## T increase prohibitions

#### Interpretation

#### Increase means to make something greater than it exists 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).

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

#### Next, “expanding the scope” means to create new claims that go beyond existing antitrust standards –

Richard Epstein 19 (Laurence A. Tisch Professor of Law, The New York University School of Law, the Peter and Kirsten Bedford Senior Fellow, The Hoover Institution, the James Parker Hall Distinguished Service Professor of Law Emeritus and Senior Lecturer, the University of Chicago. SYMPOSIUM: Judge Koh's Monopolization Mania: Her Novel Antitrust Assault Against Qualcomm Is an Abuse of Antitrust Theory, 98 Neb. L. Rev. 241. LN)

The question then arose whether the violation of the Telecommunications Act counted as a violation of the antitrust laws as well. The statutory framework contained two key provisions. The Telecommunications Act was not allowed to preempt the operation of the antitrust laws: "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." By the same token, the status quo was preserved because the Telecommunications Act also did nothing to expand the scope of the antitrust laws. It did not create new claims going beyond existing antitrust standards. The creation of any additional antitrust standards would be equally inconsistent with the saving clause's mandate that nothing in the Telecommunications Act would "modify, impair, or supersede the applicability" of existing law.

#### Violation –the resolution 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 to a new economic sector – that doesn’t increase prohibitions or expand the scope of core antitrust law

#### Reasons to Prefer and Vote Negative

#### Ground – The affirmative destroys our link ground because they don’t make substantive changes to antitrust law which was intentionally built in as a resolutional floor. It also eviscerates CP competition because they steal the enforcement and courts CPs

#### Limits – This topic is already a huge research burden for the neg but their interpretation makes it impossible to keep up – Negs are forced to play an unwinnable game of whack-a-mole as affirmatives jump from sector to sector each round.

#### Education – The aff interpretation literally side steps the core resolutional question of making substantive change to the core antitrust laws. Instead of debating the intrinsic questions of antitrust we focus on meaningless questions specific to the economics of the mohair industry but never even gain any depth on that.

#### Vote neg for all the reasons above

## Enforcement cp

#### Text: The United States federal government should expand enforcement of existing laws regarding biopharmaceutical merger and patent policy in line with Executive Order 14036.

#### CP solves and increased Antitrust fails—collapses innovation

Portuese & Ezell 21 (Aurelian, Director, Antitrust and Innovation Policy, Stephen, Vice President, Global Innovation Policy, “Senate Hearing Inadvertently Shows Why Antitrust Policy Is the Wrong Prescription for What Ails Drug Markets,” July 21, 2021, https://itif.org/publications/2021/07/21/senate-hearing-inadvertently-shows-why-antitrust-policy-wrong-prescription)

That biopharmaceutical companies have brought numerous new-to-the-world treatment innovations for a variety of ailments such as cancers, cardiovascular disease, and hepatitis C—all while holding medicines’ share of health spending nearly constant—is reflective of the highly competitive structure of the U.S. market. To be sure, it’s important to balance the cost of medicines against the expense of making them and the value they deliver. For instance, the more information technologies and biotechnologies can be deployed to enhance biotech R&D efficiency, the more it can help rein in rapidly rising drug discovery and development costs. Reforming reimbursement systems, such as by capping patients’ coinsurance payments on Part D drug plans and passing on to patients more of the rebates paid by biopharmaceutical companies, also could help reduce their out-of-pocket costs. That background is important to keep in mind when parsing the claims aired in the Senate subcommittee hearing that Sen. Klobuchar organized. Very few of the issues raised regarding U.S. branded drug prices were antitrust matters. First, Dr. Rachel Moodie from Fresenius Kabi asserted that “patent thickets”—secondary patents filed after the core drug patents are filed—are the “root cause” of high drug prices. Acknowledging that “not all secondary patents are bad,” Dr. Moodie nevertheless pointed out that some secondary patents may be of “low quality”—meaning, not true innovations but a move to extend the intellectual property rights (IPR) surrounding a drug. Should that ever be true, the U.S. Patent and Trademark Office may revise its approach on current rules to ensure they do not unduly delay the entry of generics. However, the recently passed CREATES Act facilitates the development of generics. Given the lack of sufficient experience amassed since its entry into force in 2020, it’s not yet necessary to refine existing laws. Moreover, it is precisely consistent with President Biden’s executive order, which directs the secretary of Health and Human Services to “support the market entry of lower-cost generic drugs and biosimilars” and to “continue the implementation of the law widely known as the CREATES Act of 2019.” In other words, improved guidance within the patent system’s current rules may help address the few instances of “patent thickets.” Antitrust rules are highly inappropriate to deal with this IPR-intensive policy as they may cause more harm than good.

