# 1NC v Kentucky DG

### 1nc- T

#### Interpretation

#### Increase means to make something greater than it exists as currently – it adds to what is pre-existing

Buckley 06 (Jeremiah, Legal Counsel. Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”).

Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Prohibition is a law or order forbidding an action –

Oxford Languages Dictionary No Date (https://languages.oup.com/google-dictionary-en/)

Prohibition n. forbidding an act or activity. A court order forbidding an act is a writ of prohibition, an injunction, or a writ of mandate (mandamus) if against a public official.

#### Anti-competitive business practices are those practices that do harm to businesses or consumers – the affirmative had to add something to the list

Gibbs Law Group No Date (Anticompetitive Practices. https://www.classlawgroup.com/antitrust/unlawful-practices/)

Federal and state antitrust laws prohibit anticompetitive behavior and unfair business practices that harm other businesses and consumers.

Examples of these unlawful, anticompetitive practices include:

Price Fixing – an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.

Pay-for-Delay – an agreement between a brand drug manufacturer and a would-be generic competitor to delay the release of a generic version of the branded drug, depriving consumers of lower-priced generics.

Bid-Rigging – competitors agree in advance who will submit the winning bid during a competitive bidding process. As with price fixing, it is not necessary that all bidders participate in the conspiracy.

Monopolization – one or more persons or companies totally dominates an economic market.

Unfair Competition – an attempt to gain unfair competitive advantage through false, fraudulent, or unethical commercial conduct.

Market Division – an agreement between competitors not to compete within each other’s geographic territories.

Group Boycotts – two or more competitors agree not to do business with a specific person or company.

Exclusive Dealing Arrangements – an agreement that a buyer will only buy exclusively from the supplier.

Price Discrimination – charging different prices to similarly situated buyers. Certain types of price discrimination may be illegal under the Robinson-Patman Act.

Tying – when a company makes the purchase of an item conditioned on buying a second item.

#### Violation – The rez requires the affirmative to substantively add to antitrust law, not just broaden enforcement of whats already on the books - Plan just applies existing antitrust law – that doesn’t increase prohibitions or expand the scope of core antitrust law

#### Reasons to Prefer and Vote Negative

#### Limits – This topic is already and the deal the death blow to negative research burden – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each debate, enforcing existing law to cover new situations, but without actually increasing prohibitions

#### Ground – The aff decimates our ground – they take away the floor for what the affirmative has to do which is increase prohibitions Lose all politics, agency, innovation and other core topic links. We also lose any enforcements CPs which should be core negative ground

#### Vote neg

### 1nc- T

#### Interpretation -- ‘Core antitrust laws’ are economy-wide.

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Violation – the Aff is limited to a single sector

#### Reasons to prefer

#### Limits – This topic is already massive and this deals the death blow to negative research burden – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each debate.

#### Ground – They avoid key debates about the broader role of antitrust in the economy. Justifies a race to the margin as Affs carve out insulated niches within antitrust law.

### 1nc- k

#### Capitalism controls all the impacts

Foster 19 [John, Prof of Sociology at the Univ of Oregon, “Capitalism Has Failed – What Next?” *Monthly Review*, 02/01/19, <https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/>, accessed 08/22/21, JCR]

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war. To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3 Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7 The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13 Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15 In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18 At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21 More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet. Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23 The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers. Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27 War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29 Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30 More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35 The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38 If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40 Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity. Capitalism is best understood as a competitive class-based mode of production and exchange geared to the accumulation of capital through the exploitation of workers’ labor power and the private appropriation of surplus value (value generated beyond the costs of the workers’ own reproduction). The mode of economic accounting intrinsic to capitalism designates as a value-generating good or service anything that passes through the market and therefore produces income. It follows that the greater part of the social and environmental costs of production outside the market are excluded in this form of valuation and are treated as mere negative “externalities,” unrelated to the capitalist economy itself—whether in terms of the shortening and degradation of human life or the destruction of the natural environment. As environmental economist K. William Kapp stated, “capitalism must be regarded as an economy of unpaid costs.”42 We have now reached a point in the twenty-first century in which the externalities of this irrational system, such as the costs of war, the depletion of natural resources, the waste of human lives, and the disruption of the planetary environment, now far exceed any future economic benefits that capitalism offers to society as a whole. The accumulation of capital and the amassing of wealth are increasingly occurring at the expense of an irrevocable rift in the social and environmental conditions governing human life on earth.43

#### Antitrust is the foundation of neoliberal institution formation – it re-organizes global political space around the fiction of “the market.”

Türem 16 [Z. Umut, Assoc Prof at the Ataturk Institute for Modern Turkish History at Bogazici Univ, “‘The market’ unbound: neoliberalism, competition laws and post territoriality,” *Journal of International Relations and Development* 19.2, proquest, JCR]

The post-1980 worldwide market reforms have created a massive wave of legal production. Competition and antitrust legislation -- as well as agencies to oversee such laws -- have been among the most important vestiges of this wave of neoliberal institutional formation. Today, over 100 countries have competition laws to regulate markets, the vast majority of which have been passed since 1980 -- many, notably, after the dissolution of the Soviet Union (Gerber 2010: 79).2 Not only have laws been passed in innumerable national contexts, but new economic techniques such as 'market analysis' (Indig and Gal 2013) and 'forensic economics' (Lianos 2012), as well as administrative innovations such as competition advocacy (Zywicki and Cooper 2007), have begun to circulate globally. What, if anything, does this institutional and technical proliferation tell us about the significance of territoriality and its ongoing transformation in today's world? This article seeks to answer this question by pursuing two avenues of exploration. First, I read the spread of competition law and economics in light of the historico-theoretical framework of neoliberalism advanced by Michel Foucault in his 1978/79 College de France lectures. This reading constitutes a broad background explaining how neoliberalism brings about a transformation of territoriality as we know it, and how the concepts and practices of competition and the market are at the heart of the art of government that is neoliberalism. Two points make Foucault's work especially relevant to the present inquiry: first, his discussion of neoliberalism essentially as a transformation of state spatiality and the broader system of territoriality, and second, his discussion of competition as the most important building block of neoliberalism. These twin emphases, which are developed below, constitute the intellectual foundation for the discussion of the question of territoriality in this article. Neoliberalism brings about a momentous transformation of nation-state territoriality and it re-organises political space around the notion and practices of 'the market'. Just like exchange and circulation were the building blocks of liberalism, competition is the building block of neoliberalism. The second avenue consists of analysing the conceptualisation and operationalisation of 'the market' in competition law and economics. I take competition laws and the technical instruments that accompany them as both reflecting and constituting global neoliberalism, and I focus on one of those instruments in particular, 'the market definition', as a route to understanding the contemporary state of territoriality. Building on Foucault's theorisation of neoliberalism, I trace how 'the market' begins to constitute a significant conceptual tool to think about globalising relationships, and organise legal interventions in an environment in which territoriality is an insufficient basis for legal and sovereign action. Competition laws are a set of legal and economic rules devised to keep market competition at desired levels and inhibit anti-competitive conduct.3 According to Gerber (2010: 4), 'competition laws are intended to protect the process of competition from restraints that can impair its functioning and reduce its benefits'. While increasing economic efficiency is considered by many to be the ultimate objective (Gürkaynak 2003), particularly post-1980 (Davies 2010: 65), many secondary benefits, such as decreasing consumer prices and fostering innovation, are believed to come about as a result of the implementation of competition laws and policies. In practice, inquiries into potential or actual competition violations and actual mergers and acquisitions among corporations -- two of the most fundamental activities that competition law is designed to oversee -- require, first and foremost, the delineation of the boundaries of the relevant markets to which a specific inquiry applies. Such demarcations concern both the geographic boundaries of the market and the conceptual nature of the product in question. As Kauper puts it, 'market definition is [...] an essential element in a broad range of [competition law] cases, and thus in most cases, relevant markets must be defined in product and geographic terms' (1996: 1683). For the purposes of competition law, a market may be defined as local, sub-national, national, regional or even global in scope. Determinations are made using the tools and techniques of [industrial] economics, often utilising complex algorithms advanced within this discipline. A wealth of information concerning supply and demand dynamics and the conditions of the transportability of the product is fed into the definition of the market. In the contemporary orthodoxy of neoliberal competition law, the goal in such a determination is to actualise maximum economic efficiency by carefully 'setting' the borders of the market (Fox et al. 2004: 189, 196-98). The operation to establish the boundaries of the 'relevant market' presumes a logic that would intervene -- with the force of legality -- into economic relations and geographies. Such a logic in its ideal form does not prioritise territoriality at all. Rather, every time a competition law decision must be made, a rich ensemble of factors is taken into account to determine what the scale of the intervention should be. The market, as elastic, fluid and undetermined as it is, constitutes the basic unit of legal intervention, and efficiency is the measure of its success. Building upon Foucault's historico-theoretical framework of neoliberalism, I argue that the mobilisation of market definition practices within competition law has generated a de-territorialised network concept of sovereignty that is fundamentally at odds with nation-state territoriality and traditional notions of sovereignty. The way the market is designated in competition law as an arena of legal regulation subject to a sovereign gaze, as well as the fact that markets are defined non-territorially, through a fluid, network logic, points to this transformed state of sovereignty and territoriality. Following from the practice of defining market boundaries within competition law, I argue that 'the market' is emerging as a conceptual grid for organising the fluid network of relations that characterise neoliberal globalisation, rendering them governable via legal intervention. More importantly still, the fact that the market and its de-territorialised depiction is becoming an institutionalised practice via the spread of competition laws and agencies suggests that this practice is now becoming a technology that constitutes and enhances further the institutional mechanisms that enabled such practice in the first place.

#### The kritik is a prefigurative politics of resistance that imagines alternate modes of social organization. This is key to foster sustained mobilization

Wigger 18 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “From dissent to resistance: Locating patterns of horizontalist self-management crisis responses in Spain,” *Comparative European Politics* 16.1, p.35, JCR]

The concepts ‘prefiguration’ and ‘propaganda by the deed’, mostly developed and deployed in anarchist literatures to capture a broad range of subversive tactics and activities (Day, 2005), are well suited to understand transformative agency beyond expressions of dissent and protest that is not merely reactive or defensive but that involves an actual material reorganization of social relations in everyday life. Prefiguration implies that the way in which on-going transformative praxis is organized already entails a presentiment of the envisaged future society, while propaganda by the deed refers to exemplary political actions and interventions in the prevailing system that provide a positive example and stimulate solidarity activities and imitation. As a philosophy of praxis, prefiguration entails moreover that the means, strategies and tactics ought to be commensurable with the envisaged future. Social imaginaries or utopian visions are hence a prerequisite for prefiguration. At the same time, such imaginaries should never be understood as definite blueprints for how the future should look. Prefigurative politics often contains only an incomplete glance of the anticipated future because present tense experiments are always unfinished and imperfect, and thus in process (see also Maeckelbergh, 2013). Prefiguration is thus both a lived radical praxis and a goal for the future. The alternative organization of the social relations of (re-)production can therefore be understood as a prefigurative politics of resistance that operates at the same time as propaganda by the deed. Locations of prefiguration can become ‘infrastructures of dissent’ that enable collective capacities for memory (reflection on past struggles), analysis (theoretical discussion and debate), communication, knowledge transfer and shared learning and can thereby foster sustained mobilization by creating networks of mutual support and spread alternative practices (Sears, 2014: 6; see also Dauvergne and LeBaron, 2014).

### 1nc— cp

#### Text: The United States judiciary should maintain current antitrust laws regarding technology firms by increasing the burden of proof for violations of current FTC principles.

#### CP solves without expanding antitrust laws

Minhas 21 (Sabrina, graduated from Loyola-Chicago magna cum laude with a BBA in economics and a BA in political science, spent three years working in economic research at the Federal Reserve Bank of Kansas City, where she won the Performance Excellence Award from the bank for her commitment to conducting high-quality, policy-oriented research, “Antitrust Enforcement of Startup Acquisitions,” 8/4/21, The Regulatory Review, https://www.theregreview.org/2021/08/04/minhas-antitrust-enforcement-startup-acquisitions/)

First, antitrust officials should consider the buyer’s market share. As a firm gains more market share, that firm has greater incentive to exclude its rivals. After acquiring a startup, a dominant firm is unlikely to license the acquired technology to its rivals. Bryan and Hovenkamp recommend limiting enforcement of startup acquisitions to deals in which the buyer has a large market share. Second, courts can determine how much an acquisition will affect competition by considering the “commercial significance” of the startup’s technology. Sometimes, courts will easily recognize that the startup’s technology adds value to the market. When the value of the startup’s technology is unclear, a court should use the price of the acquisition or the market value of the startup as a proxy for the value of the startup’s technology. Finally, courts should examine whether a buyer previously acquired other technology startups. Courts may be able to determine that a firm has a “broader exclusionary strategy in which persistent acquisitsions are used to restrain rivals’ access to new technologies,” Bryan and Hovenkamp note. They explain that a pattern of startup acquisitions may support an antitrust claim “under Section 2 of the Sherman Act,” which makes monopolization attempts a felony. Bryan and Hovenkamp recommend that, after the government succeeds in showing that a startup acquisition violated antitrust law, courts award a retrospective remedy, such as requiring a buyer to license newly acquired technology to its rivals. This remedy would address the concern of false negatives by allowing the acquisition to proceed while preventing competitive harm. The current lack of antitrust enforcement of startup acquisitions does not avoid errors. Rather, nonenforcement demonstrates that courts are failing to distinguish startup acquisitions from conventional mergers, Bryan and Hovenkamp argue. They recommend that courts acknowledge the potential competitive harms of startup acquisitions and “develop standards that strike a reasonable balance between administrability and the risk of judicial error.”

#### Aff kills innovation—Enforcing current law based around demonstrating anticompetitive behavior solves—overburdensome expansion of regulations kills innovation

Abbott 21 (Alden, International Center for Law and Economics,” A FIRST GLANCE AT THE BIDEN EXECUTIVE ORDER ON COMPETITION: THE GOOD AND THE BAD (INCLUDING MUCH THAT LOOKS UGLY),” 7/9/21, https://laweconcenter.org/resource/a-first-glance-at-the-biden-executive-order-on-competition-the-good-and-the-bad-including-much-that-looks-ugly/)

To be clear, this is not to say that “Big Tech” does not deserve close antitrust scrutiny, does not wield market power in certain segments, or has not potentially engaged in anticompetitive practices. The fundamental point is that assertions of market power and anticompetitive conduct must be demonstrated, rather than being assumed or “proved” based largely on suggestive anecdotes. Perhaps market power will be shown sufficiently in Facebook’s case if the FTC elects to respond to the court’s invitation to resubmit its brief with a plausible definition of the relevant market and indication of market power at this stage of the litigation. If that threshold is satisfied, then thorough consideration of the allegedly anticompetitive effect of Facebook’s WhatsApp and Instagram acquisitions may be merited. However, given the policy interest in preserving the market’s confidence in relying on the merger-review process under the Hart-Scott-Rodino Act, the burden of proof on the government should be appropriately enhanced to reflect the significant time that has elapsed since regulatory decisions not to intervene in those transactions. It would once have seemed mundane to reiterate that market power must be reasonably demonstrated to support a monopolization claim that could lead to a major divestiture remedy. Given the populist thinking that now leads much of the legislative and regulatory discussion on antitrust policy, it is imperative to reiterate the rationale behind this elementary principle. This principle reflects the fact that, outside collusion scenarios, antitrust law is typically engaged in a complex exercise to balance the advantages of scale against the risks of anticompetitive conduct. At its best, antitrust law weighs competing facts in a good faith effort to assess the net competitive harm posed by a particular practice. While this exercise can be challenging in digital markets that naturally converge upon a handful of leading platforms or multi-dimensional markets that can have offsetting pro- and anti-competitive effects, these are not reasons to treat such an exercise as an anachronistic nuisance. Antitrust cases are inherently challenging and proposed reforms to make them easier to win are likely to endanger, rather than preserve, competitive markets.

### 1nc- da

#### Biden’s XO set the brink for anti-trust policy to determine the momentum of economic populism- new laws are key

Glennon 21

(Mark Glennon- founder of Wirepoints. "Who Will Own Economic Populism? Biden's New Competition Order, Antitrust Policy And Their Future". Newstex Blogs Phil's Stock World, July 23, 2021 Friday. advance-lexis-com.gonzaga.idm.oclc.org/api/document?collection=news&id=urn:contentItem:636K-30C1-JCMN-Y3VC-00000-00&context=1516831. Accessed August 24, 2021. AR😊)

