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T – Expand Scope

#### Expand means to make something greater in size

Oxford Dictionary, <https://www.oxfordlearnersdictionaries.com/us/definition/english/expand>, accessed 8-21-2021

[intransitive, transitive] to become greater in size, number or importance; to make something greater in size, number or importance

#### The scope is what antitrust law deals with.

Macmillan dictionary. "SCOPE (noun) American English definition and synonyms". https://www.macmillandictionary.com/us/dictionary/american/scope\_1

DEFINITIONS2

1the things that a particular activity, organization, subject, etc. deals with

in scope: The new law is limited in scope.

beyond/outside the scope of someone/something: These issues are beyond the scope of this book.

within the scope of someone/something: Responsibility for office services is not within the scope of the department.

#### The key factor determining whether laws regulating competition apply to particular conduct is those laws’ “scope”

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Cosmo Graham, “2: The prohibition on anti-competitive agreements,” *EU and UK Competition Law*, Longman 2010, pp. 66, https://www.pearsonhighered.com/assets/samplechapter/g/r/a/h/Graham-Comp%20law\_C02.pdf.

European Community competition law only applies to ‘undertakings’, a word used not only in Article 81 but also in Articles 82 and 86, although there is no definition of the term in the Treaties. This is therefore a question relating to the scope of competition law, that is, to what extent are particular activities to be regulated by the rules on competition as opposed to other considerations? The question of whether or not an entity is or is not an undertaking is therefore an absolutely critical one for deciding whether or not there is a competition issue to discuss. Underlying this technical question is a much wider policy issue about how far we are prepared to see decisions in particular areas of social life determined by market forces and how far we want other considerations to predominate. For example, how far should arrangements relating to health care, welfare benefits, the regulation of professions and the regulation of sport be subject to the rules on competition law and how far should they be decided on other grounds? This is an issue that the European Courts have struggled with.

#### The “core” antitrust statutes are the Sherman Act, Clayton Act, and FTC Act

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U.S. antitrust law is defined by federal and state statutes, as interpreted by the courts. The core federal statutes are the Sherman Act,1 passed by Congress in 1890, and the Federal Trade Commission2 and Clayton Acts,3 both passed in 1914. The United States Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC” or “Commission”) (together the “agencies”) share enforcement of most areas of federal antitrust law but with some differences in the scope of their authority. The FTC has sole authority to enforce Section 5 of FTC Act, which prohibits (1) unfair methods of competition and (2) unfair or deceptive acts or practices. The FTC almost always pursues claims for anticompetitive conduct as unfair methods of competition and reserves charges of unfair or deceptive acts or practices for consumer protection violations. Though the FTC's authority to challenge unfair methods of competition goes beyond conduct prohibited by the Sherman and Clayton Acts, in practice the FTC brings most unfair methods of competition cases under the same standards that courts apply to Sherman Act claims. The most prominent exception is the invitation to collude offense, which falls outside the scope of the Sherman Act (if the invitation is not accepted, there is no agreement). The FTC challenges invitations to collude as so-called “standalone” violations of Section 5.4 The DOJ has sole authority to pursue criminal violations of the antitrust laws. Most states have their own state antitrust and unfair competition statutes. State law follows federal law to some extent, though as discussed below, may differ from federal law in meaningful ways that vary state to state. State attorneys general and private parties can also typically file suit to enforce both federal and state antitrust law.

#### Violation – the plan does not expand the scope of the core antitrust laws

#### Vote neg for limits and ground—abandoning the floor means they can do any increase in enforcement resources, strategy, take one more case, or apply one more person to an existing case—no DAs link and makes the research burden impossible

## OFF

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

#### Prohibit private sector business practices that violate an antitrust worker welfare standard

#### 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

#### Establish a basic income guarantee

#### Raise the minimum wage

#### Establish new worker welfare standards designed to protect workers against inequality and wage stagnation

#### No LIO impact—appeasement checks any challenges since other countries aren’t suicidal plus they’re all locked into the system

#### Publicly repudiate populism and increase legal efforts to prevent populism

#### Substantially increase international and domestic efforts to protect democracy

#### 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.

#### And it solves an international precedent

Paquin, 20

(Stéphane, professor at l'Ecole Nationale d'administration Publique and Canada Research Chair in International and Comparative Political Economy and Globalization, “Paradiplomacy,” 2020 <http://www.stephanepaquin.com/wp-content/uploads/2020/02/Paquin2020_Chapter_Paradiplomacy.pdf> NL)

The neologism “paradiplomacy” appeared in scientific literature in the 1980s, during a revival in the study of federalism and comparative politics. It was basically used to describe the international activities of Canadian provinces and American states in the context of globalization and an increase in cross-border relations in North America (Paquin 2004). The concept’s inventor, Panayotis Soldatos, defined paradiplomacy as “a direct continuation, and to varying degrees, from sub-state government, foreign activities” (Soldatos 1990, 34). Ivo D. Duchacek also espoused the concept, finding it superior to his idea of microdiplomacy, to which a pejorative meaning could be attributed. For Duchacek, adding “para” before “diplomacy” adequately expressed what was involved, namely a sub-state’s international policies that could be parallel, coordinated, or complementary to the central government’s, but could also conflict with the country’s international policies and politics (Duchacek 1990, 32). Although the concept of paradiplomacy tends to be the most widely used, it nonetheless remains contested by several authors. Some prefer to use the expression “regional sub-state diplomacy” (Criekemans 2011) while others favor multi-track diplomacy or “multi-level diplomacy” (Hocking 1993). In France, the expression “decentralized cooperation” is sometimes used. This article is divided into four parts. In the first part, I present the debate around the concept of paradiplomacy. In the second section, I address the issue of the phenomenon’s magnitude in the world. In the third part, I examine how foreign policy skills are formed and shared, and in the last section, I strive to describe what kinds of international actors represent non-central governments in world politics. The Concept of Paradiplomacy According to Brian Hocking, the concept of paradiplomacy was created to reinforce the distinction between the central government and sub-national governments, thereby increasing aspects of conflict between the two levels of government. For Hocking, however, that approach is incorrect. It would be preferable to situate sub-national or non-central governments in their “diplomatic complex environment” (Hocking 1993). In Hocking’s view, diplomacy cannot be seen as a segmented process between actors within the same state structure. Diplomacy must be perceived as a system intermingling actors from different levels of government and ministries. Actors change according to issues, interests, and their ability to operate in a multi-tiered political environment. Hocking’s rejection of the concept of paradiplomacy is based on “imperatives of cooperation” that exist between central governments and federated states. Thus, rather than talking about paradiplomacy, it would be preferable to refer to it as “catalytic diplomacy” or “multi-level diplomacy” (Hocking 1993). A similar argument is put forward by authors interested in multilevel governance, notably in the context of the European Union. The concept strives to describe the role of Europe’s regions in the process of European construction (Hooghe and Marks 2001). These concepts are interesting and useful in particular contexts, but they remain limited as they tend to underestimate the autonomy of regions, non-central governments, or federated states in pursuing their own international policies. Bavaria, for instance, is not active solely in Europe. It is deeply involved in activities within the conference of heads of government in partner regions. This group includes seven regions of sub-state governments (Bavaria, the Western Cape, Georgia, Upper Austria, Quebec, São Paulo, and Shandong) on four continents; they represent around 180 million inhabitants with a total gross domestic product of 2000 billion euros and are working toward economic and sustainable development. The conference of heads of government also strives to create a network that will enable them to deal with the international challenges regions are facing on the international level. The concept of paradiplomacy should also be distinguished from that of “protodiplomacy” and of “identity paradiplomacy” (Paquin 2002, 2005). Protodiplomacy refers to international strategies designed to promote diplomatic recognition as a way of preparing the establishment of a sovereign country. It is by definition a transitional phase. The concept could define the Catalan government’s strategy in 2017 or that of the government of Quebec before the 1995 referendum on sovereignty-partnership. The concept of identity paradiplomacy occurs on another level. It represents the international policies of a nation without a sovereign state, such as Quebec, Scotland, Flanders, Wallonia, or Catalonia, when the governments of those nations are not seeking independence (Paquin 2002, 2005; Paquin et al. 2015). Thus, one of the fundamental goals of these nations is to work internationally to further the strengthening or building of their nation within a multinational country. The identity entrepreneurs’ objectives are to promote exports, attract investments, seek resources they lack domestically, and try to gain recognition as a nation in the global arena, a crucial process in any attempt at nation-building. This situation tends to be highly conflictual if the central government is hostile to the “other nation’s” identity-based demands, such as with Catalonia and the Basque region in Spain or with Quebec in Canada. The concept of identity paradiplomacy is useful in explaining why the Quebec government, for instance, has adopted different international policies from other Canadian provinces. There is a strong identity-driven element in the Quebec government’s international policies. The government’s goal, whether run by federalists or sovereignists, is to reinforce the French language, to support the development of Francophonie, as well as to gain recognition from foreign governments that it forms the “nation” of Quebec. The Quebec government’s bilateral relations with the French government are greater than those between Canada and France and perhaps between Canada and Great Britain. Former Prime Minister of Quebec Jean Charest met French President Nicolas Sarkozy more often than any other head of state, with the exception of the German Chancellor Angela Merkel. Furthermore, a distinction should be made between “networks of government representatives” and paradiplomacy. According to Anne-Marie Slaughter, networks of government representatives are governmental or paragovernmental actors who exchange information and coordinate their activities in order to manage shared problems on a global scale (Slaughter 2004, 2). Among these actors are financial regulators, police investigators, judges, legislators, and central bank directors, for example. These international governmental networks are a key feature of the current world order according to Slaughter and are increasingly concerned with areas of jurisdiction on all levels of governments. When the Canadian and American police forces coordinate their activities to prevent terrorist attacks, for instance, it involves networks of government representatives rather than bilateral paradiplomacy. In the case of paradiplomacy, an actor—for example, a ministry—is formally mandated by a federated state or sub-state government to defend the state’s interests and promote them in the international arena. The ministry represents the government as a whole and speaks on its behalf. For example, the empowering legislation for the Quebec government’s Ministry of International Relations and la Francophonie entrusts the ministry with the task of establishing and maintaining relations with foreign governments as well as with international organizations. The ministry must safeguard Quebec’s interests in international negotiations and oversee the negotiations and implementation of “agreements” and international treaties. It attends to the implementation of Quebec’s international policies and handles its 32 representation abroad. Magnitude of the Phenomenon A marginal phenomenon in the 1960s and 1970s, paradiplomacy was not only in evidence in North American federated states. It also developed in Europe and elsewhere around the world and even became widespread within unitary states or ones with decentralized or devolved governments such as France, Great Britain, and Spain. It was also increasingly present at the municipal level, notably in global cities like London, New York, Paris, and Shanghai. Nowadays, the paradiplomatic phenomenon is large, intensive, extensive, and permanent despite the sizeable decline after the 2008 crisis. The actors of paradiplomacy, protodiplomacy, and identity paradiplomacy have a considerable degree of autonomy, numerous resources, and increasing influence in international politics (Paquin 2004; Aldecoa and Keating 1999; Tavares 2016). Quebec already had offices in Paris and London in the nineteenth century, despite the fact that very few cases of federated states have been identified as active in the international arena before the 1960s. Since then, things have evolved quickly, to the point where the phenomenon has become quite ordinary. In the United States, for instance, only four states had foreign offices in 1980, compared to 42 with 245 representatives in around 30 countries in 2008. Due to the recession, that number went down to 212 in 2015. In comparison, the American federal government has 267 embassies and consulates around the world (Fry 2017). Germany’s Länder have created around 130 political representations around the world since the 1970s, including over twenty in the United States. In Spain, Catalonia has 4 delegations (France, Belgium, Great Britain, Germany) as well as 34 trade bureaus, 4 cultural and linguistic representatives, 9 overseas development offices, 10 tourism centers, and 5 cultural industries representatives. In 2019, the Quebec government had 32 political representations in 18 countries, including the Quebec General Delegation in Paris whose status is akin to that of an embassy. Flanders has had 100 economic offices since 2004 although its activities mainly concern export and investment issues. Wallonie-Brussels international is the institution with the greatest number of trade offices per capita in the world. The phenomenon is also present in more centralized countries. In France, for instance, the Rhône-Alpes region and its partner Entreprise Rhône-Alpes International have several economic representations abroad. The same phenomenon can be observed in Japan, India, Australia, Austria, Switzerland, Brazil, and several other countries (Paquin 2004; Aldecoa and Keating 1999; Criekemans 2011). The international policies of federated states are an important phenomenon involving all international spheres of action, including economic and trade policies, promoting exports, attracting foreign investments and decision-making centers, science and technology, energy, the environment, education, immigration, and the movement of people, bilateral and multilateral relations, international development, and human rights, which are the major paradiplomatic issues. Paradiplomatic actors are also taking an increasing interest in non-traditional security issues such as terrorism, respecting human rights, cybersecurity, pandemics, and public health (Paquin 2004; Lequesne and Paquin 2017). Some examples of non-central governments participating in various international arenas are: the creation by the governments of California, Quebec, and Ontario of the second largest international carbon market in the world after the European Union; the presence of Australian states in the Australian government’s delegation at a UN conference on development and the environment; the presence of representatives from Texas at meetings of OPEC member countries, whereas the United States is not a member of the organization; Jordi Pujol’s one-on-one discussions with all the G7 heads of state (with the exception of Canada) while he was President of Catalonia; and the Mexican state of San Luis Potosí’s activities to facilitate money transfers sent by immigrants in the United States (Lequesne and Paquin 2017). Regarding security issues, one may observe: Baden-Württemberg’s participation in peacekeeping missions in Bangladesh, Russia, BosniaHerzegovina, Burundi, and Tanzania; the sanctions imposed by the state of Maryland against South Africa in 1985, or the 1996 Massachusetts Burma Law, since invalidated by the US Supreme Court, forbidding public contracts for companies working in Myanmar (Burma); the pressure exerted on the state of Victoria, Australia, to cancel contracts with French companies to protest against the nuclear tests carried out by France in the South Pacific in 1995; national guard officers from American states participating in international military exchange programs, etc. (Paquin 2004). Constitutions and Non-Central Governments Non-central governments hold asymmetrical powers in matters of international politics, which has a considerable effect on their ability to act. That asymmetry exists between countries as well as between regions within them. As a rule, the more decentralized a country, the more non-central governments have constitutional responsibilities that increase their ability to act in the international arena. The more expertise a non-central government has, the more financial resources and a large civil service (Paquin 2004; Michelmann 2009; Criekemans 2011). In unitary states like Denmark or Israel, non-central governments have very little autonomy. In unitary states with a more decentralized structure like France, or in devolved states like the UK, or quasi-federal ones like Spain, non-central governments have more autonomy, despite the central state’s powers remaining dominant (Table 4.1). In federal countries, sovereignty is constitutionally divided between a central government and federated states, such as with Australian and American states, German Länder, Canadian provinces, and Belgium’s regions and communities. To be designated a federal government, a central government cannot unilaterally modify the constitution to its advantage. In such countries, federated states hold a very high number of responsibilities. In Canada, provinces are responsible for issues of health, education, work, culture, and municipal policies. They are also partly responsible for issues relating to economic development, environmental protection, and even justice. India and Malaysia have constitutions that explicitly assign exclusive competence in international relations to the central state. But in several other federal countries, such as Canada, Australia, and Belgium, many specialists have highlighted the difficulty for central governments to negotiate and implement international agreements when the latter involve areas of federal jurisdiction (Twomey 2009). In Australia and Canada, the courts have ruled that the central government could negotiate agreements on all subjects, including those pertaining to federal jurisdiction in domestic law, but did not have the power to force states to implement them, which can create major problems with regard to respecting those countries’ international commitments. Other constitutions, including those of Australia, Germany, Switzerland, and Belgium, grant explicit powers to regional governments in matters of international relations. The Swiss, German, and Belgian constitutions even grant states the power to sign actual treaties by virtue of international law (Michelmann 2009, 6–7). The Belgian constitution goes even further. Since 1993, Belgium has been a federation that allows states to become true international actors. The division of powers in matters of international relations follows the division of jurisdiction by virtue of the constitutional principle: in foro interno, in foro externo, which can be translated as an international extension of domestic jurisdiction. According to that constitution, there are three kinds of treaties in Belgium: (1) treaties within federal jurisdiction; (2) treaties within the individual states’ authority; and (3) combined treaties involving two levels of government that require cooperation between the two in being negotiated and implemented. Furthermore, there is no hierarchy between levels of government, meaning that in reality a Belgian ambassador is not superior in rank to a Flemish diplomat (Paquin 2010). What Kind of International Actors? What kind of international actors are non-central governments? Their status is halfway between that of a sovereign country and a non-governmental organization (NGO). Their status is ambiguous due to being both sovereignty-bound and sovereignty-free, as James Rosenau has stated (1990). Since non-central governments are sovereignty-free, they are not recognized actors in international law. Apart from certain exceptions provided for in the domestic laws of countries such as Belgium, these governments cannot formally sign real international treaties as defined by international law. Nor can they have real embassies or consulates. That said, their status as sovereignty-free actors, thus not formally recognized by international law, does not take away their entire ability to act. Their means of action are more on the level of NGOs. Indeed, non-central governments send fact-finding and outreach missions abroad, take part in trade fairs and certain international forums such as the Davos World Economic Forum, and finance public relations campaigns to increase exports and attract investments. The Canadian province of Alberta was very active in Brussels during negotiations on the EU-Canada Comprehensive Economic and Trade Agreement in order to make sure that oil from tar sands would not be subject to sanctions by the European Union. Alberta was also highly active in Washington to pressure American officials to approve the Keystone XL pipeline project. It is also easier for non-central governments to adopt idealistic international positions, and they have greater latitude to take a strong stance on delicate topics. For example, they can more easily condemn the nonrespect of human rights. Countries, on the other hand, must take a more nuanced tone and a more diplomatic approach in order to take into account a number of political and economic factors. Sub-state governments can also defend their interests in foreign courts. The government of Ontario brought the issue of acid rain directly to American judges, as did British Columbia on the subject of the “salmon war” pitting Canada against the United States. Non-central governments are also sovereignty-bound actors, in that they have partial sovereignty over their territory. Several non-central governments have a minister in charge of international relations and a corresponding ministry. Furthermore, the range of tools available to federated states for international action is nearly as great as for sovereign countries, with the exception of the use of military force. Indeed, several non-central governments have organized official visits with other regional leaders or those from sovereign countries, such as the alternating visits of the prime ministers of France and Quebec. They have representation or “mini-embassies” abroad, establish bilateral and multilateral relations with sovereign countries and other federated states, create institutions for regional or transregional cooperation, and can sign international agreements. In this regard, the government of Quebec has signed 751 of them, including 385 still in effect. Over 80% of these agreements have been signed with sovereign countries. In certain cases, such as the Belgian federated states, it involves actual international treaties (Paquin 2010). Their localization within a sovereign state gives federated states access to decision-makers from the central government, including actors in the country’s foreign policy. Sharing sovereignty with a central government gives non-central governments a reason to establish an international presence and develop their means of influence. Thus, contrary to NGOs and multinationals, for instance, the government of a federated state may enjoy special access to international diplomatic networks if the central government agrees, and may take part in international negotiations within their country’s delegation (Paquin 2004; Lequesne and Paquin 2017). The phenomenon is growing. Since the end of the Second World War, there has been an increase in multilateralism and international negotiations. While in the late nineteenth century only one or two conferences or congresses involving official representatives were documented, today there are around 9000. The register of UN treaties provides access to about 250,000 treaties.1 Multilateralism and international negotiations have therefore become an indissociable component of globalization (Paquin 2013). Parallel to the above, there has been a substantial increase in federal governments around the world. Within the European Union, for example, only two countries had federal governments after the Second World War whereas today 19 of the 27 countries in the EU have experienced a significant increase in regional governments and several have real federal governments. The Forum of Federations estimates that 40% of the world’s population live in federal countries (Lequesne and Paquin 2017). The consequence of these two phenomena has been that all fields of government activity, even in federated states and municipalities, may enter into the jurisdiction of at least one intergovernmental organization and often of several (Paquin 2010; Lequesne and Paquin 2017). Thus, in the framework of international organizations and thematic conferences, topics are addressed regarding the environment, free trade, procurement contracts, education, public health, cultural diversity, corporate subsidies, treatment of investors, the removal of non-tariff barriers, agriculture, services, etc. In this context, federated states are increasingly aware that their political power or sovereignty—in other words, their ability to develop and implement policies—is the subject of negotiations within multilateral international forums. Since international negotiations are having a growing effect on federated states’ sovereignty, the latter have become crucial actors in negotiations. In the negotiations on climate change, for instance, the UN formally recognized the importance of such actors. According to the UN Development Programme: “[…] most investments to reduce GHG (Greenhouse gas) emissions and adapt to climate change – 50 to 80 percent for reductions and up to 100 percent for adaptation – must take place at the sub-national level”.2 Furthermore, at the 16th Conference of the Parties, UN Framework Convention on Climate Change in Cancún in December 2010, the importance of the role of non-central governments was stipulated in article 7 of the Cancún Agreements. During his speech to the delegates, the Canadian representative, John Baird, explicitly recognized the role of Canadian provinces, notably Quebec, on the issue of climate change (Chaloux et al. 2015). In terms of trade negotiations, the same trend can be observed. The provinces played a greater role during Canada’s trade negotiations with the European Union, the largest since the Canada-US Free Trade Agreement in the late 1990s. The European Union demanded that the Canadian government include the provinces in its delegation, with the aim of starting negotiations for a “new generation” free trade agreement. The main reason being that the issue of public procurement contracts in Canadian provinces and cities was of special interest to the European Union in the negotiations. In that context, the European Union deemed that, for the negotiations to succeed, they had to include representatives from the provinces at the negotiating table, since the latter are not required to implement agreements signed by the federal government in their areas of jurisdiction (Paquin 2013). There are many precedents in which representatives have taken part in meetings of international institutions—the European Union, the United Nations, the World Trade Organization, the World Health Organization and Unesco, or again at the Conference of the Parties, UN Framework Convention on Climate Change—both within a country’s delegation, and at times outside it, as with Quebec, New Brunswick, and the WallonieBrussels federation regarding la Francophonie. When central governments block non-central governments’ access to international negotiations, the latter may try to influence the negotiations by going on-site. To make its voice heard, the government of Quebec sent several representatives to the conference of the parties on climate change despite the objection of Stephen Harper’s climate-skeptic government. Another strategy consists in joining networks of non-central governments and creating an accredited NGO at the negotiations, which is entrusted with the mandate of defending the interests of those actors at the negotiations. This was the case for the NGO Network of Regional Governments for Sustainable Development, which represents the regions’ interests in climate change negotiations. ∗∗∗ The paradiplomatic phenomenon, although not generally spectacular, certainly represents an important change in the study of foreign policy and international politics. It is an extensive, intensive, and permanent phenomenon. The international interests of sub-national governments are highly varied and substantial. These governments have considerable leeway and resources in their international initiatives, despite the asymmetry. In short, the phenomenon can no longer be ignored, even in centralized countries such as France or Sweden. Although paradiplomacy has progressed a great deal in the last thirty years, and case studies are increasingly numerous, there are still several blind spots. There are few studies on paradiplomacy and security issues analyzed in the broad sense, for example. Moreover, few studies exist on non-central governments and international negotiations, in particular on negotiations and the implementation of international treaties.