## Ptx

#### Biden preparing for huge fight over raising the debt ceiling – he needs bipartisan compromise to get it done

Mattingly 9-1-21 (Phil. CNN Senior White House Correspondent. Top Biden economic aides join Senate Democrat call in push before debt ceiling fight. https://www.cnn.com/2021/09/01/politics/debt-ceiling-fight-joe-biden-aides-senate-democrats/index.html)

Two top Biden administration economic officials joined a call with top Senate Democratic aides on Wednesday as the White House pressed to maintain unified strategy for the looming fight over the debt ceiling, according to multiple people familiar with the call.

President Joe Biden and congressional Democrats are entering September braced for a pitched battle with Republicans over raising or suspending the debt limit, with potentially weeks to find a path forward.

National Economic Council Deputy Director Barat Ramamurti and Ben Harris, counselor at the Treasury Department, joined the call of Senate Democratic chiefs of staff to underscore the necessity of Republicans and Democrats coming together to pass an increase or suspension of the debt limit, pointing out in the call it is a "shared responsibility" that was raised on a bipartisan basis three times under former President Donald Trump, according to a White House official.

A central point made by the administration officials was that 97% of the debt was incurred before Biden took office, including more than $1 trillion due to a Republican-passed tax cut in 2017, the official said.

Sen. Mitch McConnell, the Republican leader, has taken a hardline stance against his conference joining with Democrats to raise or suspend the debt limit -- pointing out for several weeks that Democrats could do so on their own through the process they are utilizing to advance a proposed $3.5 trillion economic and social safety net expansion package.

It was an option White House officials and Democratic leaders discussed, but chose not to pursue, according to multiple people familiar with the talks.

The Kentucky Republican and 45 of his colleagues signed a letter to Biden saying they would not vote for any increase or suspension of the debt limit. In a chamber that requires 60 votes to advance most legislation, it has set up a significant -- and extraordinarily high stakes -- fight in the weeks ahead.

#### 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.

#### Default triggers global depression

Center for American Progress 10-13-21 (Washington: The Debt-Ceiling Crisis: Why It Matters to Millennials. LN)

If Congress fails to raise the debt ceiling, it is very possible that the United States could enter another recession—potentially a depression. The government actually reached the debt ceiling on May 19, but the Treasury Department has been using “extraordinary measures”—basically taking cash from other places, such as federal employee pensions—that allow the federal government to pay the bills. On October 17, the Treasury’s “extraordinary measures” will be exhausted, and Congress will need to raise the debt ceiling.

Not raising the debt ceiling and forcing a default would have extreme consequences. The global financial system relies on U.S. debt—that is, Treasuries—to be the safest in the world. Thus, the borrowing rate on Treasuries is intertwined with the global economy in myriad ways. At the most basic level, this borrowing rate is used as a benchmark for interest rates on common financial products in the United States such as mortgages and auto loans.

A spike in interest rates on Treasury bonds because of a default would limit businesses and consumers from borrowing and could raise their current borrowing costs. A default could also cause retirement accounts that hold a significant amount of Treasuries to collapse, and it would be more costly for the government to pay down its debt. What’s more, a default would force the United States to immediately make drastic cuts in crucial government programs, which could delay or stop payments to people who receive Social Security, Medicare, Medicaid, and veterans’ benefits.

Even the threat of default deeply harms the economy. During the debt-ceiling debate in 2011, consumer confidence tanked, the Dow Jones Industrial Average fell 2,000 points, and the United States lost its perfect credit rating for the first time in history. According to Larry Summers, former Treasury secretary and Distinguished Senior Fellow at the Center for American Progress, an actual default would lead to “a cascade that makes Lehman Brothers look like a very small event.”