'This is from the Biden Administration?' If you're a believer in free enterprise and the virtues of robust competition, that may be your initial reaction if you read through the fact sheet[4] on **President Biden's new executive order**[5] to promote competition in the economy. More importantly, if you review reactions to the order, you'll see the issues that **may determine both political control and direction of part of the populist surge in America, both nationally and at the state level. Resolution of those issues may fundamentally reshape our economy**. The driver is the huge majority of Americans who are now fed up with large corporations, particularly big tech platforms. Seventy-three percent say they are dissatisfied[6] with major corporations, including 42% who are 'deeply dissatisfied' with them, way up from earlier years. By numbers at least that large, Americans say[7] big tech must be reined in and, most importantly, they support breaking up Amazon, Google and Facebook. **The matter is playing out in a broad debate about antitrust policy** and what to do about tech companies, **which may significantly change what America's economy looks like.** Team **Biden has noticed the space left empty after Trump**. As reported by Politico,[8] one of Biden's lead campaign pollsters said Trump engaged repeatedly in cultural warfare but also weaved **in economic populist threads**. Now, however, they seem to be only doing one right now. 'That's surprising **and it's ceding a lot of terrain to us**,' she said. Who will ultimately hold that terrain? At the national level, it's unclear because deep fissures are already apparent within both the left and right. Failing national consensus, some of the answer may default to the states, including Illinois. But the most recent headlines are on Biden's executive order on competition, so let's start there. The order covers 72 distinct matters, some very specific and some broadly thematic. It's written in language free marketeers probably will be comfortable with, not the leftist crazy talk so common in Washington today. That's thanks no doubt to its primary author[9], Tim Wu, who is no stranger to free market thinking. He was a law clerk for Judge Richard Posner, who is regarded as perhaps America's leading legal scholar on free market virtues (though Posner's devotion thereto has diminished[10] in recent years). Wu says[11] Posner is 'probably America's greatest living jurist, and Posner called him Genius Wu. 'He's very, very, very smart,' says Posner. Most free marketeers will find some of the order's 72 items at least directionally appealing. For example, a Wall Street Journal editorial[12] endorsed the order to expedite deregulation of the hearing aid market by allowing Americans to purchase hearing aids over the counter rather than by prescription. Retailers and other cargo owners cheered[13] the order to crack down on what they see as rigged pricing by freight carriers. And most conservatives will applaud the effort to limit occupational licensing restrictions, which are widely criticized as barriers to labor mobility. But, geez, what a philosophical clash with the rest of what's coming out of the Biden Administration and Congress! If the sting of competition is healthy, why are we paying millions of Americans not to work? What sense is there setting a minimum, worldwide corporate income tax, which the Biden Administration supports? Why is the administration trying to federalize most everything[14], undermining the competition among states that has served America so well since its founding? Why are government mandates of all sorts micro-managing huge parts of the energy sector? Why are so many in Washington enthralled by the concept of universal basic income - money for nothing at all? **That clash is reason enough to worry how the new order will be implemented in practice**. That worry is heightened by some of the vagueness in the order. **Much of it requires later rule making, which means who-knows-what**. It calls for creation of a new White House Competition Council 'to monitor progress on finalizing the initiatives in the Order and to coordinate the federal government's response to the rising power of large corporations in the economy.' Who will be on it and what will they do? Nobody knows. Far more important than the specific items in the order itself, however, is the broader policy on competition and antitrust of which it is a part. The order calls on the leading antitrust agencies, the Department of Justice (DOJ) and Federal Trade Commission (FTC), toenforce the antitrust laws vigorouslyand 'recognizes that the law allows them tochallenge prior bad mergersthat past Administrations did not previously challenge.' That's a repudiation of antitrust policy that has been in place since the Reagan Administration. It's a reference to a new approach whose champions will hold the two key positions - Lina Khan,who has already been sworn in as Chair of the FTC, and Jonathan Kanter, recently nominated to lead the DOJ's Antitrust Division. Khan and Kanter, like Wu, want tougher legislation and stricter enforcement of competition and antitrust laws, particularly against big tech companies. Also like Wu, they are different from so many others in the Biden Administration - they are smart, credentialed and respected by many on both sides of the aisle. Real change, however, requires legislation. Biden's new order has limited scope. Broadly speaking, the new call for tougher antitrust legislation is in line with many congressional Republicans. Rep.Ken Buck[15](Colo.), the top Republican on the House Judiciary antitrust subcommittee, recently formed a new 'Freedom From Big Tech Caucus' along with a handful of otherGOP lawmakers who supported antitrust bills advanced by the committee last month. The caucus **will aim to unite Republicans in Congress to 'rein in Big Tech' through 'legislation, education, and awareness**,'as reported by The Hill[16]. On the Senate side, Senator Josh Hawley (R-MO) is pushing[17] a bill block big tech mergers and acquisitions outright. **That makes for an unusual alignment with progressives,** at least in broad terms. For months, many progressives have been posting images with mugs emblazoned with 'Wu, Khan &#38; Kanter, reports CNBC[18]. But agreement on specific legislation has been elusive, no doubt stemming in part from each side hoping to claim ownership of any results. Moreover, many in both parties are beholden to big tech contributors[19]. On the conservative side, however, there's further reluctance. **'There are some Republican members that are concerned with any proposal that might give the Biden government more authority to harass businesses along ideological lines**,' Rachel Bovard, senior director of policy for the Conservative Partnership Institute, told Axios[20]. **'It's Republicans thinking the cure is worse than the disease in terms of giving the Biden DOJ and Biden-controlled FTC broad powers to rework corporate America in their vision**,' a GOP aide told Axios. Those are legitimate concerns that apply to Biden's new order as well. **Selective prosecution for political reasons has become a major concern, for good reason.** Wu, Khan and Kanter didn't come out of the Washington swamp, but the swamp corrupts people and the swamp has final say. Perhaps most importantly, there's a fundamental disagreement coming from adherents to the hands-off attitude toward antitrust that has been in place since the 1980s. Big is by no means bad, under that approach, and the government should stay away absent solid evidence of harm to consumers. That has been the thinking from the Reagan Administration through Obama's. As a result, between 2009 and 2019, antitrust enforcers did not block[21] a single one of the more than 400 acquisitions by the five biggest online tech platforms. The Obama administration failed to prevent Facebook from acquiring Instagram and Whatsapp — 'enabling Facebook to co-opt its most promising potential competitors,' as The Hill[22] put it. A less charitable characterization of that old approach is summarized by what a former colleague of mine told me about his antitrust class when he was at Stanford Law School. It was taught by William Baxter, who championed the old approach and later headed DOJ's Antitrust Division under Reagan. Students called his antitrust class 'protrust.' In stark contrast, the new, aggressive approach of Wu, Kahn and Kanter 'identifies concentrated corporate power — something both parties previously encouraged — as actually contributing to a broad range of harms for workers, innovation, prosperity and a resilient democracy overall,' said Sarah Miller[23], executive director of the American Economic Liberties Project. **Democrats are particularly anxious to embrace the new approach to shake the growing perception that they are now the party of wealth and big corporations, not populism.** **It's not just perception**, as Victor David Hansen recently documented nicely[24].

#### Populism destroys the economy and undermines US global leadership

Wolf 17

(Martin Wolf. Chief economics commentator at the Financial Times, London. He was awarded the CBE (Commander of the British Empire) in 2000 “for services to financial journalism”. How economics has stoked populism's rise. Australian Financial Review. COMPANIES AND MARKETS; Financial Times; Pg. 232. June 29, 2017. <https://advance-lexis-com.gonzaga.idm.oclc.org/api/document?collection=news&id=urn:contentItem:5NWS-83P1-JD34-V3V5-00000-00&context=1516831>. Accessed 08/22/2021. AR😊)

What, first of all, is a populist? **The abiding characteristic of populism is its division of the world into a virtuous people on the one hand, and corrupt elites and threatening outsiders on the other.** Populists distrust institutions, especially those that constrain the "will of the people", such as courts, independent media, the bureaucracy and fiscal or monetary rules. **Populists reject credentialled experts. They are also suspicious of free markets and free trade. Rightwing populists** believe certain ethnicities are "the people" and identify foreigners as the enemy. They **are economic nationalists and support traditional social values**. **Often they put their trust in charismatic leaders.** Leftwing populists identify workers as "the people" and the rich as the enemy. They also believe in state ownership of property. Why have these sets of ideas become more potent? Ronald Inglehart of the university of Michigan and Pippa Norris of Harvard Kennedy School argue that the reaction of older and less educated white men against cultural change, including immigration, better explains the rise of populism than economic insecurity. This is part of the truth but not the whole truth. **Economic and cultural phenomena are interrelated**. This study considers immigration a cultural shift. Yet it can also be reasonably viewed as an economic one. More important, the study does not ask what has changed recently. **The answer is the financial crisis and consequent economic shocks. These not only had huge costs. They also damaged confidence in - and so the legitimacy of - financial and policymaking elites.** These emperors turned out to be naked. This, I suggest, is why Trump is US President and the British chose Brexit. **Cultural change and the economic decline of the working classes increased disaffection. But the financial crisis opened the door to a populist surge.** To assess this, I have put together indicators of longer-term economic change and the crisis, for the G7 leading economies, plus Spain. **The longer-term indicators include the loss of manufacturing jobs, the globalisation of supply chains, immigration, inequality, unemployment and labour force participation. The indicators of post-crisis developments include unemployment, fiscal austerity, real incomes per head and private sector credit.** The four most adversely affected of these economies in the long term were (in order) Italy, Spain, the UK and US. Post-crisis, the most adversely affected were Spain, the US, Italy and the UK. Germany was the least affected by the crisis, with Canada and Japan close to it. It is not surprising, then, that Canada, Germany and Japan have been largely immune to the post-crisis surge in populism, while the US, UK, Italy and Spain have been less so, though the latter two have contained it relatively successfully. Thus the rise of populism is understandable. But it is also dangerous, often even for its supporters. As a recent report from the European Economic Advisory Group notes, **populism may lead to grossly irresponsible policies**. The impact of Hugo Ch&#xE1;vez on Venezuela is a sobering example. **At worst, it may destroy independent institutions, undermine civil peace, promote xenophobia and lead to dictatorship.** Stable democracy is incompatible with a belief that fellow citizens are "enemies of the people". We must recognise and address the anger that causes populism. **But populism is an enemy of good government and even of democracy.** We can tell ourselves a comforting story about the future. The political turmoil being experienced in a number of large Western democracies is in part another legacy of the financial crisis. As economies recover and the shock dwindles, the rage and despair it caused may also fade. As time passes, trust may return to institutions essential to the functioning of democracies, such as legislatures, bureaucracies, courts, the press and even politicians. Bankers might even find themselves popular. Yet this optimism runs into two big obstacles. The first is that the results of past political follies have still to unfold. The divorce of the UK from the EU remains a process with unfathomable results. So, too, is the election of Trump. **The end of US leadership is a potentially devastating event.** The second is that some of the long-term sources of fragility, cultural and economic, including high inequality and low labour force participation of prime-aged workers in the US, are still with us today. Similarly, the pressures for sustained high immigration continue. The fiscal pressures from ageing are also likely to increase. **For all these reasons, the wave of populist anger is only too likely to be sustained.**

#### **U.S. hegemony is vital to global stability --- decline causes nuclear great power war --- best scholarship proves**

Brooks, Ikenberry, and Wohlforth 13 (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difªcult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85

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#### Biden expends capital to pass infrastructure.

López ’9-16 [Burgess Everett and Laura Barrón-López; 2021; reporters, citing Senate Majority Whip Dick Durbin, Sen. Richard Blumenthal, Andrew Bates, a spokesperson for Biden, and Celinda Lake, a pollster on Biden’s campaign; Politico, “Dems call in big gun as they face huge Hill tests,” https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952]

The next few months will push President Joe Biden to wield every drop of his influence over Congress.

Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved.

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

“People think they like the reconciliation package, but they really don't know what's in it,” said Lake, who added that her polling shows popularity for the measure, particularly among women and seniors.

The coming months will also challenge Biden’s relationship with Republicans, who are threatening to block a debt limit hike after many of them supported a suspension or increase three times under former President Donald Trump. Biden campaigned as a Democrat who could work with Republicans, and he succeeded this summer by rounding up 19 Senate GOP votes for a $550 billion infrastructure bill.

Yet he’s running into a brick wall in convincing Senate Minority Leader Mitch McConnell to provide at least 10 GOP votes to lift the nation's borrowing limit. Republicans say Biden’s dip in the polls isn’t driving their strategy on the debt ceiling. But it’s not helping either.

“I don’t think anything in the last month has increased the likelihood that he can now create an atmosphere of: Let’s work together,” said Sen. Roy Blunt (R-Mo.), who voted for the infrastructure bill and debt ceiling increases under Trump.

The White House is, so far, sticking by its plan to try and call McConnell’s bluff. Aides in the West Wing consider attaching a debt ceiling suspension or increase to a government funding measure the best way to pressure Republicans on the routine step required by law. Should that approach fail, they may be forced to separate the two fiscal measures to avert a shutdown.

On the debt limit, congressional Democrats are in lockstep with the administration's strategy. But they're looking for Biden to exhibit more of his arm-twisting and back-slapping skills on their social spending plan and their bid to shore up voting rights protections.

Biden “knows better than anyone the power of the United States [presidency] in persuading and sometimes cajoling the key members of Congress, when push comes to shove,” said Sen. Richard Blumenthal (D-Conn.).

#### Antitrust reform requires significant investments of political capital and forces legislative tradeoffs

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

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

#### Quickly secures the vulnerable grid.

Carney ’21 [Chris, August 6; Senior Policy Advisor at Nossaman LLC, former US Representative, Former Professor of Political Science at Penn State University; JD Supra, “The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants,” https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/]

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Grid vulnerabilities spark nuclear war.

Klare ’19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; Arms Control Association, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

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

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

## Case

### Solvency

#### Resources are thin – expanding the scope of antitrust trades off with SQ efforts and makes the agencies look weak – creating a vicious cycle of more litigation and overstretch

Lachapelle 21 [Tara, opinion columnist for Bloomberg, “Wall Street Is Ready to Put Lina Khan’s FTC to the Test,” *Washington Post*, 08/26/21, <https://www.washingtonpost.com/business/wall-street-is-ready-to-put-lina-khans-ftc-to-the-test/2021/08/25/cb55d2c2-059c-11ec-b3c4-c462b1edcfc8_story.html>, accessed 09/01/21, JCR]

An overburdened U.S. Federal Trade Commission [FTC] is warning acquirers that if they get impatient and close any deals without the agency’s permission, it just might slap them with a lawsuit. Dealmakers won’t hold their breath. As President Joe Biden pushes for more aggressive antitrust enforcement — an effort spearheaded by legal scholar Lina Khan, his controversial pick to lead the FTC — the agency is running up against practical limitations. It’s working with very limited resources for a very large number of deals. How large? So far this year, nearly 10,000 U.S. companies agreed to be acquired for a combined deal value of $1.25 trillion, data compiled by Bloomberg show. That’s already surpassed last year’s sum and may even be on track for a record. Not all of those tie-ups will require regulatory approval but in July alone, 343 transactions filed premerger notifications and are awaiting review, compared with 112 in July 2020, according to the FTC. These filings start a 30-day clock for regulators to decide whether to further investigate a deal. If that waiting period expires without any action, a company would typically take that to mean that it’s free to complete the transaction. But now the FTC says it can’t get to its backlog fast enough and that inaction on its part doesn’t signal permission to proceed. In warning letters sent to filers this month, the agency said companies that go ahead anyway do so at their own risk because the FTC might later decide a deal violates antitrust laws and sue to undo it — and what a mess that would create for buyers and sellers. And yet, if the agency thought such an aggressive move might discourage mergers, it was wrong. “To my mind, it is a completely hollow threat and makes the agency look weak,” Joel Mitnick, a partner in the antitrust and global litigation groups at law firm Cadwalader, Wickersham & Taft LLP, said in a phone interview. “They’re saying they’re going to ignore the statutory time limits on them whenever they feel like it and continue to investigate transactions until they’re satisfied. But it’s very difficult for the agency to sue to unwind the transaction once the eggs are scrambled.” Merger reviews traditionally involve some give and take. Companies will often give regulators more time if they think it will increase the odds of winning approval. If that cooperative attitude is being tossed out the window, though, dealmakers are ready to reassess and embrace a more adversarial process. For M&A lawyers, it’s a disturbance to an equilibrium that existed under other administrations, and they fear a reversion to the merger-hostile environment of the 1960s. Of course, folks in Khan’s camp would say it wasn’t an equilibrium at all, but rather an often overly cozy relationship between regulators and companies that were given too much leeway in recent years. In any case, businesses are understandably frustrated by what would seem to be an unreasonable ask. Waiting indefinitely to close a deal is costly and full of risks. At least one acquirer isn’t having it. Last week, Illumina Inc. finalized an $8 billion purchase of cancer-testing startup Grail even though U.S. and European authorities haven’t completed their probes. Even as the FTC began this week its attempt to unwind the deal, other dealmakers may decide they like their chances, too. The FTC “better be ready to litigate,” said David Wales, a partner in the antitrust and competition group at law firm Skadden, Arps, Slate, Meagher & Flom LLP and former acting director of the agency’s Bureau of Competition. “I’ve seen first-hand the resource constraints at the FTC,” he said. “They can’t sue everybody. They can’t block every deal. They will have to be strategic about it.” Already, regulators have two major cases sucking up resources. The FTC last week refiled its monopoly lawsuit against Facebook Inc., alleging its takeovers of Instagram and WhatsApp violated antitrust laws. (Its deal last year for Giphy also employed a sneaky maneuver to avoid showing up on regulators’ radars, and now they’re looking to close that loophole.) The Justice Department is pursuing its own case against Google. And what was initially seen as a narrow effort to reel in dominant technology companies has since expanded to other industries in light of a sweeping executive order from President Biden. Even more obscure areas such as ocean shipping are facing new scrutiny. M&A reviews had already become more of a slog in recent years. Dechert LLP’s Antitrust Merger Investigation Timing Tracker — aptly nicknamed the DAMITT report — shows how investigations that once took an average of eight months now stretch into a year or longer: Just because the FTC threatens a drawn-out legal process doesn’t mean a court will take its side in the end. Even as some politicians and antitrust officials look to toughen up M&A laws, judges still rely on precedent, which can be favorable to merging companies (it was for AT&T Inc. in its giant takeover of Time Warner, for instance). An ambitious agenda without the financial resources to match it will also be of less service to consumers than if regulators pick their battles. As it stands now, Khan’s FTC looks like it’s biting off more than it can chew, and its threats aren’t having the intended effect.

#### Circumvention is inevitable – all levels of the system- 3 reasons.

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.190-3, JCR]

Focusing on antitrust laws and applying Marx’s theory on competition reveals three reasons for antitrust laws’ ineffectiveness in preventing the accumulation of power and the cannibalism of competition that can be extracted from the recent mega-mergers. First, antitrust law is a regulation imposed by government, and regulatory failure occurs when “regulators tend to be primarily concerned with the welfare of those they regulate”306 rather than carrying out the purpose of the regulation. In the process of regulating competitors and helping them remain competitive, antitrust law regulators have lost sight of the purpose behind antitrust laws, which is to protect consumers307 through the promotion of competition.308 The regulators cannot be fully blamed for such oversight, however, because the current antitrust provisions are pragmatically inadequate in the area of protecting consumer welfare. Consider, for example, the two main guides used in the recent bank mergers, the United States Merger Guidelines309 and Japan Form 9,310 the focus of which is on competitive effects and the possibility of concentration as a result of the merger. In practical effect, however, when analyzing the potential anticompetitive effects of the mergers, the regulators are able to exercise considerable discretion in weighing other factors that can possibly lessen the overall anticompetitive effects. In the Bank of Tokyo-Mitsubishi Bank merger, for example, the JFTC gave considerable weight to other factors that could increase competition, such as recent deregulation and international competition,311 even though the new bank resulted in domination in several relevant product areas. As a result, the JFTC redefined some of those product areas so that the new bank would fall under acceptable limits.312 Second, antitrust law is only one part of a bigger whole in a country’s economic policy.313 By virtue, “antitrust, when unsupported or nullified by other public policies which shape the economic structure, is a limited and ineffective weapon against the concentration of economic power.”314 Because of the increase in global competition, antitrust regulators, together with the policy makers of their country, have fostered an environment wherein national firms that compete internationally are given more opportunities for further expansion.315 Under this formulation, domestically focused companies face a clear disadvantage316 when seeking approval for a merger and when competing directly with the stronger bigger national firm. Consider, for example, the recent Chase Manhattan and Chemical merger, resulting in the new bank attaining substantial market share (corporate and mortgage products) in key regions of the United States, like New York, and the negative impact such concentration may have on the other smaller domestic banks around those areas. In achieving all the advantages to a merger (increased profitability through efficiency and job layoffs), the new bank enjoys dominance over those small banks and can potentially control price in order to oust the competitors. Part of the reason why antitrust regulators in the United States have allowed such a mega merger to occur, despite its substantial anticompetitive effects, is because the current economic policy in the United States supports it. For example, previous deregulation activities in United States banking have made it possible for big banks that provide a vast array of financial services to exist.317 Such openness to strengthening national banks to compete in the international arena can be traced to the policymakers’ recognition318 that the United States has lagged in this area and is now lifting the barriers it placed before. This phenomenon in the United States also explains how antitrust laws in Japan, in light of the Japanese openness to big firms, has not impeded Japanese firms from expanding. In some respects, therefore, the factors that have influenced United States policy makers before, such as the fear of the concentration of power have been mitigated by nationalism and global competition. Third, Marx was correct in theorizing that competition contains the seed of concentration in a capitalist society.319 The advantages that capitalism purports to promote such as innovation and efficiency, also promotes further expansion and accumulation of capital to stay in the game320 and to eliminate other competitors. 321 At first, consumers are able to benefit from the competition fervor through better and cheaper products, but as the competition lessens, the benefits slowly disappear. The very nature of competition creates a cycle where the acts of one firm will ultimately induce action by another firm, thus causing a domino effect. 322 Essentially, the very nature of competition does not promote camaraderie with other competitors because the goal is to attain as much power as possible,323 unless, of course, a consolidation or collusion is planned. Rather than preventing the concentration of power, the current antitrust laws allow for the concentration of power to occur in the hands of few firms. For example, it would only make practical sense in a capitalist system that the recent mega mergers of the two large banks will result in consequent mergers by competing banks, and as long as other competitors exist (even if few), current antitrust provisions allow such mergers to occur. Eventually, such high concentration of power in the hands of a few (oligopolies) will still result in the extinction of true competition, and consumers will no longer face the benefits that competition first brought.324

