality via runoff and erosion, direct discharges, spills, and leaching. 262 Manure lagoons also emit gasses (ammonia and hydrogen sulfide), particulate matter, volatile organic compounds, microorganisms, and odor-all of which degrade air quality. 263 In addition, IAA operations release carbon dioxide and methane, contributing to climate change. 264 Subsequent reductions in air, water, and soil quality generate their own set of negative public health and environmental consequences. 265 This Article's focus, intensive confinement, provides but one of the animal cruelty issues associated with IAA. Other customary and problematic animal treatment practices can include castrations, debeaking, tail docking, and dietary restrictions, in addition to welfare issues involved in transport and slaughter. 266 Some also find troubling the sheer number of farm animals killed for food each year in the U.S.-in 2015, about nine billion.2 6 7 There are, of course, putative benefits to IAA. These stem primarily from IAA's capacity to produce more meat cheaply, thereby enhancing profitability and lowering costs for consumers. 268 And yet, peer-reviewed studies cast doubt on these efficiency rationales. 269 Scientific findings demonstrate that productivity gains are only possible via externalized environmental costs and government subsidies for corn and soybeans. 270 Productivity enhancements are, moreover, likely to level off as energy prices increase and agricultural conditions worsen due to climate change. 271 As far as profit-based benefits of IAA, wealth accrues primarily to corporate integratorsnot individual farmers or rural communities. 272 This again invokes concerns about market control and income inequality. Consumerbased benefits presume that eating meat is intrinsically valuable, an issue that scientists, economists, and ethicists debate.273 These defenses of LAA, more broadly, take an all-or-nothing approach to reform. Many of IAA's harms are actually issues of size and scale, which can be incrementally reduced to prevent harmful price increases. 2 74 Somewhat apart from these economic efficiency rationales, IAA advocates claim that the industrial model better protects public health, the environment, and animals. But many of these defenses presuppose IAA's single-tactic approach to problem solving.2 7 5 Take, for instance, the argument that industry's current use of antibiotics is critical to prevent disease transmission. Disease cognitions might be reduced were animals not intensively confined and fed a poor diet. Other IAA defenses, including that IAA improves food safety, implicitly assume government regulations are followed and properly enforced. Existing manifestations of harm, like the rate of food-borne illness, belie that confidence. 276 With respect to animal welfare, IAA advocates rely on a myopic view that excludes evidence about natural behaviors and mental well-being. 277 Rather, industry's welfare assessments focus on gross physical factors, like growth and weight gain.278 Some might criticize the notion of food populism based on its purely reactive iteration, i.e. food hysteria or alarmism.279 Kuran and Sunstein reference a similar "pollutant of the month syndrome," whereby "expressed concerns about a particular substance fuel growing anxieties, which then generate an irresistible demand for regulation." 280 This uninformed demand can lead to poor government decision-making. Widespread panic over Alar provides a seminal example. Alar is a pesticide sprayed on apples that contains one percent of a particular carcinogen. 281 Alar's manufacturer undertook an initial study of the pesticide's effects in 1986. Preliminary findings issued in 1989 suggested a correlation between tumor incidence in animals and exposure to Alar.2 8 2 According to several accounts, the Natural Resources Defense Council (NRDC) then vastly extrapolated the risks to children posed by Alar.2 83 Several media outlets publicized NRDC's allegations, which led to a public outcry.284 By the time the EPA found Alar's health risks negligible, the domestic apple industry had been devastated. 285 Alar's manufacturer voluntarily pulled the product from retail sale. EPA later agreed to revise its regulations to more easily ban chemicals "suspected of being carcinogenic." 286 For some, the Alar scare represents the social and economic costs to "bad science."287 Others, including NRDC, hail the EPA's subsequent move towards a precautionary approach as an outstanding victory. 288 Despite this divergence, these camps probably agree that the state can add value to public policy by providing holistic technical expertise.289 This comports with food populism's dualpronged principle, which responds to popular desires for sustainable food while paying greater attention to potential risks associated with industrial food production. 290 Encouraging state officials to take greater ownership over sustainable food and agriculture policies thus represents an important step in fulfilling a deliberative democratic approach. In other words, an approach that balances popular values with scientific principles. A state-based strategy facilitates contestation and debate over regulatory expressions of food populism, which can otherwise be easily dismissed as the work of "fringe radicals" and "fanatics."291 The negative stigma attached to these labels, in turn, further delays solutions to long-festering harms.292 While HSUS was instrumental in initially catalyzing policy change, a lack of direct state engagement creates roadblocks where citizen-led initiatives are unavailable. 293 The absence of political support from elected lawmakers also poses a problem if the ultimate goal is to enact a welfare-enhancing national standard. Indeed, both activists and outside observers agree that stringent federal regulation is ideal for redressing IAA's potential harms, including those associated with animal cruelty.29 4 Recognizing that sympathetic state officials, with entrepreneurial incentives of their own, can serve a value-adding role thus provides a fruitful new area for theorization. B. Interstate Action and Defensive Preemption Federalism scholars have taken stock of the mutually constitutive nature of inter-systemic decision-making, in which federal and state officials regulate in view of their overlapping authorities. 295 State action can impact federal policy in at least three ways: through broadbased uniformity, planned dissent, and coordinated lobbying. First, states can voluntarily cooperate to enhance uniformity and thereby address the negative economic externalities of inconsistency. Successful harmonization, in turn, signals to federal policymakers that intervention is unnecessary or even counter-productive. 296 The converse is also true: the failure or absence of proposed harmonization can inspire calls for federal action.2 9 7 The primary question then becomes whether the extent of state uniformity is sufficient or could be sufficient to stymie concerns about interstate inconsistency. A secondary question is whether reducing inconsistency, but maintaining stringency, would placate corporate entities, like IAA firms, who could pursue a "double win."2 98 Second, state cooperation can make more effective specific displays of aberrant regulatory behavior by states; that is, when states take an unorthodox approach to regulation. As Heather Gerken explains, dissident states offer up a "real life instantiation" of alternative governance in departing from the majoritarian policy approach. 299 Dissenters thereby "provide important reassurance and guidance to federal legislators who are considering whether to change gears."3 0 0 Aberrant states also agenda-set for national lawmakers by raising otherwise sidelined substantive and normative considerations. 301 To be sure, states adopting anti-confinement regulations are already dissenting in isolation. 302 But by organizing their opposition, states may improve substantive outcomes and add value to their collective action project.303 This, in turn, can signal that federal intervention is undesirable.304 Preemption dynamics thus also intersect with how well states address an underlying problem. Third, state lobbying efforts are strengthened by coordination. 305 States act as do other interest groups, by attempting to influence lawmakers considering novel statutes. 306 Geographically and politically significant states, like California and New York, have empirically succeeded in defending their regulatory regimes vis-a-vis corporate interests. 3 07 But smaller states may be unwilling or unable to go it alone against powerful interest groups. To that end, coordinated action can add strength and coherence to state views. 308 Uniformity, planned dissent, and coordinated lobbying can shift federal interest group dynamics. When it comes to policy outcomes, the result can take several forms. For instance, state collective action might ensure that a national preemptive standard is as rigorous as then-existing state rules. 309 Alternatively, state action can influence the extent of preemption, whereby the federal statute sets a floor that states are allowed to exceed.3 10 Decisions over funding, compliance with federal targets, and enforcement provide other areas in which states can assert regulatory control.311 Extremely strong state coordination might also dissuade corporate entities from pursuing a federal standard in the first instance. 3 12

#### **Second, the perm tanks solvency—ruins enforcement and gets struck down**

Weiser, 20

(Philip J., Colorado Attorney General; Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, "The Enduring Promise of Antitrust." Loyola University Chicago Law Journal, vol. 52, no. 1, Fall 2020, p. 1-14. HeinOnline.)\\JM