## OFF

infrastructure

#### Infrastructure will pass now but Biden’s PC is key

Pramuk, 10/1

(Jacob Pramuk, reporter for CNBC, "Biden pushes House Democrats to reach a deal on infrastructure, social spending bills," 10/1/21 <https://www.cnbc.com/2021/10/01/house-infrastructure-vote-democrats-try-to-reach-budget-spending-deal.html> NL)

House Democrats are holding off on passing the bipartisan infrastructure bill, as progressives threaten to vote against it while they seek agreement on a second, larger spending plan. President Joe Biden went to the Capitol to meet with House Democrats and rally support for his economic plans. Party leaders are trying to forge a deal on the second major piece of President Biden’s legislaive agenda, which could expand paid leave, child care, Medicare and education while investing in green energy. The infrastructure bill, which puts more than $500 billion in new money into transportation, broadband and utilities, would go to Biden’s desk once the House passes it. The House waited for word on whether it would vote on a bipartisan infrastructure bill Friday as President [Joe Biden](https://www.cnbc.com/joe-biden/) pushed congressional Democrats to forge a consensus on a broader spending deal. As his legislative priorities hung in the balance, Biden went to the Capitol shortly before 4 p.m. ET on Friday to meet with House Democrats and rally support for his economic agenda. House Speaker [Nancy Pelosi](https://www.cnbc.com/nancy-pelosi/), D-Calif., had told centrist Democrats the chamber would pass the infrastructure plan by Thursday. Democratic leaders pushed the vote until Friday at the earliest, as progressives threatened to sink the bill until they get assurances the Senate will approve a broader plan to invest in party priorities including climate policy, household tax credits and health-care expansion. Democrats cited progress after a flurry of talks among White House officials and key members of Congress bled into early Friday morning. Pelosi suggested the infrastructure bill could pass Friday even as the progressive and centrist flanks of her party stood trillions of dollars apart on a desired price tag for the second spending package. “We are on a path,” the speaker told reporters when asked if the legislation would pass Friday. The House was in recess on Friday morning as Democrats scrambled to strike a deal that would allow them to hold a vote. The Democratic caucus huddled to discuss its strategy ahead of Biden’s visit. As Biden and White House officials try to bridge a gulf between the liberal and centrist flanks of the party, press secretary Jen Psaki told reporters that “compromise is necessary, it’s inevitable.” The talks hold enormous stakes for the government benefits millions of Americans will receive in the coming years. Through their spending package, Biden and top Democrats aim to boost access to child care, paid leave, pre-K and community college. They hope to speed up green energy adoption and lower the Medicare eligibility age, while expanding coverage to include dental, vision and hearing benefits. The proposal would mean changes for corporations and the wealthiest Americans in the form of tax hikes to offset the new spending. Democrats have floated a 26.5% top corporate tax rate and 39.6% high individual rate — both levels below or in line with those set before the 2017 GOP tax cuts. But some of what Democratic leaders bill as a transformative plan in the mold of the New Deal could fall to the wayside as they try to win support from centrist holdouts, Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona. Senate Majority Leader Chuck Schumer, D-N.Y., will need both of their votes to push a bill through without Republicans in a chamber split 50-50 by party. Manchin has set a $1.5 trillion asking price for the plan — less than half of the $3.5 trillion investment his party set out to pass. It is unclear now where the sides can find a compromise or what they would cut from the proposal. Sinema left Washington on Friday as efforts to strike a deal continued, NBC News reported. She returned to Arizona for a medical appointment and expects to speak with White House officials Friday, Sinema spokesman John LaBombard told NBC. Late Thursday, Psaki said Democrats are “closer to an agreement than ever” after White House officials held a flurry of meetings with Pelosi, Schumer and other key lawmakers. She noted that “we are not there yet, and so, we will need some additional time” to strike a deal. “While Democrats do have some differences, we share common goals of creating good union jobs, building a clean energy future, cutting taxes for working families and small businesses, helping to give those families breathing room on basic expenses—and doing it without adding to the deficit, by making those at the top pay their fair share,” she said in a statement. The infrastructure bill — which Biden sees as a complementary piece of his domestic agenda — has already cleared the Senate and will go to the president’s desk once the House passes the legislation. It would put more than $500 billion in new money into roads, highways, bridges, public transit, broadband and utility systems. The Senate passed the bill with bipartisan support. It appears to have more limited Republican backing in the House, which has given progressives leverage to delay a vote as they seek assurances about the second spending plan. “I feel very good about where we are, and I feel very confident that we’re going to be able to deliver both these things, but you’re going to have to give us some time because it does take time to put together these kinds of transformational investments,” Rep. Pramila Jayapal, a Washington Democrat and chair of the Congressional Progressive Caucus, told reporters on Friday morning. Meanwhile, the Republicans who helped to craft the infrastructure bill in the Senate have tried to put more pressure on the House — including their GOP counterparts — to pass it. In a joint statement late Thursday, Sens. Rob Portman, R-Ohio, Bill Cassidy, R-La., Susan Collins, R-Maine, Lisa Murkowski, R-Alaska, and Mitt Romney, R-Utah, said they were “disappointed” by the vote delay. They said they “remain hopeful the House will come together in a spirit of bipartisanship just as the Senate did and pass this important piece of legislation.” The senators added, “It deserves the strong support of both parties.”

#### 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 reduces emissions and sends a global signal which solves warming

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

WASHINGTON — The collapse of negotiations between President Biden and Senate Republicans for an infrastructure bill has complicated the prospects for another priority of the administration: fighting climate change. Embedded in the president’s infrastructure proposal were billions of dollars to help pivot the country away from the fossil fuels that are generating the pollution that is heating the planet. Mr. Biden and his Democratic allies want a national network of charging stations for electric vehicles, tax incentives to propel solar, wind and other clean energy, money to retrofit homes to cut energy use, and transmission lines for renewable energy, among other things. But their highest priority is a clean electricity standard, which would require power companies to increase the amount of clean electricity they generate over time until they eventually stop burning fossil fuels. The chances of pushing climate legislation through Congress, a tall order from the beginning, now appear even more uncertain. That is starting to worry Democrats. “The planet cannot survive another successful Republican obstructionist strategy,” said Senator Edward Markey, a Massachusetts Democrat who wrote climate legislation that died in Congress in 2010. “We have to have climate at the center of any infrastructure package in order to have my vote. No climate, no deal.” 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. On Wednesday, White House officials said they had not wavered in their commitment to making climate a core part of any infrastructure package. The administration has encouraged a bipartisan group of senators to continue to try to hammer out an agreement.“ The president has underscored that climate change is one of the defining crises we face as a nation, and in the negotiations he has continuously fought for leading on the clean energy economy and on clean energy jobs — which is critical for our economic growth, competitiveness, and middle class,” said Andrew J. Bates, a White House spokesman, in a statement. Several Democratic senators as well as many climate activists say they nonetheless fear that the prospects for climate legislation could evaporate, as they did in the first term of the Obama administration. After former President Barack Obama vowed to tackle global warming, the White House repeatedly delayed its push for legislation, focusing first on passing health care and Wall Street overhauls. By the time Senate Democrats took up a major climate bill, well into Mr. Obama’s first term, momentum had waned and the measure failed to muster enough support to merit a vote on the Senate floor. Six months later, Republicans swept into the House majority in the midterm elections and prospects for climate legislation died for the next decade. “I’ve seen this movie before,” said Mr. Heinrich, a veteran of the failed 2009 effort. The impact of climate change is already being felt around the world in the form of drought, wildfire, floods, economic disrupt ion and environmentalists say action cannot be postponed. “We are all nervous,” said Tiernan Sittenfeld, senior vice president of government affairs at the League of Conservation Voters, referring to the environmental community. “We are truly out of time at this point.” A recent report from the International Energy Agency concluded that if the world is to stave off the most devastating consequences of global warming, major economies must end new oil investments by 2035. Public concern about climate change has been rising, according to recent surveys. A March poll by the Yale Program on Climate Change Communication found 52 percent of registered voters say global warming should be a high or very high priority for the president and the Congress. Support for a clean electricity standard is higher, with 61 percent of registered voters saying utilities should be required to produce all of their electricity from renewable energy sources by the year 2035. Carol Browner, who served as Mr. Obama’s senior climate change adviser, said that while memories of the 2009 failures linger, the politics have shifted significantly. “Having gone through the climate wars of the early Obama years, this moment feels very different to me,” she said. “There is more cohesion, more ardor among Democrats 16, 17 years later. That, to me, is very encouraging.” Mr. Biden has pledged to cut greenhouse pollution generated by the United States by 50 percent from 2005 levels by 2030. It is unlikely he can reach that target without passage this summer of climate legislation that includes a clean electricity standard. Even before Mr. Biden ended negotiations on Tuesday with Senator Shelley Moore Capito, Republican of West Virginia, progressive Democrats had warned that Republicans were unlikely to embrace the scale of spending needed to address climate change. Mr. Biden has now shifted his engagement to a bipartisan group of senators working on their own framework. While that group has not yet disclosed details, one of those senators, Lisa Murkowski, Republican of Alaska, said in an interview Wednesday that she was open to including some climate provisions. “I think when you’re talking about infrastructure, it’s really easy — it’s important, actually — to talk about some of the things that allow for reduced emissions,” said Ms. Murkowski, who has helped to write climate legislation in the past. “When you’ve got upgraded pipeline, that’s a good thing. When you have efficiency with the new transportation system, that’s a good thing. Charging stations, E.V., is good.”

#### Warming causes extinction

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7 A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including: • the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming; • the drying of forests from warming increases forest fires and the release of more carbon; and • higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming. Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’. The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low. While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

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#### Antitrust enforcers are drawing from other areas to challenge health care mergers now. The plan flips that strategy on its head.

Baer 20, Visiting Fellow, Governance Studies, The Brookings Institution (Bill, “Before the United States House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law,” <https://www.brookings.edu/wp-content/uploads/2020/05/Bill-Baer-5.19.20-Submission-to-Subcommittee-on-Antitrust-Commercial-and-Administrative-Law-of-the-House-Judiciary-Committee.pdf>)

The dollars and resources need to be increased for a number of reasons. First, as I have discussed, the courts today place a high burden on the government to prove an antitrust violation. That means the enforcers need to devote significant resources to investigating and proving their cases, including extensive document reviews, witness interviews and depositions and expert opinion – industrial organization economists and others. It is time-consuming; it is expensive; and it is resource-intensive. As an example in 2016 the Antitrust Division challenged two proposed mergers that would have dramatically consolidated the health insurance industry: Anthem’s proposed acquisition of Cigna and Aetna’s effort to acquire Humana.13 We successfully persuaded the courts to enjoin both deals, but to get there required the commitment of 25 to 30% of the Division’s professional staff. My colleagues in the FTC’s Bureau of Competition were similarly constrained as they litigated in multiple forums during that same time. That inevitably meant other matters were understaffed. That is no way to ensure adequate enforcement.

#### Enforcement high, resources key, sustained focus solves consolidation

King 21, John and Marylyn Mayo Chair in Health Law and Professor of Law at the University of Auckland (Jaime, “Stop Playing Health Care Antitrust Whack-A-Mole,” Harvard Bill of Health, <https://blog.petrieflom.law.harvard.edu/2021/05/17/health-care-consolidation-antitrust-enforcement/>)

The time has come to meaningfully address the most significant driver of health care costs in the United States — the consolidation of provider market power. Over the last 30 years, our health care markets have consolidated to the point that nearly 95% of metropolitan areas have highly concentrated hospital markets and nearly 80% have highly concentrated specialist physician markets. Market research has consistently found that increased consolidation leads to higher health care prices (sometimes as much as 40% more). Provider consolidation has also been associated with reductions in quality of care and wages for nurses. In consolidated provider markets, insurance companies often must choose between paying dominant providers supracompetitive rates or exiting the market. Unfortunately, insurers have little incentive to push back against provider rate demands because they have the ability to pass those rate increases directly to employers and individuals, in the form of higher premiums. In turn, employers take premium increases out of employee wages, contributing to the growing disparity between health care price growth and employee wages. As a result, rising health care premiums mean that every year, consumers pay more, but receive less. Dynamic health care antitrust enforcement is an idea whose time has finally come, but addressing the ills of consolidation in America’s health care system will require a comprehensive and multi-faceted approach. We have seen repeatedly how an entity with market power can respond quickly to negate the benefits of unilateral policy approaches, leading to an endless cycle of competition policy whack-a-mole. For instance, in the last decade, as health system merger and acquisition challenges became more successful, joint ventures and affiliations, especially with urgent care centers and private equity firms, became more frequent. Further, COVID-19 has exacerbated the threat of health care consolidation by leaving many independent hospitals and physician groups struggling financially and vulnerable to acquisition. Fortunately, the Biden/Harris administration appears uniquely poised to implement a comprehensive initiative to address health care consolidation. First and foremost, Biden has positioned key personnel with antitrust expertise, often with distinct knowledge of the health care industry, throughout his administration. For instance, the nomination of former California Attorney General Xavier Becerra, who championed health care antitrust efforts in the state, as Secretary of Health and Human Services was an inspired choice and presents a unique opportunity to enhance competition through Medicare policy. Biden’s appointment of Tim Wu to the National Economic Council and nomination of Lina Khan to one of five seats on the Federal Trade Commission (FTC) also signal a strong commitment to strengthening antitrust enforcement writ large. Second, the Biden administration should support recent efforts in Congress to address health care antitrust concerns. Senator Amy Klobuchar (D-MN) recently introduced a bill, the Competition and Antitrust Law Enforcement Reform Act, which introduces sweeping reforms that would expand funding to the Department of Justice (DOJ) and the Federal Trade Commission, strengthen prohibitions against anticompetitive mergers by forbidding mergers that “create an appreciable risk of materially lessening competition,” shift the burden of proof to require merging entities to demonstrate that the merger will not harm competition, and take steps to prevent dominant firms from engaging in anticompetitive conduct. Likewise, Senator Patty Murray’s (D-WA) Lower Health Care Costs Act of 2019 demonstrated a sophisticated understanding of how health care entities can use market power to obscure health care prices and negotiate anticompetitive contract terms, like all-or-nothing bargaining, gag clauses, and anti-steering provisions, and provided solid policy solutions to both issues. Providing support for bills like these will be essential to developing a comprehensive competition strategy. Third, on September 17, 2020, the Federal Trade Commission announced much needed plans to revamp the Merger Retrospective program. The Biden administration should provide substantial funding and resources to reinvigorate this program. Merger retrospectives, like Steven Tenn’s Sutter-Summit retrospective in 2008, have been pivotal and provided the FTC with much needed insight on how hospital mergers have leveraged the market power necessary to increase prices and harm consumer welfare. A newly revamped Merger Retrospective program holds great promise for antitrust enforcement in health care, especially if used to gain insight into whether and how vertical and cross-market health care mergers create anticompetitive harms. While a majority of consolidating transactions in health care include vertical or cross-market acquisitions, federal antitrust enforcement has been absent in this area. Fourth, Congress and the Trump Administration have moved mountains to expand price transparency in health care, which will greatly facilitate research into the effects of different types of health care consolidation and contracting practices on prices. The Biden Administration should stand firm on requiring hospitals, insurers, and self-insured employers to report negotiated health care prices, and dedicate resources to analyze that data to determine both the drivers of health care prices and the effectiveness of public policy initiatives designed to control prices. In addition, the Biden administration should promote transparency in health care consolidation by requiring all health care providers (hospitals, clinics, provider organizations, etc.) to report any material change in ownership to the Department of Health and Human Services and the FTC to allow the agencies to monitor consolidation patterns and look for stealth consolidation. All winds seem to blow in the direction of the Biden Administration taking significant action to address rampant consolidation in health care and its harms. Yet, doing so requires funding and willpower. Funding for the FTC and DOJ has decreased in relative dollars since 2010, despite a near doubling in merger filings. The FTC and DOJ need increased funding to expand their ability to review and challenge anticompetitive transactions and practices by dominant health care entities, revamp and expand the scope of their Merger Retrospective Review program, and provide technical assistance to state antitrust enforcers. Furthermore, the FTC should be granted the authority and requisite funding to challenge anticompetitive behavior by non-profit organizations, as they have developed a significant expertise in health care provider markets. Challenging the existing market dynamics in health care also demands the political will to take on some of the biggest industries in the nation (who make some of the largest lobbying contributions). As we have seen in recent challenges to the practices of dominant health care providers, the battle will be hard-fought. Yet, the alternative — allowing the health care industry to continue to siphon off ever-increasing portions of the economy and wages — is unacceptable and irresponsible. The Biden administration must make every attempt to improve the functioning of health care markets where possible, and implement price regulations in markets where competition has failed. Antitrust enforcement agencies must use the full force of their legal arsenal to restore competition in health care — and this may include breaking up large health systems that exploit their market power. For too long, the notion of “unscrambling the egg,” i.e., unwinding a previously consummated hospital merger, has been a non-starter in enforcement circles. To truly restore some form of competition in many health care markets, antitrust enforcers need to break up large systems, or at least have a credible threat of doing so. The Biden administration has an opportunity to reinvigorate our health care markets, but only if it is willing to adopt a bold, determined, and comprehensive competition strategy.

#### Health consolidation collapses public health

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Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Public Health coverage is key to preventing future pandemics and bioterror – extinction

Yong, 9/29

(Ed, staff writer at The Atlantic, citing Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, Mike Osterholm, an epidemiologist at the University of Minnesota, Eric Lander, OSTP director and Biden’s science adviser, former CDC Director Tom Frieden, Alexandra Phelan, an expert on international law and global health policy at Georgetown University, “WE’RE ALREADY BARRELING TOWARD THE NEXT PANDEMIC”, The Atlantic, 9-29-2021, https://www.theatlantic.com/health/archive/2021/09/america-prepared-next-pandemic/620238/)\\JM