#### There’s no saving antitrust law from the economic system that overdetermines the horizon of its implementation

Curran 16 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Commitment and Betrayal: Contradictions in American Democracy, Capitalism, and Antitrust Laws,” *The Antitrust Bulletin* 61.2, p.247-53, JCR]

Since the minority draws its wealth through capitalism's substantial inequalities, it will likely not participate in their remediation, relinquishing its substantial political advantages. It will use its considerable wealth to keep America capitalistic, using capitalistic principles to build and maintain politically strategic wealth, supporting inequalities and corporate growth, and blocking democratic values and principles from legislative adoption. 128 Certainly, a repudiation of Bork's theory 129 would begin a democratically restorative process. But after fifty years of Bork, antitrust cannot be saved from him. The Supreme Court has ground his theory into binding precedent. 130 And no Court will likely overrule this body of precedent, even if a future one were to lose its procapitalistic attitude. 131 Today's blindly procapitalistic Congress is no more likely to arrest Bork's theory. 13 2 For America's citizens to become more democratically equal, they must elect officials who understand the necessity of balanced and prodemocratic laws and policies. 133 A reigning system of capitalism makes hope in conventional representational politics difficult, however. 134 Yet if capitalism has always generated substantial inequalities, how can members of Congress fail to understand? Actually, there is evidence that some do understand. 135 However, who has asked probing questions about the political, moral, and social consequences of extreme wealth inequality and capitalism's role? Penetrating questions rarely get asked in Washington. Some years ago a prescient Robert Dahl observed, For all the emphasis on equality in the American public ideology, the United States lags well behind a number of other democratic countries in reducing income inequality. It is a striking fact that the presence of large disparities in wealth and income, and so in political resources, has never become a salient issue in American politics, or, certainly, a persistent one. 136 Another keen observer has written, "escalating economic inequality ... [does] not prevent the adoption of major policy initiatives further advantaging the wealthy over the middle class and poor." 137 "The massive tax cuts of the Bush era ... are a dramatic case in point." 138 Questions about capitalism while rarely expressed politically are hardly new, however. Adam Smith and John Locke addressed them first, while Mary Wollstonecraft's in her 1790 A Vindication of the Rights of Man continued their skepticism. As Professors Blau and Moncada recently observed about her, [S]he was not the first to have pointed a finger at capitalism as ... [a] cause of unfair and unequal outcomes. Adam Smith recognized its insidious effects and ... John Locke had argued a century earlier that decent societies were equitable ones. Adding to Smith's and Locke's arguments for equity was Wollstonecraft's special insight that capitalism legitimizes the very inequalities that it produces. That has not changed. Inherent in capitalism is the self-justification for the creation of inequalities because these inequalities alone engender the competition that capitalism requires to be dynamic, while holding out the seductive promise of future success to those that fail in today's round of competitive struggle. 139 Wollstonecraft realized that capitalism must have extremes for its existence and survival. And although Adam Smith and John Locke knew this before her, ignorance about capitalism and its necessary inequalities survives some two hundred years later. Yet, today, it can be understood that if capitalism requires competition, and competition requires inequality, then antitrust laws by supporting capitalism will also contribute to the extremes in inequality to which capitalism leads. The questions most critical to reality based policies have already been asked here: "Is more wealth always better?" Assuredly, no. Then, "At what point will wealth obstruct a democratic society?" Most assuredly, now. When 20% owns almost 90% of the nation's wealth, 140 it is time for structural remediation. Significant wealth must stop flowing exclusively to the top 20% without the bottom 80% sharing proportionally. But can wealth be made proportional? Can wealth's exclusivity be reformed and made democratically compatible through statutory or constitutional reform? Must the nation's wealthiest 1% continue to accumulate riches at a rate and pace until it owns virtually all 14 1 of the nation's stocks, bonds, and mutual funds? Must the middle class and poor-stuck with their near zero wealth-maintain their de minimis share? The poor has made room for the middle class, splitting America into two estranged and isolated classes: the wealthy and everyone else.1 42 Of course, this is no democracy. How could it be? Today, however, some presidential candidates are more boldly attacking inequality, as well as the laws and constitutional decisions that threaten democracy.1 43 Change may be blowing in the wind, but it now blows on sheltered wealth. How shaming it is for America. Nations must institute laws that directly and immediately attack the causes and effects of inequality.144 Freed from conservative orthodoxies, nations may even install direct controls1 4 5 -a point missed by our current president. He concluded a recent speech 146 with a misguided warning: [R]ising inequality and declining mobility are bad for our democracy. Ordinary folks can't write massive campaign checks or hire high-priced lobbyists and lawyers to secure policies that tilt the playing field in their favor at everyone else's expense. And so people get the bad taste that the system is rigged, and that increases cynicism and polarization, and it decreases the political participation that is a requisite part of our system of self-government. 147 But, of course, the system is rigged. 14 Capitalism requires capitalists. And so Congress has rigged laws and the national economy to suit them, fitting their exacting specifications, and avoiding any meaningful controls. Does this make the president naive? Maybe he is somewhat. And then again, maybe he was just being his ultracautious self, hoping and silently praying that his speech's measured words escape strong exception and political opprobrium. If he were bolder and less politically cautious, he would have granted highest priorities to human need, wealth's proportionality, and, which is to say, to democracy itself. His words, as they were, neither upset the political right nor generated remedial legislative initiatives. Few politicians must have listened. 149 No one wondered why. 15 0 Then again, the president's take on inequality is transparently political. He pushed middle-class opportunities, not proportionally greater wealth equality for all Americans.15 1 America will never be more authentically democratic as long as its wealth-based and upper-class system predominates. 15 3 This should concern him far more. He should have committed fully to democracy, helping the nation understand how it must commit to more proportionate wealth and laws combatting wealth's exclusive distribution. Higher taxes and other legislation must remediate the more audacious wealth extremes, while enhanced revenues can help keep budgets balanced, infrastructure repaired, human needs funded, and public enterprises created to help counterbalance private corporate wealth. But, first, a president must be motivated. A transformational president comes along as often as a Woodstock generation. How supremely ironic it will be when the record high inequalities produced by the oligopolies and monopolies of this Borkean era are transformed by a future Woodstock generation predisposed to limit 154 corporate size, growth, and profits; to increase taxes; and to create public enterprises. Law professors inclined to use Woodstock15 5 as a negative signifier-signifying the presumed negative extremes of the 1960s-give Bork way too much glory. If Bork had killed antitrust outright, it would have saved society from the consequences of a botched execution. But since Bork failed, antitrust has continued to facilitate wealth for the richest Americans. No longer Sherman Act targets, corporations have risen to power through the Act's freedom to expand to immense size, with only relative market size controlling.15 6 With a small market share, a corporation like Exxon Mobil can still be one of the world's largest-larger than many of the world's economiesand one that in 2014 had assets of $347 billion, revenues of $408 billion, profits of $33 billion, and a market value of $422 billion.157 America's most expensive property, the Apple Corporation, 158 has been worth over $700 billion, 159 and it may become the world's first $1 trillion corporation. 160 All publicly traded corporations combined tip the scales at about $19 trillion.1 61 If corporate wealth distorts democracy, as Professor Lindblom knows, 162 then why has the public been so tolerant? Have procorporate policies won over the public with what propagandists-Hayek, 163 Friedman,1 64 and their followers, along with the more recent "Regan Revolutionaries"-have told it? Apparently, and for now the propagandists have won. And although Bork's theory has withstood dissent and remain preeminent, cracks in the facade do appear. Bork's theory contends that markets compel corporations to become increasingly efficient, perhaps efficient and large enough to satisfy a market's total demand. And even if a single corporation can satisfy total demand-and can do so without engaging in predatory or exclusionary conduct-no Sherman Act violation occurs. Demand has been satisfied through a rational and efficient response to the operation of impersonal market forces, or so Bork contends. While his theories rests on false assumptions about competition and markets, and how corporations perform within them, efficiency has won another battle in its ongoing war with equity. 165 Still, should not the size and wealth of corporations always matter in a democracy? Should not a democracy control the influence, power, and political access that tens of trillions of dollars in corporate assets and cash can command? Not surprisingly, "When money can buy political influence," 166 warns a Harvard economist, "concentrated wealth threatens the very fabric of democracy." 167 The nation's democracy requires a proportionate equality of citizen wealth. These are not new ideas. Wollstonecraft, Adam Smith, and John Locke understood the essential nature of equality. 168 The Supreme Court has not. The cause would seemingly be Bork. 169 He would not sacrifice efficiency to have less wealth inequality. Indeed, he would not even have society-or antitrust-move in that direction.17 0 Such obduracy helps explain today's policy ambivalence over huge wealth inequalities. 17 1 To be big, as the Court once decreed,1 7 2 is not bad. To be big does help explain the nation's $28 trillion corporate asset base1 7 3 and the trillions of corporate cash hoarded here and overseas. 1 7 4 American corporations are so big, in fact, that out of the hundred largest economies of the world, fifty-one are corporations and most are American.1 7 5 The economy's $17 trillion GDP in 2013 was only a little smaller than the world's next three largest economies combined.1 7 6 The nation has long accommodated corporate behemoths. The Apple Corporation has had a market value as high as $742 billion, 17 7 along with recent annual revenues of $170 billion, cash on hand of $40 billion, and total assets of $207 billion,178 but none of this matters under antitrust law. What matters is that Apple has been extraordinarily innovative and its extremely popular products have sold like wild. So why punish it? Why would the Federal Trade Commission or the Justice Department's Antitrust Division proceed to break up a successful firm like Apple? Its competitors and the market, under Bork's theory, will provide sufficient discipline and control. That fickle techies have no brand loyalty will discipline Apple. Techies will bolt from Apple products in a flash for the latest glitz of a rival's whiz-bang products. And, of course, techies already have. Apple's stock values have significantly declined as its innovative edge has slipped and its products' higher prices have dissipated its market shares. Its values will fluctuate as the stock market flips and flops. So goliaths like Apple and Exxon Mobil operate, as Bork's theory sees it, under a market's watchful control and discipline. It is, of course, a ridiculous little story of a theory, but it has hoodwinked the Court. Its Sherman Act interpretations promote both absolute size and immense financial power - the most prominent inevitabilities of capitalism - and citizens' vast wealth differences. Afflicted Americans will not be heard in Congress over a chorus of some $28 trillion strong. 8 0 Their muffled voices perpetuate the damage inflicted upon them. 8 1 Is the damage calculable? If every $100,000 in Exxon Mobil wealth were to provide wealth for one American household, 18 2 Exxon Mobil's total market wealth of $422 billion 8 3 would provide wealth for roughly 422,000 households or about 1.7 million people-equivalent to Pittsburgh, Minneapolis, and Baltimore combined. More staggering is that all corporate wealth equates to the wealth of 28 million households or about half the population of the United States. Such magnitude of wealth and power smothers democracy-reminiscent of "the robber baron era of U.S. capitalism over a hundred years ago .... 185 Americans are helpless, facing an onslaught of corporate dollars and the power politics of extreme wealth. From each American (rich and poor alike) must be extracted about $5,600 to cover America's $1.8 trillion in total corporate profits,1 86 almost all of which is then redistributed to the 20% in the form of interest, dividends, and capital gains. As profits increase, an efficient market theory will help increase and protect the 20%'s share even as extractions from unsuspecting Americans increase. What might seem encouraging is the number of Americans who own corporate stock, houses, and other tangible assets. However, this ownership is tiny. Almost 95% is owned by the 20%,187 while the top 1% own 40%.188 What is even more disturbing is that the top 10% of wage earners take in about half of the nation's income,1 89 while each of the top 1% of households earns close to $400,000190 and each of the bottom 25% earns about $22,500.191 These inequalities reflect deep structural defects. Since antitrust has aided in the creation of huge corporations, facilitated their accumulation of tens of trillions of dollars in assets and cash, and helped them distribute profits to billionaires and millionaires, it is safe to say that neither antitrust nor capitalism can remedy wealth's extreme inequality. "[A]ntitrust policy went into eclipse during the Reagan years," is what the spoiler Paul Krugman has written.1 9 2 And like Professor Stiglitz, Krugman criticizes the distortions that corporate wealth causes democracy, but neither he nor Stiglitz1 93 has gotten the remedy right. And they are not alone. Robert Reich acknowledges the damages of wealth's inequalities, and presumes antitrust enforcement will help.1 94 Antitrust laws that helped create the problem cannot help solve it.195

### Innovation

#### Empirical studies disprove Kronos effect

Petit & Teece 21 [Nicolas, Law Department and Robert Schuman Center for Advanced Studies, European University Institute, David, Institute for Business Innovation, University of California, “Innovating Big Tech firms and competition policy: favoring dynamic over static competition,” *Industrial and Corporate Change*, https://doi.org/10.1093/icc/dtab049]

One narrative that has gone viral in policy circles is that Big Tech’s acquisition decisions are driven by efforts to suppress nascent competition. In a best-selling book on information technologies, law scholar Tim Wu claims that history supports the existence of an industry specific “Kronos effect”, whereby dominant companies consume their potential successors in their infancy (Wu, 2010). The evidence on “killer” acquisitions suggests these transactions are low frequency events (Gautier and Lamesch, 2020). Admittedly, Big Tech firms record a high nominal number of M&A transactions. But the “killer” acquisitions narrative is essentially based on an analogy with patterns observed in the pharmaceutical industry. An empirical study found that 5.3%–7.4% of the acquisitions of pharmaceutical companies were killer acquisitions (Cunningham et al., 2020).

#### Most small businesses don’t even want to innovate.

Robert Atkinson & Michael Lind 18, Mr. Atkinson is the president of the Information Technology and Innovation Foundation. Mr. Lind is a visiting professor at the University of Texas Johnson School of Public Affairs, “The Myth of the Genius in the Garage: Big Innovation,” Big Is Beautiful: Debunking the Myth of Small Business, MIT Press, 2018, pp 127-153

In conclusion, it should be no surprise that despite the publicity that rewards the rare successful tech startup, most small businesses are not innovative. Few of them want to be. In a 2011 study, Erik Hurst and Benjamin Wild Pugsley found that most small businesses do not intend to grow or innovate.77 Most small business owners cited nonpecuniary reasons, such as being their own bosses or having flexible schedules, as their motives for starting a company; only 41 percent had a new business idea or sought to create a new product.78 Only 15 percent of new businesses surveyed planned “to develop proprietary technology, processes, or procedures in the future.”79 This is not to say that tech startups and small R&D-intensive firms are not important to driving innovation, but to privilege small over large when it comes to innovation is a fundamental mistake.

#### Economic decline does not cause war

Walt 20—Robert and Renée Belfer professor of international relations at Harvard University [Stephen M. Walt, 5/13/2020, “Will a Global Depression Trigger Another World War?”, Foreign Policy, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/>]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### 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

#### No hybrid war

Dr. Samuel Charap 16, Ph.D. in Political Science from the University of Oxford, M.Phil. in Russian and East European Studies from the University of Oxford, B.A. in Political Science and Russian from Amherst College, Senior Fellow for Russia and Eurasia at the International Institute for Strategic Studies, “The Ghost of Hybrid War”, Survival, Volume 57, Number 6, December 2015 – January 2016

Analysts in the West tend to think that Russia would choose hybrid tactics in order to sow discord within NATO – using ambiguity to create divisions among allies about what was happening and how to respond – and thus break the Alliance politically, without firing a shot.13 This scenario reflects well-founded doubts about Alliance cohesion and unity. It does not reflect the reality of Russian strategy. An extensive search of Russian military writings produces no evidence of such considerations. Moreover, what we do know about Russian military thought suggests that a hybrid war with NATO would not make strategic sense from Moscow’s perspective. For the Russian military, the most significant threat in the Baltic region, particularly because of the strategically vulnerable Kaliningrad exclave, where the Russian Baltic Fleet is based, is the potential deployment of US forces and high-end capabilities. A Russian hybrid operation would give ample time for the US to do just that. So, in the time it took for Narva, the Russian-speaking Estonian border town, to be occupied by the little green men, the 101st Airborne Division could land in Tallinn and a US carrier group could set sail for the Gulf of Finland. Moreover, Moscow has options to prevent this scenario from materialising. For example, the army, with air support, could rapidly push from the Estonian border to the Baltic Sea, destroying all Estonian forces and denying the US access to the region before anyone in Washington or Brussels had the chance to navel gaze. One Russian analyst noted that it would take 30,000 NATO troops about a month to deploy to the Baltic region, while a Russian force of three times the size could be sent there in just 24 hours. He concluded that ‘while Europe’s top brass discuss and argue how to transit to the theater, and coordinate all of this with [the US], Warsaw, Riga, Tallinn and Vilnius would be transformed into a rubbish heap’.14

Some analysts have gone even further than discerning a doctrine and now claim that Russia is already conducting hybrid warfare on the West. As one recent report claimed, ‘The various diplomatic, economic, military and subversive measures that have been employed by Russia in the Baltic Region and increasingly in the Balkans, Black Sea and Mediterranean regions, could be interpreted as elements of a protracted campaign already underway.’15 The author thus equates hard-nosed – but commonplace – tactics to gain influence with subversion that represents a threat to national security. But there is a major difference between efforts to subvert a population against its government on the one hand, and the use of normal tools of statecraft to gain influence on the other.16 The former would be, of course, a real problem for NATO; fortunately, nothing like the subversion of eastern Ukraine is happening inside member states today. As for all the other unpleasant activities that Russia undertakes inside NATO and EU member states, such as funding political parties or developing media in local languages, these certainly do not merit the label ‘hybrid’, let alone ‘war’. After all, Western countries have been doing many of the same things inside of Russia for years. And no one considered those activities ‘elements of a protracted campaign already underway’.

\* \* \*

Three parallels between the developing conventional wisdom in Russia and the West on hybrid war emerge from the literature. Firstly, Russian strategists believe that the US is willing to risk conducting a limited, hybrid operation in Russia – that is, on the territory of a nuclear power – just as NATO strategists believe Russia is willing to risk the same on the territory of a nuclear alliance. Secondly, Russian analysts project well-founded fears about their country’s long-term political cohesion onto the West’s intentions. In other words, they know their political system is brittle, so therefore the Americans must be out to undermine it. In the same way, NATO analysts know there are divergences regarding threat perceptions inside the Alliance, so therefore Russia must be planning to take advantage of them. Finally, each side believes that Ukraine represents the other’s successful hybrid operation, and a potential precursor to such an operation being directed against it. Fortunately, on all three counts, the new conventional wisdom in both Russia and the West is wrong.