Unfortunately, federal antitrust authorities don't always show respect for state antitrust enforcement. In late 2019, for example, the Department of Justice (DOJ) filed a brief taking an unfortunate and unjustified position in the Sprint/T-Mobile merger.1 3 In particular, the DOJ asserted in its brief that the states' "[quasi-sovereign] role does not permit states to override the sovereign interests of the United States." 14 In essence, the DOJ argued that the DOJ itself is the supreme arbiter of antitrust law. On the DOJ's view, once it takes a position on a matter, the states are foreclosed from any enforcement that would be contrary to the selected path of the federal agency.' 5 That view runs contrary to what Congress intended in framing broad enforcement of the antitrust laws that recognizes the critical role of the states. 16 Because this position would upend forty-five years of antitrust practice and jurisprudence, the litigating states properly responded that the "[s]tates are independent enforcers of the antitrust laws, and it is the role of the Court-not any federal agency-to decide the lawfulness of the merger."17 The DOJ's flawed argument in the T-Mobile case was based on the dissenting opinion in Georgia v. Pennsylvania Railroad Co. 18 Notably, the majority in that case held that states are authorized to seek injunctive relief under the antitrust laws. Moreover, the DOJ's suggestion-that the DOJ and FCC (Federal Communications Commission) merger review in the T-Mobile case is exclusive and preclusive-contradicts Congress' empowerment of state AGs and is a dangerous idea as well. Under the DOJ's theory, if a federal antitrust agency approves a merger, antitrust enforcement against the merger would be precluded as long as the merger was subject to review and approval by the federal agency. That would diminish antitrust enforcement and would, in effect, permit the federal antitrust agencies to extinguish the rights of states and private parties to enforce and seek remedies for harm caused by violations of antitrust laws. The DOJ's rationale in the T-Mobile case would also justify exempting transactions from antitrust review because a federal regulatory agency approved such a matter. Notably, the DOJ invoked the FCC's regulatory action in that case as a basis for stripping states of authority to challenge the merger. This is a dangerous claim and goes flatly against federal merger law, which has consistently refused to reject antitrust claims for non-antitrust reasons since the Supreme Court's 1963 decision in Philadelphia National Bank.19

## BioD

#### It’s slow and resilient.

Hance Interviewing Montoya 18 Jeremy Hance at the Guardian, interviewing José M. Montoya from the Centre National de la Recherche Scientifique at the University Paul Sabatier and internally citing Ian Donohue from the School of Natural Sciences at Trinity College Dublin and Stuart L. Pimm from the Nicholas School of the Environment at Duke University. [Could biodiversity destruction lead to a global tipping point? 1-16-2018, https://www.theguardian.com/environment/radical-conservation/2018/jan/16/biodiversity-extinction-tipping-point-planetary-boundary]

But what’s arguably most fascinating about this event – known as the Permian-Triassic extinction or more poetically, the Great Dying – is the fact that anything survived at all. Life, it seems, is so ridiculously adaptable that not only did thousands of species make it through whatever killed off nearly everything (no one knows for certain though theories abound) but, somehow, after millions of years life even recovered and went on to write new tales. Even as the Permian-Triassic extinction event shows the fragility of life, it also proves its resilience in the long-term. The lessons of such mass extinctions – five to date and arguably a sixth happening as I write – inform science today. Given that extinction levels are currently 1,000 (some even say 10,000) times the background rate, researchers have long worried about our current destruction of biodiversity – and what that may mean for our future Earth and ourselves. In 2009, a group of researchers identified nine global boundaries for the planet that if passed could theoretically push the Earth into an uninhabitable state for our species. These global boundaries include climate change, freshwater use, ocean acidification and, yes, biodiversity loss (among others). The group has since updated the terminology surrounding biodiversity, now calling it “biosphere integrity,” but that hasn’t spared it from critique. A paper last year in Trends in Ecology & Evolution scathingly attacked the idea of any global biodiversity boundary. “It makes no sense that there exists a tipping point of biodiversity loss beyond which the Earth will collapse,” said co-author and ecologist, José Montoya, with Paul Sabatier Univeristy in France. “There is no rationale for this.” Montoya wrote the paper along with Ian Donohue, an ecologist at Trinity College in Ireland and Stuart Pimm, one of the world’s leading experts on extinctions, with Duke University in the US. Montoya, Donohue and Pimm argue that there isn’t evidence of a point at which loss of species leads to ecosystem collapse, globally or even locally. If the planet didn’t collapse after the Permian-Triassic extinction event, it won’t collapse now – though our descendants may well curse us for the damage we’ve done. Instead, according to the researchers, every loss of species counts. But the damage is gradual and incremental, not a sudden plunge. Ecosystems, according to them, slowly degrade but never fail outright. “Of more than 600 experiments of biodiversity effects on various functions, none showed a collapse,” Montoya said. “In general, the loss of species has a detrimental effect on ecosystem functions...We progressively lose pollination services, water quality, plant biomass, and many other important functions as we lose species. But we never observe a critical level of biodiversity over which functions collapse.”

# 1NR

#### Infrastructure is impact filter – success is key to Biden’s agenda at the UN Climate Summit which is the only way to spur global follow-on

Davenport, 21

(Coral, Lisa Friedman, Reporters at the New York Times, and Emily Cochrane, Correspondent at the New York Times, "Collapse of Infrastructure Talks Puts Climate Action at Risk", New York Times, 6-9-2021, https://www.nytimes.com/2021/06/09/climate/climate-congress-infrastructure.html)\\JM

The United States must take significant action now, just months before nations gather at a climate summit in Scotland, where the Biden administration wants to sway other countries to take similar steps, said Senator Martin Heinrich, a New Mexico Democrat. “If President Biden wants to establish credibility before he goes to Glasgow later this year, we need to do this and we need to do it big and meaningful,” Mr. Heinrich said.

#### Infrastructure solves warming, bioD, econ -- extinction

Oakes, 3/25

(Jonette, reporter for the Hill, "Ted Lieu raises alarm over biodiversity and climate change,' 3/25/21 <https://thehill.com/policy/energy-environment/544881-ted-lieu-raises-alarm-biodiversity-climate-change> NL)

Rep. [Ted Lieu](https://thehill.com/people/ted-lieu) (D-Calif.) on Wednesday said declines in biodiversity are a global concern that can be addressed at various levels of government. Speaking at The Hill’s “The Loss of Nature: A Global Threat” event, Lieu said climate change has prompted an upheaval in biodiversity, with policies needed at the state, federal and international to address the problem. “Climate change is an existential threat, not just to California or America, but to the entire world. And the way that we solve this is we get the rest of America to do what California did and the rest of the world to do what America hopefully will do soon," Lieu told The Hill’s Steve Clemons. “The good news is a number of countries are taking climate change seriously. I think they can all do more, but we’ve shifted in just a decade or so from a bunch of people denying that climate change even is happening to now people who are acknowledging it and that’s a very good first step,” said Lieu, a member of the House Foreign Affairs Committee. Lieu's comments come as the Biden administration and congressional Democrats look to pass a sweeping infrastructure package that's expected to include numerous environmental components, including provisions for renewable energy. Lieu argued that California’s climate laws are not only good for the environment, they're good for economic prospects as well. “What we’re seeing is that when you take actions to make your water cleaner, your air having less pollution, and when you’re taking carbon and methane out of air, it actually improves the quality of people’s lives. It gets people to want to come to the state and it can generate green energy and green jobs,” Lieu said at the event sponsored by Natural Security.

#### The bill is vital to a struggling agriculture industry – it improves key transportation and technology

**Voorhees ’21**; [Josh Voorhees; an American political journalist and senior writer for Slate, and the former editor of its news blog Slatest. He graduated from Davidson College, and currently lives in Iowa City, Iowa. In 2013, he was named a fellow of the Kiplinger Program by Ohio State University; 4/1/21; Modern Farmer; “Why Biden’s Infrastructure Plan Could Be a ‘Big F\*\*king Deal’ for American Farmers”; <https://modernfarmer.com/2021/04/why-bidens-infrastructure-plan-could-be-a-big-fking-deal-for-american-farmers/>; accessed: 7/14/21; YS]

Dubbed the **American Jobs Plan**, the eight-year spending proposal promises to modernize 20,000 miles of roads, repair 10,000 bridges and improve the drinking water in 400,000 schools and child-care facilities, among myriad other improvements to the built environment in the United States.

Compared to the $1.9-trillion coronavirus aid package, the infrastructure package is light on direct aid to the agriculture sector. But, if enacted, the **infrastructure** plan could ultimately have a **bigger impact on** American **farmers** over the long run—affecting everything from how they farm to how and where they sell their products.

Farmers rely on the nation’s **roads, railways and waterways** to transport their food and fiber to domestic and **global markets**. Those paths are rarely a **straight line**. A soybean harvest meant for export, for instance, may use all three of those transportation modes as it travels from field to storage to processing plant to port, all before it even leaves the United States. **Lost time** along the way from congestion and other delays is **lost money** for farmers in the short term and **lost market share** in the long term, which is why groups such as the American Farm Bureau Federation and the National Cattlemen’s Beef Association have been pushing Biden to **improve rural transportation** networks since he took office. This plan would do just that via **$115 billion** for roads and bridges, **$80 billion** for railways and **$17** billion for waterways and ports.

The more noticeable impact on farmers’ everyday lives, meanwhile, would be the **$100 billion** that Biden wants to spend bringing affordable **broadband** internet service to every American, including the estimated 35 percent of whom currently lack reliable access.

**Agriculture**, like pretty much every other industry, is an increasingly **high-tech and data-driven** endeavor. Farmers can use the internet to track the weather in real time, to guide GPS-enabled tractors and other machinery and to utilize a whole host of other precision-farming techniques that take into account soil moisture levels, plant health and other metrics. Internet access also helps on the **business side** of things, allowing farmers to find the best deals on seeds, fertilizer and equipment, as well as the best prices for their products.