A year after the United States bombed its pandemic performance in front of the world, the Delta variant opened the stage for a face-saving encore. If the U.S. had learned from its mishandling of the original SARS-CoV-2 virus, it would have been better prepared for the variant that was already ravaging India. Instead, after a quiet spring, President Joe Biden all but declared victory against SARS-CoV-2. The CDC ended indoor masking for vaccinated people, pitting two of the most effective interventions against each other. As cases fell, Abbott Laboratories, which makes a rapid COVID-19 test, discarded inventory, canceled contracts, and laid off workers, The New York Times reported. Florida and Georgia scaled back on reporting COVID-19 data, according to Kaiser Health News. Models failed to predict Delta’s early arrival. The variant then ripped through the U.S.’s half-vaccinated populace and once again pushed hospitals and health-care workers to the brink. Delta’s extreme transmissibility would have challenged any nation, but the U.S. nonetheless set itself up for failure. Delta was an audition for the next pandemic, and one that America flubbed. How can a country hope to stay 10 steps ahead of tomorrow’s viruses when it can’t stay one step ahead of today’s? America’s frustrating inability to learn from the recent past shouldn’t be surprising to anyone familiar with the history of public health. Almost 20 years ago, the historians of medicine Elizabeth Fee and Theodore Brown lamented that the U.S. had “failed to sustain progress in any coherent manner” in its capacity to handle infectious diseases. With every new pathogen—cholera in the 1830s, HIV in the 1980s—Americans rediscover the weaknesses in the country’s health system, briefly attempt to address the problem, and then “let our interest lapse when the immediate crisis seems to be over,” Fee and Brown wrote. The result is a Sisyphean cycle of panic and neglect that is now spinning in its third century. Progress is always undone; promise, always unfulfilled. Fee died in 2018, two years before SARS-CoV-2 arose. But in documenting America’s past, she foresaw its pandemic present—and its likely future. More Americans have been killed by the new coronavirus than the influenza pandemic of 1918, despite a century of intervening medical advancement. The U.S. was ranked first among nations in pandemic preparedness but has among the highest death rates in the industrialized world. It invests more in medical care than any comparable country, but its hospitals have been overwhelmed. It helped develop COVID-19 vaccines at near-miraculous and record-breaking speed, but its vaccination rates plateaued so quickly that it is now 38th in the world. COVID-19 revealed that the U.S., despite many superficial strengths, is alarmingly vulnerable to new diseases—and such diseases are inevitable. As the global population grows, as the climate changes, and as humans push into spaces occupied by wild animals, future pandemics become more likely. We are not guaranteed the luxury of facing just one a century, or even one at a time. It might seem ridiculous to think about future pandemics now, as the U.S. is consumed by debates over booster shots, reopened schools, and vaccine mandates. Prepare for the next one? Let’s get through this one first! But America must do both together, precisely because of the cycle that Fee and Brown bemoaned. Today’s actions are already writing the opening chapters of the next pandemic’s history. Internationally, Joe Biden has made several important commitments. At the United Nations General Assembly last week, he called for a new council of national leaders and a new international fund, both focused on infectious threats—forward-looking measures that experts had recommended well before COVID-19. But domestically, many public-health experts, historians, and legal scholars worry that the U.S. is lapsing into neglect, that the temporary wave of investments isn’t being channeled into the right areas, and that COVID-19 might actually leave the U.S. weaker against whatever emerges next. Donald Trump’s egregious mismanagement made it easy to believe that events would have played out differently with a halfway-competent commander who executed preexisting pandemic plans. But that ignores the many vulnerabilities that would have made the U.S. brittle under any administration. Even without Trump, “we’d still have been in a whole lot of trouble,” Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, told me. “The weaknesses were in the rootstock, not high up in the trees.” The panic-neglect cycle is not inevitable but demands recognition and resistance. “A pandemic is a course correction to the trajectory of civilization,” Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, told me. “Historical pandemics challenged us to make some fairly fundamental changes to the way in which society is organized.” Just as cholera forced our cities to be rebuilt for sanitation, COVID-19 should make us rethink the way we ventilate our buildings, as my colleague Sarah Zhang argued. But beyond overhauling its physical infrastructure, the U.S. must also address its deep social weaknesses—a health-care system that millions can’t access, a public-health system that’s been rotting for decades, and extreme inequities that leave large swaths of society susceptible to a new virus. Early last year, some experts suggested to me that America’s COVID-19 failure stemmed from its modern inexperience with infectious disease; having now been tested, it might do better next time. But preparedness doesn’t come automatically, and neither does its absence. “Katrina didn’t happen because Louisiana never had a hurricane before; it happened because of policy choices that led to catastrophe,” Gonsalves said. The arc of history does not automatically bend toward preparedness. It must be bent. On September 3, the White House announced a new strategy to prepare for future pandemics. Drafted by the Office of Science and Technology Policy, and the National Security Council, the plan would cost the U.S. $65 billion over the next seven to 10 years. In return, the country would get new vaccines, medicines, and diagnostic tests; new ways of spotting and tracking threatening pathogens; better protective equipment and replenished stockpiles; sturdier supply chains; and a centralized mission control that would coordinate all the above across agencies. The plan, in rhetoric and tactics, resembles those that were written before COVID-19 and never fully enacted. It seems to suggest all the right things. But the response from the health experts I’ve talked with has been surprisingly mixed. “It’s underwhelming,” Mike Osterholm, an epidemiologist at the University of Minnesota, told me. “That $65 billion should have been a down payment, not the entire program. It’s a rounding error for our federal budget, and yet our entire existence going forward depends on this.” The pandemic plan compares itself to the Apollo program, but the government spent four times as much, adjusted for inflation, to put astronauts on the Moon. Meanwhile, the COVID-19 pandemic may end up costing the U.S. an estimated $16 trillion. “I completely agree that it will take more investment,” Eric Lander, OSTP director and Biden’s science adviser, told me; he noted that the published plan is just one element of a broader pandemic-preparedness effort that is being developed. But even the $65 billion that the plan has called for might not fully materialize. Biden originally wanted to ask Congress to immediately invest $30 billion but eventually called for just half that amount, in a compromise with moderate Democrats who sought to slash it even further. The idea of shortchanging pandemic preparedness after the events of 2020 “should be unthinkable,” wrote former CDC Director Tom Frieden and former Senator Tom Daschle in The Hill. But it is already happening. Others worry about the way the budget is being distributed. About $24 billion has been earmarked for technologies that can create vaccines against a new virus within 100 days. Another $12 billion will go toward new antiviral drugs, and $5 billion toward diagnostic tests. These goals are, individually, sensible enough. But devoting two-thirds of the full budget toward them suggests that COVID-19’s lessons haven’t been learned. America failed to test sufficiently throughout the pandemic even though rigorous tests have long been available. Antiviral drugs played a bit part because they typically provide incremental benefits over basic medical care, and can be overly expensive even when they work. And vaccines were already produced far faster than experts had estimated and were more effective than they had hoped; accelerating that process won’t help if people can’t or won’t get vaccinated, and especially if they equate faster development with nefarious corner-cutting, as many Americans did this year. Every adult in the U.S. has been eligible for vaccines since mid-April; in that time, more Americans have died of COVID-19 per capita than people in Germany, Canada, Rwanda, Vietnam, or more than 130 other countries did in the pre-vaccine era. “We’re so focused on these high-tech solutions because they appear to be what a high-income country would do,” Alexandra Phelan, an expert on international law and global health policy at Georgetown University, told me. And indeed, the Biden administration has gone all in on vaccines, trading them off against other countermeasures, such as masks and testing, and blaming “the unvaccinated” for America’s ongoing pandemic predicament. The promise of biomedical panaceas is deeply ingrained in the U.S. psyche, but COVID should have shown that medical magic bullets lose their power when deployed in a profoundly unequal society. There are other ways of thinking about preparedness. And there are reasons those ways were lost. In 1849, after investigating a devastating outbreak of typhus in what is now Poland, the physician Rudolf Virchow wrote, “The answer to the question as to how to prevent outbreaks … is quite simple: education, together with its daughters, freedom and welfare.” Virchow was one of many 19th-century thinkers who correctly understood that epidemics were tied to poverty, overcrowding, squalor, and hazardous working conditions—conditions that inattentive civil servants and aristocrats had done nothing to address. These social problems influenced which communities got sick and which stayed healthy. Diseases exploit society’s cracks, and so “medicine is a social science,” Virchow famously said. Similar insights dawned across the Atlantic, where American physicians and politicians tackled the problem of urban cholera by fixing poor sanitation and dilapidated housing. But as the 19th century gave way to the 20th, this social understanding of disease was ousted by a new paradigm. When scientists realized that infectious diseases are caused by microscopic organisms, they gained convenient villains. Germ theory’s pioneers, such as Robert Koch, put forward “an extraordinarily powerful vision of the pathogen as an entity that could be vanquished,” Alex de Waal, of Tufts, told me. And that vision, created at a time when European powers were carving up other parts of the world, was cloaked in metaphors of imperialism, technocracy, and war. Microbes were enemies that could be conquered through the technological subjugation of nature. “The implication was that if we have just the right weapons, then just as an individual can recover from an illness and be the same again, so too can a society,” de Waal said. “We didn’t have to pay attention to the pesky details of the social world, or see ourselves as part of a continuum that includes the other life-forms or the natural environment.” Germ theory allowed people to collapse everything about disease into battles between pathogens and patients. Social matters such as inequality, housing, education, race, culture, psychology, and politics became irrelevancies. Ignoring them was noble; it made medicine and science more apolitical and objective. Ignoring them was also easier; instead of staring into the abyss of society’s intractable ills, physicians could simply stare at a bug under a microscope and devise ways of killing it. Somehow, they even convinced themselves that improved health would “ultimately reduce poverty and other social inequities,” wrote Allan Brandt and Martha Gardner in 2000. This worldview accelerated a growing rift between the fields of medicine (which cares for sick individuals) and public health (which prevents sickness in communities). In the 19th century, these disciplines were overlapping and complementary. In the 20th, they split into distinct professions, served by different academic schools. Medicine, in particular, became concentrated in hospitals, separating physicians from their surrounding communities and further disconnecting them from the social causes of disease. It also tied them to a profit-driven system that saw the preventive work of public health as a financial threat. “Some suggested that if prevention could eliminate all disease, there would be no need for medicine in the future,” Brandt and Gardner wrote. This was a political conflict as much as an ideological one. In the 1920s, the medical establishment flexed its growing power by lobbying the Republican-controlled Congress and White House to erode public-health services including school-based nursing, outpatient dispensaries, and centers that provided pre- and postnatal care to mothers and infants. Such services were examples of “socialized medicine,” unnecessary to those who were convinced that diseases could best be addressed by individual doctors treating individual patients. Health care receded from communities and became entrenched in hospitals. Decades later, these changes influenced America’s response to COVID-19. Both the Trump and Biden administrations have described the pandemic in military metaphors. Politicians, physicians, and the public still prioritize biomedical solutions over social ones. Medicine still overpowers public health, which never recovered from being “relegated to a secondary status: less prestigious than clinical medicine [and] less amply financed,” wrote the sociologist Paul Starr. It stayed that way for a century. During the pandemic, many of the public-health experts who appeared in news reports hailed from wealthy coastal universities, creating a perception of the field as well funded and elite. That perception is false. In the early 1930s, the U.S. was spending just 3.3 cents of every medical dollar on public health, and much of the rest on hospitals, medicines, and private health care. And despite a 90-year span that saw the creation of the CDC, the rise and fall of polio, the emergence of HIV, and relentless calls for more funding, that figure recently stood at … 2.5 cents. Every attempt to boost it eventually receded, and every investment saw an equal and opposite disinvestment. A preparedness fund that was created in 2002 has lost half its budget, accounting for inflation. Zika money was cannibalized from Ebola money. America’s historical modus operandi has been to “give responsibility to the local public-health department but no power, money, or infrastructure to make change,” Ruqaiijah Yearby, a health-law expert at Saint Louis University, told me. Lisa Macon Harrison, who directs the department that serves Granville and Vance Counties, in North Carolina, told me that to protect her community of 100,000 people from infectious diseases—HIV, sexually transmitted infections, rabies, and more—the state gives her $4,147 a year. That’s 90 times less than what she actually needs. She raises the shortfall herself through grants and local dollars. Trifling budgets mean smaller staff, which turns mandatory services into optional ones. Public-health workers have to cope with not just infectious diseases but air and water pollution, food safety, maternal and child health, the opioid crisis, and tobacco control. But with local departments having lost 55,000 jobs since the 2008 recession, many had to pause their usual duties to deal with COVID-19. Even then, they didn’t have staff to do the most basic version of contact tracing—calling people up—let alone the ideal form, wherein community health workers help exposed people find food, services, and places to isolate. When vaccines were authorized, departments had to scale back on testing so that overworked staff could focus on getting shots into arms; even that wasn’t enough, and half of states hired armies of consultants to manage the campaign, The Washington Post reported. In May, the Biden administration said that it would invest $7.4 billion in recruiting and training public-health workers, creating tens of thousands of jobs. But those new workers would be air-dropped into an infrastructure that is quite literally crumbling. Many public-health departments are housed in buildings that were erected in the 1940s and ’50s, when polio money was abundant; they are now falling apart. “There’s a trash can in the hallway in front of my environmental-health supervisor’s office to catch rain that might come through the ceiling,” Harrison told me. And between their reliance on fax machines and decades-old data systems, “it feels like we’re using a Rubik’s Cube and an abacus to do pandemic response,” Harrison added. Last year, America’s data systems proved to be utterly inadequate for tracking a rapidly spreading virus. Volunteer efforts such as the COVID Tracking Project (launched by The Atlantic) had to fill in for the CDC. Academics created a wide range of models, some of which were misleadingly inaccurate. “For hurricanes, we don’t ask well-intentioned academics to stop their day jobs and tell us where landfall will happen,” the CDC’s Dylan George told me. “We turn to the National Hurricane Center.” Similarly, George hopes that policy makers can eventually turn to the CDC’s newly launched Center for Forecasting and Outbreak Analytics, where he is director of operations. With initial funding of about $200 million, the center aims to accurately track and predict the paths of pathogens, communicate those predictions with nuance, and help leaders make informed decisions quickly. But public health’s longstanding neglect means that simply making the system fit for purpose is a mammoth undertaking that can’t be accomplished with emergency funds—especially not when those funds go primarily toward biomedical countermeasures. That’s “a welfare scheme for university scientists and big organizations, and it’s not going to trickle down to the West Virginia Department of Health,” Gregg Gonsalves, the health activist and epidemiologist, told me. What the U.S. needs, as several reports have recommended and as some senators have proposed, is a stable and protected stream of money that can’t be diverted to the emergency of the day. That would allow health departments to properly rebuild without constantly fearing the wrecking ball of complacency. Biden’s $7.4 billion bolus is a welcome start—but just a start. And though his new pandemic-preparedness plan commits $6.5 billion toward strengthening the U.S. public-health system over the next decade, it might take $4.5 billion a year to actually do the job. “Nobody should read that plan as the limit of what needs to be done,” Eric Lander, the president’s science adviser, told me. “I have no disagreement that a major effort and very substantial funding are needed,” and, he noted, the administration’s science and technology advisers will be developing a more comprehensive strategy. “But is pandemic preparedness the lens through which to fix public health?” Lander asked. “I think those issues are bigger—they’re everyday problems, and we need to shine a spotlight on them every day.” But here is public health’s bind: Though it is so fundamental that it can’t (and arguably shouldn’t) be tied to any one type of emergency, emergencies are also the one force that can provide enough urgency to strengthen a system that, under normal circumstances, is allowed to rot. When a doctor saves a patient, that person is grateful. When an epidemiologist prevents someone from catching a virus, that person never knows. Public health “is invisible if successful, which can make it a target for policy makers,” Ruqaiijah Yearby, the health-law expert, told me. And during this pandemic, the target has widened, as overworked and under-resourced officials face aggressive protests. “Our workforce is doing 15-hour days and rather than being glorified, they’re being vilified and threatened with bodily harm and death,” Harrison told me. According to an ongoing investigation by the Associated Press and Kaiser Health News, the U.S. has lost at least 303 state or local public-health leaders since April 2020, many because of burnout and harassment. Even though 62 percent of Americans believe that pandemic-related restrictions were worth the cost, Republican legislators in 26 states have passed laws that curtail the possibility of quarantines and mask mandates, as Lauren Weber and Anna Maria Barry-Jester of KHN have reported. Supporters characterize these laws as checks on executive power, but several do the opposite, allowing states to block local officials or schools from making decisions to protect their communities. Come the next pandemic (or the next variant), “there’s a real risk that we are going into the worst of all worlds,” Alex Phelan, of Georgetown University, told me. “We’re removing emergency actions without the preventive care that would allow people to protect their own health.” This would be dangerous for any community, let alone those in the U.S. that are structurally vulnerable to infectious disease in ways that are still being ignored. Biden’s new pandemic plan contains another telling detail about how the U.S. thinks about preparedness. The parts about vaccines and therapeutics contain several detailed and explicit strategies. The part about vulnerable communities is a single bullet point that calls for strategies to be developed. This isn’t a new bias. In 2008, Philip Blumenshine and his colleagues argued that America’s flu-pandemic plans overlooked the disproportionate toll that such a disaster would take upon socially disadvantaged people. Low-income and minority groups would be more exposed to airborne viruses because they’re more likely to live in crowded housing, use public transportation, and hold low-wage jobs that don’t allow them to work from home or take time off when sick. When exposed, they’d be more susceptible to disease because their baseline health is poorer, and they’re less likely to be vaccinated. With less access to health insurance or primary care, they’d die in greater numbers. These predictions all came to pass during the H1N1 swine-flu pandemic of 2009. When SARS-CoV-2 arrived a decade later, history repeated itself. The new coronavirus disproportionately infected essential workers, who were forced to risk exposure for the sake of their livelihood; killed Pacific Islander, Latino, Indigenous, and Black Americans; and struck people who’d been packed into settings at society’s margins—prisons, nursing homes, meatpacking facilities. “We’ve built a system in which many people are living on the edge, and pandemics prey on those vulnerabilities,” Julia Raifman, a health-policy researcher at Boston University, told me. Such patterns are not inevitable. “It is very clear, from evidence and history, that robust public-health systems rely on provision of social services,” Eric Reinhart, a political anthropologist and physician at Northwestern University, told me. “That should just be a political given, and it is not. You have Democrats who don’t even say this, let alone Republicans.” America’s ethos of rugged individualism pushes people across the political spectrum to see social vulnerability as a personal failure rather than the consequence of centuries of racist and classist policy, and as a problem for each person to solve on their own rather than a societal responsibility. And America’s biomedical bias fosters the seductive belief that these sorts of social inequities won’t matter if a vaccine can be made quickly enough. But inequity reduction is not a side quest of pandemic preparedness. It is arguably the central pillar—if not for moral reasons, then for basic epidemiological ones. Infectious diseases can spread, from the vulnerable to the privileged. “Our inequality makes me vulnerable,” Mary Bassett, who studies health equity at Harvard, told me. “And that’s not a necessary feature of our lives. It can be changed.” “To be ready for the next pandemic, we need to make sure that there’s an even footing in our societal structures,” Seema Mohapatra, a health-law expert at Indiana University, told me. That vision of preparedness is closer to what 19th-century thinkers lobbied for, and what the 20th century swept aside. It means shifting the spotlight away from pathogens themselves and onto the living and working conditions that allow pathogens to flourish. It means measuring preparedness not just in terms of syringes, sequencers, and supply chains but also in terms of paid sick leave, safe public housing, eviction moratoriums, decarceration, food assistance, and universal health care. It means accompanying mandates for social distancing and the like with financial assistance for those who might lose work, or free accommodation where exposed people can quarantine from their family. It means rebuilding the health policies that Reagan began shredding in the 1980s and that later administrations further frayed. It means restoring trust in government and community through public services. “It’s very hard to achieve effective containment when the people you’re working with don’t think you care about them,” Arrianna Marie Planey, a medical geographer at the University of North Carolina at Chapel Hill, told me. In this light, the American Rescue Plan—the $1.9 trillion economic-stimulus bill that Biden signed in March—is secretly a pandemic-preparedness bill. Beyond specifically funding public health, it also includes unemployment insurance, food-stamp benefits, child tax credits, and other policies that are projected to cut the poverty rate for 2021 by a third, and by even more for Black and Hispanic people. These measures aren’t billed as ways of steeling America against future pandemics—but they are. Also on the horizon is a set of recommendations from the COVID-19 Health Equity Task Force, which Biden established on his first full day of office. “The president has told many of us privately, and said publicly, that equity has to be at the heart of what we do in this pandemic,” Vivek Murthy, the surgeon general, told me. Some of the American Rescue Plan’s measures are temporary, and their future depends on the $3.5 trillion social-policy bill that Democrats are now struggling to pass, drawing opposition from within their own party. “Health equity requires multiple generations of work, and politicians want outcomes that can be achieved in time to be recognized by an electorate,” Planey told me. That electorate is tiring of the pandemic, and of the lessons it revealed. Last year, “for a moment, we were able to see the invisible infrastructure of society,” Sarah Willen, an anthropologist at the University of Connecticut who studies Americans’ conceptions of health equity, told me. “But that seismic effect has passed.” Socially privileged people now also enjoy the privilege of immunity, while those with low incomes, food insecurity, eviction risk, and jobs in grocery stores and agricultural settings are disproportionately likely to be unvaccinated. Once, they were deemed “essential”; now they’re treated as obstinate annoyances who stand between vaccinated America and a normal life. The pull of the normal is strong, and our metaphors accentuate it. We describe the pandemic’s course in terms of “waves,” which crest and then collapse to baseline. We bill COVID-19 as a “crisis”—a word that evokes decisive moments and turning points, “and that, whether you want to or not, indexes itself against normality,” Reinhart told me. “The idea that something new can be born out of it is lost,” because people long to claw their way back to a precrisis state, forgetting that the crisis was itself born of those conditions. Better ideas might come from communities for whom “normal” was something to survive, not revert to. Many Puerto Ricans, for example, face multiple daily crises including violence, poverty, power outages, and storms, Mónica Feliú-Mójer, of the nonprofit Ciencia Puerto Rico, told me. “They’re always preparing,” she said, “and they’ve built support networks and mutual-aid systems to take care of each other.” Over the past year, Ciencia PR has given small grants to local leaders to fortify their communities against COVID-19. While some set up testing and vaccination clinics, others organized food deliveries or educational events. One cleaned up a dilapidated children’s park to create a low-risk outdoor space where people could safely reconnect. Such efforts recognize that resisting pandemics is about solidarity as well as science, Feliú-Mójer told me. The panic-neglect cycle is not irresistible. Some of the people I spoke with expressed hope that the U.S. can defy it, just not through the obvious means of temporarily increased biomedical funding. Instead, they placed their faith in grassroots activists who are pushing for fair labor policies, better housing, health-care access, and other issues of social equity. Such people would probably never think of their work as a way of buffering against a pandemic, but it very much is—and against other health problems, natural disasters, and climate change besides. These threats are varied, but they all wreak their effects on the same society. And that society can be as susceptible as it allows itself to be.

## Inequality

#### Economic inequality inevitable and plan can’t solve

Qureshi, 20

(Zia, Visiting Fellow - [Global Economy and Development](https://www.brookings.edu/program/global-economy-and-development/) at the Brookings Institute, "Tackling the inequality pandemic: Is there a cure?," Nov 17 2020 <https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/> NL)

What does research say about why inequality is rising? Many factors affect income distribution but research has increasingly focused on technological change as a key driver of the rise in inequality observed in recent decades.[[3]](https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/#footnote-3) Digital technologies have been transforming markets and how we work and do business, and the latest advances in artificial intelligence are driving the digital revolution further. The benefits of this technological transformation have been shared highly unequally. Inequalities have increased between firms and between workers. Firms at the technological frontier have broken away from the rest, acquiring dominance in increasingly concentrated markets and capturing the lion’s share of profits. Increasing automation of low- to middle-skill tasks has shifted labor demand toward higher-level skills, hurting wages and jobs at the lower end of the skill spectrum. With the new technologies favoring capital, winner-take-all business outcomes, and higher-level skills, the distribution of both capital and labor income has become more unequal, and income has shifted from labor to capital. The COVID-19 pandemic is reinforcing these inequality-increasing dynamics. It is causing the digital transformation of production, commerce, and work to accelerate.[[4]](https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/#footnote-4) While smaller firms struggle, large technologically advanced firms are further increasing market shares, fortifying the shift toward more oligopolistic, less competitive markets.[[5]](https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/#footnote-5) Increased automation and telework are further tilting labor markets against low-skilled, low-wage workers.[[6]](https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/#footnote-6) Industries with business models heavily reliant on human contact and low-skilled workforce are hit especially hard. Globalization also has contributed to rising inequality within economies—although technological change has been the more dominant factor. But it has been a force for reduced inequality between economies. Expanding global supply chains have been a major spur to economic growth in emerging economies, enabling them to narrow the income gap with advanced economies. The pandemic could disrupt this economic convergence by stoking the backlash against globalization and provoking nationalist trade policy responses, including reshoring of production. This would add to the challenges emerging economies face as increasing automation necessitates search for new growth models less reliant on low skill, low-wage labor as the source of comparative advantage. A weakening redistributive role of the state also has been a factor pushing inequality higher. As shifts in product and labor markets caused by technological change—and globalization—drove inequality of market incomes within economies higher, the role of the state in alleviating market-income inequality through taxes and transfers diminished. In OECD economies, taxes and transfers typically kept disposable-income inequality one-fifth to one-quarter lower than market-income inequality. In recent years, the role of fiscal redistribution in offsetting the rise in market-income inequality has shrunk because of reduced progressivity of personal income taxes, lower taxes on capital, and tighter spending on social programs.