#### European populism is dead

Statista 20

(Statista Research Department, “Populism in Europe - Statistics & Facts”, <https://www.statista.com/topics/3291/right-wing-populism-in-the-european-union/>. 2020)

It is unclear how big the impact of the current populist surge will be for the future of Europe. As of March 2018, [populist parties](https://www.statista.com/statistics/883893/populism-in-europe/) have secured more than half the vote in only four countries in the European Union. The parties themselves are [perceived negatively](https://www.statista.com/statistics/895730/perception-of-populist-parties-in-europe/) by large portions of the population along with many populist figures, such as [Nigel Farage](https://www.statista.com/statistics/895942/nigel-farage-popularity/), [Marine le Pen](https://www.statista.com/statistics/667747/french-opinion-marine-le-pen/) and [Geert Wilders](https://www.statista.com/statistics/667889/opinions-on-geert-wilders-in-the-netherlands/). There is also evidence of a generational divide, with younger voters more likely to have voted “remain” in the [Brexit referendum](https://www.statista.com/statistics/567922/distribution-of-eu-referendum-votes-by-age-and-gender-uk/), or to find figures such as [Boris Johnson](https://www.statista.com/statistics/895910/boris-johnson-popularity-by-age/) unpopular. The [youth of Europe](https://www.statista.com/statistics/895760/share-of-populist-youth-in-europe/) that are drawn to populist ideologies are more likely to be left-wing than right. EU already solves, and populism US doesn’t model. Bradford et al. 19, Anu Bradford, Henry L. Moses Professor of Law and International Organization, Columbia Law School; Adam Chilton, Professor of Law and Walter Mander Research Scholar, University of Chicago Law School, Katerina Linos, Professor of Law and Faculty Co-Director, Miller Institute for Global Challenges and the Law, University of California, Berkeley, School of Law, “Breakingviews - Guest view: Europe beating U.S. in antitrust race,” Reuters, 11/26/19, https://www.reuters.com/article/us-usa-antitrust-breakingviews/breakingviews-guest-view-europe-beating-u-s-in-antitrust-race-idUSKBN1Y021B Modern antitrust laws were invented in America. Yet it’s Europe that’s now acting as the global authority on competition regulation. The United States is losing the global race. The Department of Justice is staffing up its online-platforms unit to probe antitrust violations by technology giants like Facebook, Apple, Alphabet and Amazon, yet will be playing catch-up to its European Union counterpart. In fact, it’s the EU that has kept these and other U.S. companies in check for years with its vigorous antitrust enforcement. Since 2017, the European Commission has fined Google, for example, nearly $10 billion for breaching EU antitrust laws. But beyond holding American companies to account, the EU has become the global authority on antitrust regulation. To date, over 130 countries have adopted a domestic antitrust law, most of them reflecting what the EU has put in place. In a new study published in the Journal of Empirical Legal Studies, the authors of this column, together with Alexander Weaver, analyzed antitrust statutes from 125 countries for over 50 years, and compared them to U.S. and EU antitrust laws. First, by looking for linguistic similarity – seeing whether countries copied key pieces of language from U.S. or EU laws when writing their antitrust laws. Secondly, by considering whether the substantive provisions found in those laws mirrored more closely the provisions embedded in U.S. or EU antitrust laws. Both analyses showed that countries with very different geographical, linguistic, and cultural ties overwhelmingly gravitate towards the EU. Indicatively, important regional leaders in antitrust law and major emerging markets like Brazil, China, India, Mexico, Russia, South Africa, and South Korea all now have laws more similar in substance to the EU than the United States. This declining American influence is surprising. Modern antitrust rules were first formulated in the United States, and its law schools have continued to been profoundly influenced by the law and economics movement. The United States also masterminded the creation of the main venue for global antitrust regulatory dialogue, the International Competition Network. Nevertheless, the EU has been pushing harder to spread its rules around the world. It has promoted its regulatory model actively through trade agreements, making access to its vast consumer markets contingent on the adoption of an antitrust law. Being able to offer market access to over 500 million consumers gives it tremendous influence. The United States has been much more reluctant to use trade treaties as instruments to export its antitrust model. Europe’s approach also appeals in other ways. Laws that tend to be more stringent, and defer less to markets, tend to resonate with governments that want to maintain their regulatory authority. In addition, the EU offers a detailed regulatory template that is easy to copy without further technical expertise. EU rules are already available in French, Spanish, and Portuguese, further facilitating their adoption in Africa and Latin America. The EU’s power shows in flashes, such as when the commission imposes record fines on American tech giants or data providers around the world unveil new EU-compliant privacy policies. But analysis reveals a much more entrenched process of regulatory influence. The EU’s global antitrust dominance illustrates the ability of a single jurisdiction to attract countries with starkly different characteristics into its orbit, creating a regulatory impact that far exceeds its economic, linguistic and political boundaries. All this is good news for an embattled European Union – but not for the United States. While it’s still home to the most robust economic theories underlying modern antitrust laws, theories and ideas alone do not determine how global regulatory races are fought and won. The more the United States, under the administration of President Donald Trump, deregulates domestically and turns its back to global trade deals and regulatory cooperation, the weaker its ability to shape other countries’ regimes becomes. The unprecedented attack on global trade rules and traditional alliances under the Trump administration will only accelerate these longstanding trends. When U.S. regulators take a back seat, the antitrust example shows the EU is prepared to step in and write the rules for the global markets, alone.

#### Even extreme warming won’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the 12°C warmer climate of the early Eocene, nor the rapid global change of the PETM, nor in rapid regional changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially relevant to understanding future biotic response. What emerges from these past records is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another, but there is very little evidence for broad-scale extinctions due to a warming world.” There are similar conclusions in Botkin et al. (2007), Dawson et al. (2011), Hof et al. (2011) and Willis & MacDonald (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

# 2NC

## Enforcement

### 2NC – PDB

#### Acquisition is key to innovation—the aff’s overenforcement collapses it

Goure 21 (Dan, Ph.d vice president at the public-policy research think tank Lexington Institute, “How Misguided Antitrust Concerns Pose A Threat To The Nation’s Security And Health,” 6/15/21, https://nationalinterest.org/blog/buzz/how-misguided-antitrust-concerns-pose-threat-nation%E2%80%99s-security-and-health-187782)

An important tool that contributes to the private sector being more innovative and accelerating change is mergers and acquisitions. In response to the trend of reduced defense spending, as well as reductions in the number of major programs, the defense and aerospace sector has been in a continuous state of consolidation since the end of the Cold War. In addition, until the recent drive toward shortening acquisition timelines, major programs often took fifteen years or more to go from initial design to full-rate production. Scale and financial resources were also important for the ability of defense companies to survive changes in national security priorities or decisions to cancel major acquisition programs. Therefore, small and mid-sized firms often found it extremely difficult to thrive in the defense and aerospace sector. As a result of these factors, the number of major prime contractors has shrunk to, at best, two or three companies in each defense subsector. Mergers and acquisitions will continue to be an important tool for defense and aerospace companies in accelerating change, improving their performance, reducing costs, and providing the rapid innovation demanded by the Pentagon. Recent examples include the merger of L3 and Harris; the merger between Raytheon and United Technologies; the acquisition of Sanders Electronics from Lockheed Martin by BAE Systems; the acquisition of OrbitalATK by Northrop Grumman; and finally, the proposed acquisition of Aerojet Rocketdyne by Lockheed Martin. But where mergers and acquisitions may be particularly significant is in bringing unique products to bear on critical defense problems. The acquisition of small and mid-sized companies (particularly those without a foothold in the defense sector) by larger firms is an important way of providing them with the access to customers, financial and human resources, and management support required to enter and survive in the defense market. Over the past several years, the Federal Trade Commission (FTC) has pursued several misguided antitrust investigations and suits. One of these was against Qualcomm, despite senior DoD officials warning that this would harm national security. The recurring theme in these actions is the need to reign in corporations based on size or market presence. This reflects a growing sentiment at the FTC that corporate success as reflected in size or dominant performance is suspect. As a recent Wall Street Journal editorial observed, the premise of the new approach is that “big is bad.” Efforts by the FTC to impose outdated antitrust standards on companies involved in multi-year defense procurement contracts could pose a direct threat to national security. Only companies that are uniquely capable of designing, developing, and producing sophisticated stealth fighters, such as the F-35, or secure cloud environments that operate from headquarters in the U.S., such as the Joint Enterprise Defense Infrastructure (JEDI) system, can ever meet DoD’s strict requirements to do so. These companies need experience, scale, a breadth of talented personnel, and deep pockets. When it comes to bringing commercial products to the defense marketplace, it is also important to have experience in navigating the labyrinth of defense acquisition regulations, accounting standards, and approaches to funding.

### 2NC – CP Solvency

#### Using common law to establish regulatory frameworks for continued technological expansion solves their offense—CP’s existing mechanism of enforcement creates better outcomes

Wheeler and Veeveer et al 21 (John, Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution, Shorenstein Center on Media, Politics, and Public Policy, Senior Fellow at the Shorenstein Center at Harvard Kennedy School, https://shorensteincenter.org/new-digital-realities-tom-wheeler-phil-verveer-gene-kimmelman/)

In order to move forward protecting consumers and promoting competition while not harming innovation, it is necessary to look backward to common law principles first applied centuries ago. The implementation of the common law concepts of duty of care and duty to deal enables protections that address the “what” of marketplace effects rather than the “how” of traditional regulatory micromanagement. In so doing, they are responsive to the companies’ complaints about “utility style micromanagement” while at the same time establishing proven consumer protection and competition promoting policies to be obeyed by the companies. The DPA is thus responsive to the need for public interest oversight of digital platforms, while also being responsive to the companies’ argument that application of existing regulatory policies would result in innovation-destroying micromanagement. Implementing this, the DPA should be empowered to act on its own but with a preference for such action through the cooperative development with industry stakeholders of enforceable behavioral codes subject to agency approval. Such a process would have the added benefit of imposing enforceable policies that, because of the cooperative process, are more agile and dynamic than traditional regulation. The adoption of such risk management policies would also fill the vacuum created by the inaction of the federal government that has encouraged the nations of the European Union and the United Kingdom—as well as state governments within the United States—to intervene on their own. The international policy leadership role once held by the United States has been abrogated by America’s failure to lead. In the absence of national oversight and leadership of the borderless digital marketplace, American companies are forced to conform to rules made by other governments. Internationally, it is probably too much to expect that rules established for the protection of foreign marketplaces would not also happen to advantage foreign firms. Domestically, the homefield efficiency advantage of a uniform market of 325 million consumers is Balkanized by different rules in different states. The policies of the DPA would allow the United States government to reassume the mantle it has traditionally asserted regarding the oversight of new technologies.

Even if they win enforcement of existing laws fail in the status quo, enforcement of agile regulation through

### 2NC – Internal NB

#### Big tech key to defense innovation—Aff collapses cloud computing and intel gathering

Bateman 19 (Jon, fellow in the Cyber Policy Initiative of the Technology and International Affairs Program at the Carnegie Endowment for International Peace, 10/22/19, “The Antitrust Threat to National Security,” https://carnegieendowment.org/2019/10/22/antitrust-threat-to-national-security-pub-80404)

Forty-six state attorneys general have joined Letitia James, their New York counterpart, in an antitrust investigation of Facebook. Every presidential candidate in last week’s Democratic debate agreed that big tech companies have grown too powerful and must be humbled or diminished, if not broken up entirely. This idea has gained popularity across the political spectrum, with two-thirds of Americans now saying they would break up Big Tech. Although still a long shot, the breakup campaign has spawned dozens of antitrust probes against Amazon, Apple and Google as well as Facebook. And it has started a long-overdue debate about Silicon Valley’s sweeping influence. But there are dangers in restructuring any U.S. industry. One of the most serious remains largely unrecognized: national-security risk. Despite their faults, tech companies contribute directly to American military and intelligence operations. Their titanic scale can itself be an asset. Any responsible antitrust debate must address the national security risks of breaking up Big Tech—and the parallel risks of keeping these companies intact. Consider cloud computing. The Defense Department is planning a massive global cloud called JEDI. Unlike corporate clouds, the “war cloud” must support life-or-death missions on austere battlefields despite virtual or physical onslaughts. The Pentagon found only two eligible bidders: Amazon and Microsoft. Three defense secretaries, a federal judge and the Government Accountability Office have upheld this bidding process. It is no coincidence the two eligible bidders have a combined market value of $1.9 trillion. Vast resources were needed to fund global networks of hardened data centers linked by undersea cables. The U.S. military’s unique demands required companies of unique scale. Yet one JEDI bidder faces a concerted breakup campaign (Amazon), and the other was nearly dissolved in 2001 (Microsoft). Scale also matters in intelligence collection. The Foreign Intelligence Surveillance Act compels U.S. companies to hand over data on suspected foreign agents. U.S. intelligence analysts increasingly rely on FISA to monitor terrorist communications or warn of cyberattacks. Tech giants have particular FISA value because their sheer popularity attracts users from around the world, including hostile actors. The largest tech companies provide some of the fastest-growing intelligence streams. Splitting up Big Tech would reduce its intelligence value. First, smaller companies would lose global market share to foreign rivals such as Alibaba or Baidu, which can ignore FISA. Small U.S. sites can’t leverage the “network effect,” a gravitational force that helps large sites stay dominant. Intelligence collected from small sites would also be less useful. They see only narrow slices of online activity, whereas tech giants track users across sprawling internet ecosystems. Dismantling these ecosystems would put greater burden on intelligence agencies to “connect the dots” of potential threats.

## Populism

### 2NC – Link

#### Support for big tech is high now but new laws would reverse that

Huddleston 19

JENNIFER HUDDLESTON. Breaking up 'Big Tech' is the latest 'techlash,' but what would it actually do?. <https://thehill.com/opinion/technology/462995-breaking-up-big-tech-is-the-latest-techlash-but-what-would-it-actually-do>. 09/25/19.

**When it comes to tech’s “most wanted**” — Facebook, Google, Amazon, and Apple — **it’s hard to define** a market that **any one of them monopolizes**. In most cases, it is easy to identify other major competitors. Apple’s iOS and app store compete with Android and others in the mobile space. A variety of social networking and messaging sites exist in addition to Facebook. There are also a variety of online advertising options, and Big Tech still competes with some offline options like traditional media. So while they may be extremely successful and household names, they do not appear to meet the definition of monopoly, at least in the traditional sense. Technology remains incredibly dynamic, and it’s not certain that regulatory intervention is the best solution to Big Tech’s market power. History shows how companies that seem unstoppable can be replaced by new competitors — or shift to entirely different types of services — more quickly than you might think thanks to innovation. The Department of Justice brought separate multi-decade antitrust cases against IBM and Microsoft, yet it was dynamism in the market, not any court ruling or legal settlement, that undermined the power of their alleged anticompetitive conduct. Much as **Generation X and Millennials embraced Google and** Facebook, **Generation Z is already embracing** **other tech players** like Snapchat. The market and its players may have changed dramatically by the time the case ends. And today, simply defining the market and competitors is much more fluid and complicated than in the days of more established industries like railroads. Advocates of the techlash point to a variety of social harms like privacy or the abuse and overuse of technology or social media, but, as law professor John Lopatka points out, **antitrust is not designed to remedy these concerns**. Tools like the unfair and deceptive trade practices authority or specific legislation are better designed to address them. In fact, as my Mercatus colleague Tyler Cowen points out, **breaking up companies into smaller, walled-off versions of themselves might even make certain problems worse.** These smaller entities might lack the resources they once had for security and content moderation, and they would have to generate revenue on their own because they would no longer be subsidized by the revenues of their parent companies. For instance, an independent Instagram without Facebook’s backing would have to clutter its feed with more advertising, leading to the same problematic financial incentives driving the popularity of “fake news” **and** other practices concerning user privacy. Breaking up Big Tech could also bring **renew**ed **concerns about interoperability** among different platforms, as well as a heavy regulatory burden to determine where acceptable limits are and what exactly is beneficial to consumers. Antitrust serves an important purpose, but it’s not a magic bullet for every industry concern. **Breaking up Big Tech may be** the only satisfactory solution for its fiercest critics, but it would be a long and messy process in the courts, **a failure at addressing alleged social and political ills, and would bring plenty of new problems**

#### Techlash destroys innovation and makes it impossible to address other social priorities like climate change

Atkinson et al 19

Robert D. Atkinson, Doug Brake, Daniel Castro, Colin Cunliff, Joe Kennedy, Michael McLaughlin, Alan McQuinn, Joshua New. A Policymaker’s Guide to the “Techlash”—What It Is and Why It’s a Threat to Growth and Progress. <https://itif.org/publications/2019/10/28/policymakers-guide-techlash>. October 28, 2019.

While the evidence suggests the public is more comfortable with modern technology than many pundits, activists, and politicians are—consumers still line up to buy the latest iPhones, and they use social media at record levels—the techlash is still, we believe, an important issue. **Techlash manifests not just as antipathy toward continued tech**nological **innovation**, **but also as active support for policies that** are expressly designed to **inhibit it**. **This trend**, which appears to be gaining momentum in Europe and some U.S. cities and states, **risks seriously undermining economic growth, competitiveness, and societal progress**. Its policies are not rational, but the **techlash has created a mob mentality, and the mob is coming for innovation**. To be clear, not all of the concerns being raised about technology today are frivolous or without merit. Issues around privacy and cybersecurity—to name just two—are real, and they deserve considered policy responses. But overall, while perhaps a natural response and overcorrection to an earlier trend of techlust—the mindless techno-utopianism and boosterism of Silicon Valley—the techlash phenomenon is likely to reduce individual and societal welfare.2 Rather than techlash, we need “tech realism”—a pragmatic recognition that today’s **technologies,** driven in particular by IT, are like virtually all past technologies: They **are a fundamental force for human progress**, but can in some instances pose real challenges that deserve smart and effective responses. However, **technology** bans, taxes, and overly **stringent regulations** are almost never effective responses, as they “throw the baby out with the bathwater.” To be sure, many advocates focused on **whip**ping **up techlash** would certainly welcome such an outcome. But **giving into techlash passions would slow down economic and wage growth, reduce national competitiveness, and limit progress on a host of critical societal priorities, including education, community livability, environmental protection, and human health.**

#### The plan would cause a techlash that would make addressing domestic problems impossible

Brown 20

ELIZABETH NOLAN BROWN. Democrats Hate Facebook. Republicans Want To Ban TikTok. The Bipartisan Backlash Against Big Tech Is Here and It's a Disaster. <https://reason.com/2020/08/13/democrats-hate-facebook-republicans-want-to-ban-tiktok-the-bipartisan-backlash-against-big-tech-is-here-back-and-its-a-disaster/>. 8.13.2020.

**In the COVID-19 era, federal tech policy has become a vehicle for conspiratorial and authoritarian impulses** of all kinds. **Politicians attacking Big Tech have invoked** Silicon Valley elites, **Russian bots, Chinese spies**, Middle Eastern **terrorists**, domestic sex predators, gun violence, revenge porn, internet addiction, "**hate speech,"** human trafficking, and the fate of democracy as reasons for action. **Whatever works to distract people from** their attempts to interfere in **American freedom** of expression, commerce, and privacy. Google, Amazon, Facebook, Twitter—even platforms as seemingly superficial and politics-free as TikTok—have all been swept up into a wide-ranging political war on the foundations of online life and culture. It might be working. Even as Big Tech has benefited ordinary people in countless ways, **political backlash** to the size and power of America's largest technology companies—what some insiders call "**techlash"—is coming stronger than ever**. And **it could make addressing** everything from **the pandemic to election integrity, cancel culture, criminal activity, police reform, racial justice, and state surveillance** of our digital lives **so much worse.**

#### Techlash sustains itself through calls to breakup big tech

Robert D. Atkinson, Doug Brake, Daniel Castro, Colin Cunliff, Joe Kennedy, Michael McLaughlin, Alan McQuinn, Joshua New. A Policymaker’s Guide to the “Techlash”—What It Is and Why It’s a Threat to Growth and Progress. <https://itif.org/publications/2019/10/28/policymakers-guide-techlash>. October 28, 2019.