Internet access, however, is **not currently a given** on American farms. According to the US Department of Agriculture, 1 in 4 farmers lacked access in 2019, the most recent year for which data is available. Meanwhile, having internet access isn’t the same thing as having **reliable access**. A poll conducted that same year by the United Soybean Board found that nearly **60 percent** of US farmers believed poor connectivity was **negatively impacting their** business. There’s **not a lot that farmers can do** about that on their own, either, since those in rural areas often only have a single provider from which to choose.

All of this is why, broadly speaking, expanding rural broadband has support on both sides of the political aisle, including with farm-state Republicans such as Sen. John Boozman, the ranking member on the Agriculture Committee. It’s also been a top priority at the US Department of Agriculture in administrations both past and present. USDA Secretary Tom Vilsack has touted broadband access as a boon to American farmers, and his predecessor, Sonny Perdue, went as far as to suggest that **rural broadband** would be as **revolutionary** in this century as rural electrification was in the last one.

#### Infrastructure’s key to ag production, connectivity, and global food security

Jahn 19 — Chris; contributor and president of The Fertilizer Institute. (“America is in desperate need of infrastructure investment: Senate highway bill a step in the right direction” The Hill. August 7, 2019. <https://thehill.com/blogs/congress-blog/politics/456602-america-is-in-desperate-need-of-infrastructure-investment-senate)//LFS>—SR

It’s no secret that our country’s infrastructure is in desperate need of investment after years of neglect. We’ve all groaned and said some choice words when hitting deep potholes or been late to an appointment due to road or bridge closures. As our network of roads and bridges have continued to crumble, the situation has degraded from an occasional personal inconvenience to a serious barrier to national economic growth and prosperity.

The infrastructure network we depend upon to move people and commercial goods has long outlived its designed lifespan and is operating on borrowed time. For agriculture, recent flooding in the Midwest highlights how vulnerable our network is, the extensive nature of disrepair and how quickly critical food supply chains can be severed. These disruptions are not just headaches for the fertilizer and farming industries; they can potentially lead to higher prices on everyday goods for all consumers.

Last week Sens. [John Barrasso](https://thehill.com/people/john-barrasso) (R-Wyo.), [Tom Carper](https://thehill.com/people/tom-carper) (D-Del.), [Shelley Moore Capito](https://thehill.com/people/shelley-moore-capito) (R-W.Va.) and [Ben Cardin](https://thehill.com/people/benjamin-cardin) (D-Md.) demonstrated much needed leadership by introducing [“America’s Transportation Infrastructure Act of 2019,”](https://www.epw.senate.gov/public/index.cfm/2019/7/epw-committee-leaders-introduce-most-substantial-highway-legislation-in-history) legislation that would provide $287 billion over five years to maintain and repair our crumbling roads and bridges. The funding level authorized in the bill is a nearly 30 percent increase over current levels and will be a much-needed economic shot in the arm for all communities and local economies across the country.

Our country’s roads and bridges have always played a critical role in getting plant nutrients to farmers’ fields when they are needed. But with [railroad rate increases](https://www.theregreview.org/2019/06/24/moore-us-freight-customers-taxed-higher-rail-rates/), rail service challenges and stalled reform efforts due to oversight board vacancies, roadway infrastructure is more important now than ever. Unfortunately, the state of our road system is hurting our industry’s ability to deliver fertilizer to customers. Last year we had truck drivers waiting in line for up to 11 hours to pick up fertilizer due to bottlenecks and breakdowns in road networks. This year we saw heavy rains wash away deteriorating roads and bridges that should have long ago been repaired and upgraded to standards that keep our economy growing and our communities connected. The Senate proposal would provide $6 billion over five years to address the backlog of bridges in poor condition nationwide and alleviate and prevent future network delays.

The importance of the timeliness of fertilizer deliveries cannot be overstated. The safe and reliable delivery of fertilizer to ensure that nutrients can be applied at just the right time in the growing process is absolutely essential to both keeping crop yields high enough to sate global demand and protecting the environment. The Fertilizer Institute (TFI) has for years been tirelessly promoting 4R Nutrient Stewardship, a collection of best management practices which include using the Right fertilizer source, at the Right rate, at the Right time and in the Right place. The 4Rs have been identified by multiple conservation and environmental stakeholders as one of the most impactful pathways to keep fertilizer on fields where it belongs and out of waterways where it doesn’t. A key part of that formula is getting it there at the Right time and a reliable infrastructure network is necessary to make that happen.

In addition to providing needed investment in roads and bridges, the Senate legislation supports increased research for carbon capture and storage projects. Thanks to years of investment, nitrogen fertilizer production efficiency has essentially reached its technical efficiency limit due to the laws of chemistry. Carbon capture and recycling is and will continue to be a strategy to reduce emissions from the nitrogen fertilizer production process. In 2016, our industry captured 8 million metric tons of carbon dioxide, the equivalent of removing 1.7 million cars from the road for a year. Additional investments in research and development in this area will help continue to reduce emissions by making the technology more feasible, efficient and scalable for future use.

At the end of the day, the fertilizer industry relies heavily on the timely delivery of product to growers where and when they need it so they can grow the food, fuel and fiber to feed a growing world. Our country’s farmers are the best and most productive in the world and the United States is the globe’s top agricultural exporter. A robust and well-maintained infrastructure network to facilitate the movement of critical inputs is necessary to ensure that doesn’t change. “America’s Transportation Infrastructure Act” will help ensure U.S. agriculture has a 21st century transportation network that allows it to thrive and grow in a competitive global marketplace.

#### The bill addresses inadequate physical infrastructure as well as providing broadband access – key to the agriculture industry

**Ferguson ’21**; [Ellyn Ferguson; reports on agriculture and food issues for CQ Roll Call. For nearly 20 years she worked as a Washington-based reporter for Gannett covering the overhaul of federal welfare programs and the writing of several farm policy bills, including the 1996 overhaul. She is a member of the North American Agricultural Journalists and the National Press Club and is former president of the Regional Reporters Association. Ellyn graduated from the University of Florida in Gainesville with a degree in journalism; 4/1/21; Roll Call; “Biden’s infrastructure plan seen as aiding ‘initial link’ in farm supply chain”; <https://www.rollcall.com/2021/04/01/bidens-infrastructure-plan-seen-as-aiding-initial-link-in-farm-supply-chain/>; accessed: 7/16/21; YS]

President Joe Biden’s plan to spend billions for better roads, safer bridges and modernized locks and dams on waterways will aid **rural areas** and the **agriculture sector**, but some groups say his broad definition of infrastructure and his proposed tax increases are problematic.

Johnathan Hladik, policy director for the Center for Rural Affairs in Nebraska, said he is heartened by the $115 billion the plan says is needed to “repair the worst 10,000 smaller bridges, including bridges that provide **critical connections** to rural and tribal communities.”

Hladik said **large-scale farming** means heavy equipment is needed for harvesting and the routes to fields frequently mean crossing **bridges** “in very, very **poor condition**” built decades ago for smaller vehicles. Navigating those bridges can be tricky.

"When you’re growing corn, you need to bring your semi and your trailer to that field to haul the corn back away,” he said. “Well, if you can’t get to that field because all of the bridges are out or all of these bridges are so antiquated that they are not designed to hold the weight that you have with your machine, you can’t do your job.”

The American Society of Civil Engineers’ 2021 report card gives U.S. roads, bridges, rails, waterways, public parks and other infrastructure an overall **grade of C-.** The grade was an improvement from D+ in the last report card issued in 2017.

The report says **43 percent** of U.S. roads, mostly non-interstate streets in rural and urban areas, **are in a poor or mediocre state** while 42 percent of bridges are at least 50 years old and 7.5 percent of them are structurally unsound. The report card estimates there is a combined $**786 billion backlog** of road and bridge repairs. The report also estimates there is a $6.8 billion backlog in construction of aging locks.

Hladik also sees **promise for rural areas** with Biden's proposed $**100 billion for access to broadband service**, which is increasingly viewed in **agriculture and rural development** to be **as essential as access to electricity**. He said broadband and the growing use of **technology** in agriculture could lead to **good-paying, high-tech jobs in small towns and communities**.

He wonders if other parts of the $2 trillion proposed plan will “distract from the other tangible brick and mortar problems we have. I don’t know. That’s a fair question.”

The Biden plan proposes $621 billion over eight years for transportation-related infrastructure, including $80 billion for passenger and freight rail; $17 billion for inland waterways, coastal ports, land ports of entry, and ferries; $85 billion for modernizing existing public transit; and $25 billion for projects of regional or national importance.

The plan is drawing Republican opposition as a tax-and-spend package for its cost and for proposing that the corporate income tax rate rise to 28 percent from 21 percent and that the minimum tax rate paid by U.S. multinationals rise to 21 percent from 10.5 percent.