#### No multilat impact and it’s resilient

Mueller, 21

(John; February 17; Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies; The Stupidity of War: American Foreign Policy and the Case for Complacency, “The Rise of China, the Assertiveness of Russia, and the Antics of Iran,” Ch. 6)

Complacency, Appeasement, Self-destruction, and the New Cold War It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conflict as can be seen in the case of the Cuban missile crisis of 1962. As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938. Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try. If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129 Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy. However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion o f the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130 The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities. The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods. However, as discussed in Chapters 1 and 2, the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct.134 It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony. Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so. There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other. More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence. In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

## Modelling

#### Populism is dead

Urbinati, 21

**(**Nadia, political theorist who specializes in modern and contemporary political thought and the democratic traditions. She is the Kyriakos Tsakopoulos Professor of Political Theory at Columbia University; “Never Far: Populism as the Shadow of Democracy,” Green European Journal, May 26, 2021; https://www.greeneuropeanjournal.eu/never-far-populism-as-the-shadow-of-democracy/)

How have countries in the grip of populism managed to break the dynamic? Many people focus on the conditions and reasons for the success of populists. But the important question now is how we exit from populism. In the West, we see at least two developments that attempt to answer this question. The first is the classical political party model. In the US, Joe Biden has responded to populism by rehabilitating and rejuvenating the political language of Right and Left, and of social justice. It is clearly different from Trumpist language, but it is also distinct from Obama’s because Biden is reviving partisan discourse and not looking for consensus from moderate Republicans. The Democratic Party – in part because it has listened to its left wing – is showing that good policies such as investing to create stable jobs are possible even when society is divided. In Europe we see another model. The European response to populism is about stabilising the European Economic Area by drawing on its long experience of technocratic decision- making. As Carlo Invernizzi Accetti and Christopher Bickerton have shown in their book *Technopopulism*, there can be a conjunction between populism and technocracy. Not the demagogical and movement-based populism, but instead a kind of populism that wants to tame the myth of the unity of the people against parties using technocratic governance. Examples include Emmanuel Macron’s France and Italy under Mario Draghi. They promise to unite the people through a form of decision-making that is declared to be neutral and objective, with its outputs subject to measurement, monitoring, and evaluation. Economists and bureaucrats are to be the judges of success, not parties or partisan ideas. Technopopulism relies upon leadership rooted in governance and sets out to speak to the people with the assurance that its decisions are expressions of data, independent of views of justice. But the problem with technopopulism is dysfunctionality, not injustice.

#### No impact either and alt causes

Akkerman, 17

(Tjitske Akkerman 17, Assistant Professor in the Department of Political Science at the University of Amsterdam, 7-31-2017, "Populism is overrated – if there is a threat to democracy, it’s from authoritarian nationalism," EUROPP, https://blogs.lse.ac.uk/europpblog/2017/07/31/populism-is-overrated-if-there-is-a-threat-to-democracy-its-from-authoritarian-nationalism/)

Populism is perhaps the most overrated concept today. The presumption that populism is threatening to destabilise democratic regimes in Europe abound in the media as well as in academia. Populism is, as Cas Mudde has argued, not anti-democratic but against liberal democracy. It endorses the ideal of a majoritarian or popular democracy, based on the general will of the people. Yet, this potential threat to liberal democracies is merely hypothetical. There is a current wave of populism in Europe and there is pressure on liberal freedoms in many European countries, but is populism a significant cause of the current pressures on liberal democracies? To identify threats (or correctives if you like) to liberal democracies it is important to assess the impact of populism instead of assuming it. Research indicates that populist parties have had little impact on democratic institutional reform in Western Europe so far. With predominantly proportional electoral systems and coalition governments in which populist parties are most often still junior partners, significant opposition of courts, parliaments and civil societies, liberal democracies in Western Europe overall provide resilient contexts. However, this still leaves open the possibility that populism has been a major force behind the establishment of illiberal regimes in Hungary, Poland or Latin America, and that it may still grow into such a force in Western Europe. My arguments to question the potential impact of populism on liberal democracies are more general. First, populism is not a core ideology of political parties or movements in Europe. Neither populist parties nor their voters tend to give much weight to issues of democratic reform. Dissatisfaction with politics is a marginal reason for voters in Western Europe to vote for radical right-wing parties, and dissatisfaction does not play a role at all as a motivation to electorally support left-wing populist parties. Like their voters, populist parties do not give much salience to issues of democratic reform. For radical right-wing populist parties, for instance, proposals to introduce direct forms of democracy or to reform the judiciary tend to be instrumental to anti-immigration policies and security issues. Nationalism and authoritarianism are much more important ideological sources for these parties than populism. For left-wing populist parties, it is still to be seen whether they aim to reform liberal democracies into popular democracies. Second, not all populist parties are against liberal democracy. Some parties are merely rhetorically populist. The Dutch Socialist Party (SP), for instance, is widely regarded as a populist party. Surely, the party often contrasts the good people to corrupt elites like bankers, but the SP is also committed to a liberal democracy. This is in contrast to Geert Wilders’ radical right-wing Party for Freedom (PVV) that is not only rhetorically populist, but also shows little commitment to liberal democracy. Third, the pressure on liberal democracies is not restricted to populist parties. Policy proposals and legislative initiatives that are in tension with or defy fundamental freedoms are also coming from mainstream parties. Systematic comparative research is still lacking, but a case study of the Netherlands makes clear that policies that are in conflict with the rule of law are not restricted to populist parties. Systematic comparison of election manifestoes demonstrates that mainstream right-wing parties also increasingly tend to endorse policies that subordinate fundamental rights to policy goals like restricting immigration and enhancing security. In other words, the common drivers of populist parties as well as non-populist parties to seek out the boundaries of the rule of law or to go beyond them are immigration and security concerns. If there are any ideologies threatening liberal democracies today, nationalism and authoritarianism are far more likely candidates than populism.

#### No nuclear terror.

Mueller, 20

(John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism)

Building a Bomb of One’s Own Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44 The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45 The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence. To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material. A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49 It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50 If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51 Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53 Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54 Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals. The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off. The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud. The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

## Democracy

#### Democracy is resilient, but it solves nothing.

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

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an enormous academic database for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes. The frst fiding is that a reverse wave away from democracy has not happened (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed. Another fnding is that the instrumental value of democracy is very questionable. The feld has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘no consensus’ in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a huge amount of literature which rejects their own point of view. After undertaking a large-scale analysis of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefts are not as strong as they seem. Hence, we should not overstate the links between the phenomena. The overall evidence is weak. Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a fourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is quite weak. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations for war and peace, and even that the impact of democracy is a spurious one (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, we cannot defend the idea that democracy has instrumental value. Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are confusing, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly diffcult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifcally, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the confict is more cruel leading to more victims, destruction and killings (see Chapter 4). A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fghting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically signifcant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats). The perceived impact of democracy on development has been highly contested as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-ftsall approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not suffcient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5). Overall, the instrumental value of democracy is—at best—tentative, or—if being less mild—simply non-existent. Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefts—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy do not make a distinctive difference. Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favourable economic factors in a country—are much more powerful to explain the expected benefts, at least compared to the single fact that a country is a democracy or not. The impact of democracy fades away in the powerful shadows of the economic factors.8

#### Democracy is guaranteed – autocrats always lose

Treisman, 20

(Daniel, professor of political science at the University of California, Los Angeles and a research associate of the National Bureau of Economic Research, Ph. D., Harvard University, B.A. Hons., Oxford University, “Democracy by Mistake: How the Errors of Autocrats Trigger Transitions to Freer Government”, American Political Science Review, 114, 3, 792–810, 3-24-20, https://www.cambridge.org/core/journals/american-political-science-review/article/democracy-by-mistake-how-the-errors-of-autocrats-trigger-transitions-to-freer-government/7F9054A5F636EEE21B3BF56EF1BF8930)\\JM

CONCLUSIONS

Since the early 1800s, democracy has spread to almost 60% of countries. Scholars have wondered whether political rights were more often “conquered” or “granted” (Przeworski 2009). Was power wrenched from the elite by a rising class or bestowed from above out of enlightened self-interest? Evidence reviewed here suggests a third possibility. Often, elites fumbled power into the hands of their adversaries. Neither conquered nor granted, democracy emerged after an incumbent blundered and lost control. Structural factors, strategic choices, and sometimes luck did the rest.

Given the high stakes, it seems puzzling at first that so many autocrats miscalculate. Yet, their task is incredibly hard. They must calibrate repression and concessions, manage elites, pay and promote enforcers, detect disloyalty, and deter foreign rivals without provoking them. And they must do all this day after day. Acquiring accurate information is challenging. Polls mislead if fear lowers response rates or prompts preference falsification. Attitudes can change suddenly. Apparently solid support when a semi-free election is called can become an opposition landslide as informational cascades unfold. Previously loyal agents defect amid their own cascades (Rundlett and Svolik 2016). From this perspective, the puzzle is not that many autocrats fail eventually but that some survive so long.

Two caveats require mention. First, the limited purchase of deliberate-choice arguments does not render them irrelevant. They do fit certain well-known cases, especially in the first wave. And, as noted, mistakes sometimes combine with elements of deliberate choice. Still, the scope remains narrow. The 22–39% of the episodes that fit the five deliberate-choice arguments already includes cases that began from incumbent mistakes. Deliberate-choice cases without ruler missteps constitute only 6–15%.

Second, the frequency of errors does not mean rationalist methods such as game theory are not useful. On the contrary, to identify mistakes requires a prior conception of optimal action; the typology I develop derives from a rationalist view of authoritarian governance. Rather, the findings suggest the need to take seriously—as some existing models do—the severe and sometimes self-inflicted information constraints under which rulers operate and to consider approaches (such as trembling hand perfection) that incorporate the possibility of off-equilibrium-path play.

Recognizing the role of mistakes in democratization is important for several reasons. First, it casts new light on the last two centuries. The processes generating democracy’s spread were complex. This paper’s findings should remove any temptation to oversimplify these into a “Whig history” narrative of enlightened elite compromises.

More generally, the results have implications for theories of regime change. Some theories relate democratization to characteristics of countries—economic development, inequality, international integration (“structure”). Others focus on actions of players in the political game (“agency”). Most scholars now agree neither is by itself sufficient. While structural factors may explain why countries become democratic, choices of political actors help determine when and how they do so.

Recent papers suggest that certain events—economic crises, violent coups, leader turnover—serve as triggers, activating the pro-democratic effect of economic development (Kennedy 2010; Miller 2012; Treisman 2015). I conjecture that incumbent mistakes can also serve as triggers. Indeed, they may prove to be a common cause of the others. As the synopses show, economic crises, violent coups, and leader turnover— although sometimes exogenous—often result directly from incumbent errors.

One way to understand such structure-agency interactions is in terms of a model with multiple equilibria. Structural variables determine what equilibria are possible. For some values of these, both authoritarian and democratic equilibria exist. Which occurs may depend on coordination and beliefs, which respond to contingent actions. A major mistake by the ruler can prompt sudden belief changes, undermining a previous coordination scheme. When structural parameters permit only a democratic or authoritarian equilibrium, such missteps, at most, prompt leader turnover. But when parameters are intermediate, the same errors can tip participants from one mode of politics to the other.

Methodologically, the findings suggest the value of investigating posited causal mechanisms in individual cases (Kreuzer 2010). Rough proxies can mislead. For instance, in 75–84% of the cases the Acemoglu and Robinson (2006) argument would pass a test that looked just for anti-elite mobilization. Requiring consistency with the other observable implications, however, lowers the pass rate to 4–6%. Do elites enfranchise citizens to persuade them to defend the country? Democratization did occur at times of war, civil war, or serious threat in 23–45% of the cases. But in less than 5%, political rights were granted to motivate those needed to fight (or demobilize).

Further research may uncover what factors—individual or structural—make mistakes more likely. Developing a theory about when mistakes occur and when they matter is an important challenge for future research. Both leaders’ age and tenure may contribute. Age increases odds of mental impairment. It also raises issues of succession, with their associated dangers. However, age also discourages risk-taking, which could reduce mistakes (Truett 1993). Tenure might have contrasting effects. Experience accrues with years in office and more competent incumbents will survive longer, so new leaders should make more mistakes. Consistent with this, dictators are most likely to lose power early on (Bueno de Mesquita and Smith 2010, 941). However, hubris and informational filters tend to develop over time, so the relationship could be nonlinear, with mistakes likelier both early and late in a leader’s tenure.

Some subtypes of authoritarian regimes may be more prone to blunders. Those with collective leadership— some single-party and military regimes, oligarchical proto-democracies—may vet policies better than personalistic dictatorships or monarchies do (Weeks 2014). (Single-party regimes are particularly resilient (Geddes 1999, 132).) Those that hold elections risk mismanaging them, although not holding elections has its own drawbacks. Major economic or political turbulence may increase errors. Confronting crises, leaders may risk potentially destabilizing innovations. Social change makes it harder to discern the optimal mix of concessions and repression. Rulers facing complex international threats are more likely to blunder abroad.

Mistakes matter also for other institutional reforms. Rational accounts of electoral rule selection have sparked debate (Boix 2010; Cusack, Iversen, and Soskice 2010; Kreuzer 2010). Such accounts have trouble explaining why in early twentieth century Western Europe and postcommunist Eastern Europe incumbents often “supported electoral rules that later eliminated them from politics” (Andrews and Jackman 2005, 65). Another possible example is the spread of human rights treaties. That egregious abusers would ratify these is puzzling at first glance. Perhaps reputational gains or access to foreign aid offset any risk. But leaders might simply fail to anticipate the consequences. The year before his plebiscite, Pinochet’s government signed the United Nation’s Convention against Torture. Eleven years later, it was used against him. African leaders whose countries supported the creation of the International Criminal Court were among its early targets. “[I]n a period of rapid flux,” writes Sikkink (2011, 40), “states may misunderstand the implications of their actions. They make mistakes.”

Future studies could explore the role of mistakes in other types of regime change. As well as facilitating democratization, errors can trigger democratic breakdowns. Failures in the interwar period often occurred because participants “were mistaken in their analysis of the situation” (Linz 1978, 81). The fatal missteps of democratic leaders—domestic policy failures, concessions that embolden the opposition, appointment of covert (or overt) regime opponents—clearly overlap with those of autocrats.

#### Democracy resilient – capitol riot proves

Dupont, 21

(Alan, chief executive officer of political and strategic risk consultancy The Cognoscenti Group and a non-resident Fellow at the Lowy Institute, “Only a resilient democracy could have survived.”, The Australian, 01-11-2021, https://www.theaustralian.com.au/commentary/only-a-resilient-democracy-could-have-survived-the-mob-violence/news-story/00700b0f0046588b6acd34b4a08f6737)\\JM

After last week's unprecedented scenes of mayhem and wanton destruction in Washington's Capitol building, the notion of a rebirth seems far-fetched. Worse could follow in the waning days of his presidency if Trump gives full vent to his vindictive nature by inflaming his hardcore supporters or initiating an international crisis. Without bipartisan support, impeachment risks turning Trump into a martyr and further polarising the electorate.

But American resilience and the capacity for renewal should never be underestimated. The Trump-inspired insurrection against the people's house may be the shock the country needs to realise it has come to a fork in the road. Unconstrained populism is the low road that leads to dysfunction, division, violence and the anarchy of the mob. Joe Biden's task is to bring America's warring tribes to their senses and reverse the palpable decline in civic pride and principled behaviour that has debased the nation's political culture.

Can he do it? Sceptics - and there are many - doubt Biden's empathy and compassion are enough to heal the grievous wounds Trump has inflicted on the US body politic. But this could be a case of "cometh the hour, cometh the man". Dismissed as a weak and ineffectual presidential candidate less than a year ago, a reinvigorated Biden has come roaring back to life, visibly growing in stature since his emphatic defeat of Trump at the ballot box.

The unexpected Democratic triumph in the two Georgia Senate run-off elections has gifted Biden rare control of both houses of congress. Well versed in the realities of congressional power, Biden is unlikely to look this gift horse in the mouth.

As Trump's hold on the media and electorate loosens, Biden has seized the moral and political high ground by defending the constitution, calling for national unity and holding Trump to account for the chaos that has paralysed the country. The contrast couldn't be greater. Biden's unifying message is resonating across the political divide while Trump's crass, self-serving behaviour is turning off an increasing number of Americans.

A highly unusual public declaration calling on the military to refrain from involvement in Trump's attempt to delegitimise the election results by all 10 living former US defence secretaries - including two appointed and fired by Trump - was an early sign the pendulum was beginning to swing against the man who glories in his capacity to hire and fire at will. But this is not reality TV. In the real world there are consequences. One is that powerful people will strike back.

Although it was to be expected that the handful of longstanding, dissident Republicans such as Senator Mitt Romney would ramp up their criticisms of a man they clearly despise, Trump didn't anticipate once stalwart loyalists throwing in the towel. Republican royalty in the form of Senate Majority leader Mitch McConnell and leading conservative Lindsey Graham have clearly had enough, distancing themselves from a president they once defended. Opportunists such as Ted Cruz, who hope to inherit Trump's crown and voter base, risk having their presidential ambitions derailed by their ill-conceived and futile attempt to derail Biden's certification as president.

The lesson for Australia is that America's democratic deficit is ours, too. Our democracy sprang from the same classical and Enlightenment philosophers who profoundly influenced the authors of the US constitution. And we suffer many of the same afflictions, although mob violence has thankfully not yet scarred the offices of our elected representatives or the halls of Parliament House.

The realisation that what happened in the US could happen anywhere will galvanise democracies everywhere, helping Biden in his quest to reunify the nation and push back against autocratic governments invested in democratic failure. Restoring the moral authority of the presidency, and faith in the foundational pillars of American democracy, is an essential first step to restoring US greatness, something Trump never understood. But the world's dictators well understand the connection. That's why they are gleefully portraying America's travails as irrefutable evidence of a failing political system unable to deliver the national unity and social discipline required of great countries.

They have a point. If the US is a country at war with itself, so are many other leading democracies. The cancel culture intolerance that infects them is symptomatic of societies tribalising along racial, ethnic and identify lines rather than being united by common interests, values, traditions and institutions. In attempting to heal his country, Biden may find activists in his own party as much of a problem as the insurrectionists who stormed the Capitol.

In addressing the many domestic problems the country confronts, Biden must be careful not to neglect the very real challenges that will be thrown at him by autocratic competitors and adversaries anxious to capitalise on Washington's disarray.

The first challenge may come from China as it ramps up pressure on Hong Kong under its draconian national security law. Chinese officials are already arguing there is no difference between their crackdown on dissidents who "illegally" occupied the Hong Kong Legislative Council last year and US authorities restoring law and order in the Capitol. This is spurious. There is no moral equivalence between a society that defends its democratic institutions and one that subjugates its people to the dictates of an autocrat.

While authoritarian governments will continue to exploit the shocking optics of America's "citadel of freedom" under mob attack, the reality is that only a vibrant and resilient democracy could have survived such an attack without breaking. This is a triumph, not a defeat. US democracy has survived the ultimate stress test and will emerge stronger for it.