Perhaps **the most commonly cited techlash complaint is tech companies are monopolies**, and that this is hurting the economy. Tim Wu, author of the book, The Curse of Bigness, wrote that **Facebook is the poster child** for the curse of bigness, **Google destroys all competitors, and Amazon will be the only company selling** online.273 Barry Lynn, executive director of the Open Markets Institute, stated, “The world is going to be better off after we break up these [tech] companies.”274 Robert VerBruggen, in the title of his article for the conservative National Review, called Google, Facebook, and Amazon “Our Digital Overlords.”275 **These kinds of claims have led** some **elected officials to** want to **take action.** Democratic FTC Commissioner Rohit Chopra stated, “We actually have to take a hard look at whether these behemoths are killing off innovation and competition.”276Sen. Elizabeth Warren (D-MA) has campaigned for the Democratic presidential nomination on a pledge to “break up” Big Tech.277

## Innovation

#### Plan will push Khan’s credibility over the brink – leads to defunding and regulatory rollback

CQ News 21 [Congressional Quarterly News, “FTC Chair Khan's rapid pace seen risking overreach, congressional backlash,” 08/06/21, lexis, JCR]

Federal Trade Commission Chair Lina Khan is risking the perception of overreach as she tries to make dramatic changes at the agency amid an ongoing public debate and internal clashes, observers said. Some of her recent moves, which are already raising questions on Capitol Hill among Republicans, could complicate the outlook for measures to beef up the FTC's authority. "She has to be careful about going too far so that she doesn't lose her support and embolden the critics of the FTC in Congress," Seth Bloom, president and founder of Bloom Strategic Counsel PLLC and a former Democratic aide for the Senate Judiciary's Antitrust Subcommittee, told CQ Roll Call. Khan, who is viewed as one of the most progressive FTC chairs in decades, was sworn in on June 15. Since then, the commission has voted on sweeping changes, including the repeal of a major competition policy statement that was put in place on a bipartisan basis during the Obama administration. Critics, including the commission's Republicans, are voicing concerns that Khan is dismantling old policies at an alarming rate, while ignoring traditional agency procedures along the way. "I think it is the stifling of staff perspectives that is most dramatic," Republican Commissioner Christine Wilson said in an interview. "Under prior chairs, dating back for decades, commissioners have been able to get comprehensive, detailed analysis from staff about every recommendation that is coming before the commission and about every matter on which the commission votes. The flow of information has been dialed back to zero under Chair Khan." The public tension at the FTC is at odds with the agency's decades-long tradition of avoiding open political battles and working behind the scenes to achieve consensus on most matters, according to observers. "I think it's fair to say the FTC has operated as a bipartisan, consensus-based agency pretty much for the last 40 years," said Stephen Calkins, a law professor at Wayne State University in Michigan and a former FTC general counsel in the Clinton administration. "The current chair and majority would probably say the commission has been making mistakes and doing the wrong things for those 40 years." In contrast with the approach taken in recent weeks, the FTC normally takes time in its decision making, with a significant amount of internal deliberation, according to James Fishkin, an antitrust partner at Dechert LLP. "In reality, there's a lot of back and forth and internal discussion going on behind the scenes," said Fishkin, who previously worked as a staff attorney in the FTC's Competition Bureau. The commission has five seats: three for the majority party and two for the minority. Besides Khan, the current Democrats are Rebecca Slaughter and Rohit Chopra, who has been nominated by President Joe Biden to become head of the Consumer Financial Protection Bureau and is expected to leave. Wilson's Republican colleague is Noah Phillips. Much of the agency's day-to-day work is handled by career staff, most notably in the bureaus of Consumer Protection and Competition. Shortly after Khan took over, the FTC launched a series of open meetings, with the goal of making the agency more transparent. Previously, the commission voted on policy items behind closed doors. While Khan has been praised for seeking to open up the work of the commission to the public, some have criticized the way the meetings have been conducted. So far, two such meetings have been held virtually. In both cases, commissioners were asked to vote on major items with little advanced notice or planning, according to Wilson. She also said the meetings lacked any meaningful dialogue. Staff was excluded and commissioners took turns reading prepared statements. The first meeting, on July 1, included a vote to rescind a 2015 policy statement that restricted the agency's authority to prohibit unfair methods of competition under Section 5 of the FTC Act. It was a 3-2 vote, with Wilson and Phillips dissenting. On July 21, the commission voted, also along party lines, to rescind a merger policy statement from the Clinton administration. The 1995 policy had ended the practice of routinely requiring companies to obtain prior approval for acquisitions in certain cases. "The rescission of these statements without providing guidance about where the commission will head provides an irresponsible lack of clarity to the business community about the types of conduct that are lawful and unlawful," Wilson told CQ Roll Call. Bipartisan pledge Last week, during her first appearance on Capitol Hill as FTC chair, Khan pledged to work with her fellow commissioners in a bipartisan fashion. "I think this is a really fascinating moment for a new, emerging bipartisan consensus, especially around some of the concerns relating to concentration of economic power in the digital markets," she said at the hearing, which was convened by the House Energy and Commerce Subcommittee on Consumer Protection and Commerce. "I'm always keen to find areas of shared agreement with my colleagues." She said the new open meetings are "still very early in the process," and the agency is "always thinking about ways that we can improve our processes going forward." The hearing included testimony from all five commissioners. Republicans used it as an opportunity to air some of their grievances over how the agency is currently being run, with Wilson calling it an "abrupt departure from regular order." Similar concerns were raised by GOP members of the subcommitee. Five Senate Republicans have written to Khan, asking her to respond to several questions about recent events at the FTC. The senators, including Marsha Blackburn of Tennessee and John Cornyn of Texas, said they were concerned about the level of openness and transparency at the agency. "In particular, it appears that unprecedented steps have been taken to empower the office of the FTC chair at the expense of the bipartisan, consensus-based decision-making that characterized the FTC under prior administrations," they said. The lawmakers asked Khan to explain why the commission voted to rescind the 2015 policy statement without a public comment period. They also asked her to address a report that her chief of staff, Jen Howard, has internally issued a moratorium on public events and press outreach -- ostensibly, so that staff can focus on the agency's heavy workload. The revelation has triggered concerns that staff is being silenced amid a period of turmoil at the agency. The scrutiny comes as Khan seeks increased resources and new authorities from Congress that can help her to carry out an aggressive agenda. One of the agency's most urgent priorities is getting Congress to restore its ability to obtain monetary restitution for victims of consumer protection and antitrust violations, which was struck down by a U.S. Supreme Court ruling. On July 20, the House narrowly passed a bill (HR 2668) that would give the commission explicit monetary restitution authority. Republicans said the measure, which received only two votes from their side of the aisle, lacked provisions to prevent regulatory overreach. The legislation now awaits action in the Senate, where more Republican support will be needed to reach the 60-vote threshold for overcoming a filibuster threat. "I think Chair Khan risks losing support in the Senate if Republicans perceive her as overly aggressive and if they're uncomfortable with the kind of reforms that she's pushing through," Bloom said. While public disagreement at the FTC isn't unprecedented, the current situation is one of the most extreme examples in modern history, according to observers. "You have go back 40 years to when Ronald Reagan became president," Calkins said. "There was a pretty sharp change in the doctrinal views of the commission under its new chair, Jim Miller, compared with Michael Pertschuk, the previous chair." Pertschuk was one of the most liberal chairs in FTC history, and Miller was one of the most conservative, according to Calkins. When Miller arrived, Pertschuk stayed on as a commissioner, serving in the minority. The two constantly clashed. Miller's agenda was consistent with the overall de-regulatory focus of the Reagan administration. It also followed a period when the FTC came under fire for what was perceived on Capitol Hill as excessive regulatory activity. The agency's powers were curbed by Congress as a result.

#### Kahn is pushing the limits of FTC authority- the question is how far it will go- we are at the brink

Wright 21 [Joshua, Executive Dir of the Global Antitrust Institute, Univ Prof at George Mason, FTC commissioner under the Obama admin, “Lina Khan Is Icarus at the FTC,” *Wall Street Journal*, 07/13/21, <https://www.wsj.com/articles/lina-khan-ftc-monopoly-big-tech-11626108008>, accessed 09/01/21, JCR]

It’s a touch ominous when a bureaucrat begins her tenure by sending bipartisan procedural safeguards to the paper shredder. Federal Trade Commission Chairman Lina Khan wasted no time making confetti of the guardrails at the FTC, including the Obama administration policy statement placing minimal limits on how the agency could use its theretofore undefined power to police “unfair methods of competition.” Shredding the statement clears the way for Ms. Khan’s attempt to remake antitrust law in her image (“Lina Khan’s Power Grab at the FTC,” Review & Outlook, July 6). With the announcement of a global gag order on FTC staff, Ms. Khan has made it clear the FTC will now speak with one voice—hers. All that has been overshadowed by an executive order aimed at competition and loaded with goodies, good intentions, new regulatory regimes and a blissful ignorance of unintended consequences (“Joe Biden, 20th Century Trustbuster,” Review & Outlook, July 10). Some of its pronouncements, like occupational-licensing reform, are to the good. But the FTC’s competition authority is about to become a free-for-all for the Biden administration to reshape the economy. One wonders how the Republicans going along with all this to “get Big Tech” are feeling right now; I’m guessing “played.” If not, they’ll catch up soon enough. Imagining the FTC as Icarus flying without the constraints of history, economics or law is a fun thought experiment, but we’ve been here before. Ms. Khan’s initial steps are indicative of a regulatory overreach that will end with the FTC’s wings melting in the courts. This path does not lead to incremental, much less radical, change. I predict early headlines that appease a rabid base, frustration for FTC staff and a new, volatile partisanship at the agency, but actual results that leave unsatisfied the progressives aching for radical change.

**Courts Rollback:**

#### Courts will rollback

Steuer 12

(Richard M Steuer. Served as Chair of the ABA Section of Antitrust Law from 2011-2012. Previously, he served as the Section’s Delegate to the ABA House of Delegates and as Editorial Chair of the Section’s Antitrust magazine. For three years he also served as Chair of the Antitrust Committee of the New York City Bar Association. The Simplicity of Anti-Trust Law. University of Pennsylvania Journal of Business Law. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2163690>. February 8 2012. Accessed August 30, 2021. AR😊)

Fortunately, the growing sophistication of antitrust analysis, both legal and economic, has made decision-makers better equipped to reach the right determinations—if they can maintain the right focus. **The cause of rogue decisions seldom has been defective rules or tools, but rather a misunderstanding of the principles behind the rules**. If judges, enforcement officials, and lawyers confine their focus to unilateral and collective activity that threatens serious harm to competition, the proper application of the legal and economic principles and tools will become clearer. **To a large degree, the backlash against antitrust enforcement is in reaction to the complexity, and resulting confusion, that has fostered bad policy decisions, bad enforcement decisions, and bad judicial decisions.** **Once antitrust becomes too complicated to explain on an elevator ride, it is in danger of being misinterpreted by courts and losing widespread support.** How does one reconcile the benefits of greater sophistication against the capacity to foster confusion and chaos? **There is no need to rewrite the laws, which are simple enough.** **There generally is no need to rewrite the many guidelines either**, although several might benefit from some clarification. It would suffice for counselors, enforcers, and judges to understand that the beacon of antitrust and competition law is not just maximizing consumer welfare and economic efficiency, but achieving that goal by confining enforcement to preventing bullying and ganging up that seriously threatens competition. **When decision-makers train the weapons of the antitrust arsenal on other practices, they run the risk of both reaching the wrong results and losing public support.** When their aim is true, everyone is better off.

### !- Settlements

#### Trade-offs ensure no legislative enforcement- they are forced to settle instead

Mintzer and Zie 20

(ALLY MINTZER and KAT XIE- BER staff. Berkeley Economic Review. Is Antitrust Enforcement Effective? <https://econreview.berkeley.edu/is-antitrust-enforcement-effective/>. Access August 21, 2021. October 28, 2020. AR😊)

From the 1990s, **federal antitrust agencies have increasingly reached settlement agreements instead of pursuing litigation**. The last “Big Case,” United States v. Microsoft Corporation, resulted in a consent decree, which is a settlement without the admission of guilt. In this case, the allegation that Microsoft became a monopolist in the PC market with its Windows Operating system led to the demise of Netscape’s web browser in an attempt to control internet access. For both the U.S. Department of Justice, Antitrust Division and the Federal Trade Commission, **approximately 93% of all cases are settled** or result in consent decrees. **This trend towards settlement inevitably dictates how the agencies are run and which cases are pursued. Evidently, most resources and time are spent on investigation rather than litigation.** In class action litigation, settlement can be an appealing option for both parties—especially for defendants. Antitrust laws include a treble damage provision from the Clayton Act, meaning that damages are tripled since it is understood that most antitrust violations are undetected. The trebling does not apply to settlements though, making a settlement even more appealing to the defense. **Plaintiffs too find settlements attractive due to the difficulty of winning a case and certainty of a settlement (especially when pressured by class council), although it is likely they are well undercompensated for damages. Even presiding judges lean towards settlements; they are much quicker and efficient, and promptly clear the docket.**

#### The tradeoff corrodes antitrust law across all sectors- settlements become the only option

Baker & Salop 15 [Jonathan, Prof of Law at American Univ Washington College of Law, Steven, Prof of Economics and Law at Georgetown Univ Law Center, “Antitrust, Competition Policy, and Inequality,” *Georgetown Law Journal Online* 104, https://tinyurl.com/hvpvetn2, accessed 7/31/21, p.18, JCR]

Greater antitrust enforcement generally would improve the distribution of income and wealth by reducing the impact of market power, particularly if the agencies fully embrace the consumer welfare standard. But federal and state antitrust enforcement today is limited by agency budgets. Because every enforcement action has an opportunity cost, the agencies limit the intensity of their enforcement efforts and have to pick and choose which matters to pursue. They similarly are constrained in their ability to litigate multiple cases against deep-pocketed defendants, which may lead them to accept weaker settlements. Private plaintiffs add additional enforcement capacity, but they cannot employ the investigative tools available to the government, so they have less ability to uncover and challenge many types of anticompetitive conduct. If federal and state agency antitrust budgets were increased, the agencies could do more to protect consumers and reduce inequality, even without any changes in antitrust law. Although this proposal would need to compete for scarce tax dollars with other policies for combating income and wealth inequality, it may be more feasible politically to increase antitrust budgets than to adopt policy alternatives incorporating more direct redistribution. In addition, even a modest increase in those budgets may have beneficial effects on deterrence.

### !- Econ Chilling

#### Expanding anti-trust law burdens enforcement and causes economic chilling

Heather 20

SEAN- Senior Vice President, International Regulatory Affairs & Antitrust. Unlocking Antitrust: 3 Reasons Why Simplicity is Antitrust’s Greatest Strength.US Chamber of Commerce. <https://www.uschamber.com/series/above-the-fold/unlocking-antitrust-3-reasons-why-simplicity-antitrust-s-greatest-strength>. DEC 08, 2020 .

In recent years, politicians and activists have called **to both change the antitrust laws and increase enforcement**. The push is intended to attack the largest companies in every industry, simply because they are large, and impose specialized regulatory-like **burdens** through **antitrust enforcement.** Some of **these changes** however **would upend antitrust’s simple yet effective approach** only to serve to undermine its importance. Here are the three reasons why the simplicity of existing antitrust laws are also the laws' greatest strength: 1. Antitrust laws have near universal application **Antitrust laws apply to all actors** in the market regardless of size or sector, only in a handful of instances has Congress written in exemptions**. Efforts to move away from such universal application would result in a law that no longer asks all economic actors to compete**. And **efforts to consider special antitrust rules that would only apply to certain sectors or to certain sized companies would destroy the idea that our antitrust laws should have universal application to all economic actors**. Finally, because the laws are universal, proposed changes must be carefully weighed as they will impact the entire economy. 2. Antitrust laws have necessary and important limits No law or statute is open ended or designed to accomplish varied policy objectives. All laws therefore must have limits. In the case of antitrust laws, **not every externality that arises in the market is for antitrust to address.** For example, pollution is an externality in the market, hence we have environmental statutes to guard against it. Consumer protection against fraudulent marketing is another example of an externality that is again best addressed by laws other than antitrust. Similarly, antitrust laws have important and necessary limits to their power as well. The law narrowly examines how conduct in the market impacts price, output, and innovation. All of these are important to the economic well-being of consumers. This is often referred to as the “consumer welfare standard” — a limited approach that focuses on consumer harm in an economic sense and prevents antitrust from drifting into a larger role that is left to regulation. Today, consumers are empowered to make decisions that shape the market, whereas regulations shape the market based on government-directed outcomes. Unfortunately, plans to void this well-reasoned limiting principle would turn the law into a morass of complaints from competitors alleging unfairness divorced from genuine harm to consumers. Asking enforcers or courts to enforce such an open-ended standard would lead to highly subjective enforcement infused with political bias. 3. Antitrust laws invites all arguments When it comes to conduct in the market, no conduct is safe from potential antitrust scrutiny. While antitrust cases brought by federal antitrust agencies get the most attention, the overwhelming majority of cases are brought as private legal actions. Anyone has the legal authority to bring forth an antitrust complaint and argue that the law is being violated. No one need wait for the federal agencies to act**.** Further, antitrust law doesn’t hold a bias against any claim. Business decisions that impact price in the market, terms embedded in contracts that potentially shape market outcomes, or concerns levied over harm to innovation are all routinely made under the law. The law welcomes all claims, allowing arguments from all sides. Complaints from competitors are levied against a defense of the conduct, and as is the case in all legal proceeding, the burden is rightfully on the accuser to provide enough evidence to support its case. After the arguments have been heard and the evidence weighed, the better argument prevails. This approach is often referred to as the “rule of reason” — a balanced approach made possible because antitrust hears all arguments, both complaints against conduct and justifications for that conduct. However, some want to privilege complaints over justifications under the law, upending the level-playing field all arguments enjoy under the law. **Upsetting this balance would complicate the law immensely, resulting in companies of all shapes and sizes, and across all sectors, to have to second guess their business decisions – thus chilling economic activity.**

### 2NC – AT Fails

#### Antitrust law incapable of preventing consolidation

Bejerana 01 [Catherine, practicing attorney in Immigration law in Guam, member of the US Court of Appeals, and US Court of International Trade, “Capitalist Manifesto: The Inadequacy of Antitrust Laws in Preventing the Cannibalism of Competition,” *Asian-Pacific Law & Policy Journal* 2.1, p.145-8, JCR]

Analogous to the poker player who commands a disproportionate financial advantage over his opponents and has the capacity to bankrupt his rivals, a monopoly, according to Karl Marx, interferes with the normal expression of value.2 Marx theorized that capitalism amidst its competitive3 splendor and glory4 has a natural tendency to become a global monopoly.5 For Marx, “the overwhelming drive for capital accumulation” is a basic tenet of capitalism.6 Additionally, “competition [contains] the seed of future centralization,”7 or rather, competition contains the seed for future capital accumulation that is achieved through “mergers and acquisitions.”8 This capital accumulation then results in the demise “of many small firms,” the cannibalism of other competitors, and the ultimate “evolution of monopoly power.”9 During Marx’s time,10 however, antitrust laws did not exist,11and his theory was not premised upon the existence of government regulation that attempted to hamper the formation of monopolies.12 Considering this, it is tempting to hastily conclude that Marx’s theory is, therefore, no longer applicable to countries that have antitrust laws. Marx’s basic premise is that competition results in the “growing accumulation of capital.”13 The inevitable formation of monopolies cannot be discounted, however, and is still applicable even with the existence of antitrust laws. The existence of antitrust laws merely creates a slight twist in Marx’s formulation. To put it more precisely, although antitrust laws can curb the formation of monopolies, they are insufficient in preventing the accumulation of power in the hands of a few, or rather, the formation of oligopolies.14 Antitrust laws fail to prevent competition from cannibalizing itself, because antitrust laws preserve, rather than completely extinguish the competitive process.15 The increase in mergers and acquisitions16 activities around the world in various sectors illustrates this phenomenon.17 A firm’s drive to attain a competitive edge in a capitalist society, which initially fueled the increase in competition, has led it to combine forces with competitors.18 Antitrust laws have been inadequate in preventing such consolidation of large firms leading to the concentration of capital in the hands of a few and, eventually, extinguishing competition.