#### **Biden’s choice for Ag Chief proves he’s not focusing PC on antitrust**

The Counter, 20

(“Biden’s choice to lead USDA is sparking a broad backlash. Here’s why.”, The Counter, 12-10-2020, https://thecounter.org/biden-usda-tom-vilsack-ag-secretary-backlash/)\\JM

Vilsack represents a “huge conflict of interest” on antitrust issues Some advocates hoped that the Biden administration would work to combat consolidation in agriculture and feel let down by Vilsack’s nomination. In particular, they take issue with his failure to prioritize policies that would have given farmers and ranchers more leverage with the industry’s meatpacking giants. Take the Farmer Fair Practice rules—also known as the Grain Inspection, Packers, and Stockyards Administration (GIPSA) rules—for example. As antitrust law advocates see it, Vilsack’s USDA dilly-dallied over the rules for too long, and by eventually introducing them in the final months of the Obama administration, it all but guaranteed that they would get axed by Trump. These rules would have made it easier for contract farmers to sue processors—who dictate almost all the terms of raising livestock—over unfair retaliation, such as terminating contracts of farmers who attempt to organize. “[Vilsack] had the opportunity to implement the Farmer Fair Practice rules that the Obama administration has set in place from day one and failed to get those across the finish line,” said Joe Maxwell, president and CEO of Family Farm Action, which advocates for reining in monopolies in agriculture. “There was not a better opportunity … to have put justice and peace back into the antitrust law that protects America’s farmers.” “He can’t work for industry if he’s governing the industry.” Vilsack also accumulated fresh baggage in the last four years as president and CEO of the U.S. Dairy Export Council, an organization tasked with generating overseas demand for U.S. milk and milk products. Vilsack has drawn heat for taking a nearly $1 million salary from his job, at a time when dairy farmers have struggled with low prices and bankruptcies.

#### Obama administration proves that new antitrust rules for ag causes policy hostage-taking by the House.

Khan ’12 [Lina; November/December; JD at Yale Law School, antitrust expert, now in the Biden FTC; the Washington Monthly, “Obama’s Game of Chicken,” https://washingtonmonthly.com/magazine/novdec-2012/obamas-game-of-chicken/

The change that finally upended this balance came in 1981. A group of Chicago School economists and lawyers working in the Reagan administration introduced a new interpretation of antitrust laws. Traditionally, the goal of antitrust legislation had been to promote competition by weighing various political, social, and economic factors. But under Reagan, the Department of Justice narrowed the scope of those laws to promote primarily “consumer welfare,” based on “efficiency considerations.” In other words, the point of antitrust law would no longer be to promote competition by maintaining open markets; it was, at least in theory, to increase our access to cheap goods. Though disguised as an arcane legal revision, this shift was radical. It ushered in a wave of mergers that, throughout the course of the following decades, would transform agriculture markets.

Although the change was strongly opposed by centrists in both parties, a number of left-wing academics and consumer activists in the Democratic Party embraced the new goal of promoting efficiency. The courts also soon began to reflect this political shift. In 1983, after Cargill, the nation’s second-largest meatpacker, moved to purchase Spencer Beef, the third largest, a rival meatpacker named Montfort filed a lawsuit claiming that the acquisition would harm competition in the industry. In a 6-2 decision three years later, the Supreme Court ruled in favor of Cargill. The decision set a precedent limiting competitors’ ability to challenge mergers, and helped catalyze a rapid series of buy-ups across the agriculture industry. In 1980, the four biggest meatpacking companies in the country controlled 36 percent of the market. Ten years later, their share had doubled, to 72 percent.

As mentioned above, today the share of the market controlled by the four biggest meatpackers has swelled to 82 percent. In pork, the four biggest packers control 63 percent. In poultry, the four largest broiler companies—Tyson, Pilgrim’s Pride, Perdue, and Sanderson—control 53 percent of the market. In all these sectors—but especially poultry—these numbers greatly understate the political effects of concentration. At the local level, which is what matters to the individual farmer, there is increasingly only one buyer in any region.

The practical result of all this consolidation is that while there are still many independent farmers, there are fewer and fewer processing companies to which farmers can sell. If a farmer doesn’t like the terms or price given by one company, he increasingly has nowhere else to go—and the companies know it. With the balance of power upended, the companies are now free to dictate increasingly outrageous terms to the farmers.

At the hearing in Alabama in 2010, poultry farmers laid out how the arrangement now works. Staples, for example, described how processing companies routinely demand equipment upgrades that push independent farmers into heavy debt. In order to keep up with the companies’ facility requirements, farmers often must mortgage their farms and homes. With contracts often lasting only sixty days, and no real option to switch processing companies at the end of the contract period, farmers must either accept the terms they’re given—and stay on the company’s good side—or risk bankruptcy. “[W]ith the contracts that we’re offered now it’s either a take-it or leave-it situation,” Staples said.

Tom Green, another Alabama farmer at the hearing, recounted what happened when he contested a contract that included a mandatory arbitration clause that would take away his right to a jury trial if a dispute arose. When he took issue with the clause, the processing company refused to work with him. Absent other options, Green and his wife, Ruth, lost their farm. “Ruth and I chose to stand up for our principles,” Green, a former infantryman and pilot in Vietnam, said at the hearing. “We did not give up a fundamental right to access the public court … which is guaranteed by our Constitution, regardless of price. I had flown too many combat missions defending that Constitution to forfeit it. It was truly ironic that protecting one right, we lost another. We lost the right to property.”

Of all the abuses farmers described to officials in Alabama, the one they kept returning to was the “tournament system,” a payment scheme designed, according to the processing companies, to promote efficiency among farmers. Unlike a traditional market, where every pound of chicken of the same grade fetches the same price, the tournament system allows companies to pit one farmer against another by ranking each farmer based on how he performs in “competition” against his fellow farmers. The idea is that the healthier and heavier the chickens a farmer produces with a set amount of feed, the higher he’s ranked in relation to the entire set of farmers who deliver their birds to the same processing plant on that same day. The higher he’s ranked, the more a processing company pays him per pound.

One problem with the tournament system is that no standards regulate the quality of feed and chicks that processing companies deliver to farmers, which means there’s no way for a farmer to know if he’s getting the same inputs as the other farmers against whom the company makes him compete. Another problem is that the processing companies often weigh the full-grown chickens behind closed doors, out of the sight of the farmer who raised them. This enables the companies to favor or punish whichever farmers they, or their local foremen, choose. Any farmer who complains about the system, or about the specific provisions of a contract, or who even signs some sort of petition that a processing company doesn’t like, risks seeing his “earnings” arbitrarily cut.

Farmers are still expected to own their own land and to bear all the risks of investing in facilities, like chicken houses, just as they did when they sold into fully open and competitive markets. But almost all the authority over how they run their farm and what they earn now belongs to the companies. “A modern plantation system is what it is,” said Robert Taylor, a professor of agriculture economics at Auburn University who has worked with poultry farmers for close to three decades. “Except this is worse, because the grower provides not just the labor, but the capital, too.”

In most other industries, labor law protects workers from such forms of manipulation and exploitation. Farmers, though, aren’t protected under labor law because—at least until recently—it was assumed that open market competition enabled them to take their business to another buyer. Today, however, even as they become more like employees, laboring for a single company, the law still treats farmers as if they were their own masters. “The shift to vertical integration means that farmers no longer own what they are producing,” explains Mark Lauritsen, director of the food processing, packing, and manufacturing division at United Food and Commercial Workers, the union that represents workers across many industries, including agriculture and food processing. “They are selling their labor—but they don’t have the rights that usually come with that arrangement.”

The specific type of contract and the payment scheme offered by companies vary by sector, and the hearings indicated that the worst practices are generally found in the poultry industry. What applies across the board—in cattle ranching and dairy and hog farming—is the stark and growing imbalance of power between the farmers who grow our food and the companies who process it for us, and how this imbalance enables practices unimaginable in any competitive market.

Watts, the farmer who drove from North Carolina to attend the Alabama hearing, says he and his fellow poultry farmers are independent only in name. “What I can make through my work is entirely dictated by many hands before it ever gets to me,” he said in an interview. “My destiny is no longer controlled by me.”

Farmers and activists have been fighting to restore fair agriculture markets since the 1980s with little to show for it. Both Democratic and Republican senators have periodically introduced legislation to level the playing field for independent farmers and ranchers, but those measures have repeatedly collapsed under the weight of corporate lobbies.

Most consequentially for farmers, the once-groundbreaking Packers and Stockyards Act has been weakened over the decades by both the courts’ and the executive branch’s narrow interpretation of its broad, sometimes ambiguous language. As a result, the act is no longer sufficiently powerful to protect their rights. The administration of George W. Bush essentially halted enforcement of the act entirely. In 2006 the USDA’s own inspector general reported that the agency responsible for enforcing the act, the Grain Inspection, Packers and Stockyards Administration (GIPSA), had been deliberately suppressing investigations and blocking penalties on companies violating the law. The inspector general found that Deputy Administrator JoAnn Waterfield was hiding at least fifty enforcement actions in her desk drawer.