# States

### 2NC A2: Marvit/Preemption

**2nc cp— in the event of federal preemption, the 50 states and all relevant subfederal entities should continue to enforce prohibitions on private sector business practices that violate an antitrust worker welfare standard.**

#### AND this is supported by their evidence. Their 2AC Marvit card is titled “the way forward for labor is through the states” and concludes that state action like raising minimum wages and establishing new worker protections solve the aff and that they should ignore federal preemption and advocate the CP anyways. It also says that the federal government follows on with state actions—which both means the CP solves the whole aff AND that the CP would successfully put pressure on the Supreme Court to not preempt

Marvit, 17

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

Each January, as the Bureau of Labor Statistics (BLS) releases its annual data on union membership rates, labor braces itself to see how steeply the chart dips. This past year, the share of unionized workers declined 0.4 percent, to just 10.7 percent of wage and salary workers overall and a bare 6.4 percent of private-sector workers. As has been the case for many years now, the annual release represents the lowest year on record for unions. Even though it has been the long-stated policy of the federal government, as codified in the National Labor Relations Act, to encourage collective bargaining, federal labor law has proven unable to adequately protect workers in the exercise of their rights, and Congress has proven unwilling to pass even tepid reforms that would help them. As a result, the law does little to protect workers who face increasingly hostile and sophisticated employers who often threaten, fire, and surveil employees in order to crush organizing efforts. While reforms to federal law have been blocked by Congress, states and cities have faced a different hurdle: the courts. Starting in 1959, the Supreme Court has written into the National Labor Relations Act (NLRA) a continually expanding preemption doctrine that prevents states and cities from passing laws that touch upon anything related to labor, involve the interpretation of a collective bargaining agreement, or even involve issues that the courts believe Congress intended to leave to the free play of market forces. Congress can, and often does, expressly preempt states from passing laws that fall within a defined scope. Neither the NLRA nor its extensive legislative history, however, contains any mention of preemption: Congress did not expressly preempt states from acting. In instances where Congress has not expressly preempted states from acting, state laws that actually conflict with federal laws are still preempted. However, neither the NLRA nor its legislative history show any consensus that Congress meant to push states and cities from making laws that advanced, and do not conflict with, the pro-collective-bargaining policies of the NLRA. And yet, as Harvard Law Professor Ben Sachs has pointed out, the Supreme Court has not employed the typical typologies of preemption at all when dealing with labor law. Rather, it has created a “preemption doctrine [that] is among the broadest and most robust in federal law.” In most other areas of worker protection—from minimum wage to antidiscrimination laws—the federal government has set the floor under which states and cities may not go, but they can and often do raise the ceiling by increasing state or local minimum wage or including additional protected categories such as sexual orientation to existing protections. Indeed, the evolution of many of the nation's employment and civil rights protections began at the state level and trickled up to the federal government. It is only in the area of workers' labor rights that states and cities are powerless to act—and that, solely as the result of judicial decisions. The Supreme Court's preemption doctrine started with the 1959 case, San Diego Building Trades v. Garmon, where the employer got a state court injunction against the union for picketing. The Supreme Court should have held that the picketing that the union was engaged in was a protected right under federal labor law, and therefore the state could not pass a law that conflicts with that right. Instead, the Court went further and held that Congress gave the National Labor Relations Board primary agency jurisdiction, and so when something is “arguably” protected or prohibited by the NLRA, then only the Board can act. Furthermore, only the Board can answer the initial question of whether conduct is “arguably” under the Board’s jurisdiction. The Supreme Court then doubled down on its preemption doctrine in the 1976 case, Machinists v. Wisconsin Employment Relations Commission. In the Machinist case, an employer brought an unfair labor practice charge against union workers who engaged in concerted refusal to work overtime during contract negotiations. The NLRB dismissed the charge because it held that the work refusal was not prohibited under the NLRA, so the employer brought a state court action against the union. In response, the Supreme Court expanded its earlier Garmon preemption to hold that Congress intended that certain conduct be left unregulated and left “to be controlled by the free play of economic forces.” Though the union in the Machinists case benefitted from the Court’s expansion of federal preemption, the decision has led to states and cities being almost absolutely prohibited from passing laws that promote unionization and collective bargaining. These Court decisions, and thousands of lower court decisions that have followed the precedent in overturning state and local laws, rely on three types of specious and archaic reasons that deserve challenge and reconsideration. First, the Court has repeatedly shown a strong reliance on the state of the economy and labor force during the time when these decisions were issued. In the Machinists case, the Court described how it experimented with various types of preemption before settling on the broad form begun by Garmon, stating, “it was, in short, experience, not pure logic, which initially taught that each of these methods sacrificed important federal interests in a uniform law of labor relations.” The experience the Court referred to was that of the late 1940s and 1950s, when union membership was at its peak. Whatever balance between labor and management that may have existed then has since eroded. Second, the Court has long interpreted the statute to require a uniform labor law across the country—and yet, labor law has become in many ways a crazy quilt, varying from region to region, from state to state, and from one president to the next. The NLRB has become a highly politicized agency, with its decisions swinging wildly every time a new president appoints new members and a general counsel. Cases that proceed through the National Labor Relations Board are often appealed to federal courts, and different federal circuits often come to opposite conclusions, meaning that the laws in different states effectively differ—though it is the courts, not state or local governments, that create those differences. Further, the expansion of state “right to work” laws, as well as a variety of state public sector labor laws have also undermined any goal of national uniformity in labor law. Lastly, the Court's determination that Congress intended to leave a wide variety of conduct to the free play of economic forces has, in the words of NYU Law Professor Cynthia Estlund, “done what Congress did not do in the NLRA, or even with the Taft-Hartley Act: It has granted to employers a federal ‘right' to use their economic power against unions.” The Congress that passed the NLRA may have intended to ensure a balance between employer and union power, but there is no indication that it intended employers to be able to use the Act to evade any regulation in broad areas through a laissez faire argument. The result of this judicially created broad preemption has been to limit state and local experimentation—in line with what Justice Brandeis described as “laboratories of democracy”—with labor laws that advance the stated purpose of federal labor law. However, since states and cities cannot act in the field of labor law, all discussions of federal labor law reform are purely theoretical and lack any empirical basis for their possible effects. Numerous labor law scholars have written critically over the years of the rationale for such broad preemption, as well as the effects it has had on workers' ability to organize. Recently, Lewis & Clark Law Professor Henry Drummonds came up with a list of ten potential reforms that would advance the pro-collective bargaining mission of the NLRA—if states could be able to pass such reforms under normal preemption rules. These include allowing states to: increase damages for violating workers' labor rights so the penalties are in line with those for other forms of workplace discrimination; experiment with restrictions on permanent replacement of striking workers and on the use of employer lockouts; experiment with “card check” recognition of the union; provide “equal access” to union advocates as well as employers during a campaign for unions; and require arbitration if an impasse arises in the bargaining over a first contract. The one and only major state labor reform since the 1935 enactment of the NLRA has had a profound effect on the division of wealth and power in the United States. That, of course, was the provision of the 1947 Taft-Hartley Act enabling states to pass “right to work” laws. Allowing states and cities to create local rules that promote unionization and collective bargaining that are tailored to local needs and local industries could prove just as significant in the opposite direction. After eight years of the Republicans using a strategy of non-cooperation with President Obama, and now President Trump's open contempt for federal regulation and enforcement, many on the left have begun to push for a “progressive federalism” that relies more on state and local action on issues from climate change to minimum wage to immigration. Labor law should be included on their federalist bill of particulars, and broad federal preemption of labor law should also be challenged. Doing so would free states and cities to experiment with a variety of policies that would protect workers and more adequately allow them to exercise their rights of free association and collective bargaining at work. These experiments could then provide empirical data for national labor law reform, should the day ever come when Congress regains a taste for cooperation and compromise. To create the ground for such experiments cities, states and unions should begin challenging the Supreme Court to reconsider the preemption doctrine that it wrote into the NLRA. Challenging preemption may lead to unlikely alliances that are not grouped easily into liberal and conservative camps. Even though the results of such a challenge would benefit labor, the promotion of federalist and strict statutory construction arguments are core principles of conservative legal thought. Getting the Supreme Court to overturn its past precedent is always an uphill battle, but it is not impossible. Though the overall labor figures released by the Bureau of Labor Statistics show a movement in decline, labor's density and power is quite uneven. Labor is still a force in northern cities across the country, as well as major states such as California, New York, Washington, Oregon, Alaska, Hawaii, Pennsylvania, and throughout the Midwest. In many of these states and cities, laws could be passed that advance the original purpose of the NLRA—provided their hands were unbound. It is time for those concerned with workers' rights and with the future of labor in America to challenge the Supreme Court's misreading of the law.

#### Separately, there’s no preemption for the CP planks which establish new general labor standards outside of antitrust. That solves the whole aff.

Jacobs, Oct. 2021

(Ken Jacobs, is the Chair of the Center for Labor Research and Education at the University of California, Berkeley. REBECCA SMITH is the Director of Work Structures for the National Employment Law Project. JUSTIN MCBRIDE a Doctoral Student in the Department of Urban Planning at the University of California, Los Angeles. “STATE AND LOCAL POLICIES AND SECTORAL LABOR STANDARDS: FROM INDIVIDUAL RIGHTS TO COLLECTIVE POWER,” ILR Review, 74(5), October 2021, pp. 1132–1154 NL)

The US enterprise-based collective bargaining regime creates substantial limitations for organizing workers in an economy in which supply chains are increasingly disaggregated in ways that reduce worker power. Federal labor law generally preempts state and local policies that directly address private-sector bargaining. State and local governments, however, are not preempted from setting general labor standards. The authors examine four cases of recent experiments using sectoral standards at the local level. The cases show that sectoral standards have the potential to expand new forms of social bargaining through state and local public policy in areas of the country where worker organizations are already strong. Sectoral standards can do so in ways that promote worker organization and build institutional power, especially when combined with robust worker organizing. In presenting these cases, the authors show both the potential power, and limitations, of federalism in US workplace regulation. Unions, policymakers, and academics in the United States are increasingly interested in sectoral standards setting as a way to strengthen worker organizations and raise labor standards for low- and middle-wage workers. With uncertain prospects for change in federal labor law, new experiments in setting sectoral labor standards are emerging at the state and local levels. Setting sectoral labor standards at the state and local levels, ideally, can improve outcomes of enterprise-level collective bargaining. The sectoral standards strategy may also address gaps in federal labor law for key issues facing many workers in the United States—workplace fissuring and exemption from federal labor or employment law. This development follows increased attention in recent decades by practitioners and scholars to state and local governments as loci of workplace regulation, with some arguing for a progressive vision of federalism, which uses the power of states and local government to expand rights and regulate business. Employment law in the United States, which regulates individual workplace rights, provides a clear example of how this can work. The federal government sets the floor. States or local governments can choose to regulate above that floor.

### 2NC Solvency

#### It solves advantage 1 by establishing the same worker welfare standard that the aff does—it also establishes a basic income guarantee, raises the minimum wage, and establishes stronger worker welfare standards not tied to antitrust, all of which collectively solves inequality and wage stagnation, the only internals they have to this advantage

Standing, 20

(Guy, Fellow of the UK Academy of Social Sciences, and Professorial Research Associate, School of Oriental and African Studies, University of London. He was formerly Professor of Economic Security at the University of Bath, and Director of Socio-Economic Security in the International Labour Organisation "The Case for a Basic Income," Nov 24 2020 <https://www.resilience.org/stories/2020-11-24/the-case-for-a-basic-income/> NL)

The COVID-19 pandemic has brought into sharp relief the irretrievable breakdown of the post-war income distribution system in the West that essentially ties income and benefits to employment. The past four decades have seen income, wealth, and power flowing increasingly to rentiers—owners of physical, financial, and so-called intellectual property—while the ranks of the global precariat swell, consigning workers to unstable jobs, low and erratic incomes, and insecure lives. But the pandemic may prove the undoing of that system, as paying people to stay home—indeed, to not do paid work—has become essential to survival. As long as income depends on jobs, workers will feel a need to return to unsafe conditions. And as long as economic power remains concentrated at the top, companies will have every incentive to make workers come back. Even if we manage to weather the current pandemic, our system lacks the resilience to be ready for the next one—let alone other crises. The glimmer of hope amidst the tragedy is that the economic recession triggered by the pandemic is a potentially transformative crisis. Many on the left were puzzled by the reversion to the neoliberal status quo following the 2007/2008 financial crash. However, a hegemonic paradigm will only be displaced if it cannot answer the questions that preoccupy people and if an alternative paradigm is ready. For too long, that second condition has been missing. Fortunately, an alternative economic vision has been emerging, and a basic income system is an essential component of it. A basic income is not a panacea, merely a necessary pillar of the reimagining of work and economic security in our crisis-ridden world. As resolutely against old-style “laborist” social democracy as against neoliberal capitalism, it will foster greater freedom while helping us tackle the worsening crises of inequality, climate change, and authoritarian populism. A Right to Economic Security Basic income is a centuries-old idea with roots in ideas of social justice. As Thomas Paine, an early advocate, said in his 1795 pamphlet Agrarian Justice, “It is not charity, but a right, not bounty but justice that I am pleading for.” A basic income system would aim to assure basic economic security to all, independent of employment, by providing every legal resident of a country with an equal monthly sum of money, without conditions, as an economic right.[1](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_1" \t "_blank) Such unconditionality is what distinguishes a basic income from other welfare programs. A modest basic income would be paid to individuals as individuals, regardless of household arrangements, work status or prior contributions. Importantly, it would be guaranteed to all regardless of other income, thus bypassing the stigmatizing and exclusionary means-testing intrinsic to many welfare programs. Although some conservative basic income advocates view it as a substitute for existing public programs, they are a distinct minority. Most advocates see it as a complement to robust universal public services like education, health care, and other social supports. There would, moreover, need to be automatic supplements for the disabled and elderly coping with extra living costs and constraints on earnings. A basic income is also a recognition of our collective social and ecological inheritance, the true source of wealth. Indeed, the wealth and income of all of us are due far more to the efforts and achievements of past generations than to what we do ourselves. But we do not know whose ancestors contributed more to our wealth. If society allows for private inheritance of private wealth, then we should allow for social inheritance in the form of a social dividend or basic income. Similarly, a basic income would be partial compensation for loss of the commons, which belong to all of us equally, but which have been appropriated by privileged elites and corporations to generate private wealth. In this context, the commons are not just land, waterways, forests, parks, and natural resources, but also the social amenities, public services, and body of ideas and knowledge we inherit as a society. We all deserve a share of the wealth these commons produce. A Guarantor of Freedom The postwar job-based income distribution system involved a tradeoff between economic security and freedom. Job-based income and benefits lead to dependence on an employer. Accessing means-tested benefits from a welfare state requires going through administrative hoops. Moreover, such welfare programs are often specifically conditioned on having or looking for employment, even if that means accepting a low-paying job. A basic income stands against such strictures. Unlike other social policies, basic income would enhance three types of freedom: libertarian freedom, liberal freedom, and republican freedom. The first—libertarian freedom—refers to the freedom from constraints. Modern policymakers impose paternalistic controls on what “the poor” must or must not do, on pain of worse impoverishment. As a right with no conditions attached, basic income leaves people free to spend their money as they wish, prioritizing what is most important to them. A basic income would strengthen the capacity to say no to abusive or exploitative relationships and yes to forms of paid and unpaid work that might otherwise be out of reach. People would be able to accept more fulfilling jobs that they may have rejected due to economic considerations or to spend more time caring for their loved ones, neighbors, and community. Nobody should need reminding in these pandemic times that there is a care deficit. It would also foster liberal freedom, the freedom to be moral, described by the philosopher T.H. Green as the ability to decide and do what you think is right.[2](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_2" \t "_blank) You cannot be moral if you must do as you are told or “steered” to do by a paternalistic government or other authority. Unpaid community work is not a virtuous moral choice of activity if you are required to do it to receive welfare benefits or as a punishment. A basic income would reduce these hurdles to moral action. Lastly, such a scheme would advance republican freedom, freedom from actual and potential domination by unaccountable authority. A woman, for instance, may lack such freedom if she can only do things with the approval of a husband or father, even if they usually “allow” her to do what she wishes. Basic income experiments in the US found that in some cases women who had their own basic income were able to leave abusive relationships.[3](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_3" \t "_blank) Mahatma Gandhi captured the essence of republican freedom by saying freedom means being able to look others in the face and not having to give in to their will. Moving from Crisis to Sustainable Prosperity A basic income system is not only a tool for responding to the pandemic in the short term. It can also help us tackle longer-term crises of poverty and inequality, climate change, and the rise of authoritarian populism. The most obvious benefit of a basic income is poverty reduction. Targeted, means-tested schemes exclude many poor people, sometimes deliberately so, and the inevitable poverty traps—when benefits are withdrawn as income rises—simply serve to keep people in poverty. Job guarantee and subsidy schemes are difficult and expensive to administer, distort the labor market, and come perilously close to workfare. Vouchers, as alternatives to cash, are paternalistic schemes that presume what people need rather than allowing them to decide for themselves (thus food stamps in the US allow mothers to buy food but not diapers). A basic income scheme underwritten by taxation on the rich would reduce economic inequality. As an equal payment to every individual, regardless of household, income or employment status, it would also help promote gender and racial equity. This would help equalize power relations within households, relieving financial dependence on a household “head.” A basic income system would also have macroeconomic advantages. By increasing the purchasing power of low-income households, who have a higher propensity to spend than more affluent ones, it would boost spending on local goods and services, creating more jobs and further raising incomes.[4](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_4" \t "_blank) Moreover, the security afforded by a basic income would encourage entrepreneurship, since people could take more risks knowing they had something to fall back on if their venture failed. Finally, the delinking of jobs from economic security reduces the perceived threat posed by automation. Rather than fearing the disruption or displacement of millions of jobs, we can share the wealth that mechanized productivity provides. A basic income system could be an important part of effective plans to mitigate climate change. Carbon taxes and other eco-taxes are essential to reduce emissions but by themselves are regressive and unpopular. The solution? Recycle the tax revenue generated as a basic income. More broadly, a basic income would encourage a transition to an ecological society by giving people the freedom to shift from resource-depleting (and often boring and demeaning) jobs to resource-preserving care, craft, and community work. Likewise, funding a basic income system with a taxation scheme that discourages resource depletion and checks luxury consumption would further reduce environmental stress. Tackling climate change and inequality has become more difficult with the spread of an authoritarian populism that combines xenophobia, misogyny, and climate change denial. Fear and insecurity have fueled the surge in neo-fascist populism around the globe. A basic income would counter this dangerous tendency because having economic security fosters altruism, empathy, and tolerance.[5](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_5" \t "_blank) By freeing time for community and political engagement, it could also help to weaken the appeal of all forms of populism.

### A2: Perm Do Both

#### **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

### 2NC A2: Open Markets Ev

#### Their Open Markets ev is awful—says the FTC has tried to undermine efforts by states, not that those efforts have been successful nor that they have blocked anything the states have done nor does it provide a single example—prefer our ev because Congress has explicitly stated that the FTC and the DoJ don’t have the authority to undermine the states

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

I. THE ROLE OF THE STATES IN ANTITRUST ENFORCEMENT During the 1970s, Congress began to develop a range of "cooperative federalism" regulatory programs. Under such programs, Congress authorizes state enforcement of federal law and generally calls on the federal government to set a floor for enforcement. In so doing, it generally provides states with additional authority to tailor standards as well as pick up any slack in enforcement. By instituting such a model, Congress adopted a hedging strategy-ensuring a base level of uniformity, allowing for appropriate experimentation, and building in the opportunity to pick up the slack as to any underenforcement at the federal level. 2 The environmental laws provide the classic example of cooperative federalism in action, with the Clean Air Act being a clear case in point. 3 Under the Clean Air Act's model, the Environmental Protection Agency (EPA) authorizes state agencies to address air pollution using a variety of tools, provided that they ensure a basic level of air quality. Where state agencies decide to go above the level specified by the EPA, they are permitted to do so. 4 Following this precedent, both telecommunications regulation and health care policy later adopted a cooperative federalism architecture, blending state and federal authority and calling on state agencies to develop and enforce federal regulatory standards. Antitrust law operates in a functionally similar manner to other cooperative federalism regimes. In 1976, by adopting the Hart-Scott-Rodino Antitrust Improvements Act, Congress embraced the ability of state AGs to enforce federal antitrust law on behalf of their states, using what is called "parens patriae" authority.5 The theory of this delegation of authority, like other cooperative federalism programs, is twofold: (1) states may be better positioned to know of competitive issues in their jurisdictions; and (2) states may have a greater willingness to take action and have the ability to collect damages on behalf of their citizens, thereby further advancing the goals of antitrust law. As the Supreme Court stated, the role of states in antitrust enforcement "was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition." 6 One of the questions inherent in a cooperative federalism framework is whether the federal government has the authority to prevent states from going further than the federal government where, in their view, local conditions warrant. In the environmental arena, the EPA has the authority to ensure a minimum level of enforcement, but not to prevent states from taking additional action. In the antitrust arena, the situation is similar: the federal government can take action to ensure a basic level of enforcement, but it does not have the power to prevent states from going further-under federal or state law-to stop anticompetitive conduct.7 For an example of parallel federal and state action, consider the Microsoft case. 8 In that case, the federal government ultimately decided-after a remand on the remedies issue by the Circuit Court of Appeals of the District of Columbia-on a regulatory remedy and declined to pursue structural relief. A number of states that were part of this litigation took a different view and proceeded to challenge the absence of divestiture. As this case was litigated and ultimately decided, it was accepted that the states have the requisite authority to pursue a different view from the federal government if they choose to do so. 9 The opposite approach-empowering the federal government to bar states from antitrust enforcement whenever it so chooses-would undermine the architecture of cooperative federalism. Such an approach would also hurt consumers in states where state AGs pick up the slack in federal enforcement by bringing additional resources to bear and by applying their local expertise. Consider, for example, the case of a recent merger in Colorado Springs between DaVita's clinical network and UnitedHealth Group's Medicare Advantage insurance product.10 In this case, UnitedHealth consummated the merger after its market share declined from around 75% to around 50% as a result of the emergence of a disruptive entrant, Humana. Humana emerged as a rival after building its relationship with DaVita's clinics, which referred patients to Humana's Medicare Advantage offering. In the wake of the merger, however, Humana faced the prospect of losing access to referrals for its Medicare Advantage product from patients at DaVita's clinics. The Federal Trade Commission (FTC) reviewed the UnitedHealth/DaVita merger and declined to take action in the Colorado Springs market. 1 In Colorado, however, the Attorney General's office was concerned about the prospect of UnitedHealth using control over DaVita's clinics to reestablish its dominant position in the Medicare Advantage market-thereby leading to higher prices, less choice, and lower quality offerings to patients. By taking action in this case, separate and apart from the FTC, we were able to protect Colorado consumers. And rather than protest our action, the FTC respected our authority. Indeed, two commissioners wrote separately to highlight the valuable role state AGs play in enforcing antitrust law.12 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 In a later speech, DOJ Antitrust Division Chief Makan Delrahim defended the DOJ's position. 20 He argued that allowing states to bring antitrust actions of their own "creates the risk that a small subset of states, or even perhaps just one, could undermine beneficial transactions and settlements nationwide." 2 1 Moreover, he suggested that states should not be authorized to seek any "relief that is incompatible with relief secured by the federal government." 22 This concept of federal supremacy is incorrect and ignores the fact that states can enforce the federal antitrust laws only by bringing cases in federal court. If states advance claims that are unfounded and would undermine procompetitive mergers, the courts will reject them. And the courts can, of course, take into account any action or decision by the federal antitrust agencies in assessing a state's claims, just as the Court in Philadelphia National Bank took into account the actions of federal bank regulatory agencies. 23 But there is no basis in the statutes, the cases, or sound policy for a decision by a federal agency to preclude the states from exercising their rights under the antitrust laws by asking a federal court to prevent or provide remedies for a violation of those laws. Although the court ruled against the states in the T-Mobile case, Judge Marrero declined to adopt Delrahim's proposed limit on the states' role. Rather than reject the states' authority to bring the action, the court evaluated the case on the merits, noting that the views of federal regulators can be informative, but are not conclusive. 24 To be sure, the presence of a remedy-a fix to the harm occasioned by the merger, as it were-is a fact of life that the litigating states and the court rightly had to address. Similarly, the DOJ would also need to "litigate the fix" if another federal regulatory agency (say, the FCC) adopted a remedy in the face of a DOJ merger challenge. But to face challenges in litigation is a far cry from being barred from the courtroom. In short, the states are partners in antitrust enforcement, reflecting the cooperative federalism architecture adopted by Congress. In effect, Congress has empowered states to act as a check on federal enforcement, or, more precisely, on instances of federal underenforcement; as such, it declined to allow federal inaction or preference for particular remedies to remove the states from antitrust enforcement. In this sense, the central question is not-as the DOJ suggests-whether states might "displace the federal government's role as the nation's federal antitrust enforcer," 25 but rather whether states are positioned to pick up any slack and ensure that important issues are raised before the courts, whether or not the federal agencies are inclined or able to do so.26

#### Uniformity solves—the feds only intervene to check outlier laws but the CP establishes critical mass for antitrust reform which means the feds won’t intervene