### 2NC – Circumvention

#### Antitrust is an ideological trap – enforcement is impossible and circumvention is inevitable

Curran 16 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Commitment and Betrayal: Contradictions in American Democracy, Capitalism, and Antitrust Laws,” *The Antitrust Bulletin* 61.2, p.242-7, JCR]

Over the last thirty-five years, Congress and both Democratic and Republican administrations have installed policies that favor individual wealth creation and preservation.59 And the policies have worked-obviously. 60 Less obvious, perhaps, is what we have just learned here-that the design of the interpretation and enforcement of Sherman and Clayton Acts promotes wealth's maldistribution. 61

\*\*\*Insert Footnote 61\*\*\*

See STIGLITZ, supra note 6, at 47 ("Of course, even when laws that prohibit monopolistic practices are on the books, these have to be enforced. Particularly given the narrative created by the Chicago school of economics, there is a tendency not to interfere with the 'free' workings of the market, even when the outcome is anti-competitive. And there are good political reasons for not taking too strong a position: after all, it's anti-business-and not good for campaign contributions-to be too tough on, say, Microsoft.").

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Of course, then, the antitrust laws are antidemocratic. 62 The Sherman Act was thought to be a check against monopolizations, against corporations growing into monopolies through monopolistic practices, while the Clayton Act was believed to check corporate acquisitions and mergers that tended to lessen competition or create a monopoly.6 3 Now it is wealth that matters most. It is antitrust's goal. 64 And it remains its goal even as wealth's gross maldistribution ranks America with some of the world's most unequal societies65 -a very grim but rarely spoken about truth.66 But was antitrust ever important to America's democracy? 67 Antitrust enforcement has long been a charade-isolated and irrelevant. 68 Monopolization and merger cases are filed infrequently. 69 Neither the Sherman nor Clayton Acts has controlled corporate size. 70 Clayton Act enforcement sanctions global mergers,71 while Sherman Act enforcement accommodates large corporations. Antitrust enforcement proceeds in the limited instances that market competition has been injured.73 Markets are geographic areas within which corporations engage in head-to-head competition,74 such as the street comers where a hypothetically merging BP and Exxon Mobil would compete against each other in selling petroleum, or where an alleged monopolist may have acquired a substantial market share. If a corporation lacked market power-to raise prices or reduce production-it was incapable of monopolizing or acquiring or merging with another corporation illegally. Of course, the focus on prices and quantities would always be in markets, where anticompetitive and possibly illegal conduct might occur-like the street comers where BP's and Exxon Mobil's service stations compete head-to-head. That these two petroleum titans operate globally, not just on comers serving motorists, would be minimized. Enforcement agency approval of past significant mergers between large petroleum producers-such as Exxon's merger with Mobil75 illustrates the absurdity of localizing antitrust enforcement while putting pieces of Standard Oil's 1911 busted trust together again.76 Corporations and the 20-percenters must surely give their daily gratitude to Professor (and Supreme Court nominee) Robert Bork.77 Democracy has been effectively traded for wealth-as Bork's consumer welfare designed it.7 8 Why doesn't America's wealth extremes-approaching that of dictatorships and democratically failed nations7 9 -arouse more democratic passion? The 2016 Democratic presidential campaign has taken aim at several antidemocratic targets. s Large corporations are one. They have grown mightily.81 Their size, power, and trillions in wealth have made some Americans very rich. The top 20% now owns 90% of the nation's financial wealth. 2 They enjoy an exclusive corporate wealth distribution. And although Bork's design remains antitrust's principal concept, it is pure fantasy-competitive markets, as economists would define them, do not really exist.8 3 Wealth's inequality has become a reality,8 4 persistent and dangerous, 5 while antitrust enforcement has become that charade of isolated and irrelevant democratic importance. Yes, large corporations and the 20% are fortunate to have had Bork-as are the law professors who keep his vigil.8 6 Bork, according to one law professor, has had the single most lasting influence on antitrust law and policy of anyone in the past 50 years. To read the 1978 Antitrust Paradox today, one is struck by how closely contemporary case law tracks Bork's policy prescriptions.... Bork created a unified goal for antitrust based on a "consumer welfare prescription" to shape the development of the case law.... [M]any of Bork's ideas are mainstream now.... 87 One professor visualized Bork nearly killing antitrust as the populism of the Warren Court threatened to turn into Woodstock antitrust in the 1970s, with Congress contemplating legislation to deconcentrate oligopolies and put caps on corporate growth, and with the federal enforcement agencies getting expansive "fairness" authority, pursuing shared monopoly theories, and bringing monopolization litigation against major high technology firms, [while] Bork was honing the case against antitrust.... 88 Bork emerged victorious. The hugely unequal wealth of oligopolies, monopolies, and those fortunate 20-percenters who own and invest in them, won with him. A democratically shared wealth lost. Bork would have been unmoved. He disdained ethical questions. 89 Who or what was to prosper was not for him to answer or antitrust laws to resolve. Antitrust, in his view, has nothing to say about the way prosperity is distributed. 90 That it is for other laws, was his indulgent ethical stance. 91 And if Bork had nothing for antitrust to say, the already wealthy have ended up with most of the nation's riches. Coincidence? No. Bork wanted the nation to preserve opportunities for even more wealth. 92 He wanted wealth protected from any attempts at egalitarianism, 93 finding "no prospect either in antitrust or in society generally that ... [egalitarianism] will be achieved." 94 So the nation should avoid the investment, is what he would likely have held. If his mind was fixed, his investment choices were false. A democratic nation need not choose between all-out wealth with its huge disparities and full-scale egalitarianism with its significant losses in efficiency. Bork was never nuanced. One always knew where he stood and what he wanted. So his failure to search the accommodating middle between polar extremes was conspicuous. He never liked democracy, its plausible outcomes, or its search to accommodate societal needs. He would not likely give an inch. Wealth remained Bork's first and principal interest. 95 Consequently, he avoided nuance to protect wealth. But against what threat must be asked. It was against any compromise by society that might inch toward equality. He should not have worried. Compromise would not result in miles frighteningly lost in efficiency. 96 A few inches will only begin the backtrack of miles necessary to help compensate for the inequities of maldistributed wealth and the wealth that Bork designed antitrust to create and that he defaulted to capitalism for distribution, top to bottom. Piketty's work97 emphasizes wealth's inequities and more fundamental ones-the losses to equality and democracy. Bork deplored any societal egalitarianism in outcomes. 98 Moving in inches hardly constitutes a threat. Bork exaggerated the worries-they were all a red herring. Will wealth and Bork's passion for it ever be matched by a fervor for a more equitably apportioned society? For now, no. Courts understand neither how wealth's disproportionate generation is destructive of democracy, 99 nor how Bork's consumer welfare concept promotes wealth with absolute disregard of democracy.1 00 It is not "objective economic analysis,"1 01 obviously. It promotes corporate bigness, industrial concentration, and economic power. 102 And as firms inevitably increase in size, their owners and investors become wealthier while their wealth increases gross inequalities. Bork's consumer welfare has terribly mis-served millions-the vast majority of America's citizens-adding to the burdens they carry. 103 Laws that promote wealth's inequality-whether by design or designed default-are, consequently, incompatible with democracy. Simply stated, wealth has not been built objectively; it gravitates to the wealthiest. This we know from Piketty-that wealth even if built without distributional design or purpose will flow to the top. If wealth were physical matter, it would be flowing in reverse gravitational order. How? That is how it has been designed. That is how capitalism has been designed-to get wealth to the wealthy-producing significant antidemocratic results through a top-heavy distribution. Courts continue to exploit wealth maximization.10 4 Then again, are not courts doing exactly what Bork criticized Learned Hand and other "anti-democratic elitists" O for doing? Are not courts using a "legislative warrant" as Hand advocated, 10 6 whenever they deploy the consumer welfare prescription? Did not Congress authorize that warrant for judges "to appraise and balance the value of opposed interests and to enforce their preference." 1 07 If Hand used First Amendment values in Associated Press, why would judges not be inclined to use other constitutional values, like democracy? And what if judges actually used them? Bork anticipated that apostasy, finding First Amendment values-if not democracy itself-to be in philosophic opposition with antitrust laws. 108 So he rejected Hand's "dissemination of news from as many sources, and with as many different facets and colors as is possible ..... 109 Such a plurality of sources, facets, and colors strikes a resounding democratic chord that Bork would likely have called "preposterous," as he would brashly label any rules to have evolved from social and political values. 110 Scholars now link antitrust with distributional values. 11 Professor Anthony B. Atkinson wants antitrust to value the individual,1 12 recognizing as Hand did in Alcoa1 13 that "among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them." 1 14 And it is the individual-rich and poor, but especially the poor-whom Atkinson wants to protect from the inequities of the marketplace.115 Atkinson sees as Senator John Sherman did in 1890 that the "problems that may disturb [the] social order ... none is more threatening than the inequality of condition of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade to break down competition." 11 6 Sherman's and Hand's worries were certainly not Bork's. Hand said it best in Alcoa, "[W]e have been speaking only of the economic reasons which forbid monopoly ... [but] there are others, based upon the belief that great industrial consolidations are inherently undesirable, regardless of their economic results.",1 1 7 Bork-regardless of destructive results to democracy-would never find efficient economic results inherently undesirable. Bork would likely find democracy a "cornucopia of social values, all rather vague and undefined but infinitely attractive."iiS A definition that was surely meant to disparage, fails. What makes democracy attractive is its socially related values. 11 9 What makes it infinitely attractive are its regenerative capacities and potential for self-definition. 120 Bork blocked democracy's values so as not to tempt liberal judges. He worried needlessly. An antitrust solution to wealth's severe inequality is simply not plausible. 121 Antitrust has always been the heart of capitalism's ideology. 122 In truth, antitrust's distribution of wealth for the wealthy is more than ideology-it is heartless reality. So was Bork right? Are the fates of capitalism and antitrust intertwined? 123 And if antitrust were repealed?

#### No court enforcement of the plan – the Court is in the pocket of corporate capitalism

Curran 11 [William, practicing attorney, Editor in Chief of the Antitrust Bulletin, “Democracy or Dagher? What liberals would want,” *Antitrust Bulletin* 56.4, p.884-919, JCR]