In 2008, independent farmers seemed at last to have caught two big breaks. First, in the 2008 Farm Bill, Congress instructed the USDA to revise and update specific issues that the eighty-year-old act either had never addressed or had left overly vague. As the agency regulating the Packers and Stockyards Act, the USDA, and, more specifically, its subsidiary body GIPSA, already had the power to revise and supplement its laws. Now it had a political mandate to do so, too.

The second big break came during the 2008 campaign, when Senator Barack Obama spoke directly about the need to address such abuse of independent farmers. Four days before the Iowa caucus, he even organized a conference call with independent farmers to discuss their concerns. In the primary, the farmers’ votes swung toward Obama, helping him beat Hillary Clinton and making him a serious contender for the nomination. In the general election, the appeal may have helped Obama win some rural, traditionally Republican counties in Colorado and North Carolina.

Some farmers and activists criticized Obama’s choice of Vilsack, a former governor of Iowa, to lead the Agriculture Department, mainly because of his close ties to biotech companies, including Monsanto. But the administration soon balanced this out by appointing Mississippi rancher and trial attorney Dudley Butler to head GIPSA. Farmers and ranchers trusted Butler, who had been a private lawyer for thirty years and had long been on the front lines representing chicken farmers against processing companies.

In August 2009, eight months into Obama’s first term, the administration announced plans for a series of hearings the following year—the most high-level examination of agriculture in decades, overseen by the new antitrust chief, Christine Varney. At the opening event in Ankeny, Iowa, in March 2010, Attorney General Holder spoke boldly, assuring the crowd that reform was now a Cabinet-level priority. “Big is not necessarily bad, but big can be bad if the power that comes from being big is misused,” he said. “That is simply not something that this Department of Justice is going to stand for. We will use every tool we have to ensure fairness in the marketplace.”

Over the next nine months, officials held another four full-day hearings, in Alabama, Wisconsin, Colorado, and Washington, D.C., to investigate the poultry, dairy, cattle, and seed industries, as well as to look at the discrepancy between the price consumers pay for food and the price farmers receive for producing it. Each hearing featured several panels with a range of perspectives, and each included time for comments from many of the thousands of farmers, ranchers, industry representatives, activists, and academics who attended. In addition to the hours of testimony collected publicly, the administration provided computers in adjacent rooms where those reluctant to speak out could privately register their concerns and fears.

The administration also consulted experts like Taylor, the professor at Auburn University. At one point, the USDA sent an entire team of economists and lawyers to Alabama with a full day’s worth of questions. “It was clear these were conscientious, committed officials who had spent a lot of care investigating the issues,” Taylor said.

During the course of the hearings, the USDA also began to address Congress’s 2008 Farm Bill instruction that the department revise and update elements of the Packers and Stockyards Act. By midsummer, the USDA had rolled out a series of far-reaching revisions, addressing many of the farmers’ concerns. One of the proposed changes would have specifically banned company retaliation against farmers who tried to negotiate the terms of a contract. Another would have required any company that forced farmers to make capital investments to offer contracts long enough for the farmers to recoup some minimum amount of that investment. This series of proposed updates and revisions to the Packers and Stockyards Act later came to be known collectively as the “GIPSA rules.”

While updating an old law might not sound like a big deal, farmers widely regarded the proposed GIPSA rules as serious game changers. “Before, they would throw us a little bone once in a while,” Watts said. “But with these rules we knew they meant business.”

Because the USDA has the legal authority to revise the rules under the Packers and Stockyards Act, Congress didn’t actually have to formally vote on the new rules. Congress has the right to discuss them and request additional information, but it has no direct authority over them. In the Senate, Tom Harkin, Chuck Grassley, and Tim Johnson, longtime advocates of reform in the agriculture industry, voiced their support for the proposed updates. Many House members, however, began to attack the rules, especially once the processing companies came out strongly against them.

In July 2010, less than a month after the USDA published its proposed rules, the House Agriculture Committee, which was led by Michigan Minnesota Democrat Collin Peterson, called a hearing to question USDA officials on the revisions. At the hearing a group of mostly Republican lawmakers, joined by Jim Costa of California and a few other Democrats, assailed the proposed rules for their wide-reaching impact. They accused the USDA of ignoring the concerns of industry groups like the National Cattlemen’s Beef Association and the National Chicken Council, which represent processing companies like Cargill and Tyson. After the House hearing, the USDA agreed to extend the period for public comments on the proposed rules from the regular sixty days to a total of 150.

Then, in October, House members—led by Peterson, Agriculture Committee Ranking Member Frank Lucas (Republican from Oklahoma) and Livestock, Dairy, and Poultry Subcommittee Chairman David Scott (Democrat from Georgia) and Ranking Member Randy Neugebauer (Republican from Texas)—delivered a letter to Vilsack. The letter argued that the USDA, despite nationwide hearings and dozens of investigations, interviews, and fact-finding missions, had not sufficiently justified the need for some of the new farmer protections, and urged the agency to subject the rules to more thorough economic analysis. The letter was signed by sixty-eight Republicans and forty-seven Democrats.

In the November 2010 midterm elections, a surge of successful Tea Party candidates handed Republicans control of the House. In the aftermath of the election, the administration continued its reform efforts. If anything, by the last of the five hearings in December the tone of the reformers had become more radical, centering on the political and moral nature of what many American farmers now suffer. “We’ve got to be looking at power,” explained Bert Foer, head of the American Antitrust Institute, at the hearing. “We’ve got to be looking at the negotiating realities that occur in the marketplace and not simply what the effect on the consumer price is going to be.”

But in the new year, a new political reality set in. In January 2011, Obama appointed Bill Daley, former commerce secretary and top executive at JPMorgan Chase, as his chief of staff. Part of a wider post-election shake-up at the White House, Daley’s appointment signaled that the administration was now intent on compromising with Republicans, especially on economic issues. Many Republicans, though, viewed the election as a mandate for even more radical obstruction.

In February 2011, the House Agriculture Committee again pushed Vilsack on the economic analysis of the proposed Packers and Stockyards rules, and over the next few months various subcommittees orchestrated hearings for trade groups to voice their objections. According to one industry report, paid for by the National Meat Association, the proposed USDA rules would levy a $1.64, billion blow to the meat industry and lead to 22,800 job losses. The report also claimed that the rules would, over time, decrease beef, pork, and poultry production across the board.

In May 2011, Costa, the Californian Democrat, Reid Ribble, a House Republican from Wisconsin, and Lucas, now the chairman of the Agriculture Committee, circulated a letter asking Vilsack to withdraw all proposed rule changes entirely. “[W]e are confident that any such rule will not be looked upon favorably by Congress,” the congressmen wrote. Though their letter was signed by 147 members—more than a third of the House, including twenty-five Democrats and thirty Tea Party Republicans—the USDA didn’t accede to the request. But officials did begin to water down the proposed rules.

The next month, in June 2011, the House Appropriations Committee included a crucial rider in its funding bill. The rider was designed to strip the USDA of the funds it needed to finalize and implement the strongest of the proposed rules. Farmers and activists tried to fight the rider, which was backed by corporate livestock and poultry lobbies. Advocacy groups flew in farmers from around the country to meet with members of Congress, and 6,000 people called in to the White House to express their support. During a debate over the rider, Ohio Democrat Marcy Kaptur, the only representative to come out strongly in favor of the rules, slammed the House for “standing with the few big meatpackers and against the many thousands and thousands of producers.” Even the American Farm Bureau, a group that often champions policies favorable to agribusiness, wrote an open letter to Congress opposing the rider.

But the farmers and activists found that they were now largely alone. By late 2011, the administration was in full retreat. “The White House and USDA became very timid and really didn’t do much to disabuse the critics spreading untruths about the reforms,” said Patrick Woodall, research director with Food & Water Watch, which organized some of the efforts in support of the proposed rules. “They all fell silent.”

The Senate supported the Packers and Stockyards revisions in its appropriations bill in September 2011. But the House, as Woodall put it, “went on a full-out offensive,” holding hostage everything from food stamps to food-safety measures. “Nobody wants to have to defend a policy position where the victims are low-income kids, and that’s where the balance ultimately was,” Woodall said. Even Senators Harkin and Johnson, who only a month earlier had strongly voiced their support for the GIPSA rules, backed down.

By November 2011, it was clear that the reformers had lost. The rider had passed. The rules as they had been intended were dead. The most ambitious, far-reaching campaign to reform the agricultural industry in forty years was over, less than two years after it had begun.