Magnuson, 20

(William Magnuson, Associate Professor, Texas A&M University School of Law; J.D., Harvard Law School; M.A., UniversitA di Padova; A.B., Princeton University, “The Race to the Middle,” Notre Dame Law Review [Vol. 95:3] 2020 NL)

The final factor that drives states toward a race to the middle is the risk of federal intervention. 15 3 The observation here is a simple one: it is more likely that the national government will act to strike down a state's regulation if that regulation is an outlier. If, on the other hand, the state's regulation is well within the norms of behavior of other states, the national government will be less likely to intervene. To the extent that states seek to prevent the national government from stepping in to challenge or preempt their laws, they will have an interest in adopting regulations that look similar to those of their peers, rather than distinguishing themselves from the crowd. 154 Federal intervention may take a number of forms. First, and most formally, it may come in the form of congressional action: Congress may pass laws to prohibit states from enacting regulations with certain content.' 55 In some cases, Congress may be quite specific in the types of laws they are targeting. For example, when several states passed burdensome laws concerning trucking and shipping operations in their states, laws that made it more difficult for new entrants to compete with incumbent trucking companies, Congress stepped in to prohibit the practice, enacting in 1995 a law that prohibited stating from enacting or enforcing any "law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.' "156 Second, it may come in the form of actions by regulatory bodies or federal prosecutors seeking to challenge the state law as contrary to federal or constitutional law. A recent example of this kind of federal intervention has been seen in the debate around so-called "sanctuary cities," or cities that seek to protect immigrants from deportation under federal law.' 57 After President Trump took office in 2017, he issued an executive order for the Secretary of Homeland Security to prioritize deportation and to ensure that "sanctuary jurisdictions" that refuse to comply with their orders are held ineligible for federal grants. 158 Outlier states found that federal intervention could prove a powerful tool to thwart their legislative priorities. Whatever its form, federal intervention in state regulation is more likely in the case of states with regulations that are viewed as outliers, or more extreme than the regulations of the majority of states. This is so for a number of reasons. First, outlier states are more likely to garner public attention and, thus, become the subject of politically motivated action. If a state adopts a law that looks quite similar to laws in other jurisdictions, it is less likely to gain political attention and salience. On the other hand, if a state adopts a law that goes much further than other states, either in pandering to powerful interests (in the case of races to the bottom) or in creating more efficient solutions to long-term problems (in the case of races to the top), the law is more likely to become a hot-button issue in public discussion.1 59 Second, outlier states are more likely to have regulations that lead to extreme results that create demand for a federal response. State regulations that strongly favor the interests of one group over another can be expected to mobilize burdened groups to react, either by lobbying the state government to change its law or, if those efforts are ineffectual, by appealing to the federal government. 160 But regulations that simply copy the regulations in place in other jurisdictions can be expected to have more moderate effects on the interests of stakeholder groups and, thus, should generate fewer demands for intervention from the federal government. 161

### 2NC A2: Garza Ev

#### There are about a thousand examples of states getting modeled internationally AND of them working with international agencies, which means we do solve the whole aff

Engstrom, 18

(David Freeman Engstrom (dfengstrom@law.stanford.edu) is a professor of law at Stanford Law School, and Jeremy M. Weinstein (jweinst@stanford.edu) is a professor of political science and a senior fellow at the Freeman Spogli Institute for International Studies at Stanford University “What If California Had a Foreign Policy? The New Frontier of States’ Rights,” The Washington Quarterly, 41:1, 27-43, 2018 DOI: 10.1080/0163660X.2018.1445356 NL)

When President Donald Trump announced his decision to withdraw the United States from the Paris agreement on climate change, the response from local and state officials was swift. The mayors of 61 U.S. cities quickly released an open letter promising to meet the commitments agreed to under the Paris framework. Twelve states and Puerto Rico announced the formation of the United States Climate Alliance, a coalition of state governments committed to upholding the Paris agreement. And Michael Bloomberg, the U.N. special envoy for cities and climate change, submitted to the U.N. a joint statement signed by more than one thousand business leaders, mayors, governors, and others prepared to quantify the emissions reductions that can be achieved in the United States without the federal government’s help. Entitled, “We are Still In,” the letter symbolizes an important phenomenon in U.S. foreign policy, one that is taking off in the age of Trump—the rise of assertive states and cities ready to act on their own on the international stage. Leading the pack is California, led by Governor Jerry Brown who is in the home stretch of his more than forty years in public life. Even as President Trump spoke in the Rose Garden in June 2017, Brown was on his way to China, where a formal meeting with President Xi Jinping in the Great Hall of the People—an honor typically reserved for visiting Heads of State—signaled a budding partnership between California and China to battle carbon emissions. Brown eagerly positioned California at the forefront of global efforts to confront climate change, just as China seemed poised to assume the leadership role abandoned by President Trump. But this was not just symbolism, and it was only the most recent chapter in California’s international climate policy. While the state’s far-reaching fuel economy standards get the lion’s share of attention, more than 170 jurisdictions, including Canada and Mexico, have embraced Brown’s Under 2 Coalition—a nonbinding, global agreement launched in 2015, before the Paris agreement, that commits signatories to reduce their emissions to net-zero by 2050. Collectively, the signatories represent nearly 40 percent of the global economy.1 Because California prides itself on its global reach, the idea of a distinctively Californian foreign policy has been kicking around for a while. Governor Arnold Schwarzenegger famously celebrated the state as the modern-day equivalent of Athens and Sparta in 2007, a “nation state” by virtue of its economic strength, population, and technological force.2 Indeed, California is the world’s sixth largest economy— larger than France or Brazil. Its 40 million residents make it the most populous state in the United States. And between Silicon Valley and Hollywood, California has almost unrivaled capability in terms of technological leadership and cultural influence. By virtually any measure, California would be a global powerhouse except for two fundamental constraints: it lacks many of the legal attributes and policy instruments of a nation-state, and the U.S. Constitution expressly reserves for the federal government responsibility for the conduct of foreign affairs. As a result, until recently, the enthusiasm for a Californian foreign policy far exceeded the reality. Before its climate leadership, California’s foreign policy looked pretty parochial and a lot like any other state or province with a focus on export promotion, trade, and foreign investment. Though some legal constraints remain, the Trump presidency has spurred, and will likely continue to galvanize, a range of new efforts by California—and other states and municipalities—to test the legal limits of federal power in foreign affairs. Californians are proud that their commitments to diversity, the environment, and human rights set them apart from what they see emanating from Washington D.C., while California’s politicians will undoubtedly see the value in resisting Trump administration policies and distinguishing California from the United States as an actor in global politics. Among others, an ambitious governor—one who already ran for president three times—is seemingly prepared to see just how far California can get. Whether these efforts succeed will depend, in part, on how much latitude the courts ultimately grant to the states. Historically, the answer has been not much. But these new state initiatives may be emerging at just the right time. In the midst of a long-running transformation in how foreign affairs are conducted and an evolution in legal thinking about federalism’s boundaries, the time to challenge federal foreign affairs powers may have finally arrived. Subfederal actors are building a legal case and infrastructure for their expanded role, while pressing forward on climate, human rights, and immigration. While the federal government could rely on the judiciary to referee this contest in an episodic fashion, the pace of expanded state and municipal activism is unlikely to slow. National policymakers would be wise to wake up to this new set of practices and think strategically about how to harness the opportunities while mitigating the risks. Erosion of the Unitary State It used to be the case that foreign policy was considered the sole province of diplomats and soldiers—agents of a national government pursuing its interests on the international stage. To understand foreign policy, one needed only to understand the power and interests of competing nation-states. National governments were seen to act as coherent units, making decisions that served the national interest and contending with one another to accumulate greater power and influence. This state-centric view of world affairs originated with the Peace of Westphalia in 1648, and is still taught to undergraduates as a first approximation of how international relations operate. For better or worse, it is also how our Constitution conceptualizes the appropriate roles of national and state governments in the conduct of foreign affairs. But this perspective was never fully compelling as an empirical matter. It missed the diverse interests and competing power centers of the federal government. Cabinet agencies, Congress, the military, and the courts all shape how national interests are defined and what instruments are used to pursue them. It overlooked the network of domestic actors outside of government—corporations, non-governmental organizations, unions, religious institutions, unaffiliated billionaires, and others—that seek to influence the foreign policy priorities of the United States, shape the international environment in which foreign policy is conducted, and impact domestic politics in other countries directly, often acting autonomously in pursuit of their own interests. And it ignored the growing web of transnational governmental relations: networks of government officials (including policymakers, regulators, and enforcement agencies) that operate across borders to cooperate on issues as diverse as banking, transnational crime, corruption, taxation, and immigration, often without explicit direction from the president. Over time, these realities have brought significant changes to the architecture of U.S. foreign policy. The emergence and growth of the National Security Council since the passage of the National Security Act of 1947 reflects a recognition that the management and coordination of competing power centers in the executive branch is key to articulating and implementing a coherent foreign policy. The proliferation of informal mechanisms for consultation, formal advisory committees, and public-private partnerships signal how seriously policymakers take the task of understanding, influencing, and channeling the attention and resources of non-governmental actors including NGOs, corporations, and philanthropies. Whereas it used to be the case that international diplomacy was conducted through the State Department, using a professional corps of trained diplomats, now almost every federal agency—from the Department of Agriculture to Health and Human Services and the Environmental Protection Agency—has its own office of international affairs, facilitating the kind of expert-led, transnational cooperation that is key to addressing global problems. The dispersal and fracturing of the international relations function across government has, no doubt, made life more difficult for State Department diplomats, and it has fundamentally challenged the notion of a single and unified U.S. government operating with a clear and coherent mandate. The foreign policy activism of states and cities fits quite naturally in this increasingly complex network of actors that influence and make foreign policy. In one sense, they are like any other pressure group in the political system. In the bargaining process to determine U.S. foreign policy, states and cities can make their voice heard by advocating directly to senior policymakers in the executive branch, influencing elected officials in Congress, or leveraging their relationships with federal agencies. But states and cities differ in important ways as well. In particular, governors and mayors are elected representatives of a geographic constituency with a mandate to advance that state’s or region’s particular interests. When those interests are poorly served by the federal government’s foreign policy, the pressure to act in ways that challenge the federal government’s preeminence can be irresistible. Examples abound. In the 1970s and 1980s, hundreds of cities and states declared themselves nuclear-free zones to keep nuclear weapons production-related materials out of their jurisdictions during the Cold War. Today’s resistance to federal immigration law has its roots in the “sanctuary” movement of the 1980s, when Wisconsin and a number of cities, including Berkeley—spurred by religious congregations—committed to provide safe-haven to refugees fleeing conflicts in Central America. When the Reagan administration was embracing “constructive engagement” with South Africa’s apartheid regime in the 1980s, states and municipalities played a significant role in advancing the sanctions movement, prohibiting engagement with businesses investing in South Africa.3