Liberals have much to learn about the Court's history of subverting a democratic economy by privileging principles of corporate capitalism. 26 That history, contrary to what liberals might wish, would show that Sherman Act principles have never played a significant democratic role beyond wrapping corporate capitalism in a transparent packaging of political respectability.27 Recent antitrust decisions' like Dagher, upon dispensing with the historical trappings and rhetorical necessity of an antitrust for our democracy, have supplanted antitrust with corporate capitalism. That liberals have traditionally equivocated over corporate capitalism, and whether to advocate its democratic control through strict antitrust enforcement, are also subjects for this article's discussion. Texaco and Shell, as part of an industrial consolidation movement, began maneuvering in the mid-1990s to secure strategically competitive positions.29 Their final strategic response, ironically, was to abandon competition through discussions beginning in 1996 of alternatives to competition that would enhance efficiency, and, as a result, they formed a cartel in 1998 that eliminated significant portions of their nationwide and global competition. 0 Through their cartel, they formed those two joint ventures, Motiva (with Saudi Refining) and Equilon, and agreed that neither Texaco nor Shell would compete with either Equilon or Motiva, or manufacture or market certain products in certain defined nationwide areas," but that they would consolidate and unify the pricing of their branded gasoline with Equilon and Motiva.32 These incriminatory facts, even though they clearly appear in the court of appeals' opinion," are absent from Dagher. The Supreme Court could then ignore Dagher's most consequential if implicit legal point, namely, that the rule of reason should never be used to analyze a conspiracy with global implications between direct competitors, like Texaco and Shell, which divided the United States into competitive and noncompetitive zones through their cartel, and then used their cartel to create twin joint ventures in order to facilitate their customer, territory, product, production, and price agreements and secure for themselves the United States and global competition that these agreements eliminated. Such agreements have long been held to be per se anticompetitive and strictly illegal; indeed, "[i]f Equilon's price unification policy is anti-competitive,"" as the Supreme Court in Dagher speculated, then it should have at least occurred to the Court not to have made Equilon and its price fixing per se lawful. But, by characterizing Equilon as a lawful joint venture, the Court condoned what antitrust precedent never would have. That is, that a joint venture - especially one with its supporting conspiracies, which enabled it to price fix, and which was created by a cartel specifically to help eliminate nationwide and global competition - would be per se lawful. So by ignoring the hugely consequential cartel and its conspiratorial mapping, the Court could then focus exclusively on the duplicitous issue of whether Equilon, which was, of course, neither a solitary joint venture, nor a single, independent entity, could legally fix Texaco and Shell branded products' prices for sale in the western United States." This issue was, of course, duplicitous not only because Equilon, as the instrument of a conspiracy that masterminded partitioning of the United States and global sectors, could never be solitary, but also because Equilon, as that cartel's instrument, was neither single nor independent. It was dependent upon both Texaco and Shell, and they did not disagree. Equilon could not be "a discrete entity"' because, as Texaco and Shell correctly argued elsewhere,-" they both owned and controlled Equilon.4" The Court, however, presumed to know better. So after Dagher, Texaco and Shell could legally establish uniform, higher prices through Equilon because the Court, with its sleight of mind and scant supporting reasons, made Equilon, an "economically integrated joint venture,"' into a single and independent per se lawful price fixing entity. Corporate capitalism was now protected and Texaco and Shell's Sherman Act risks were evaded. Democracy's vulnerability to corporate capitalism did not, regrettably, concern the Court. The Court, consequently, will no longer subject a venture like Equilon to per se analysis, with fixed joint venture pricing likewise closed to per se review. Only the rule of reason is now open to plaintiffs contesting joint ventures or contesting them for selling products at fixed prices," making the free markets essential for a democratic capitalism even more vulnerable.' The facts surrounding Dagher, as we now know, involved many more than those of a purported single entity." The Supreme Court, after presumptively finding this nationwide Texaco-Shell conspiracy lawful, then gratuitously found joint ventures generally to be "important and increasingly popular"4 6 -more popular now because of Dagher. But joint ventures are also "important" because the Court listens to and believes what corporate America says about their importance." But in order to observe and apply principles of corporate capitalism, the Court had to violate precedent and contort logic, as well as engage in contradictions, deceptions, and critical factual omissions, to give its constituencies what they wanted and what they have wanted in other decisions.' This is how the Court defended big oil's strategic initiatives and how the Court conducted its analysis. But were there critical facts that the Court did not omit from Dagher? The Court found (1) that Texaco and Shell "collaborated in a joint venture, Equilon ... to refine and sell gasoline in the western United States under . . . Texaco and Shell . . . brand names"4 9 ; (2) that "[h]istorically, Texaco and Shell ... have competed with one another in the national and international oil and gasoline markets""; (3) that "[tiheir business activities include refining crude oil into gasoline, as well as marketing gasoline to downstream purchasers, such as service stations . . . ."1 ; (4) that "[in 1998, Texaco and Shell ... formed a joint venture, Equilon, to consolidate their operations in the western United States, thereby ending competition between the two ... in the domestic refining and marketing of gasoline" 2; (5) that "[u]nder the joint venture agreement . .. [they] agreed to pool their resources and share the risks . . . and profits"13 ; and (6) that their joint venture's "pricing policy amount[ed] to price setting . . . ."I There were a few other noted facts, but the Court ignored many more critical ones-like the cartel, obviously an important and especially incriminatory fact 5 -and like Texaco and Shell's deliberate, purposeful, and coordinated elimination of nationwide competition through it.' But even from these few Dagher facts, the Court could still have concluded (1) that Texaco and Shell were direct competitors; (2) that they were direct competitors because they competed with one another in "national and international oil and gasoline markets," 7 (3) that they were conspirators- through Equilon, the multi-interested joint venture that they jointly managed and through which they jointly sold and refined petroleum under their agreed-upon brands at fixed prices to agreed-upon service stations in their agreed-upon Western states territory but avoiding the East; (4) that these conspiracies ended significant competition between them in the domestic refining, marketing, and selling of gasoline; and (5) that they were, therefore, involved in multiple per se violations. But, no, it was a joint venture that was presumed to be "economically integrated"" as a "single entity"' that could fix prices "per se" legally"1 that saved Texaco and Shell. The Court's reasoning was predictably simplistic. All it apparently meant was that Equilon was integrated because Texaco and Shell combined and integrated their management into and through EquiIon, not that through Equilon some recombination of Shell and Texaco assets became economically efficient.' Indeed, how could substantial fixed assets of oil refining, production, and distribution be combined or "pooled"' (to use the Court's term) in Equilon, then be made efficient? To be sure, costs and expenditures might well have been reduced or eliminated," but they certainly could have been financially adjusted unilaterally through either company's independent assessment of its own strategic needs.65 But financial adjustments do not constitute enhanced efficiencies. To the Court, unfortunately, Equilon's joint operations by and under Texaco and Shell's managerial control constituted efficient economic integration. Deceptive? More importantly, conspiracies between Texaco and Shell, whether in or through Equilon or Motiva, would be fully integrated-and fully concealed as well-through the "economically integrated" and "single entity" labels, including conspiracies essential to the cartel, so that petroleum could be refined in eastern and western territories, and sales and marketing could be restricted to customers within these two territories, under agreed-upon brands and prices.66 Of course, Equilon would have had to have been grounded and integrated in one more conspiracy; neither Texaco nor Shell would likely have combined their respective managerial interests in Equilon without a conspiracy that either could sell out its interest to the other at possibly appreciated values.6 ' Texaco and Shell used Equilon" as part of their cartel so they could more easily coordinate their conspiratorial elimination of competition. As we now understand, Equilon was unintegrated and under the control of Texaco and Shell over its short three-year existence until Texaco sold out to Shell in 2001, making Equilon a peculiarly inefficient, redundant, and non-joint venture, but one through which Shell has inexplicably continued to sell exclusively and inefficiently over the last ten years. In 2006, the Court used those labels in Dagher as if Equilon had remained a joint venture and had not become Shell's exclusive but redundant sales conduit five years earlier. Deceptions such as these must surely compromise liberalism's belief in the possibilities of a democratic capitalism through antitrust. The Equilon LLC joint venture would also have had to have been a multifirm entity in order to accommodate Texaco and Shell and the multiple rights, interests, and controls required of their legalized LLC structure.' Such rights and interests were required because an LLC is legally dependent upon members, like Texaco and Shell, and upon their legal obligations to operate and control it, which Texaco and Shell did. They also apparently agreed "to pool" their interests in Equilon, to reap profits through the venture, and to have it managed by a board of directors that consisting of Texaco and Shell representatives," all in order to sell gasoline "to downstream purchasers under the ... [two firms'] original brand names.""' The Court saw "no reason to treat ... [Equilon] differently just because it chose to sell its gasoline under two distinct brands at a single price."' But since Texaco and Shell remained separate and distinct within Equilon through those segregated and dual rights, interests, and controls, and used Equilon as a sales conduit, the Court had significant reasons to treat Equilon "differently" and as a per se pricing violation. The Court is blind to democracy and to antitrust laws interpreted to protect democratic free market institutions, while it perversely opens itself to corporate capitalism's cartels and their price fixing as if they were the institutions worthy of antitrust's protection. Would not liberals want more from antitrust? Why is there silence from this usually noisy crowd? So neither Texaco nor Shell disappeared; both could be found within, and under, their contractually created but ephemeral EquiIon LLC structure. And additional facts about the LLC, including relevant details about Equilon's management by Texaco and Shell, their management of the fixed pricing, as well as their jointly managed allocation of national sales, customers, and production, and their inefficient and redundant short-term operations through Equilon, should have convinced the Court of an even broader antitrust violation. But they did not. Certiorari was granted on a record' that the Court had to distort to make new law for Big Oil and corporate America. Certainly, contradictions, omissions, and distortions make Dagher remarkable, and it is especially remarkable for all the other joint ventures and price fixing that may now be sanitized, for all the markets that may now be cartelized, and for all the corporate efficiencies that may now be exaggerated.74 Texaco and Shell, unimpeded by Dagher, would likely have continued with their own remarkable strategic plans' with a likely and clear understanding of the obvious. That is, that the Court will facilitate competitors' joint strategic plans to eliminate competition, even if the plans eliminate price competition, as long as the plans complement the principles that corporate capitalism wants. Since democracy and corporate capitalism are not complements, however," democracy can no longer be an explicit Supreme Court goal. But was it ever?' Moreover, was it ever liberalism's goal? Had Equilon actually listed what it had owned as including "all of [Texaco and Shell's] . . . production, transportation, research, storage, sales and distribution facilities,"' would Equilon then have had the absolute right to set "a price for. . . goods and services"?' But "goods and services" are notably absent from the list. Furthermore, the Court must have realized that Equilon did not have unequivocal title to Texaco and Shell's "goods" because they both legally maintained and protected their respective brands' ownership." Nonetheless, the Court presumed mistakenly that "the goods" were Equilon's. "What could be more integral to the running of a business,"" was asked, then answered presumptively, "than setting a price for [those] goods ... ?"82 How illogical. As a result, pricing, when cooperatively established and calculated through a joint venture, when that venture is outwardly owned, controlled, and managed by the corporations that fixed their own products' prices, and even when the products' brands and the "goods" themselves are owned by the corporations whose products are sold through that conduit of a joint venture, matters not legally. But it must be asked-why? The Court rushed to find Equilon lawful and to make all joint ventures and their fixed prices presumptively and per se lawful for corporate America. It promoted joint ventures because of their alleged "synergies"" and "cost effectiveness and found them to be per se lawful. But were these particularly significant or particularly effective cost savings? Nothing in Dagher, as we have seen, identifies or explains the "synergies" or the enhanced "cost effectiveness." Yet if costs decrease, will they be "effective" (to use the Court's term) if only duplicative or ephemeral ones are eliminated? Simply put, Equilon did not achieve efficiencies sufficient to support the Court's sweeping per se legality for all joint ventures. Yet the Court kowtowed to Texaco and Shell's claim that Equilon was efficient because for three years it had "up to" $800 million in nationwide annual cost savings." But, of course, Texaco and Shell's short-term and incidental costs will have decreased because they were no longer forced to operate unilaterally or to manage independently, that is, forced to compete. How extraordinary Dagher is-a spectacle of antitrust deception and intellectual dishonesty. Or is that too harsh an assessment? Some day the Court will perhaps find an Equilon-like venture to be what it is, a ruse,' and not a single and fully integrated venture, but an easy conspiratorial mechanism for fixing prices and for allocating customers, sales territories, production, and products, especially if joint ventures like Texaco and Shell's are inefficient." After Shell's 2001 purchase of Texaco's interests, Equilon and Motiva finally became "streamlined"' and able "to act quicker and to operate more efficiently."" Previously, both Texaco and Shell had been "disappointed in . . . [Equilon and Motiva's] performance"" because both of their joint ventures had been "hampered by organizational redundancy."91 After 2001, however, the exclusive Shell entities would have had "simplified structures [that] will ... lead to a significant improvement in ... performance in the U.S. and ... [in their] global competitive position .. . ."92 Certainly, these Texaco and Shell self-assessments sharply contradict their Dagher efficiency allegations. Was the Court's presumed acceptance of them simply naive? Or was the Court again being deceptive in its service of corporate capitalism? Such contradictions abound in Dagher and substantiate this article's criticism that the Court will risk accommodating corporate strategies as long as they promote contrived cost efficiencies, even if the strategies concern a per se illegal cartel that coordinates and fixes prices. Democratically secure and protected markets and competitive prices are now vestiges of liberalism's past. What is more, there was no way to test the judicially proclaimed Equilon efficiencies because Texaco and Shell agreed to allocate customers, as well as never to compete independently with that "single entity," and never to re-enter Western states' markets as Texaco and Shell. Consequently, it can never be known whether these cost efficiencies were real or whether they reflected artificial savings limited to trivial administrative costs, to arbitrary budget items, to dispensable future expenditures, or to dispensable assets, with their associated operational costs.3 Those cost reductions and eliminations could easily have been achieved by Texaco and Shell unilaterally, but that did not matter to the Court. Nor did it matter to the Court that the purported efficiencies were neither factually attributable to Equilon nor linked to exact Equilon cost reductions.94 Not only was the $800 million an unsubstantiated allegation, it was an allegation of nationwide savings that was indiscriminately attributed to both Equilon and Motiva in indeterminate proportions. A perceived "integration" of Equilon should not have determined its absolute per se legality, any more than the likely achievement of purported efficiencies should have been the reason for that absolutism. Efficiency is not a legal concept and is not the sole economic determinant of an entity's competitiveness. Mere allegations of efficiency should not suffice." Although assets were not efficiently enhanced in Dagher, corporations like Texaco and Shell may now form cartels to create joint ventures to eliminate the type of direct competition that the Court recognized in Dagher, but did not protect, and that the Court should have fostered if it were to protect democratic capitalism. Courts have equivocated over democracy when facing corporate claims of efficiency. Indeed, markets free of cartels and fixed pricing are no longer deemed essential to antitrust, much less to democracy, with no more than an allegedly efficient corporate capitalism becoming the Court's paramount antitrust goal. If the idea of Big Oil conjures up images of billions of dollars in mammoth ocean tankers and huge, sprawling coastal refineries, then it is not difficult to see that saving millions of dollars in mostly administrative duplications matters little. True efficiencies would eliminate considerable costs from crude oil and its refinement, but no facts were before the Court about Equilon advancing production savings or developing new products.9 The Court, as we know, merely presumed efficiencies." The Court's motivation could simply have been to give Texaco and Shell want they wanted-the elimination of competition'-by giving them the authority and power to control their production and marketing jointly and to fix the prices of the petroleum products they sold nationwide.' Texaco and Shell flaunted Sherman Act proscriptions, with the Court now motivating other competitors in their likely post-Dagher rush to meet, to discuss, to plan, and to agree, whether provisionally, preliminarily, or finally to form and execute Dagher-like joint ventures, but with greater assurances of legality and considerably less fear of indictment.100 Prospective joint venturers will expose to each other their respective future strategies and strive to reach agreement as to a joint management strategy, and as to what they will jointly arrange and control, in anticipation of what they will conspiratorially masquerade as a joint venture with built in Dagher-like controls. Extensive meetings, discussions, and agreements will be conducted throughout the venturing process in an atmosphere of accommodating mutuality and solicitous agreement-with cartels likely formed to manage a broad array of products. Could this be what the Court wanted? Apparently so. And it is the conduct that Dagher invites for corporate America. But it should have been otherwise. The Court in Dagher should have bucked the trend toward this industry's advancing cartelization, should have staunchly backed per se prohibitions and price fixing disincentives, and applied fact to law without the distortions and the deception. But now, through Dagher, the Court has developed new principles of permissible cooperation and agreement, abandoning past prohibitions against competitors' reaching agreement through shared business details, strategic plans, trade secrets, and operational specifics, and then memorializing conspiratorial agreement through a contract like a malleable LLC. Competitors will likely stampede toward Dagher's per se excuses and what Texaco, Shell, and the Court accomplished for them. Unfortunately, they will also rampage across a democracy left exposed by the Court. Texaco and Shell also got from Dagher, and its presumed lawful LLC, the power and authority to manage Equilon and to manage it with flexible authority.102 Consequently, Texaco and Shell had the power to establish all of Equilon's goals, directions, and objectives," without intrusions from outside directors or meddling shareholders. Assuredly, an LLC has infinitely more flexibility than any publicly traded corporation. And, if facts in some future litigation emerge about an LLC's dual ownership, operation, and control, the Court might find a facilitating limited liability company like Equilon and its operations illegal. For now, corporations wishing to collaborate need only establish an LLC agreement through which they can manage conspiratorially, all under indulgent state law." Any Texaco and Shell interests shifted to Equilon would have been managed by Texaco and Shell corporate appointees,"os who would likely have retained their Texaco and Shell allegiances,0 6 who would have reported both to the entity, and its managing director, and who would have exercised authority bestowed by a board, a convenient and useful figurehead, that Texaco and Shell would have controlled. Upon termination, retirement, or death, new managers could be appointed by the conspirators."' Outsider interests never intrude; outside oversight never occurs. The entity is conveniently closed except to the conspirators, making an LLC an ideally suited legal form, through which collaborators can finagle and finesse, through the flexibility it offers like a partnership' and the cover and veneer it offers like a corporation.'"' Without the oversight of either outside directors or shareholders, there is no public much less democratic oversight. The Court in Dagher never analyzed Equilon's actual operations as a closed, and tightly controlled, entity,"0 facilitating Texaco and Shell's price fixing and their agreements to allocate customers, sales territories, production, and products. Any single such agreement, much less all of them, would violate section 1 of the Sherman Act,"' and all have been held to be per se illegal" 2 -but presumably no longer. They have now become per se lawful, that is, as long as corporations form joint ventures that they manage jointly, even if corporations agree to end competition through them and to unify their prices."' Is not this, however, what any illegal conspiracy would entail: discussions would be conducted as to the extent of the agreed upon collaboration, as to the managerial operations involved, and the goals to be achieved, and, finally, as to the embodiment of these collaborations into a conspiratorially effective structure out of which to operate. The Court, although acknowledging the "ending" of competition between Texaco and Shell,"4 simply ignored Equilon as an instrumental part of an allencompassing cartel and its conspiracies formed, organized, and perpetuated to end that competition. The Court's amazing accommodations even included the labeling of Texaco and Shell's Equilon interests as "investments,"" although Texaco and Shell were no ordinary financial stakeholders; these "investors" could significantly manipulate their interests through their direct control of operational rights in their LLC "investment." Such direct rights and controls are what LLC law not only permits but requires."' Texaco and Shell were not, therefore, the equivalents of public shareholders, but the Court appears to have made the assumption that they were, ignoring that Texaco and Shell controlled Equilon and that it functioned by means of multiple anticompetitive agreements."' Such agreements also included reciprocal ones, which ended competition between them in certain specified products and in certain geographic areas, and which ended any possibility that Equilon would compete with their other businesses."' These numerous agree- ments identify Equilon and its operations as per se illegal and as a part of an illegal cartel. In these reciprocal noncompetition agreements," the two collaborators specifically agreed to stay out of the way of Equilon and the cartel - and each other's way as well - in a range of products, in specific territorial and product markets, and in equity product investments.12 0 Thus, competition was further eliminated by the agreement of Texaco, Shell, and Equilon in numerous products and markets through these reciprocal agreements that also cushioned them from competitive risk. Additionally, Texaco and Shell isolated themselves from still other risks and burdens by restricting Equilon from some global competition with Texaco and Shell.121 These many customer, sales, production, and product restraints were all to be enforced by the cartel through the Equilon mechanism. These incriminatory facts should have constrained the Court from the per se sanctioning of Equilon and its price fixing. But they did not. Corporate capitalism rules antitrust. Dagher also reveals how the Court distorts the law when it portrays Equilon's pricing restraint as per se legal, while at the same time suggesting it might be illegal under the rule of reason,'22 and while suggesting still further that this price fixing between direct competitors that might be unreasonable would not be per se illegal." But, as we have seen, Dagher is replete with distortions and intellectual deceits. To mention one more, the FTC did not in its consent decree 24 sanction the price fixing challenged by the Dagher plaintiffs as the Court believes; the decree focused upon formation issues, not the pricing issues that the Dagher plaintiffs challenged.1 2 ' False characterizations such as these, and the others already identified here, plague Dagher. Moreover, once Shell and Texaco created Equilon, and identified themselves as Equilon, then, according to the Court, Equilon could fix prices. Their identity as Equilon determined the legal outcome of their conduct-form will now always conquer substance.2 6 It is not what the two have done, but it is how they have identified themselves in what they have done that matters most. Self-asserted (and self-serving) identity matters more than behavior. Corporations have asserted, and the Court has followed, the principles of their capitalism with its preference for a superficial analysis of appearances. The Court must have believed that, upon the singularly defining moment of Equilon's creation,12 7 competition spontaneously ended between Texaco and Shell 2' in the production, marketing, sales, and pricing of their respective brands to their customers located in western statesl2 9-and, of course, ended for them sales across their artificially created western barrier into eastern states. Competition ended not spontaneously, however, but because Texaco and Shell previously planned it to end,' so their conspiracies to manage jointly in and through Equilon would become effective.13 ' Its cessation, therefore, was not the inevitable result of Equilon, no matter how the Court might wish to neutralize the facts. And if Texaco and Shell could thereafter have their products sold at uniformly higher prices, this again reflected what they previously agreed.13 2 To claim as the Court did, however, that with the formation of Equilon competition spontaneously stopped 3 and that Equilon could then fix their products' prices per se legally missed the obvious logical point that this specific competition between them in the western enclave ended only because of the previously created and coordinating conspiracies that ended it. The Court falsely portrayed Equilon as a unitary or single entity when it was a part of Texaco and Shell's comprehensive territorial, product, production, and customer conspiracies and a transparent but useful subterfuge for their fixing of higher nationwide prices. Texaco and Shell upon selling through Equilon need not, however, have ceased competing between themselves or with Equilon, 5 but could have produced, distributed, and sold independently and unilaterally wherever and whatever each might have independently decided.'" And what about sales in those eastern states? That other Texaco and Shell conspiracy, namely Motiva, disposed of that competitive probability-yet it was a reality the Court ignored. It had to ignore the cartel and Motiva, because had it not, it would have disclosed a greater conspiratorial basis for fixing prices' and coordinating conspiracies, and would have revealed the global implications of a co-conspiring Saudi Refining. Was the Court simply naive or deceptive? The question does recur. The Court, then, not only failed to apply the per se rule of prior "liberal" decisions'8 to these Equilon facts that were per se anticompetitive, it also refused to take even a "quick look" at the incriminating facts.' By ignoring such clear anticompetitive facts and implications of conspiracy, and with its mislabeling of Equilon as a "single entity," the Court mangled per se antitrust logic. The Court is not about to wait for another set of facts to declare a price fixing LLC joint venture violative under a rule of reason assessment. Its hostility toward antitrust and its per se rule will make it very impatient. Since the Court reasoned neither through fact nor principle but through a simplistic logic of corporate capitalism, it has threatened a liberally democratic capitalism. How facts are characterized, as either per se lawful or per se illegal, thus matters greatly."' That is, a per se lawful characterization conceals factual substance that otherwise might be revealed, and that would be revealed through a per se analysis. The only logical principle should be that it "simply depends," not upon identities, however-whether by other per se lawful characterizations like "single entity," "joint venture," or "economically integrated"-but upon underlying fact and, at that, upon legitimate democratic principles and not on the per se lawful privileges conferred by the Court and its corporate capitalism." Antitrust analysis should depend upon how competitors, such as a Texaco and a Shell, have collectively arranged their interests, whether through a cartel, a joint venture, or a merger, while recognizing that a term, such as "economic integration," is not only a presumptive one, but a privileged term of distinction, yet one that is devoid of coherent legal meaning, as to whether joint ownership and managerial controls are integrated, how partial or complete that joint control is, how it would be exercised, or how long the arrangement is to survive with all interests intact. This special conference of privilege does not include a like conference of democratic privilege, however. And the Court's focus on the principles of corporate capitalism is worse than empty of democratic content; its focus is innately biased against democracy. Democracy can never be compatible with corporate capitalism."' Thus, to name Equilon an "economically integrated joint venture"" should not be to validate it; validation through naming is as an illogic that elevates form over function, and ignores that such a joint venture may be jointly controlled and managed by and through "venturing" competitors. Before Dagher, then, the phrase "economically integrated" would likely not have been used, and had it been used at all, it would not have had the legal significance Dagher attached to it so that prices could be fixed. A controlling logic of corporate capitalism and its accommodation led the Court to ignore Texaco and Shell's dual interests and management rights preserved in Equilon, as well as to ignore their customers, sales territories, production, and products allocated through it, along with the cartel through which they masterminded their entire scheme. If antitrust legality should not turn on privileged characterizations, the Supreme Court in a future opinion will nonetheless likely exclude other facts and democratic principles for the privileges of capitalism and a further broadening of the rule of reason, while shrinking or even eliminating the per se rule.1 45 What if the Dagher plaintiffs had litigated under a rule of reason theory of liability, especially given Dagher's facts, the state of current law, and the Court's corporate agenda? Yet, had the Court in Dagher analyzed facts of record regarding the multiple conspiracies-Equilon's conspiratorial creation, its conspiratorial management and operation, or the cartel, or the two nonunitary joint ventures through which Texaco and Shell governed prices and allocated customers, sales territories, production, and products across the United States and globally with Saudi Refining-would a rule of reason attack have even been necessary? Actually no, since sufficient facts were developed through the Dagher plaintiffs' per se theory of liability for the Court to have recognized that Equilon and its uniform pricing would have been illegal whether under a per se or rule of reason attack,'4 1 leaving the Court with no excuse for not allowing a trial on the price fixing issue. This was Big Oil's cartel implementing an anti-competitive global strategy. And it is how the Court's allowance of a corporate strategy threatens democratic capitalism and leaves antitrust plaintiffs to the vicissitudes of a mandated rule of transformed rationality.14 7 In an earlier rule of reason transformation, the Indiana Federation of Dentists decisionm the Court would not allow dentists, under the rule of reason, to agree to withhold patients' x-rays from their insurance companies because the dentists' policy constituted a horizontal agreement. According to the Court, "no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement," 4 9 explaining that a "refusal to compete with respect to the price term of an agreement [.. .. impairs the ability of the market to advance social welfare . . . ." " Application of the rule of reason, the Court confidently asserted, is not "a matter of great difficulty."'' It was such a simple matter for the Court that it found that agreements "limiting consumer choice by impeding the 'ordinary give and take of the market place,' .. . cannot be sustained under the Rule of Reason.""52 Actually, even if Indiana Federation of Dentists sounds more like a per se application, it was a constriction of it because of the Court's examination of defendant dentists' "credible argument""' that not providing x-rays needed by insurance companies to evaluate diagnoses was cost justified. And, although the Court did not find the dentists' defense "credible,"" even a rationalized cost justification defense will still require a court's scrutiny. Under such a rule, excuses are invited even though no excuse could justify the dentists' blatantly illegal agreement. If the Court in Indiana Federation of Dentists tried to make its rule of rationalized excuses seem simple, direct, and not of "great difficulty,"' a per se rule would have been far easier and more logical. No detailed, or even simple, analysis would have been required. And, certainly, no excuses would be allowed. Yet, even though the dentists were not allowed to "[plre-empt the working of the market by deciding for . . . [themselves] . . . that [their] customers do not need [the x-rays] that .. . they demand,""' the Court still found it necessary to allow and then to dispense with the dentists' excuse. Still it seems very simple, does it not? If so very simple, however, why did the Court even bother with the Indiana Federation of Dentists' appeal? Did it see an opportunity for another rule of reason transformation despite the fact that the Federal Trade Commission never even challenged the dentists under the rule?" Perhaps it did see in Indiana Federation of Dentists-as it may have in Dagher-that opportunity to convert the rule into an even broader rule of corporate rationality as it continued making antitrust a corollary of corporate capitalism. For plaintiffs to argue in a future case that fixed pricing was illegally achieved through a joint venture, they must show that the joint venture was not only a price fixing ruse, but that it was one that defendants could not rationalize. But, of course, the Court will not under another decision of transformed rationality, California Dental,'" permit plaintiffs to rationalize-actually "assume,"' to use the Court's term-the anticompetitive effects of the restraint they challenge if the effects have but a "theoretical basis."" Not surprisingly, corporations, on the other hand, are free to use any rationalized theory of efficient capitalism in their defense. For example, in California Dental the defendant dentists' price advertising agreements were found not to be per se illegal although the Court asked whether they tended "obviously" 6 1 to limit total dental services delivered.162 Despite the anticompetitive consequence, the Court did not in effect find that these horizontal agreements had "intuitively obvious" consequences that were anticompetitive.' 63 Thus, even with evidence of anticompetitive consequence, the Court was not to be satisfied. It will want more, and it will require a more thorough examination of circumstances, details, and logic. That is, in the Court's defense of capitalism's interests, it will want for corporations a rule that accommodates them, but for plaintiffs a rule that their claims survive a thorough examination of circumstances, details, and logic." Any Dagher-like plaintiffs, therefore, would first have to assert facts detailing how defendants' joint venture is a ruse for their price fixing. In other words, details and circumstances would have to show how a joint venture like Equilon, with ownership, management, and unified pricing controlled by corporations like Texaco and Shell, is not integrated, and is not a single entity, along with details and circumstances showing how it logically could have and actually did behave with clear anticompetitive consequence. Corporate interests will be well protected by this rule of transformed rationality that insulates them both from the per se rule and from those plaintiffs that might in the eyes of the Court challenge corporate capitalism. Consider, also, how the Court in the NCAA decision' further secured and protected corporate interests first by focusing the rule of reason and the per se rule on a consideration of impact on competitive conditions,16 6 and then by intensifying the per se rule's focus on whether "surrounding circumstances mak[e] the likelihood of anti-competitive conduct so great as to render unjustified further examination of the challenged conduct."' With such reasoning, the Court has simply reduced the per se rule to that rule of rationality that would then likely require answers to such questions as: What would be those "surrounding circumstances"? What would be "so great" an anticompetitive conduct that it would nullify further examination? How likely must a "likelihood" of anticompetitive conduct be? Such questions may have caused the Court to observe that "there is often no bright line separating per se from rule of reason analysis."1" What nonsense. Antitrust jurisprudence of the last seventy-five years established sufficiently illuminating lines. But the Court apparently wanted a newer, shinier version that "may require""9 for corporate violations a per se rule that conducted a "considerable inquiry into market conditions before the evidence justifies a presumption of anticompetitive conduct."" "May require"? "Considerable inquiry"? "Market conditions"? "Evidence"? These multiple, nebulous questions show how the Court would again protect corporate interests. And they show how the Court would protect those interests as it best understands: that is, by reducing the per se rule to a rationalizing and accommodating rule for corporate capitalism. The Court would want from the per se rule a result that its framers never intended."' NCAA rhetoric, or rather its imprecision in the articulation of rules-whether per se or rule of reason-led the Court to a "quick look."1 ' However, that "look" can lead to paradoxical results, especially when it is "too quick" and an alleged illegal price restraint passes a superficial and presumptive Dagher-type exam, or when it is "too slow" and a price restraint passes a superfluous and rationalizing rule of reason. Regardless of that "look," then, the rationalized rules can lead to identical and accommodating views of a restraint. Corporate behavior once settled and established as per se illegal was opened by the Court to its accommodating and rationalizing disposition. The Court in the NCAA decision was, indeed, very accommodating, concluding that, although the NCAA television plan "on its face constitutes a restraint upon the operation of a free market ... [since] it ... raise[d] prices and reduce[d] output,"" these were not sufficient findings to invoke the per se rule. The Court under the rule of reason instead shifted this rule's "heavy burden"" to the NCAA to establish a "defense which competitively justifies this apparent deviation from the operations of a free market.""' But why an "apparent" deviation when the Court first found that the NCAA's television restraint raised prices and reduced output? So not only is any shifted burden actually not "heavy," as the Court labeled it, the Court has given corporations additional chances for further market exploitation through the principles of a naturally and inevitably exploiting capitalism. Accordingly, the Court in NCAA found that "a certain degree of cooperation is necessary if the type of competition that . .. [the NCAA and its members] seek to market is to be preserved."" Although such exploitative cooperation among competitors to create a scarce and then more valuable TV product violates the per se rule, the Court again saved corporate America from a per se violation. Exactly how much competitor cooperation the Court will allow has long been decided under the per se rule, but the Court now prefers instead that rationalizing and accommodating rule of rationality, displaying an antipathy toward the per se rule and its potential for strict corporate control, through that rule's restructured and contradictory directions and confusing instructions. Although corporate capitalism is not compatible with democracy, the present Supreme Court would favor capitalism with no regard or thought to the damage that its decisions inflict upon democracy. The recent Dagher decision illustrates how a logic of corporate capitalism, which does not objectively analyze relevant antitrust fact, resulted in the antidemocratic accommodation of two competing corporations so they could legally conspire through their cartel to eliminate competition. It was through their cartel that the corporations created two joint ventures, with interests and rights they retained for themselves, that equipped them jointly to manage them and to fix prices, production, and marketing of their respective product brands for their nationwide sales. Through Dagher, the Court threatens a liberally conceived democratic marketplace of competitive prices, as it will continue its assault on the antitrust laws and the per se rule in particular. A liberal democracy will likely not survive the onslaught. But where is the liberal outcry? Although with Dagher the Court had another chance to slice away at per se precedents, it was a chance contaminated by facts of conspiracy and monopoly, which then tortured Dagher's precedent and twisted its logic in order to conceal the contamination. Whatever else corporations will want, the Court will likely hand it to them stealthily if with per se lawful presumptiveness, just as the fixing of prices in Dagher had been handed to them with per se legality. It is Big Oil's turn again-just as it always seems to be corporate capitalism's turn. How dispiriting the thought. But not as dispiriting as the thought that the per se rule-the one protective rule against corporate capitalism will likely soon be cut from antitrust. That Dagher was wrongly decided is not the most immediately dispiriting thought, however. As Professor Dworkin has warned: "The worst is yet to come.""