#### Impact is global war

Sundaram 19 (Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007, Vladimir Popov, a former senior economics researcher in the Soviet Union, Russia and the United Nations Secretariat, is now Research Director at the Dialogue of Civilizations Research Institute in Berlin, “Economic Crisis Can Trigger World War,” 2-12, <http://www.ipsnews.net/2019/02/economic-crisis-can-trigger-world-war/>)

Economic recovery efforts since the 2008-2009 global financial crisis have mainly depended on unconventional monetary policies. As fears rise of yet another international financial crisis, there are growing concerns about the increased possibility of large-scale military conflic**t.** More worryingly, in the current political landscape, prolonged economic crisi**s**, combined with rising economic inequality, chauvinistic ethno-populism as well as aggressive jingoist rhetoric, including threats, could easily spin out of control and ‘morph’ into military conflict, and worse, world war. Crisis responses limited The 2008-2009 global financial crisis almost ‘bankrupted’ governments and caused systemic collapse. Policymakers managed to pull the world economy from the brink, but soon switched from counter-cyclical fiscal efforts to unconventional monetary measures, primarily ‘quantitative easing’ and very low, if not negative real interest rates. But while these monetary interventions averted realization of the worst fears at the time by turning the US economy around, they did little to address underlying economic weaknesses, largely due to the ascendance of finance in recent decades at the expense of the real economy. Since then, despite promising to do so, policymakers have not seriously pursued, let alone achieved, such needed reforms. Instead, ostensible structural reformers have taken advantage of the crisis to pursue largely irrelevant efforts to further ‘casualize’ labour markets. This lack of structural reform has meant that the unprecedented liquidity central banks injected into economies has not been well allocated to stimulate resurgence of the real economy. From bust to bubble Instead, easy credit raised asset prices to levels even higher than those prevailing before 2008. US house prices are now 8% more than at the peak of the property bubble in 2006, while its price-to-earnings ratio in late 2018 was even higher than in 2008 and in 1929, when the Wall Street Crash precipitated the Great Depression. As monetary tightening checks asset price bubbles, another economic crisis — possibly more severe than the last, as the economy has become less responsive to such blunt monetary interventions — is considered likely. A decade of such unconventional monetary policies, with very low interest rates, has greatly depleted their ability to revive the economy. The implications beyond the economy of such developments and policy responses are already being seen. Prolonged economic distress has worsened public antipathy towards the culturally alien — not only abroad, but also within. Thus, another round of economic stress is deemed likely to foment unrest, conflict, even war as it is blamed on the foreign.

## Cap

#### 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).

## set col

#### Settler colonialism is a constant state of incarceration for Indigeneity. The aff is a veil of neutrality that enables more insidious forms of settler elimination.

Anthony, 20—Senior Lecturer in Law at the University of Technology, Sydney (Thalia, “Settler-Colonial Governmentality: The Carceral Webs Woven by Law and Politics,” *Questioning Indigenous-Settler Relations*, Chapter 2, pp 33-53, SpringerLink, dml)