The notion that foreign policy functions as a reflection of the interests of a “unitary state” has eroded in practice. Today, a huge diversity of actors—sometimes acting in unison, oftentimes acting in parallel, occasionally conflicting— shape how U.S. interests are defined and advanced on the world stage. Will the law adapt to this new reality? There are some reasons to think that California and others may have more room to play, as a result of a revolution in federalism that has challenged federal preeminence in a range of new areas. “One Voice” in Foreign Policy? If the “unitary state” has given way to a richer transnational vision of international relations, then it might follow that legal understandings have shifted as well. After all, the majesty of the law, as Justice Oliver Wendell Holmes said long ago, is its ability to adapt to changing circumstances. But legal change in the area of foreign affairs federalism, as it is sometimes called, has come more slowly. The growing disconnect between the law and ground-level realities of how foreign relations are actually conducted has put the two on a collision course. The result is a heady mix of legal risks and opportunities as California and other subfederal governments move onto the global stage. The conventional view is that the Constitution makes foreign affairs the exclusive province of the federal government. While this view has many facets, much of it is built around a single and appealing turn of phrase: the United States must be able to speak with “one voice.” The idea, built out of multiple provisions of the Constitution and voiced by the Supreme Court as far back as the 1820s, is that sound foreign relations depend on clear and deliberate communication among sovereigns. It cannot be entrusted to a provincial and parochial chorus of states and localities. The “one voice” idea is a convenient shorthand, but the legal case in its favor is hardly ironclad. Begin with the text of the Constitution itself. True, the Framers plainly prohibited certain state actions. States may not engage in war or make treaties, and they may not enter into compacts or agreements with other states, whether domestic or foreign, without Congress’s permission. But the textual case for the “one voice” concept otherwise lacks much punch. To begin, the Constitution sprinkles foreign affairs powers across both the legislative and executive branches. Congress gets to regulate foreign commerce, define offenses under international law, declare war, and raise and regulate the military, while the president is the commander in chief, makes treaties, and nominates ambassadors (the latter two with Senate concurrence). From the start, then, the Constitution’s commitment to separation of powers has meant multiple federal voices on foreign affairs, not a single one. More importantly, on foreign affairs the Constitution is, as a leading scholar put it, a “strange, laconic document.”4 It carefully specifies many foreign affairs powers but omits mention of others. Where, to cite a few examples, is the power to recognize other governments, open consulates in other countries and admit foreign consulates, or acquire or cede territory? The Supreme Court has tried to fill gaps by fleshing out the “one voice” concept, but questions remain as to just how far the concept stretches. In cases of direct conflict between federal and state policies, all agree that state policy must yield. The Supremacy Clause, which says that federal law trumps state law, is clear on that score. But that leaves myriad situations in which federal and state law do not formally conflict, where the case for “one voice” is more complicated and only a small handful of Court decisions light the way. A standard concern about multiple voices is that, even where there is no direct conflict between federal and state law, state actions can still create big federal problems. Indeed, an ill-considered state tax on foreign commerce, the Court has said, might benefit the particular state but risk retaliation—whether economic, military, or otherwise— against the whole nation. Here, the “one voice” doctrine can be seen as a curb on a kind of free-rider behavior by states, but it is not always obvious which state actions are rogue enough to count. The Court has further suggested that it is not just state interference with concrete and continuing federal action, but also potential federal action, which can impair the federal government’s solo voice. For instance, state action can, by removing a potential “bargaining chip,” deprive the federal government of needed leverage in its dealings with other nations. Thus, when Massachusetts moved in 1996 to sanction Myanmar by refusing to enter into procurement contracts with companies that did business with its repressive government, the Court held that the Bay State’s refusal to deal was preempted by a federal law that imposed similar sanctions but gave the president flexibility to raise or lower them in nudging the regime toward better behavior. The Massachusetts law thus stood as an “obstacle” to federal policy because it took away “levers of influence” that the federal government might wish to hold in reserve for future use.5 On this expansive version of the “one voice” idea, even seemingly symbolic state-level slights can muffle the federal government’s voice. In a key case from the 1960s, the Court confronted an Oregon law that, in a jab against Communist countries, barred foreign nationals from collecting inheritances in Oregon unless an Oregonian would have the same rights in the other country. The Court struck down application of the law, but it did so not because of a direct conflict between federal and state law—the Nixon administration told the Court the Oregon law did not affect its conduct of foreign affairs.6 Rather, the Oregon law fell because it would require judges to sit in judgment of foreign nations—and gauge their “democracy quotient,” as Justice William Douglas put it.7 This, the Court said, was a task for the feds alone—a move in the Cold War’s ideological chess match that was far too important to leave to the state-level rabble. Weaving together multiple threads of the “one voice” concept, we can imagine current legal doctrine as creating a defensive halo that radiates out from any particular area of federal foreign policymaking. This halo is brightest near its center, where federal and state policies directly conflict. But its light grows progressively dimmer as it moves outward and touches state actions that pose a less direct conflict with federal law. The million-dollar questions as California and other subfederal governments move onto the global stage are: Just how far out does the defensive halo extend as the degree of federal-state conflict weakens—or, in the current context, where the federal government has left the field altogether and has no policy at all? And how, in determining the halo’s reach, should the Court weigh other factors, such as the importance and pedigree of the state interest, the state’s motive in pursuing it, or the level of competence the state brings to the table? Because the Court has only sporadically addressed these questions over time, and as states and localities steadily move onto the global stage in the new and more dynamic world of foreign relations, the foundation of the “one voice” idea suddenly seems full of fissures and cracks. It is these fissures and cracks that states and other subnational governments will have to exploit as they pursue opportunities for global leadership. Testing Constitutional Limits Will California and other states and cities seeking a place on the global stage be able to move the law? The answer, as good lawyers know, is as much logistical as it is legal. Two examples highlight some of the legal opportunities a state like California might seize under current doctrine. The first surfaces most cleanly in a 2003 case in which the Supreme Court invalidated a California law that required insurance companies to disclose details of insurance policies held by Jews during the Holocaust and, further, made it illegal for insurers to refuse to pay claims on those policies. The problem was that the law conflicted with an executive agreement, signed by President Clinton and the leaders of several other countries, that took a purely voluntary approach to the problem, cajoling insurers rather than commanding them. Echoing its earlier decision in the Myanmar case, the Court invalidated California’s law because, while the federal approach used “kid gloves,” California’s used an “iron fist,” thus undermining the president’s “diplomatic discretion.”8 But tucked in the decision was a sleeper. In striking down the law, the Court said its analysis might be different where a state was acting within its “traditional competence” and, further, that analysis of federal-state conflict would turn, at least in part, on “the strength or the traditional importance of the state concern asserted.”9 For a state like California that is fast moving into the climate space, this is manna from heaven. Indeed, the Supreme Court said more recently in a 2007 case that Massachusetts, as both a sovereign and landowner, has a powerful and longstanding interest in protecting its own shorelines against the rising sea levels that come with climate change.10 Of course, this argument may not wash, so to speak, in land-locked Oklahoma. But for coastal states like California, it provides a ready-made defense to a “one voice” challenge to state action. As states and cities move onto the global stage and attack global problems, expect them to frame their efforts as local efforts to protect people and property—the core of a state’s traditional, time-tested police powers. As they do so, the distinction between what is foreign and domestic will blur—and could fall away entirely— further undermining the “one voice” idea in the climate space and perhaps even beyond, in areas like immigration or human rights, wherever states can plausibly point to concrete interests. The second opportunity states can seize might be the Constitution’s bar on state-level compacts with foreign nations. Though the Constitution prohibits foreign-state compacts absent congressional consent, in reality states have entered into them on myriad issues, from trade and firefighting cooperation to transboundary bridges and water diversion. States are entering such compacts at a growing clip—there have been 340 agreements since the 1950s, and some 200 of them in the last ten years alone.11 Few of these, however, have suffered invalidation. Part of the reason is explicit or implicit congressional authorization. But the Court has also been quick to read congressional silence on compacts and agreements as acquiescence and, thus, approval.12 If the current trend continues and the number of foreign-state agreements continues to rise, Congress will face an unsavory choice: bluntly disallow entire categories of agreements and thereby risk the ire of friends and foes alike, or spend valuable time and energy sifting good and bad ones on a case-by-case basis. Either approach brings costs. And in the current era of partisan gridlock and political paralysis, one wonders just how often Congress will be able to muster action at all. In seeking to exploit these and other legal opportunities, California will also be aided by the shifting political tides of federalism. Throughout much of American history, federalism and states’ rights have been a conservative war cry—a needed check on a liberal, overweening federal government. The most recent wave arose in decisions throughout the 1980s and 1990s, as the Supreme Court, with Chief Justice William Rehnquist leading the charge, trimmed federal power and strengthened the states’ position across numerous policy areas, often to deregulatory effect. But last November’s election and the recent wave of state-level activism has flipped federalism’s political valence, making states the hope of progovernment progressives. Will this matter? To be sure, as cases testing the boundaries of foreign affairs federalism reach the Court, the decisions might prove, once and for all, that federalism is just a political football. But so far, at least, the smart money seems to be that the commitment to state autonomy at the core of the Rehnquist Court’s federalism revolution will continue to enjoy significant sway in the Roberts Court. At the very least, a more forward-leaning state role on climate, trade, and other problems with a global cast will create uncomfortable dissonance for conservative justices who have long laced their opinions with encomiums to federalism’s virtues. The other reason to believe California will be able to exploit available legal opportunities is logistical. Legal revolutions are not built on ideas alone. They also require an infrastructure—and a set of institutional actors with the will and capacity to advance novel legal claims and make them stick. The most significant development here is the dramatic rise in recent decades of state attorneys general —and their steady acquisition of resources and topflight legal talent. Notable as well is California’s recent high-profile retention of former Attorney General Eric Holder to quarterback the state’s strategizing on federalism matters.13 Even local governments have built impressive litigation shops and staffed them with some of the best and brightest young lawyers. During yesteryear, San Francisco might have buckled in response to Trump administration threats to cut off federal funding if the city does not assist federal immigration authorities. So might have nearby Santa Clara County. Today, both have sued the Trump administration on the issue and, so far at least, are winning.14 To this point, much of this new subfederal legal infrastructure has been given over to what might be called defensive legal efforts. Think here of state-led opposition to the Trump administration’s travel ban, or—as just noted—litigation challenging the federal government’s effort to pull federal funding from sanctuary jurisdictions unwilling to play ball with federal immigration authorities. Both have a clear defensive posture—an effort to push back against federal policies. But the growing and increasingly sophisticated legal infrastructure can also be deployed to defend more affirmative policymaking efforts as California and other subfederal governments move onto the global stage. New Frontiers of State Action In what policy areas are California and other jurisdictions most likely to push the envelope? Top of the list is climate policy, as recent headlines attest. Yet while Governor Jerry Brown’s Beijing sit-down with President Xi Jinping dramatized California’s global ambitions and bolstered Brown’s status as a de facto envoy for the United States on climate issues, the actual conversation was mostly benign—little different from the assurances aired when state trade delegations make nice in foreign countries. Even the Under 2 Coalition’s memorandum of understanding promises only “coordination and cooperation” on emission reductions, with signatories to pursue “their own strategies.”15 However, bolder state initiatives are afoot, in California and elsewhere, and may soon crest as legal issues. The best example is regional cap-and-trade programs for reducing carbon emissions that reach across international borders, linking American states with foreign governments. The idea dates back to well before Trump. In 2007, California spearheaded an effort to create a cap-and-trade program among five western states, following in the footsteps of a more limited effort among New England and Mid- Atlantic states. But the western version soon took on a novel international flavor when four Canadian provinces climbed aboard. Reaching across borders is good: more territory brings scale economies, a thicker market for trading carbon permits, and a reduced threat of “leakage” when industry picks up and moves outside the system. That was the initial attraction of a multi-state approach, even before Canadian provinces got involved. But when the Great Recession and turnover at governor’s mansions sent all the other American states to the exits, California suddenly found itself pursuing Canadianonly linkages, beginning with Quebec in 2013. The problem is that linkage involves lots of paperwork—and a set of written understandings between sovereigns that looks far meatier than the oral statements that passed between Governor Brown and President Xi in Beijing. To be sure, the linkage document inked in 2013 by California’s Air Resources Board and Quebec’s government is a skinny 14 pages, and its preamble contains plenty of hedging language that it does not limit either government’s “sovereign right and authority.”16 But the rest of the document belies such claims, including its formal styling as an “agreement” and its parade of “shall” clauses. Most worrying from a legal perspective are termination and withdrawal provisions requiring participants to remain in the agreement for a year after serving notice to the other side. These details present legal challenges and opportunities. The main challenge is that much of the agreement has a binding feel and so might be said to deprive the federal government of a potential “bargaining chip” or otherwise impair its ability to speak with “one voice” in its dealings with Canada. But there is an equally big opportunity, too. Cap-and-trade linkage may be the best way for California to expand the beachhead the Supreme Court provided in 2007 when it recognized Massachusetts’s sovereign interest in safeguarding its own shorelines against the effects of climate change. That view explicitly connects climate policy to a “traditional state concern” that the Court has said must be weighed in assessing federal-state conflict around foreign affairs. Cap-and-trade linkage may also test Congress. Despite its power to disapprove state agreements under the Compacts Clause, Congress never objected to the Quebec linkage. But California recently finalized a second Canadian linkage, to Ontario. Doing so has provided a focusing event that could raise congressional antennae. But do climate-denying Republicans in landlocked states have the stomach to disallow climate policy in a distant state, particularly one that may help, rather than hinder, their own states’ efforts to attract mobile capital and industry? Continued congressional silence would go a long way toward entrenching a norm in favor of cross-border state action, paving the way for other state efforts to step onto the global stage on climate issues and beyond. State-Led Human Rights Advocacy Affirmative efforts to confront human rights violations and other egregious behavior by foreign governments—including repression, corruption, and human trafficking— represent another area ripe for action. The evidence so far suggests that the Trump administration is advancing a narrow conception of American self-interest, deemphasizing the universal values of freedom and opportunity that have occupied a central place in the foreign policies of Democrats and Republicans for decades. In particular, Trump’s embrace of leading autocrats and proposed budget cuts for the federal agencies that lead on these issues —the State Department and USAID—put the administration on a collision course with activists around the country who want to maintain American leadership on human rights. The experience with apartheid provides them with an important precedent. While the Reagan administration chose quiet dialogue and cooperative engagement with South Africa—prioritizing instead the fight against communist insurgencies in the developing world—dozens of states and cities across the United States embraced an aggressive divestment campaign that some say played a key role in ending the apartheid system.17 The result was a web of subnational laws limiting the extent to which state and local governments could contract with companies doing business in South Africa and authorizing public pension funds to divest from companies working with the apartheid state. Moved at least in part by this subnational mobilization, the federal government adopted comprehensive sanctions against South Africa of its own, over President Ronald Reagan’s veto. At the time, the authority of states and cities was never challenged in the courts. The enthusiasm for state and local action using procurement sanctions and investment/divestment policies has not waned, though the legal basis for doing so has narrowed. Since the Court held in 1996 that federal law preempted Massachusetts’ procurement sanctions against Myanmar, most state-level sanction regimes have been trained on Iran and Sudan pursuant to explicit authorization by Congress. But as states pursue a more global role, they will find firmer legal ground when it comes to divestment actions. Procurement sanctions prohibit the state government from conducting business with private corporate entities, either U.S. companies doing business in a human rights-abusing country or companies based in the targeted country. These companies and their dealings with targeted countries may also be the subject of federal regulation. Divestment statutes arguably sit closer to the exercise of purely state power: states’ management of their own investment funds. And because state public pension funds have a fiduciary obligation to protect their members’ investments, divestment can be framed as a strategy of managing investment risks that flow from repressive and politically unstable regimes. The potential impact is significant, with nearly $3 trillion of investment capital available in state pension funds in 2015. Beyond divestment, look for states to test-drive new policies in areas where traditional state competence is beyond question: state-chartered banks and local real estate markets. For example, New York has long been at the forefront of efforts to strengthen regulatory oversight of state-chartered banks. Because every major international bank is chartered in New York, the state has a powerful platform to police efforts by repressive autocrats to keep their regimes afloat by laundering the proceeds of corruption and bypassing sanctions programs. States are also well positioned to help clean up the U.S. real estate market, where human rights abusers and kleptocrats use a lack of transparency or anonymous shell companies to launder and store money. With pressure mounting against such practices, state governments can use their authority over real estate markets to impose higher standards for customer due diligence and transparency around beneficial ownership. With these kinds of regulations in place, it would be far more difficult for corrupt and repressive regimes to stash wealth in the United States. States’ Role in Immigration Policymaking A third area where states and localities are carving out a more global role and pushing the legal envelope is immigration. As already noted, much of the headline- grabbing action here is defensive, with sanctuary jurisdictions like San Francisco and Chicago pushing back against the federal government in lawsuits invoking constitutional doctrines that protect them against federal coercion. But in the shadow of this litigation is a longer and deeper record of subnational action that has put states like California on the front lines of immigration policymaking. As with so much else in the world of foreign affairs federalism, Trump’s election last November was not so much a sudden, seismic event as a punctuation point for trends long in the making. Viewed at a distance, immigration federalism can look different from other policy areas that implicate foreign affairs. First, the case for exclusive federal authority is stronger in the immigration area. This is because the “one voice” doctrine is bolstered by the Constitution’s grant of power to Congress to “establish an uniform Rule of Naturalization.”18 The Supreme Court has consistently held that this clause confers exclusive federal authority over admission, deportation, and naturalization of noncitizens. This makes the second distinctive feature of immigration federalism something of a paradox: State and local policymaking around immigration is far thicker than in other policy areas that implicate foreign affairs. In fact, the last decade has seen an explosion of legislative activity in statehouses on immigration matters—so much so, that it is not a stretch to say the United States has already undertaken “immigration reform,” just not at the federal level.19 Some states have taken a restrictionist approach, pledging state and local support for federal enforcement efforts—and some, like Arizona, have gone beyond mere cooperation and engaged in more rigorous enforcement than federal law does, drawing a rebuke from the Supreme Court in 2012 for a state law that imposed additional sanctions on undocumented persons and authorized arrests beyond what federal law provides.20 Other states’ laws, by contrast, are integrationist. Some of these, like the current litigation efforts, are defensive and aim to secure sanctuary at home, work, and school by, among other things, expressly prohibiting state and local officials from cooperating with federal enforcement efforts. But a raft of other measures in California and elsewhere take a more affirmative approach to integration, granting immigrant access to education, medical care and other public benefits, and driver’s as well as professional licenses. A lesson here is that, even if the federal government holds exclusive power over admission, deportation, and naturalization, states can do much to modulate immigrant flows via policies that either foil or foster settlement and permanency. This may prove once and for all that the current era of rapid globalization has rendered the line between what is foreign and domestic, in the immigration area and beyond, more apparent than real. And this is part of why many integrationist laws—unlike Arizona’s harsh restrictionist approach—have survived legal challenges. Without a clear way to distinguish laws designed to shape immigration flows and those performing the traditional state functions of protecting the welfare of persons within state borders, the Court has instead reached a rough equilibrium granting states and localities latitude to regulate immigrants and immigrant services so long as they leave regulation of immigration to the feds. But two further examples of subnational action may test this equilibrium. The most dramatic is state efforts to advance more inclusive constructions of state citizenship. A bill first put forward in New York in 2014 would grant citizenship to state residents regardless of immigration status, granting them full access to public benefits and—reviving a practice common earlier in American history— entitling them to vote in state and local elections.21 More recently, Utah passed a law establishing a state guest worker program for noncitizens. Though implementation has since stalled under the threat of a Department of Justice lawsuit, a key point here is that Utah is only the most visible actor in a long-running and increasingly tense drama: More than a dozen other states, frustrated by chronic shortages of workers in the agriculture, energy, construction, and tech sectors, have proposed measures by which Congress would grant state and local control over federal guest worker visas. If Congress continues to punt on immigration—or, as the Trump administration recently suggested, the feds take a more restrictive line even as to legal immigration—look for more assertive, boundary-pushing action by states that could chip away at plenary federal power. The second type of boundary-pushing state action on immigration may lack the diplomatic feel of a Brown-Xi summit, but nonetheless has states and localities carving out a global role: the increasingly dense web of relations between state and local officials and the fifty-plus U.S.-based Mexican consulates. This is evident in the proliferation of memoranda of understanding between states and localities and consulates on deportation defense and legal proceedings involving Mexican children. Harder to see, but no less important, is an increasingly rich and routinized system of communication around other key issues impacting immigrant communities, including notario fraud, in which non-lawyers falsely represent themselves as qualified to offer immigration-related legal services, and the Ventanilla de Salud (literally, “windows of health”) system, a Mexican program run through its U.S. consulates to provide Mexican nationals with health counseling and referrals. This dense web of consular agreements and communications is important, and not just because it sits at the center of a shadow system of subnational diplomacy on immigration matters. If we squint hard enough, we can also see in it a much wider process of capacity-building as state and local governments draw in talent and expertise that can drive a new, more global role. This process began long ago in big states like California, where many state officials have done time in the federal foreign policy apparatus. But it is becoming visible in other places as gridlock in Washington, on immigration and more generally, has moved smaller states and a growing corps of self-styled “global cities” to reach beyond the water’s edge. Just the Beginning Trump’s election and his administration’s major shifts in policy on the environment, human rights, and immigration have thrust a wide range of subfederal initiatives into near-daily headlines. Undoubtedly, these efforts will serve the political interests of progressive policymakers in Democratic-leaning states looking to challenge the policies of the Trump administration at every turn, and they are sure to find a receptive audience overseas where long-standing U.S. allies are looking for ways to continue making progress on shared priorities and to stand up to President Trump. They will also test the boundaries of federal foreign affairs power, raising the question of whether the Justice Department is preparing for a fight. But it is also important to note that the enthusiasm of states and cities to exercise leadership on the global stage has been long in the making; it will not go away when Trump does. Nor is it limited to hot button, highly politicized areas like climate, human rights, and immigration. Exhibit A is cyber security, where a patchwork federal presence has moved states to the front lines of policymaking despite the fact that cyber-regulation’s frequent extraterritoriality—think here of a Parisian bookseller who fails to safeguard a Massachusetts customer’s online data—would seem to make it an ideal candidate for federalization. Most arresting of all, some say state-level cybersecurity efforts to combat botnets and other malware could soon involve countermeasures—that is, malware that goes the other way and attacks the perpetrator’s systems—that look a lot like state-led warfare. Is U.S. foreign policy enabled or hobbled by growing subfederal activism in foreign affairs? This is not an easy question to answer, even if the trend is difficult to reverse. Two of the central virtues of federalism—its potential to spur policy innovation and the ability to bring the locus of policy choice closer to voters—are in direct tension with the view that U.S. power depends on policy coherence and the leverage that comes from acting in unison. In an environment of strong bipartisan agreement on major national security priorities, few were concerned about activist states and municipalities; with a shared sense of direction, the energy of subfederal actors was seen as a virtue, opening up new tools and channels for advancing U.S. interests. But with the loss of that bipartisan consensus, the likelihood that the federal government and states may act at cross-purposes is increasing, and the incentives for pushing the boundaries even stronger. Whether the courts will allow the most forward-leaning state policy efforts to proceed is anyone’s guess at this stage, but it is not clear that judges are best positioned to help policymakers navigate this new terrain. Judges will encounter these issues only episodically, in a subset of policy domains, and without the expertise to identify the conditions under which a more expansive subfederal role advances U.S. policy goals. Policymakers, on both sides of the aisle, would be wise to get ahead of the courts on this one. While it may be too late to turn back the clock, the challenge of harnessing all the instruments of American power involves figuring out how to lead this diverse network of players in a common direction with a shared goal—a significant organizational task for any president, and one made far more difficult when views on policy are so polarized.

### 2NC Solves Economic Inequality

#### Basic income guarantee solves both economic inequality and climate change AND COVID’s a huge alt cause to their inequality scenario

Standing, 20

(Guy, Fellow of the UK Academy of Social Sciences, and Professorial Research Associate, School of Oriental and African Studies, University of London. He was formerly Professor of Economic Security at the University of Bath, and Director of Socio-Economic Security in the International Labour Organisation "The Case for a Basic Income," Nov 24 2020 <https://www.resilience.org/stories/2020-11-24/the-case-for-a-basic-income/> NL)

The COVID-19 pandemic has brought into sharp relief the irretrievable breakdown of the post-war income distribution system in the West that essentially ties income and benefits to employment. The past four decades have seen income, wealth, and power flowing increasingly to rentiers—owners of physical, financial, and so-called intellectual property—while the ranks of the global precariat swell, consigning workers to unstable jobs, low and erratic incomes, and insecure lives. But the pandemic may prove the undoing of that system, as paying people to stay home—indeed, to not do paid work—has become essential to survival. As long as income depends on jobs, workers will feel a need to return to unsafe conditions. And as long as economic power remains concentrated at the top, companies will have every incentive to make workers come back. Even if we manage to weather the current pandemic, our system lacks the resilience to be ready for the next one—let alone other crises. The glimmer of hope amidst the tragedy is that the economic recession triggered by the pandemic is a potentially transformative crisis. Many on the left were puzzled by the reversion to the neoliberal status quo following the 2007/2008 financial crash. However, a hegemonic paradigm will only be displaced if it cannot answer the questions that preoccupy people and if an alternative paradigm is ready. For too long, that second condition has been missing. Fortunately, an alternative economic vision has been emerging, and a basic income system is an essential component of it. A basic income is not a panacea, merely a necessary pillar of the reimagining of work and economic security in our crisis-ridden world. As resolutely against old-style “laborist” social democracy as against neoliberal capitalism, it will foster greater freedom while helping us tackle the worsening crises of inequality, climate change, and authoritarian populism. A Right to Economic Security Basic income is a centuries-old idea with roots in ideas of social justice. As Thomas Paine, an early advocate, said in his 1795 pamphlet Agrarian Justice, “It is not charity, but a right, not bounty but justice that I am pleading for.” A basic income system would aim to assure basic economic security to all, independent of employment, by providing every legal resident of a country with an equal monthly sum of money, without conditions, as an economic right.[1](https://greattransition.org/gti-forum/basic-income-standing#endnote_1) Such unconditionality is what distinguishes a basic income from other welfare programs. A modest basic income would be paid to individuals as individuals, regardless of household arrangements, work status or prior contributions. Importantly, it would be guaranteed to all regardless of other income, thus bypassing the stigmatizing and exclusionary means-testing intrinsic to many welfare programs. Although some conservative basic income advocates view it as a substitute for existing public programs, they are a distinct minority. Most advocates see it as a complement to robust universal public services like education, health care, and other social supports. There would, moreover, need to be automatic supplements for the disabled and elderly coping with extra living costs and constraints on earnings. A basic income is also a recognition of our collective social and ecological inheritance, the true source of wealth. Indeed, the wealth and income of all of us are due far more to the efforts and achievements of past generations than to what we do ourselves. But we do not know whose ancestors contributed more to our wealth. If society allows for private inheritance of private wealth, then we should allow for social inheritance in the form of a social dividend or basic income. Similarly, a basic income would be partial compensation for loss of the commons, which belong to all of us equally, but which have been appropriated by privileged elites and corporations to generate private wealth. In this context, the commons are not just land, waterways, forests, parks, and natural resources, but also the social amenities, public services, and body of ideas and knowledge we inherit as a society. We all deserve a share of the wealth these commons produce. A Guarantor of Freedom The postwar job-based income distribution system involved a tradeoff between economic security and freedom. Job-based income and benefits lead to dependence on an employer. Accessing means-tested benefits from a welfare state requires going through administrative hoops. Moreover, such welfare programs are often specifically conditioned on having or looking for employment, even if that means accepting a low-paying job. A basic income stands against such strictures. Unlike other social policies, basic income would enhance three types of freedom: libertarian freedom, liberal freedom, and republican freedom. The first—libertarian freedom—refers to the freedom from constraints. Modern policymakers impose paternalistic controls on what “the poor” must or must not do, on pain of worse impoverishment. As a right with no conditions attached, basic income leaves people free to spend their money as they wish, prioritizing what is most important to them. A basic income would strengthen the capacity to say no to abusive or exploitative relationships and yes to forms of paid and unpaid work that might otherwise be out of reach. People would be able to accept more fulfilling jobs that they may have rejected due to economic considerations or to spend more time caring for their loved ones, neighbors, and community. Nobody should need reminding in these pandemic times that there is a care deficit. It would also foster liberal freedom, the freedom to be moral, described by the philosopher T.H. Green as the ability to decide and do what you think is right.[2](https://greattransition.org/gti-forum/basic-income-standing#endnote_2) You cannot be moral if you must do as you are told or “steered” to do by a paternalistic government or other authority. Unpaid community work is not a virtuous moral choice of activity if you are required to do it to receive welfare benefits or as a punishment. A basic income would reduce these hurdles to moral action. Lastly, such a scheme would advance republican freedom, freedom from actual and potential domination by unaccountable authority. A woman, for instance, may lack such freedom if she can only do things with the approval of a husband or father, even if they usually “allow” her to do what she wishes. Basic income experiments in the US found that in some cases women who had their own basic income were able to leave abusive relationships.[3](https://greattransition.org/gti-forum/basic-income-standing#endnote_3) Mahatma Gandhi captured the essence of republican freedom by saying freedom means being able to look others in the face and not having to give in to their will. Moving from Crisis to Sustainable Prosperity A basic income system is not only a tool for responding to the pandemic in the short term. It can also help us tackle longer-term crises of poverty and inequality, climate change, and the rise of authoritarian populism. The most obvious benefit of a basic income is poverty reduction. Targeted, means-tested schemes exclude many poor people, sometimes deliberately so, and the inevitable poverty traps—when benefits are withdrawn as income rises—simply serve to keep people in poverty. Job guarantee and subsidy schemes are difficult and expensive to administer, distort the labor market, and come perilously close to workfare. Vouchers, as alternatives to cash, are paternalistic schemes that presume what people need rather than allowing them to decide for themselves (thus food stamps in the US allow mothers to buy food but not diapers). A basic income scheme underwritten by taxation on the rich would reduce economic inequality. As an equal payment to every individual, regardless of household, income or employment status, it would also help promote gender and racial equity. This would help equalize power relations within households, relieving financial dependence on a household “head.” A basic income system would also have macroeconomic advantages. By increasing the purchasing power of low-income households, who have a higher propensity to spend than more affluent ones, it would boost spending on local goods and services, creating more jobs and further raising incomes.[4](https://greattransition.org/gti-forum/basic-income-standing#endnote_4) Moreover, the security afforded by a basic income would encourage entrepreneurship, since people could take more risks knowing they had something to fall back on if their venture failed. Finally, the delinking of jobs from economic security reduces the perceived threat posed by automation. Rather than fearing the disruption or displacement of millions of jobs, we can share the wealth that mechanized productivity provides. A basic income system could be an important part of effective plans to mitigate climate change. Carbon taxes and other eco-taxes are essential to reduce emissions but by themselves are regressive and unpopular. The solution? Recycle the tax revenue generated as a basic income. More broadly, a basic income would encourage a transition to an ecological society by giving people the freedom to shift from resource-depleting (and often boring and demeaning) jobs to resource-preserving care, craft, and community work. Likewise, funding a basic income system with a taxation scheme that discourages resource depletion and checks luxury consumption would further reduce environmental stress. Tackling climate change and inequality has become more difficult with the spread of an authoritarian populism that combines xenophobia, misogyny, and climate change denial. Fear and insecurity have fueled the surge in neo-fascist populism around the globe. A basic income would counter this dangerous tendency because having economic security fosters altruism, empathy, and tolerance.[5](https://greattransition.org/gti-forum/basic-income-standing#endnote_5) By freeing time for community and political engagement, it could also help to weaken the appeal of all forms of populism.