In early December, the USDA published four watered-down revisions and updates to the Packers and Stockyards Act. The only full-fledged rule to come into effect prohibits mandatory arbitration clauses in poultry farmers’ contracts—vindication for many, including Tom Green and his wife, Ruth, but hardly a sweeping victory. The other three revisions are vague “guidelines” for the USDA. None of them explicitly prohibit arbitrary and exploitative conduct by the processing companies under the notorious tournament system.

In January 2012, Butler resigned from the USDA. Then in May, the DOJ quietly published a report summarizing the five nationwide hearings conducted in 2010. The report detailed both a lack of competition in the industry and abusive behavior. It went on to claim that the DOJ couldn’t act to address these wrongs because, no matter how outrageous the conduct of the processing companies, their actions did not amount to “harm to competition” as defined by the current antitrust framework.

#### Biden’s PC must beat the overwhelmingly powerful agribusiness lobby.

Madsen ’11 [Travis, Benjamin Davis, Brad Heavner, and John Rumpler; policy analyst at the Frontier Group; policy analyst at the Frontier Group; State Director of Environment Maryland; Senior Attorney at Environment America; Environment America Research and Policy Center, “Growing Influence: The Political Power of Agribusiness and the Fouling of America’s Waterways,” https://environmentamerica.org/sites/environment/files/reports/Growing-Influence---low-res.pdf]

Yet, for decades, agribusiness interests have succeeded in persuading state and federal officials to allow agribusiness practices that harm our waterways and to evade responsibility for reducing their pollution and restoring our waterways to health. The result is the devastating water quality problems that affect cherished waterways such as the Chesapeake Bay and Gulf of Mexico, as well as countless smaller water bodies across the United States.

Agribusiness interests often couch their agenda as defending the interests of the family farmer. But it is corporate interests far removed from traditional farming that wield power in state capitals and in Washington, D.C., using their power to forward their own interests and stand in the way of clean water for all Americans.

Sources of Power: How Big Agribusiness Gets its Way

The agribusiness lobby is one of the most powerful interest groups in Washington, D.C., and in some state legislatures. Their power is reinforced by the vast resources big agribusiness firms spend on campaign contributions to candidates for public office and lobbyists to work the halls of legislatures and agency offices. It is also reinforced by the insider connections the agribusiness lobby has built with the government agencies that are supposed to regulate its conduct.

#### Requires significant political capital.

Jordan ’19 [Spike; May 9; reporter; citing OCM Executive Director Joe Maxwell; Associated Press, “Report from Washington-based thinktank makes the case to bust up ag monopolies,” https://apnews.com/article/1f1ac9369a834c84a468120b996f5b4a]

The report calls for four major policy planks: restoring competition through anti-trust laws, guaranteeing farmers a fair share in profits, contract reforms, and the creation of an Independent Farmer Protection Bureau similar to the Consumer Financial Protection Bureau, which policed banks following the economic collapse of 2008.

Dire straits for family farms

The report’s authors Andy Green, CAP’s managing director of economic policy and former U.S. Securities and Exchange Commission (SEC) lawyer, and research assistant Zoe Willingham, were joined on a conference call with reporters Tuesday by OCM Executive Director Joe Maxwell, a former Missouri lieutenant governor and fourth-generation hog farmer, and J.D. Scholten, a self-described rural advocate and Iowa Democrat who ran unsuccessfully for Rep. Steve King’s congressional seat in 2018.

“Since 2000, about three-fourths of America’s industries have become less competitive,” Green said. “From technology to healthcare, rising monopoly power is squeezing America’s workers and communities, short-changing consumers, pushing aside small businesses and threatening democracy.

‘Rural America is no exception’

Green said higher costs and lower incomes seen in agriculture are driven by failures of federal regulatory agencies to enforce anti-trust and anti-predatory practices laws. CAP’s report calls on Congress, the Federal Trade Commission and the Department of Justice to create a moratorium that would press the pause button on big agribusiness mergers and acquisitions, and to apply concentration caps to ensure a diverse market for farmers. Further policing of alleged monopolies would be done by a special task force that would investigate violations of anti-trust laws and break up conglomerates if necessary.

“Farmers ultimately need a dedicated fighter on their side in Washington, D.C.,” Scholten said.

Same old story, same old song and dance

In September 2009, then-Assistant Attorney General Christine A. Varney spoke during a field hearing of the Senate Judiciary Committee about dairy issues in Franklin County, Vermont. During her remarks, Varney said competition issues in agriculture were her personal priority as the leader of the Obama Justice Department’s Antitrust Division. She also referenced a new partnership that DOJ formed with the Department of Agriculture to co-host “an unprecedented series of workshops” to examine the state of competition in agriculture markets.

That “unprecedented series” (five workshops to be exact) played out over the course of 2010, starting with farmer concerns in Ankeny, Iowa, that March, followed by the Poultry Industry round-table in Normal, Alabama, that May. In June, the Dairy Industry workshop was held in Madison, Wisconsin, followed by a Livestock Industry workshop two months later in Fort Collins, Colorado. Rounding out the year was a Margins workshop in Washington, D.C., that December.

From those meetings, the departments generated 1,895 pages of transcripts, which were distilled down to a 22-page report released in May 2012. The departments concluded that anticompetitive practices abound in agriculture, from price fixing and collusion schemes, to mergers that have consolidated the market and dampened competition for inputs, commodities or grower services, and the sale of food products downstream. The remedies to these observations were left purposefully vague and littered with platitudes.

Existing laws and where to find them

Anti-trust laws exist that are meant to put a check on big agribusiness interests. Yet, lax government enforcement of those laws have left few options outside of civil action, such as the petition R-CALF USA filed recently against the four major beef packers — a lawsuit that Maxwell said OCM supports.

“It’s a shame that these producers have to find another avenue,” Maxwell said. “Government within our capitalist economic model, the way it has worked and needs to work, is that the government provides the safeguards for the market, either through transparency or through regulatory action to prevent predatory, discriminatory or retaliatory type practices or collusion that harms both the farmer and gouges the consumer.”

‘We can’t turn away from these battles’

In the current political environment, it would require significant political capital in order to secure the kinds of reforms CAP recommends.

#### Immediate action is key to mitigate growing risks

PPG 3/2/21 [Pittsburgh Post-Gazette Editorial Board. Invest in infrastructure. March 4, 2021. https://www.post-gazette.com/opinion/editorials/2021/03/05/Invest-in-infrastructure/stories/202102270028]

Now is the time for a reckoning, a realization: While it’s important to study the past to avoid repeating the same mistakes, the country must also look to its future and see the obvious — that America’s infrastructure as a whole needs some serious upkeep.

Democrats and Republicans alike have flirted with the idea of a sweeping infrastructure bill in recent years, and President Joe Biden’s team is working to outline such legislation. These efforts should proceed swiftly — now is the time for Congress to invest in infrastructure, not only to help prevent crises, but also to jump-start an economy mired in the coronavirus pandemic.

Despite being one of the richest countries in the world, the U.S. seems constantly to hover on the edge of disaster, with news of natural forces smashing through power grids and levies and fire prevention strategies on a yearly or monthly basis. Texas is only the most recent state to have been pushed over the edge.

The American Society of Civil Engineers just this week gave America’s infrastructure an overall grade of C-minus in its quadrennial report card. The last grade was D-plus and that report cited decades of underfunding and unheeded recommendations. C-minus is an improvement but deserves not just federal attention but actual intervention. The report notes “we are heading in the right direction, but a lot of work remains.”

There is opportunity in the recent economic and environmental devastation that grabs headlines and breaks hearts. In the aftermath of the Great Depression, the government put millions to work improving parks and building roads and bridges and airports. President Dwight Eisenhower’s interstate highway system remains the life veins of interstate travel.

A new and vigorous infrastructure package for America would fix what needs to be fixed and offer the promise of an economic boon.

The purpose of the federal government is to address the needs of American society in a way that can’t be tackled by states in a piecemeal fashion. What has happened in recent days within The Lone Star State demonstrates keenly that this is the time — actually past the time — that our federal leaders must shore up the foundations of our federation. Congress should act swiftly to lead states in reversing the entropy chewing away at America’s foundations. Until this happens, society stands on shifting sands.