In invoking the concept of ‘settler colonial governmentality’, I rely on the works of settler colonial scholars such as Wolfe (2006), and critical Indigenous scholars such as Coulthard (2014). Through centering settler colonial relations, both approaches demonstrate that policy change is contingent on the logic and structures of colonisation—colonising land, affecting primitive accumulation and eliminating the native. Accordingly, policy change driven by the state inadequately materialises Indigenous rights and can often set them back, including where touted as progressive such as gestures towards reconciliation and native title. State reforms remain built on a ‘logic of elimination’ that shapes the settler colonial response to cultures, languages, Country and sovereignty (Wolfe, 2006, p. 387). Settler colonial theory is concerned with how colonialism lives and breathes in the present. The continuity of colonial legacies produces discursive and non-discursive strategies, according to Coulthard (2014, p. 7), to facilitate the ‘ongoing dispossession of Indigenous peoples of their lands and self-determining authority’. The relegation of historical colonial wrongs to a ‘dark chapter’ in history disconnects them from ‘continued child removals, mass incarceration and ongoing land dispossession’ (Woolford & Hounslow, 2018, p. 205). Equally, designating contemporary forms of systemic discrimination as exceptional, annuls the entrenched and intergenerational impact of colonisation on Indigenous peoples. Contemporary injustices—whether that is Indigenous deaths in custody in Australia, the removal of Māori babies in Aotearoa or the construction of pipelines across North America—deepen existing scars rather than create new wounds. Situating the various guises of state policy and legality within this historical and continuing trajectory enlivens a relational analysis of state containment and control of Indigenous people. This approach shows that incarceration and maltreatment are not one state policy or directive alone, but in fact are a longstanding feature of the settler colonial-Indigenous relationship. In addition, however, examining the lived experience of settler colonial policies demonstrates another form of relationality. It brings to the fore Indigenous peoples experience as one of subordination, resilience and resistance. In undertaking a review of the formal statements in the NT Royal Commission, this chapter exposes the ideologies of the state officials as well as the perspective of the Indigenous young people who were detained in the criminal justice system and removed from their families, as well as the standpoints of Indigenous Elders, respected persons and leaders. Through this analysis, it is evident that Indigenous peoples’ resilient cultural and family ties offset the settler state’s logic of elimination. Indigenous identity extends beyond their relationality to the non-Indigenous settler state and remains attached to their living culture, notwithstanding the hugely traumatic impact of state violence on Indigenous people in the NT. 3.4 Colonial Carceralism and Its Multiple Guises While mass incarceration has become synonymous with contemporary penal policy, for Indigenous people, incarceration is not an exceptional state of being. The penal phase of mass incarceration is yet another iteration in Indigenous people’s long experience of the settler state’s impetus to segregate and contain Indigenous people, whether that be for Christian, civilising, protectionist, welfare or penal purposes (see Chartrand, 2019). Loïc Wacquant coined the term ‘hyperincarceration’ to describe the phenomenon of over-representation in the criminal justice system and the broader role of the penal system as an ‘instrument for managing dispossessed and dishonoured groups’ (Wacquant, 2001, p. 95). For Indigenous people, management through mass detention featured long before the war on drugs or neo-liberal class warfare. Declaration of jurisdiction over Indigenous people by the first settler colonial courts in eastern Australia (New South Wales) were made in response to Indigenous peoples’ challenges to the capacity of the colonial administration to imprison them (see R v Bonjon, 1841; R v Murrell, 1836). Since then, Indigenous people have been incarcerated by settler colonial authorities for administrative and penal ends. Nonetheless, analogies can be drawn with Wacquant’s description of the ‘never-ending circulus’ between prison and the ghetto for African Americans (Wacquant, 2001, p. 97). It can be likened to the symbiosis between Indigenous incarceration and a network of institutions designed to further Indigenous extinguishment. This racialised strategy of institutionalisation has barely shifted since early colonisation; it has simply been veiled by the state’s claims to neutrality. Concealing bias has become more insidious by enabling the state, as demonstrated above, to blame the Indigenous person for being more criminal while exculpating any bias on the part of law enforcers. For example, former Chief Minister Giles (2017, p. 3310) told the NT Royal Commission that his government was not acting in a discriminatory manner towards Indigenous children when they were segregated in isolation cells, gassed and tortured, it was simply dealing with a problem with children. Simply following the law enables all types of wrongs to be rationalised, and was relied on by detention staff to justify all manner of torture against Indigenous children. The law removes the need for overt politics because law is conceived by the settler state as a neutral instrument, while it operates as a coercive tool to disproportionately regulate Indigenous people**.**

#### The only ethical alternative to settler colonialism is a destabilizing of settler subject-hood – this takes the form of centering our speech acts around deconstructing what gives settled spaces their meaning and focusing on ethical subject formation

Henderson 15 Phil, prof of political science @ University of Victoria. ‘Imagoed communities: the psychosocial space of settler colonialism,’ Settler Colonial Studies, Special Issue on Globalizing Unsettlement.