# Tradeoff

#### Health care enforcement is coming now---but it could be triaged in the case of overstretch

Galvin 9-10-2021 (Gaby, “Hospitals, Other Health Care Players Are Seeing ‘the Bar of Scrutiny’ Raised by Biden Regulators,” *Morning Consult*, <https://morningconsult.com/2021/09/10/health-care-antitrust-biden-administration/>)

When President Joe Biden tapped vocal critics of big tech companies for key antitrust roles, companies like Amazon.com Inc. went on high alert. But he’s pledged to crack down on anticompetitive behavior across sectors — including “unchecked mergers” in health care, and former officials and industry watchers say hospitals and other groups should tread carefully. Officials like Lina Khan, who was sworn in as chair of the Federal Trade Commission in June, and Tim Wu of the White House’s National Economic Council, haven’t gone public with how they plan to tackle health care consolidation. But early action from the administration points to hospital price transparency and heightened merger scrutiny as top priorities. “This administration is going to take a stronger approach to any antitrust enforcement than we’ve previously seen,” said Alexis Gilman, an antitrust lawyer at Crowell & Moring who worked in the FTC’s competition bureau, primarily during the Obama administration. “The bar of scrutiny does seem to have been raised.” Biden laid out his broad antitrust agenda in an executive order in July that singled out rural hospital closures and higher hospital prices in markets with little competition as reasons to support stronger FTC guidelines for health care mergers. Now, Gilman said the FTC appears to be taking more time to review details on proposed mergers that may have otherwise been cleared quickly or seen as “non-problematic.” The FTC’s public stances so far “reflect an agency that believes that prior enforcement has been a bit lax, and they’re going to tighten that up,” Gilman said. Health systems feeling the heat Industry watchers are taking cues from Sutter Health’s $575 million antitrust settlement, which received final approval from a federal judge in late August after a yearslong legal battle over allegations that the nonprofit health system in California engaged in price gouging. Notably, Health and Human Services Secretary Xavier Becerra sued Sutter Health in 2018 when he was California’s attorney general, and before joining the Biden administration, he said in March that he would continue to promote health care competition so patients “aren’t left holding the bag when big players dominate the market.” Given Becerra’s involvement, the case could offer a roadmap for health care competition policy in the Biden era at both the state and federal levels, said Elizabeth Mitchell, president and chief executive of the Purchaser Business Group on Health, which helped bring together employers and unions to file the lawsuit against Sutter Health. “I think it is very important that some of what we achieved in the Sutter case is applied more broadly,” Mitchell said. That includes efforts to promote hospital price transparency, a priority left over from the Trump administration. Meanwhile, Gilman points to the Sutter Health case and a federal settlement with North Carolina-based Atrium Health in 2018 as signs that health systems should “be a bit more cautious” when drawing up contracts that could be seen as anti-competitive, such as those that include measures that ban insurers from “steering” patients toward less expensive medical care or revealing pricing information. “I think there is — as a result of those two enforcement actions — increased risk, at the least for the largest systems that have meaningful shares in their local markets,” Gilman said. Provider groups are readying their defenses. In August, the American Hospital Association sent a letter to antitrust officials calling for more reviews of health insurance companies, saying payers have “largely escaped close scrutiny for conduct and practices that adversely impact both consumers and providers.” The group declined an interview request. David Maas, an antitrust lawyer at Davis Wright Tremaine LLP who works with health care providers, noted that ramped-up scrutiny on hospitals could hurt smaller physician groups or rural hospitals that are the only option for care in some communities. “We already have aggressive enforcement in that space, and it often is good and leads to more competitive marketplaces,” Maas said. “But just in the interest of being more aggressive, to push for even more enforcement in health care, I think could lead to some unfortunate outcomes, because a lot of health care providers are struggling.” Hospital mergers have slowed this year, with 27 deals completed in the first half of 2021 compared with 43 in the same time period last year, according to a Kaufman Hall analysis. While the number of deals has fallen, revenue is on par with previous years as health systems focus more on regional partnerships in new markets rather than acquiring smaller independent hospitals, the analysis said. Other health industries in regulatory crosshairs Hospitals aren’t the only health care groups getting a closer look in the Biden era. The FTC has also signaled interest in vertical mergers, when companies that don’t compete directly consolidate, and is looking to unwind life science company Illumina Inc.’s $7.1 billion acquisition of Grail Inc., which was finalized last month despite a lack of clearance from the FTC or European regulators. In Sept. 2 letters to GOP lawmakers who questioned the agency’s stance, Khan said the FTC is at a “crossroads” and has taken an “unduly permissive” approach in the past that’s allowed for massive companies to form across industries. Antitrust lawyers are closely watching the Illumina-Grail case, which will be “the first vertical merger case the FTC litigates in decades,” Gilman said. Another key deal to watch: Michigan-based Beaumont Health and Spectrum Health said last week they’re proceeding with a merger that would give the combined health system control of 22 hospitals, an outpatient business and a health plan covering 1 million people. If approved, the merger is expected to be finalized this fall. Collaborations between payers and providers — forming so-called “payviders” — have become increasingly common, with hospital systems launching their own health plans and health insurance giants such as UnitedHealth Group Inc. moving into health care delivery in recent years. “In the coming years, the for-profit insurers will start following United’s lead in acquiring, or effectively acquiring, more and more providers,” Maas said. Some analysts are skeptical of the Biden administration’s ability to meaningfully rein in such deals. “The idea that now Biden is going to direct the FTC to pay closer attention to health care mergers is a lot like closing the barn door after the horses have run out,” said Michael Abrams, co-founder and managing partner at health care consultancy Numerof & Associates. But “when you combine the payer and the provider, it’s the consumer who, more than ever, needs protection.” RELATED: Pharmacy Benefit Managers Are Feeling a Push From States to ‘Turn the Lights on’ to Their Business Practices Regulators picking their battles Going forward, Gilman said he expects agencies to “be less likely to either clear or settle vertical merger transactions” right away, which “could have some chilling effect.” But regulators will also have to “triage” top priority cases, given the FTC said it is being hit with a “tidal wave” of merger filings.

#### Law enforcement will be focused on health care now.

Shryock 21, analyst @ Medical Economics (Todd, “Hospital consolidations in crosshairs of Biden administration,” *Medical Economics*, <https://www.medicaleconomics.com/view/hospital-consolidations-in-crosshairs-of-biden-administration>)

As part of a sweeping executive order, President Biden addressed hospital mergers and their sometimes negative effects on patients and the health care system. The order specifies that the Justice Department and Federal Trade Commission review and revise their merger guidelines to ensure patients are not harmed by the mergers. The administration points out that hospital consolidation has hit rural areas especially hard, leaving many patients without good options for convenient and affordable health care services. Since 2010, 139 rural hospitals have shuttered, including a high of 19 last year during the pandemic.

#### New enforcement priorities trigger a tradeoff from health care

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” <https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit>)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony: “The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.” I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making. The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

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#### **Enforcement against multiple companies magnifies the link.**

Sutner 20, News Director @ TechTarget. (Shaun, 12-15-2020, "Efforts to break up big tech expected to continue under Biden", *SearchCIO*, <https://searchcio.techtarget.com/news/252493702/Efforts-to-break-up-big-tech-expected-to-continue-under-Biden>)

Biden pushed on antitrust

Antitrust activists, though, are optimistic about the prospects of a Biden administration clamping down on big tech -- an outcome they argue is long overdue, with decades of light enforcement of antitrust laws. They are pushing Biden toward aggressive antitrust policy. Thirty-three antitrust, consumer and progressive groups in a letter on Nov. 30 urged Biden to reject the influence of big tech vendors and to exclude big tech executives, lobbyists, lawyers and consultants from his administration. Prominent among the signatories was Public Citizen, the liberal consumer advocacy group that has called for Biden to triple the FTC's annual funding, from $400 million to $1.2 billion. "At the front end we want these investigations to be pressed. There are supposed to be investigations of Amazon and Apple and we believe there are cases to be brought there," said Alex Harman, competition policy advocate at Public Citizen and former chief legal counsel to Sen. Mazie Hirono (D-Hawaii). "It's a lot to bring big antitrust cases against multiple companies, and that requires resources," Harman said. "As a lawyer, I don't want to say 'Biden does this,' but we want results that structurally change these companies. We don't want quick resolutions and quick settlements."

#### DOJ can’t do it all

**Palko** & Rand **19**, \*David, associate in Womble Bond Dickinson. \*\*Ripley, associate, one of the President’s United States Attorneys in North Carolina. (8/9/19, "Year One of Trump’s DOJ: An Overview of the Four Major Categories of Offenders", *JD Supra*, https://www.jdsupra.com/legalnews/year-one-of-trump-s-doj-an-overview-of-53913/)

Some of this decrease in the number of drug offenders can be attributed to the **zero-sum nature of DOJ resources** – the direction of **increased** **effort** toward offenses in **one** category will result in **fewer offenses** being prosecuted in **other categories**. But a part of this decrease is likely due to an increase in strategic prosecution of certain drug offenses in state court. In contrast to immigration offenses, which are crimes of exclusive federal jurisdiction, drug offenses are crimes of concurrent jurisdiction – they can be prosecuted either in state court or in federal court. In determining whether to prosecute a drug offense, federal prosecutors look at many factors, including whether the offense would likely be punished more seriously in state court or in federal court. Some state laws provide for harsher punishment for certain drug offenses than federal law does. For example, someone in North Carolina with no criminal record who possesses 28 grams of heroin is looking at a mandatory sentence under North Carolina law of 225-282 months in prison. In North Carolina’s federal courts, the guideline range for the same person with the same amount of heroin starts at 21-27 months. On the other hand, a person who has the highest level criminal record provided for under North Carolina law and who is in possession of 28 grams of crack cocaine is looking at a mandatory sentence under North Carolina law of 35-51 months in prison; the same person with the same amount of crack cocaine is looking at a federal advisory guideline range starting at 100-125 months.

#### Antitrust enforcement is focused on health care.

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### Healthcare funding sufficient now.

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

During my years as an executive in the FTC’s Bureau of Competition and as FTC general counsel, I became quite familiar with FTC antitrust development and policy research applicable to healthcare. In my opinion, the FTC staff possesses the legal tools (with the exception of the nonprofit limitation, discussed earlier) to fully investigate and take action against anticompetitive behavior in this sector. What’s more, the FTC has had an excellent enforcement track record, including in hospital mergers. It currently is addressing a broad range of healthcare-related activity. Existing agency guidance, including the 2020 Vertical Merger Guidelines, provide ample support for appropriate, evidence-based, economically sound enforcement. New general legislation is not needed.

#### Top of the agenda

Mitchell 21 (Joseph, “FTC cracks down on health tech: 7 things to know,” <https://www.beckershospitalreview.com/healthcare-information-technology/ftc-cracks-down-on-health-tech-7-things-to-know.html>)

Healthcare's data privacy and monopoly concerns top the FTC's agenda as its chair, Lisa Khan, completes her first two months in the role, according to the report. Seven things to know A trial kicked off Aug. 24 examining monopoly concerns in cancer screening technology. At issue is the acquisition of startup biotech firm Grail by genetic sequencing giant Illumina. The case was in the works before Ms. Khan's confirmation, but it showcases that health IT is part of the FTC's agenda, Politico reported. The way healthcare and tech companies handle sensitive data “is an area that I'm sure [Ms. Khan’s] very, very interested in," said Jessica Rich, former director of the FTC’s consumer protection bureau. The FTC will also closely watch hospital mergers, Ms. Rich said. "I expect her and the commission to take a very bold approach to what constitutes harm for both," Ms. Rich said. "I expect her to pay close attention to algorithms and potential discrimination in healthcare, both denials and pricing issues which the FTC's laws can address."

#### FTC is empirically effective in healthcare which solves alt causes

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**No overwhelming---antitrust agencies are effective now**

**Gardiner 20** (General Counsel and Senior Fellow for Competition, Data, and Power @ Center for Democracy & Technology, We Don’t Need to Ban All Mergers During the COVID-19 Pandemic, 5-1, <https://cdt.org/insights/we-dont-need-to-ban-all-mergers-during-the-covid-19-pandemic/>, y2k)

If the **antitrust agencies** were **overwhelmed** by the current crisis and **unable** to investigate transactions **properly**, that could **hurt** competition. But economic crises tend to drastically reduce corporate America’s merger activity. Indeed, merger filings are **down** 60% since the U.S. COVID-19 crisis began. DOJ and FTC lawyers, paralegals, and economists are working from home, like so many of us. There is **little reason** to believe that our **antitrust agencies** are currently **unable** to keep up with the business of analyzing proposed mergers.

# Infrastructure

#### Outweighs nuclear war

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

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

# Modelling

### 2NC Populism

#### Political and economic checks solve

Kurlantzick, 21

(Joshua, Senior fellow for the Southeast Asia at the Council on Foreign Relations; “After Trump: Lessons From Other Post-Populist Democracies,” World Politics Review, February 10, 2021; <https://www.worldpoliticsreview.com/articles/29415/after-trump-lessons-from-other-post-populist-democracies>)

Donald Trump is among the first, and most prominent, of this recent wave of populist leaders to lose an election and leave office—albeit not without putting up a fight. Other populist leaders, like Indian Prime Minister Narendra Modi and Philippine President Rodrigo Duterte, [still appear to be gaining power and popularity](https://www.wsj.com/articles/india-vote-shows-how-narendra-modi-is-buffered-from-covid-19-fallout-11605015673). But Trump’s defeat in last November’s presidential election offered some hope to proponents of democracy and the rule of law. Now that he is out of power, can the U.S. restore the democratic norms and institutions that Trump badly undermined during his presidency? The histories of other countries that ejected their illiberal populist leaders do not give great cause for optimism, but their examples also suggest that American democracy is not doomed. The United States retains stronger democratic institutions than some other countries where populist strongmen rule today, like the Philippines, Brazil, Hungary, Mexico or Poland. Still, damage has been done. [In an earlier study of populists leaders’ impacts on democracies](https://www.washingtonpost.com/news/posteverything/wp/2018/11/16/feature/unfixable-several-nations-have-tried-to-restore-democracy-after-populist-strongmen-it-was-never-the-same/), I found that many countries once ruled by illiberal populists, like Italy after Silvio Berlusconi, struggled mightily to put their political systems back together. Instead, they often wound up with permanently shattered norms that gave rise to a new wave of populists. In the case of Italy, an aging Berlusconi no longer wields much influence, but he has been succeeded by two powerful populist parties: the left-leaning Five Star Movement, which currently governs as part of a coalition, and the right-wing League, the largest opposition party. Indeed, populist leaders often play upon the idea that their country’s government is so broken that only a strongman can solve its problems. Even after they are ousted, the resulting lack of trust in government often lingers in many citizens’ minds. [As The New York Times columnist Ezra Klein has argued](https://www.nytimes.com/2021/01/21/opinion/biden-inauguration-democrats.html), a more mainstream leader who comes to power after a period of populist rule often becomes a kind of placeholder, unable to govern effectively because of obstreperous opposition and deep polarization. Quoting the political scientists William Howell and Terry Moe, Klein observes that “populists don’t just feed on socioeconomic discontent. They feed on ineffective government—and their great appeal is that they claim to replace it with a government that is effective through their own autocratic power.” This is why traditional politicians who replace populist leaders are often unable to govern effectively, which creates opportunities for populists to feed on that ineffectiveness and return to power. It is a timely lesson for President Joe Biden. But there are some reasons to be optimistic, as well. [As I noted in a WPR article in 2019](https://www.worldpoliticsreview.com/articles/27150/how-to-stop-a-democratic-free-fall-when-populists-are-in-power), one factor that determines whether countries can rebuild after a period of illiberal rule is whether citizens took steps to reinforce checks on executive power during the illiberal leader’s time in office. In the United States, for instance, municipal and state-level governments served as powerful bulwarks against Trump’s overreach, as did the media and the country’s independent judiciary, despite its conservative leanings. The limits these institutions placed on Trump during his time in office will make it a bit easier for the Biden administration and its supporters to restore democratic norms and institutions. In addition, by limiting Trump to only one term, American voters laid a critical piece of the foundation for restoring democracy. In many cases, illiberal leaders compete in a relatively level playing field when they first seek reelection, but then move to co-opt electoral institutions, making it harder for voters to enact change at the ballot box. For instance, when Hungarian Prime Minister Viktor Orban won his second term in office, in 2010—he had earlier served in the top job from 1998 to 2002—he did so in a relatively free and fair election. [But each subsequent round of polls after 2010 proved more slanted in his favor](https://www.vox.com/policy-and-politics/2018/9/13/17823488/hungary-democracy-authoritarianism-trump), as Orban used extensive gerrymandering and many other tools to make it virtually impossible to defeat his Fidesz party. Finally, in 2020, with the pandemic raging, [Orban seized emergency powers to become all but an outright dictator](https://www.businessinsider.com/coronavirus-created-new-dictator-emboldens-authoritarians-worldwide-2020-4), assuming near-total control of the government. Russia, a more extreme case of illiberalism, is another example. When President Vladimir Putin first ran for reelection in 2004—he won his first full term in 2000 after serving in an acting capacity for several months—the election process, though not truly democratic, was somewhat contested. At the least, it was more contested and vibrant than later Putin-era elections, which were complete shams. Other historical examples show that it is possible to rebuild democratic norms and institutions after a period of illiberal rule, even if it is a steep road back. South Korea, for instance, [witnessed abuses of power](https://democracyfund.org/wp-content/uploads/2020/06/2018_WhatComesNext_vFINAL.pdf), intimidation of political opponents and a wave of high-level corruption scandals under the conservative President Park Geun-hye, who took office in 2013. She was impeached in 2017 and forced from office amid vibrant and peaceful street protests that helped encourage a democratic restoration. [Park was subsequently sentenced to 30 years in prison](https://asia.nikkei.com/Politics/South-Korea-top-court-upholds-ex-President-Park-s-20-year-sentence) on charges that included bribery, extortion and abuse of power, though the sentence was reduced on appeal to 20 years. In the immediate aftermath of her impeachment, South Korean activists and civil society groups mobilized to advocate for anti-corruption measures and transparency in government. Park’s successor, the more progressive President Moon Jae-In, won the 2017 election vowing to fight corruption, make government accountable and level the economic playing field. He has [faced criticism from some commentators for politicizing the judiciary](https://fsi.stanford.edu/news/democracy-south-korea-crumbling-within), limiting the speech of some conservative organizations and commentators, [and trying to govern autocratically](https://www.aljazeera.com/opinions/2020/9/5/abuse-of-power-has-become-the-norm-in-moons-south-korea), using his Democratic Party’s majority in the legislature to hastily pass consequential laws. But the South Korean electorate has remained energized, keeping the pressure on Moon to follow through on his promised reforms. South Africa is another instructive example. After the [disgraced President Jacob Zuma stepped down before the end of his term in 2018](https://www.nytimes.com/2018/02/14/opinion/jacob-zuma-resign-south-africa.html), amid massive corruption allegations, a revival of democratic norms and institutions has come from the top as much as from civil society and the public. Zuma’s successor, Cyril Ramaphosa, has made restoring South African democracy a central theme of his presidency, although he has struggled to deliver on that promise given the [scale of South Africa’s problems following Zuma’s tenure](https://www.worldpoliticsreview.com/articles/29012/the-south-africa-economy-never-stood-a-chance-against-covid-19). Still, Ramaphosa has attacked corruption within the ruling African National Congress, reduced politicization of the police and judiciary, and [promoted ways to build national consensus and reduce polarization](https://www.gov.za/SONA2020).

# Democracy

### 2NC Democracy

#### No impact – anti-democratic leaders won’t derail stability or the liberal order

Kentikelenis and Krogh, 20

(Alexander Kentikelenis is assistant professor of political economy and sociology at Bocconi University in Milan, Erik Voeten is Peter F. Krogh Professor of Geopolitics and Justice in World Affairs at Georgetown University, “Biden promises to embrace multilateralism again. World leaders agree.” 12-16-20, https://www.washingtonpost.com/politics/2020/12/16/biden-promises-embrace-multilateralism-again-world-leaders-agree/)

In a recently published article, in fact, we found explicit criticisms of the global economic order have been on the decline for the past 15 years and are now at an all-time low. Each year, leaders have an opportunity to speak for about 15 minutes during the General Debate of the U.N. General Assembly. Leaders sometimes use this opportunity to vent their criticisms of global economic institutions. For example, President Trump remarked in 2018 that: “the world trading system is in dire need of change. … While the United States and many other nations play by the rules, [some] countries use Government-run industrial planning and State-owned enterprises to rig the system in their favor.” When we analyzed all 2,908 such speeches between 1970 and 2018, we found leaders rarely criticize the order in this way anymore. In our analysis, we tagged criticisms as statements of intent to abandon the global economic governance organizations, like the IMF and the World Bank, or broader challenges to underlying norms and practices and calls for their reform. Endorsements took the form of clear statements of support, or involved neutral statements that a country is cooperating with global institutions. As the figure below shows, despite a brief spike around the 2008 financial crisis, the heyday of critiques of the economic order was the 1975 to 2005 period. This reflects debates over the New International Economic Order in the 1970s and early 1980s, when some developing countries sought to shift the global economic system to aid developing economies grow faster and become less dependent on rich countries. At the time, the IMF, the World Bank and their controversial “structural adjustment programs” drew the ire of world leaders, while in the 1990s and early 2000s the world trade system attracted much negative attention. But **since 2016** — **a period of rising populist forces** around the world — we found only a minor increase in criticisms. Moreover, these **criticisms were outweighed by an increase in endorsements**. Very few leaders followed Trump in using their moment in the global spotlight to criticize global economic institutions. These broad trends mask an important shift Here’s what we think is happening. During the Cold War, the nature of contestation over the multilateral order was largely an insider-outsider conflict. Critiques came primarily from low-income countries that sought to overhaul the entire economic order. In contrast, **membership in the core global economic institutions has become near** universal. What we’re seeing is insider contestation, as members argue over the rules of the game. Leaders of countries that are highly open to economic globalization are more likely to criticize established arrangements. But they rarely call for wholesale reforms or abandonment of these institutions. Of course, there are exceptions. Our paper notes a number of leftist Latin American leaders with strong ideological objections to the liberal international order were strongly overrepresented among heads of state using the U.N. General Assembly platform to call for exits, including appeals by Hugo Chávez (Venezuela), Daniel Ortega (Nicaragua), Fidel Castro (Cuba) and Evo Morales (Bolivia). The defining feature of leader speeches in the U.N. in recent years is the relative silence about the international economic order and its institutions. Silence — while difficult to interpret — can also be a passive granting of legitimacy: It’s exceedingly rare for countries to abandon the system altogether, so attempts to delegitimate it in major international forums is a key avenue available to countries looking to challenge the established system. **But very few leaders take this route, which suggests** the liberal order has become institutionalized. Decades of multilateral organizations spreading free-market policies around the world have increased the order’s perceived immutability and staying power. Many leaders around the world probably see the U.N., WTO and other elements of the liberal order as no longer up for debate — they take them for granted.

#### Tons of alt causes and no impact

Cooley, 21

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The “liberal international order” is under severe strain. Although its supporters welcomed the defeat of former U.S. President Donald Trump, the order still faces major challenges from both within and without. Populist politicians across the globe call for major changes in the norms and values of world politics. They attack liberal order as a so-called globalist project that serves the interests of sinister elites while trampling national sovereignty, traditional values, and local culture. Some with this view currently lead countries that belong to pillars of liberal order, such as NATO and the European Union. Others, including in the United States, are only an election away from taking the reins of foreign policy. Meanwhile, emboldened illiberal powers seek to make the world safe for authoritarianism, in the process undermining key elements of liberal order. China and Russia, in particular, have exercised diplomatic, economic, and even military power to put forward alternative visions. But if the current liberal international order is in trouble, what kind of illiberal order might emerge in its wake? Does an illiberal order necessarily mean competition for naked power among increasingly nationalist great powers, rampant protectionism, and a world hostile to democratic governance? Current trends suggest less a complete collapse of liberal order than important changes in the mix of illiberal and liberal elements that characterize world politics. Multilateral cooperation and global governance remain strong, but they display increasingly autocratic and illiberal characteristics. The growing strength of reactionary populism and assertiveness of autocratic powers are eroding the international order