#### Infrastructure solves the grid – it’s vulnerable now.

Gozdziewski 21 (Charles J. Gozdziewski is the American Council of Engineering Companies' (ACEC) Board Chair. He is also the Chairman Emeritus of Hardesty & Hanover in New York where he oversees transportation planning, construction inspection and support services for highways; all types of movable, fixed and railroad bridges; as well as special structures.; “Our nation's critical infrastructure is dangerously vulnerable”; March 22, 2021; <https://thehill.com/changing-america/opinion/544330-our-nations-critical-infrastructure-is-dangerously-vulnerable?amp>) Accessed 6/25/21//eleanor

The recent historic snowfall in Texas and the ensuing failure of the state's power grid have laid bare what we in the engineering industry have known for a long time - our nation's critical infrastructure is dangerously vulnerable to a wide range of threats. We must act quickly and comprehensively to make our infrastructure more resilient because those threats will only become more severe in the future. While the focus right now is justifiably on the energy sector and the power grid, all of our nation's infrastructure systems - transportation, water, and power - are at risk from extreme weather. Climate change lies at the heart of this challenge, and to mitigate its effects, we must have robust investment to fund the design and construction of the resilient infrastructure our country needs. As engineers, infrastructure is who we are. It is critically entwined in everything we do - from embracing smart cities, to establishing safe protocols in buildings for a post-COVID world, to preparing for the much needed Fourth Industrial Revolution. The need for resilience, sustainability, reliability, and flexibility will become even more vital as we move into the future. As leaders in the engineering and design industry, we have both a stake in and a valuable perspective on the policy discussion on infrastructure. Moreover, we are a critical partner in the implementation of that policy and the repair and upgrading of all aspects of our physical infrastructure - including roads, bridges, freight rail, ports, electrical grids, and Internet provision. Each of these components is critical to the health of our physical and built environment. Yet our expertise is worth nothing if the public sector clients we serve lack certainty from the federal government that there will be consistent, predictive funding in place to finance the infrastructure improvements we need. No designs will be drawn up and no dirt will be moved. It is imperative that our federal lawmakers act on a transformative infrastructure plan before the current law expires in September. Investing now in a long-term infrastructure bill will pay dividends, not only to mitigate the effects of a changing climate, but to help our nation recover from the COVID-19 pandemic. Engineers play a substantial role in the health of the national economy. According to the ACEC Research Institute's Industry Impact Series of reports, the Engineering and Design Services sector currently employs 1.5 million Americans directly. Those employees and their companies collectively support another 3 million jobs in the various contracting and other firms with which they work. The Institute's latest study found that each new job created in the Engineering and Design Services industry indirectly creates two additional jobs in related sectors across the economy. The data shows that investments in infrastructure that support engineering jobs pave the way for economic opportunity. What's more, the designs our industry creates help improve the built environment, making it more resilient to climate change. This is a win-win for society, creating a more equitable, environmentally sound, and prosperous built environment resulting in job creation and economic mobility. We look forward to working with policyholders, members of Congress, and the Biden-Harris Administration to develop sustainable solutions that benefit the country as a whole in the weeks ahead.

#### Grid vulnerabilities spark nuclear war.

Klare ’19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; 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]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

#### Blackouts cause societal collapse and extinction.

Rees 18 (Martin John Rees, Baron Rees of Ludlow, Kt, OM, FRS, FREng, FMedSci, FRAS is a British cosmologist and astrophysicist.; “On the Future: Prospects for Humanity”; pg. 108-109; October 16, 2018)//eleanor

Our world increasingly depends on elaborate net- works: electricity power grids, air traffic control, international finance, globally dispersed manu- facturing, and so forth. Unless these networks are highly resilient, their benefits could be outweighed by catastrophic (albeit rare) breakdowns—real- world analogues of what happened in the 2008 global financial crisis. Cities would be paralysed without electricity—the lights would go out, but that would be far from the most serious consequence. Within a few days our cities would be uninhabitable and an- archic. Air travel can spread a pandemic worldwide within days, wreaking havoc on the disorganised megacities of the developing world. And social media can spread panic and rumour, and economic contagion, literally at the speed of light. When we realise the power of biotech, robot- ics, cybertechnology, and AI—and, still more, their potential in the coming decades—we can’t avoid anxieties about how this empowerment could be misused. The historical record reveals episodes when ‘civilisations’ have crumbled and even been extinguished. Our world is so interconnected it’s unlikely a catastrophe could hit any region without its consequences cascading globally. For the first time, we need to contemplate a collapse—societal or ecological—that would be a truly global setback to civilisation. The setback could be temporary. On the other hand, it could be so devastating (and could have entailed so much environmental or genetic deg- radation) that the survivors could never regenerate a civilisation at the present level.

#### Civilizational collapse and extinction.

Friedemann 16 (Alice Friedemann is the founder of EnergySkeptic.com and the author of “Life After Fossil Fuels: A Reality Check on Alternative Energy”; “Electromagnetic pulse threat to infrastructure: U.S. House hearings 2012 & 2014”; Energy Skeptic; January 24, 2016; <https://energyskeptic.com/2016/the-scariest-u-s-house-session-ever-electromagnetic-pulse-and-the-fall-of-civilization/>) Accessed 6/26/21//eleanor