Facing assertive indigenous presences within settler colonial spaces, settlers must answer the legitimate charge that their daily life – in all its banality – is predicated upon the privileges produced by ongoing genocide. The jarring nature of such charges offers an irreconcilable challenge to settlers qua settlers.64 Should these charges become impossible to ignore, they threaten to explode the imago of settler colonialism, which had hitherto operated within the settler psyche in a relatively smooth and benign manner. This explosion is potentiated by the revelation of even a portion of the violence that is required to make settler life possible. If, for example, settlers are forced to see ‘their’ beach as a site of murder and ongoing colonization, it becomes more difficult to sustain it within the imaginary as a site of frivolity.65 As Brown writes, in the ‘loss of horizons, order, and identity’ the subject experiences a sense of enormous vulnerability.66 Threatened with this ‘loss of containment', the settler subject embarks down the road to psychosis.67 Thus, to parlay Brown's thesis to the settler colonial context, the uncontrollable rage that indigenous presences induce within the settler is not evidence of the strength of settlers, but rather of a subject lashing out on the brink of its own dissolution. This panic – this rabid and insatiable anger – is always already at the core of the settler as a subject. As Lorenzo Veracini observes, the settler necessarily remains in a disposition of aggression ‘even after indigenous alterities have ceased to be threatening'.68 This disposition results from the precarity inherent in the maintenance of settler colonialism's imago, wherein any and all indigenous presences threaten subjective dissolution of the settler as such. Trapped in a Gordian Knot, the very thing that provides a balm to the settler subject – further development and entrenchment of the settler colonial imago – is also what panics the subject when it is inevitably contravened.69 We might think of this as a process of hardening that leaves the imago brittle and more susceptible to breakage. Their desire to produce a firm imago means that settlers are also always already in a psychically defensive position – that is, the settler's offensive position on occupied land is sustained through a defensive posture. For while settlers desire the total erasure of indigenous populations, the attendant desire to disappear their own identity as settlers necessitates the suppression of both desires, if the subject's reliance on settler colonial power structure is to be psychically naturalized. Settlers’ reactions to indigenous peoples fit, almost universally, with the two ego defense responses that Sigmund Freud observed. The first of these defenses is to attempt a complete conversion of the suppressed desire into a new idea. In settler colonial contexts, this requires averting attention from the violence of dispossession; as such, settlers often suggest that they aim to create a ‘city on the hill’.70 Freud noted that the conversion defense mechanism does suppress the anxiety-inducing desire, but it also leads to ‘periodic hysterical outbursts'. Such is the case when settlers’ utopic visions are forced to confront the reality that the gentile community they imagine is founded in and perpetuates irredeemable suffering. A second type of defense is to channel the original desire's energy into an obsession or a phobia. The effects of this defense are seen in the preoccupation that settler colonialism has with purity of blood or of community.71 As we have already seen, this obsession at once solidifies the power of the settler state, thereby naturalizing the settler and simultaneously perpetuating the processes of erasing indigenous peoples. Psychic defenses are intended to secure the subject from pain, and whether that pain originates inside or outside the psyche is inconsequential. Because of the threat that indigeneity presents to the phantasmatic wholeness of settler colonialism, settlers must always remain suspended in a state of arrested development between these defensive positions. Despite any pretensions to the contrary, the settler is necessarily a parochial subject who continuously coils, reacts, disavows, and lashes out, when confronted with his dependency on indigenous peoples and their territory. This psychic precarity exists at the core of the settler subject because of the unending fear of its own dissolution, should indigenous sovereignty be recognized.72 Goeman writes as an explicit challenge to other indigenous peoples, but this holds true to settler-allies as well, that decolonization must include an analysis of the dominant ‘self-disciplining colonial subject’.73 However, as this discussion of subjective precarity demonstrates, the degree of to which these disciplinary or phenomenological processes are complete should not be overstated. For settler-allies must also examine and cultivate the ways in which settler subjects fail to be totally disciplined. Evidence of this incompletion is apparent in the subject's arrested state of development. Discovering the instability at the core of the settler subject, indeed of all subjects, is the central conceit of psychoanalysis. This exception of at least partial failure to fully subjectivize the settler is also what sets my account apart from Rifkin's. His phenomenology falls into the trap that Jacqueline Rose observes within many sociological accounts of the subject: that of assuming a successful internalization of norms. From the psychoanalytical perspective, the ‘unconscious constantly reveals the “failure”’ of internalization.74 As we have seen, within settler subjects this can be expressed as an irrational anxiety that expresses itself whenever a settler is confronted with the facts regarding their colonizing status. Under conditions of total subjectification, such charges ought to be unintelligible to the settler. Thus, the process of subject formation is always in slippage and never totalized as others might suggest.75 Because of this precarity, the settler subject is prone to violence and lashing out; but the subject in slippage also provides an avenue by which the process of settler colonialism can be subverted – creating cracks in a phantasmatic wholeness which can be opened wider. Breakages of this sort offer an opportunity to pursue what Paulette Regan calls a ‘restorying’ of settler colonial history and culture, to decenter settler mythologies built upon and within the dispossession of indigenous peoples.76 The cultivation of these cracks is a necessary part of decolonizing work, as it continues to panic and thus to destabilize settler subjects. Resistance to settler colonialism does not occur only in highly visible moments like the famous conflict at Kanesatake and Kahnawake,77 it also occurs in reiterative and disruptive practices, presences, and speech acts. Goeman correctly observes that the ‘repetitive practices of everyday life’ are what give settler spaces their meaning, as they provide a degree of naturalness to the settler imago and its psychic investments.78 As such, to disrupt the ease of these repetitions is at once to striate radically the otherwise smooth spaces of settler colonialism and also to disrupt the easy reproduction of the settler subject. Goeman calls these subversive acts the ‘micro-politics of resistance', which historically took the form of ‘moving fences, not cooperating with census enumerators, sometimes disrupting survey parties’ amongst other process.79 These acts panic the subject that is disciplined as a product of settler colonial power, by forcing encounters with the sovereign indigenous peoples that were imagined to be gone. This reveals to the settler, if only fleetingly, the violence that founds and sustains the settler colonial relationship. While such practices may not overthrow the settler colonial system, they do subvert its logics by insistently drawing attention to the ongoing presence of indigenous peoples who refuse erasure.