# 1NR

## K

### 1NR – OV

#### Outweighs – by a lot

Monbiot 19 [George, investigative journalist and environmental activist, recipient of the SEAL Environmental Journalism Award, attempted citizen’s arrest of John Bolton, “Dare to declare capitalism dead – before it takes us all down with it,” *The Guardian*, 04/25/19, <https://www.theguardian.com/commentisfree/2019/apr/25/capitalism-economic-system-survival-earth>, accessed 08/21/21, JCR]

For most of my adult life I’ve railed against “corporate capitalism”, “consumer capitalism” and “crony capitalism”. It took me a long time to see that the problem is not the adjective but the noun. While some people have rejected capitalism gladly and swiftly, I’ve done so slowly and reluctantly. Part of the reason was that I could see no clear alternative: unlike some anti-capitalists, I have never been an enthusiast for state communism. I was also inhibited by its religious status. To say “capitalism is failing” in the 21st century is like saying “God is dead” in the 19th: it is secular blasphemy. It requires a degree of self-confidence I did not possess. But as I’ve grown older, I’ve come to recognise two things. First, that it is the system, rather than any variant of the system, that drives us inexorably towards disaster. Second, that you do not have to produce a definitive alternative to say that capitalism is failing. The statement stands in its own right. But it also demands another, and different, effort to develop a new system. Capitalism’s failures arise from two of its defining elements. The first is perpetual growth. Economic growth is the aggregate effect of the quest to accumulate capital and extract profit. Capitalism collapses without growth, yet perpetual growth on a finite planet leads inexorably to environmental calamity. Those who defend capitalism argue that, as consumption switches from goods to services, economic growth can be decoupled from the use of material resources. Last week a paper in the journal New Political Economy, by Jason Hickel and Giorgos Kallis, examined this premise. They found that while some relative decoupling took place in the 20th century (material resource consumption grew, but not as quickly as economic growth), in the 21st century there has been a recoupling: rising resource consumption has so far matched or exceeded the rate of economic growth. The absolute decoupling needed to avert environmental catastrophe (a reduction in material resource use) has never been achieved, and appears impossible while economic growth continues. Green growth is an illusion. A system based on perpetual growth cannot function without peripheries and externalities. There must always be an extraction zone – from which materials are taken without full payment – and a disposal zone, where costs are dumped in the form of waste and pollution. As the scale of economic activity increases until capitalism affects everything, from the atmosphere to the deep ocean floor, the entire planet becomes a sacrifice zone: we all inhabit the periphery of the profit-making machine. This drives us towards cataclysm on such a scale that most people have no means of imagining it. The threatened collapse of our life-support systems is bigger by far than war, famine, pestilence or economic crisis, though it is likely to incorporate all four. Societies can recover from these apocalyptic events, but not from the loss of soil, an abundant biosphere and a habitable climate. The second defining element is the bizarre assumption that a person is entitled to as great a share of the world’s natural wealth as their money can buy. This seizure of common goods causes three further dislocations. First, the scramble for exclusive control of non-reproducible assets, which implies either violence or legislative truncations of other people’s rights. Second, the immiseration of other people by an economy based on looting across both space and time. Third, the translation of economic power into political power, as control over essential resources leads to control over the social relations that surround them. In the New York Times on Sunday, the Nobel economist Joseph Stiglitz sought to distinguish between good capitalism, which he called “wealth creation”, and bad capitalism, which he called “wealth grabbing” (extracting rent). I understand his distinction. But from the environmental point of view, wealth creation is wealth grabbing. Economic growth, intrinsically linked to the increasing use of material resources, means seizing natural wealth from both living systems and future generations. To point to such problems is to invite a barrage of accusations, many of which are based on this premise: capitalism has rescued hundreds of millions of people from poverty – now you want to impoverish them again. It is true that capitalism, and the economic growth it drives, has radically improved the prosperity of vast numbers of people, while simultaneously destroying the prosperity of many others: those whose land, labour and resources were seized to fuel growth elsewhere. Much of the wealth of the rich nations was – and is – built on slavery and colonial expropriation.

### 1NR – FW

#### Focus on policy agenda influence ignores the concrete material praxis needed for broad social transformation

Wigger 18 [Angela, Assoc Prof in Global Political Economy at Radboud Univ, “From dissent to resistance: Locating patterns of horizontalist self-management crisis responses in Spain,” Comparative European Politics 16.1, p.34-5, JCR]

A historical materialist approach gives ontological primacy to historically specific socio-economic realities constituted by the social relations of production and the collective class agency emanating from it. It allows for systematically analysing clusters of class action in a historical context of broader ideational and material structures of power and counterpower. As an emancipatory project, changing the social relations of production is considered the groundwork for a wider social transformation. Analyses in the historical materialist tradition however often suffer from an elitist bias by focusing overwhelmingly on the role and internal fractionation of capital (Wigger and Horn, 2014). Social struggles consequently tend to be reduced to top-down institutional arrangements securing domination within the state apparatus, while dissent, disruption, protest and resistance outside the remit of the state institutional realm, such as demonstrations, strikes, square occupations, as well as more concrete material economic practices, remain analytically and theoretically marginalized (Huke et al, 2015). Emerging forms of resistance are consequently often perceived as limited or as reactive only (Featherstone, 2015). Social movement literatures in contrast clearly give primacy to bottom-up political struggles but often suffer from a similar state-centric bias by focusing predominantly on political demands by social movements vis-a-vis the established state institutional arena, and henceforth, their successes in influencing the policy agenda (McAdam et al, 2001; Tarrow, 2012; Della Porta, 2013). Tarrow (2011: 9), for example, conceptualizes social movements as ‘collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities’. Such a state-centric institutional reductionism is problematic insofar as it tends to ignore forms of concrete material radical praxis that takes place outside the realm of state institutional pressure politics of political parties, trade unions, interest groups, advocacy networks or NGOs and that challenges the very status quo of how the (re-)production of everyday life through work is organized. As a result, the traditional social movement literature has paid little attention to forms of resistance in the form of alternative social relations of (re-)production and the redistribution of material resources. Collective action is moreover frequently portrayed as classless. Certainly, not all forms of collective action are necessarily rooted in class or class awareness; yet, such agency may nonetheless have ‘conjuncturally determined’ class relevance (Jessop, 2002: 32).

### 1NR – Perm

#### Pragmatism DA – the perm keeps its foot in the door of neoliberalism as a pragmatic move in the face of neoliberal subject formation – that’s a fatalistic move that captures the alt

Reed 18  
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Petrified Futurity Capitalist Realism indexes not only our economic condition, but more pervasively, the 'atmosphere' of political resignation which denies the possibility for any other socio-economic structural scenario. This 'atmosphere' permeates both conscious and unconscious life, including the arena of cultural production (music, art, film, etc.) where instead of seeing boundless innovation (a capitalist premise), we seem caught in retroparalysis: loops of re-makes and pop-cultural revivalism,5 where substantial technological development devolves into trivial consumer gadgetry.' Within such an atmosphere, mental distress and illness has also proliferated as a debilitating symp- tom of the behavioral imperatives this naturalization entails. This is in the way one is compelled to 'govern from within' to adapt to the world successfully in full, entrepre- neurial self-reliance. Such naturalization is internalized as the only system compat- ible with 'innate' humanness, where this picture of 'innateness' is both self-referential and self-reinforcing, coercing the human into a narrow mold wherein the incentive of accumulation through competition is isomorphic with our 'intrinsic' selfishness and self-interest (those very social biases buttressing neoclassical economics, upon which neoliberalism is built). In this framing, capitalism is upheld as the only system com- mensurate with the 'nature' of the human; to suggest otherwise is to fall prey to folly, almost as nonsensical as fighting the fact of gravity on earth. The diagnosis Fisher puts forth, quite pointedly, is that Capitalist Realism petrifies politics because it stifles our imaginative and perspectival horizons. The axiom then gets extrapolated: if futurity is always a political project and politics is dead-locked, our future, as such, has become cancelled - a point to which we will return.

### 2NC – A2: Cap Good

**The system is crisis-prone—collapse is inevitable**

**Li ’13** Minqi Li, “The 21st Century: Is There An Alternative (to Socialism)?” Science & Society: Vol. 77, January 2013, No. 1, pp. 10-43, doi: 10.1521/siso.2013.77.1.10

Over the past one and a half century, the long-term tendency towards rising wage, taxation, and environmental costs seem to have accelerated. The rising wage and taxation costs have reflected the long-term challenges from the “anti-systemic movements” (social democracy, national liberation movements, and “communism”), which forced the system’s ruling elites to make major concessions in the mid-20th century. The rising environmental costs have resulted from the relentless capital accumulation, which has greatly accelerated the depletion of the natural resources and the degradation of the global environment (Wallerstein, 2003, 57-66). As a result, the capitalist world system has been under great pressure to accelerate the pace of global industrial relocation. This has led to the dramatic expansion of the geographic zone of semi-periphery over the past quarter of a century. Most importantly, China and India, by serving as the centers of the latest round of global industrial relocation, have joined the rank of the semi-periphery. China’s per capita GDP has by now risen to about one-seventh of the US level and India could reach a similar relative level in about a decade. Given the enormous size of the Chinese and Indian population, then by around 2020, the world semi-periphery (defined as the geographical areas with per capita GDP around one-fifth of the level in the most advanced capitalist state) would have expanded to include about 60 percent of the world population. Can the capitalist world system survive such a massive expansion of the semi-periphery? With the massive expansion of the semi-periphery, there will inevitably be a major redistribution of the world surplus value. As less of the world surplus value is concentrated in the core, it will become increasingly difficult for the core states to finance capital accumulation in the leading industries. The core states will also have growing difficulty to maintain a large pool of “cadres”, the system’s skilled and managerial labor force or the “middle class”. Already, virtually all core capitalist countries are now confronted with insurmountable fiscal crises. Fiscal crisis, in essence, is the sign that capitalism in the core zone can no longer simultaneously provide favorable conditions of capitalist accumulation while maintaining “social peace” (that is, to secure the political loyalty of the middle classes) at home. It is widely recognized that the US hegemonic power is in irreversible decline, both in the sense that the relative economic position of the United States has been falling in the capitalist world system and in the more important sense that the United States is less willing and less able to regulate the system for the system’s long-term, common interest. The current expansion of the semi-periphery has obviously accelerated the decline of the US hegemonic power. More ominously for the capitalist world system, the great expansion of the semi-periphery has also made it much less likely and even impossible for a new hegemonic power to emerge by dramatically increasing the number of states that is relevant in the system-wide politics. This is shown by the expansion of the most high-profiled global policy making body from the so-called “G7” group to the so-called “G20” group. The capitalist world system is an inter-state system. The arrangement of the inter-state system is necessary for maintaining a balance of power between the state and capital in terms that are favorable for capital accumulation. However, the system also has a fatal flaw. As the system does not have a “world government”, there is no effective mechanism to secure and promote the system’s long-term, common interest (such as global peace, global macroeconomic management, construction of global social compromise, and global environmental management) and unrestrained inter-state competition could lead to the system’s self-destruction. Historically, the capitalist world system has relied upon the periodic hegemonic powers (the Netherlands in the 17th century, the United Kingdom in the 19th century, and the United States in the 20th century) as a proxy for the world government to regulate the system’s long-term, common interest. With the massive expansion of the semi-periphery, this historical mechanism required for the normal functioning of the capitalist world system begins to break down (Li 2008, 113-138).

**Infinite growth crowds out environmental health**

**Magdoff ’12** Fred Magdoff, Professor emeritus of plant and soil science at the Unviersity of Vermont, “Harmony and Ecological Civilization,” Monthly Review, June 2012, Vol. 64, Issue 2, p. 1-9

The growth imperative of capitalism deserves special attention because it is one of the major stumbling blocks with respect to harmony between humans and the environment. Accumulation without end means using ever greater quantities of resources—without end—even as we find ways to use resources more efficiently. An economy growing at the very meager rate of 1 percent a year will double in about seventy-two years, but one growing at 2 percent a year, still a low rate, will double in size in thirty-six years. And when growing at 3 and 4 percent, economies will double in twenty-four and eighteen years respectively. China recently has seen recorded growth rates of up to 10 percent, meaning economic output doubles at a rate of approximately every seven years! Yet, we are already using up resources far too fast from the one planet we have—depleting the stocks of nonrenewable resources rapidly and misusing and overusing resources that are theoretically “renewable.” If the world’s economy doubles within the next twenty to thirty years this can only hasten the descent into ecological, and probably societal, chaos and destruction. Thus capitalism promotes the processes, relationships, and outcomes that are precisely the opposite of those needed for an ecologically sound, just, harmonious society. In the alienated ideology and practice of bourgeois society, Marx and Engels noted in The German Ideology, “the relation of man to nature is excluded from history and hence the antithesis of man to nature is created.” Proletarians thus had the historical task of bringing their “‘existence’ into harmony with their ‘essence’ in a practical way, by means of a revolution” (italics added).3 Only in this way could they reestablish a harmonious connection to nature and to their own production. That Marx and Engels were referring directly to the early stages of what we now call the ecological crisis is indicated by the following: “The ‘essence’ of the fish is its ‘being,’ water—to go no further than this one proposition. The ‘essence’ of the freshwater fish is the water of a river. But the latter ceases to be the ‘essence’ of the fish and is no longer a suitable medium of existence as soon as the river is made to serve industry, as soon as it is polluted by dyes and other waste products and navigated by steamboats, or as soon as its water is diverted into canals where simple drainage can deprive the fish of its medium of existence.”4