Modern civilization cannot exist for a protracted period without electricity. Within days of a blackout across the United States, a blackout that could encompass the entire planet, emergency generators would run out of fuel, telecommunications would cease as would transportation due to gridlock, and eventually no fuel. Cities would have no running water and soon, within a few days, exhaust their food supplies. Police, Fire, Emergency Services and hospitals cannot long operate in a blackout. Government and industry also need electricity in order to operate. The EMP Commission warns that a natural or nuclear EMP event, given current unpreparedness, would likely result in societal collapse. Terrorists, criminals, and even lone individuals can build a non-nuclear EMP weapon without great trouble or expense, working from Unclassified designs publicly available on the internet, and using parts available at any electronics store. In 2000, the Terrorism Panel of the House Armed Services Committee sponsored an experiment, recruiting a small team of amateur electronics enthusiasts to attempt constructing a radiofrequency weapon, relying only on unclassified design information and parts purchased from Radio Shack. The team, in 1 year, built two radiofrequency weapons of radically different designs. One was designed to fit inside the shipping crate for a Xerox machine, so it could be delivered to the Pentagon mail room where (in those more unguarded days before 9/11) it could slowly fry the Pentagon’s computers. The other radiofrequency weapon was designed to fit inside a small Volkswagon bus, so it could be driven down Wall Street and disrupt computers— and perhaps the National economy. Both designs were demonstrated and tested successfully during a special Congressional hearing for this purpose at the U.S. Army’s Aberdeen Proving Ground. Radiofrequency weapons are not merely a hypothetical threat. Terrorists, criminals, and disgruntled individuals have used home-made radiofrequency weapons. The U.S. military and foreign militaries have a wide variety of such weaponry. Moreover, non-nuclear EMP devices that could be used as radiofrequency weapons are publicly marketed for sale to anyone, usually advertised as ‘‘EMP simulators.’’ For example, one such simulator is advertised for public sale as an ‘‘EMP Suitcase.’’ This EMP simulator is designed to look like a suitcase, can be carried and operated by one person, and is purpose-built with a high energy radiofrequency output to destroy electronics. However, it has only a short radius of effect. Nonetheless, a terrorist or deranged individual who knows what he is doing, who has studied the electric grid for a major metropolitan area, could—armed with the ‘‘EMP Suitcase’’— black out a major city. A CLEAR AND PRESENT DANGER. An EMP weapon can be used by state actors who wish to level the battlefield by neutralizing the great technological advantage enjoyed by U.S. military forces. EMP is also the ideal means, the only means, whereby rogue states or terrorists could use a single nuclear weapon to destroy the United States and prevail in the War on Terrorism or some other conflict with a single blow. The EMP Commission also warned that states or terrorists could exploit U.S. vulnerability to EMP attack for coercion or blackmail: ‘‘Therefore, terrorists or state actors that possess relatively unsophisticated missiles armed with nuclear weapons may well calculate that, instead of destroying a city or military base, they may obtain the greatest political-military utility from one or a few such weapons by using them—or threatening their use—in an EMP attack.’’ The EMP Commission found that states such as Russia, China, North Korea, and Iran have incorporated EMP attack into their military doctrines, and openly describe making EMP attacks against the United States. Indeed, the EMP Commission was established by Congress partly in response to a Russian nuclear EMP threat made to an official Congressional Delegation on May 2, 1999, in the midst of the Balkans crisis. Vladimir Lukin, head of the Russian delegation and a former Ambassador to the United States, warned: ‘‘Hypothetically, if Russia really wanted to hurt the United States in retaliation for NATO’s bombing of Yugoslavia, Russia could fire an SLBM and detonate a single nuclear warhead at high altitude over the United States. The resulting EMP would massively disrupt U.S. communications and computer systems, shutting down everything.’’ China’s military doctrine also openly describes EMP attack as the ultimate asymmetric weapon, as it strikes at the very technology that is the basis of U.S. power. Where EMP is concerned, ‘‘The United States is more vulnerable to attacks than any other country in the world’’: ‘‘Some people might think that things similar to the ‘Pearl Harbor Incident’ are unlikely to take place during the information age. Yet it could be regarded as the ‘Pearl Harbor Incident’ of the 21st Century if a surprise attack is conducted against the enemy’s crucial information systems of command, control, and communications by such means as… electromagnetic pulse weapons… Even a superpower like the United States, which possesses nuclear missiles and powerful armed forces, cannot guarantee its immunity…In their own words, a highly computerized open society like the United States is extremely vulnerable to electronic attacks from all sides. This is because the U.S. economy, from banks to telephone systems and from power plants to iron and steel works, relies entirely on computer networks… When a country grows increasingly powerful economically and technologically…it will become increasingly dependent on modern information systems… The United States is more vulnerable to attacks than any other country in the world.’’ Iran—the world’s leading sponsor of international terrorism—in military writings openly describes EMP as a terrorist weapon, and as the ultimate weapon for prevailing over the West: ‘‘If the world’s industrial countries fail to devise effective ways to defend themselves against dangerous electronic assaults, then they will disintegrate within a few years… American soldiers would not be able to find food to eat nor would they be able to fire a single shot.’’ The threats are not merely words. The EMP Commission assesses that Russia has, as it openly declares in military writings, probably developed what Russia describes as a ‘‘Super-EMP’’ nuclear weapon—specifically designed to generate extraordinarily high EMP fields in order to paralyze even the best protected U.S. strategic and military forces. China probably also has Super-EMP weapons. North Korea too may possess or be developing a Super-EMP nuclear weapon, as alleged by credible Russian sources to the EMP Commission, and by open-source reporting from South Korean military intelligence. But any nuclear weapon, even a low-yield first generation device, could suffice to make a catastrophic EMP attack on the United States. Iran, although it is assessed as not yet having the bomb, is actively testing missile delivery systems and has practiced launches of its best missile, the Shahab–III, fuzing for high- altitude detonations, in exercises that look suspiciously like training for making EMP attacks. As noted earlier, Iran has also practiced launching from a ship a Scud, the world’s most common missile—possessed by over 60 nations, terrorist groups, and private collectors. A Scud might be the ideal choice for a ship-launched EMP attack against the United States intended to be executed anonymously, to escape any last-gasp U.S. retaliation. Unlike a nuclear weapon detonated in a city, a high-altitude EMP attack leaves no bomb debris for forensic analysis, no perpetrator ‘‘fingerprints.’’ Under present levels of preparedness, communications would be severely limited, restricted mainly to those few military communications networks that are hardened against EMP. Today’s microelectronics are the foundation of our modern civilization, but are over 1 million times more vulnerable to EMP than the far more primitive and robust electronics of the 1960s, that proved vulnerable during nuclear EMP tests of that era. Tests conducted by the EMP Commission confirmed empirically the theory that, as modern microelectronics become ever smaller and more efficient, and operate ever faster on lower voltages, they also become ever more vulnerable, and can be destroyed or disrupted by much lower EMP field strengths. Microelectronics and electronic systems are everywhere, and run virtually everything in the modern world. All of the civilian critical infrastructures that sustain the economy of the United States, and the lives of 310 million Americans, depend, directly or indirectly, upon electricity and electronic systems. Of special concern is the vulnerability to EMP of the Extra-High-Voltage (EHV) transformers, that are indispensable to the operation of the electric grid. EHV transformers drive electric current over long distances, from the point of generation to consumers (from the Niagara Falls hydroelectric facility to New York City, for example). The electric grid cannot operate without EHV transformers—which could be destroyed by an EMP event. The United States no longer manufactures EHV transformers. They must be manufactured and imported from overseas, from Germany or South Korea, the only two nations in the world that manufacture such transformers for export. Each EHV transformer must be custom-made for its unique role in the grid. A single EHV transformer typically requires 18 months to manufacture. The loss of large numbers of EHV transformers to an EMP event would plunge the United States into a protracted blackout lasting years, with perhaps no hope of eventual recovery, as the society and population probably could not survive for even 1 year without electricity. Another key vulnerability to EMP are Supervisory Control And Data Acquisition systems (SCADAs). SCADAs essentially are small computers, numbering in the millions and ubiquitous everywhere in the critical infrastructures, that perform jobs previously performed by hundreds of thousands of human technicians during the 1960s and before, in the era prior to the microelectronics revolution. SCADAs do things like regulating the flow of electricity into a transformer, controlling the flow of gas through a pipeline, or running traffic control lights. SCADAs enable a few dozen people to run the critical infrastructures for an entire city, whereas previously hundreds or even thousands of technicians were necessary. Unfortunately, SCADAs are especially vulnerable to EMP. EHV transformers and SCADAs are the most important vulnerabilities to EMP, but are by no means the only vulnerabilities. Each of the critical infrastructures has their own unique vulnerabilities to EMP: The National electric grid, with its transformers and generators and electronic controls and thousands of miles of power lines, is a vast electronic machine—more vulnerable to EMP than any other critical infrastructure. Yet the electric grid is the most important of all critical infrastructures, and is in fact the keystone supporting modern civilization, as it powers all the other critical infrastructures. As of now it is our technological Achilles Heel. The EMP Commission found that, if the electric grid collapses, so too will collapse all the other critical infrastructures. But, if the electric grid can be protected and recovered, so too all the other critical infrastructures can also be restored. Transportation is a critical infrastructure because modern civilization cannot exist without the goods and services moved by road, rail, ship, and air. Cars, trucks, locomotives, ships, and aircraft all have electronic components, motors, and controls that are potentially vulnerable to EMP. Gas stations, fuel pipelines, and refineries that make petroleum products depend upon electronic components and cannot operate without electricity. Given our current state of unpreparedness, in the aftermath of a natural or nuclear EMP event, transportation systems would be paralyzed. Traffic control systems that avert traffic jams and collisions for road, rail, and air depend upon electronic systems, that the EMP Commission discovered are especially vulnerable to EMP. Communications is a critical infrastructure because modern economies and the cohesion and operation of modern societies depend to a degree unprecedented in history on the rapid movement of information—accomplished today mostly by electronic means. Telephones, cell phones, personal computers, television, and radio are all directly vulnerable to EMP, and cannot operate without electricity. Satellites that operate at Low-Earth-Orbit (LEO) for communications, weather, scientific, and military purposes are vulnerable to EMP and to collateral effects from an EMP attack. Within weeks of an EMP event, the LEO satellites, which comprise most satellites, would probably be inoperable. Banking and finance are the critical infrastructure that sustain modern economies. Whether it is the stock market, the financial records of a multinational corporation, or the ATM card of an individual—financial transactions and record keeping all depend now at the macro- and micro-level upon computers and electronic automated systems. Many of these are directly vulnerable to EMP, and none can operate without electricity. The EMP Commission found that an EMP event could transform the modern electronic economy into a feudal economy based on barter. Food has always been vital to every person and every civilization. The critical infrastructure for producing, delivering, and storing food depends upon a complex web of technology, including machines for planting and harvesting and packaging, refrigerated vehicles for long-haul transportation, and temperature-controlled warehouses. Modern technology enables over 98 percent of the U.S. National population to be fed by less than 2 percent of the population. Huge regional warehouses that resupply supermarkets constitute the National food reserves, enough food to feed the Nation for 30–60 days at normal consumption rates, the warehoused food preserved by refrigeration and temperature control systems that typically have enough emergency electrical power (diesel or gas generators) to last only about an average of 3 days. Experience with storm-induced blackouts proves that when these big regional food warehouses lose electrical power, most of the food supply will rapidly spoil. Farmers, less than 2 percent of the population as noted above, cannot feed 310 million Americans if deprived of the means that currently makes possible this technological miracle. Water too has always been a basic necessity to every person and civilization, even more crucial than food. The critical infrastructure for purifying and delivering potable water, and for disposing of and treating waste water, is a vast networked machine powered by electricity that uses electrical pumps, screens, filters, paddles, and sprayers to purify and deliver drinkable water, and to remove and treat waste water. Much of the machinery in the water infrastructure is directly vulnerable to EMP. The system cannot operate without vast amounts of electricity supplied by the power grid. A natural or nuclear EMP event would immediately deprive most of the U.S. National population of running water. Many natural sources of water—lakes, streams, and rivers—would be dangerously polluted by toxic wastes from sewage, industry, and hospitals that would backflow from or bypass wastewater treatment plants, that could no longer intake and treat pollutants without electric power. Many natural water sources that would normally be safe to drink, after an EMP event, would be polluted with human wastes including feces, industrial wastes including arsenic and heavy metals, and hospital wastes including pathogens. Emergency services such as police, fire, and hospitals are the critical infrastructure that upholds the most basic functions of government and society—preserving law and order, protecting property and life. Experience from protracted storm-induced blackouts has shown, for example in the aftermath of Hurricanes Andrew and Katrina, that when the lights go out and communications systems fail and there is no gas for squad cars, fire trucks, and ambulances, the worst elements of society and the worst human instincts rapidly takeover. The EMP Commission found that, given our current state of unpreparedness, a natural or nuclear EMP event could create anarchic conditions that would profoundly challenge the existence of social order.