## Case

### Solvency

#### SQUO solves the impact- Bidens XO galvanized FTC focus on hospital mergers

Clason 21

(Lauren Clason and Niels Lesniewski. Biden orders agencies to look at hospital consolidation, costs of drugs and hearing aids. <https://www.rollcall.com/2021/07/09/biden-orders-agencies-to-look-at-hospital-consolidation-costs-of-drugs-and-hearing-aids/>. July 9, 2021. AR)

**The wide-ranging executive order President Joe Biden signed** Friday includes plans to **boost market competition in health care** and other industries. **The order**, which White House officials have promoted throughout the week, **touches on** issues ranging from **prescription drug prices to hospital** and insurance **consolidation,** in a combination of policy directives that also incorporates priorities shared with the Trump administration. “What we’ve seen over the past few decades is less competition and more concentration that holds our economy back. We see it in big agriculture and big tech and big pharma and the list goes on,” Biden said before signing the executive order at the White House Friday. “Take prescription drugs: just a handful of companies control the market for many vital medicines, giving them leverage over everyone else to charge whatever they want,” the president said. Many of the provisions of the order provide direction or encouragement to federal departments and agencies on next steps, and there could be lengthy rule-makings to follow on health, transportation and other policy areas. For instance, **the Federal Trade Commission would be encouraged to ban or limit non-compete agreements** and revise unnecessary occupational licenses required of many positions in the health care field. “American’s healthcare and pharmacy workers have been on the frontlines helping millions to get the care and medicine they need throughout the pandemic,” United Food and Commercial Workers International President Marc Perrone said in a statement. **“Today’s executive action lowers barriers to entry for healthcare and pharmacy jobs, helping more Americans pursue these good careers and closing the healthcare access gaps that have plagued so many communities across the country.”** Biden’s order directs the Food and Drug Administration to work with states and tribal governments on their plans to import prescription drugs from Canada. The agency first outlined two narrow pathways to importation under former President Donald Trump, but has not yet approved a plan from the only state — Florida — to formally request permission. Drug importation still faces major headwinds. Industry trade group the Pharmaceutical Research and Manufacturers of America is suing to block the policy, and Canada has also signaled its opposition to large-scale exports. Biden’s order also directs the Department of Health and Human Services to bolster support for generic and biosimilar drugs and develop a comprehensive plan to combat “price gouging” in the prescription drug market. The order instructs the Federal Trade Commission to examine anticompetitive practices like “pay for delay,” in which brand name manufacturers strike deals with generic competitors to delay the entry of new products. The idea has broad bipartisan support in Congress, but has been bogged down in more partisan disputes such as whether to allow Medicare to negotiate drug prices. **The FTC will also review guidelines related to hospital mergers in light of the recent string of closures in rural areas. Biden’s order comes after Congress approved a change to Medicare’s requirements for rural hospitals, which will allow facilities to shed unprofitable inpatient services while maintaining emergency and outpatient care.** **Right now, rural hospitals often seek to merge with larger health systems in order to make the conversion without losing the lifeline of Medicare funding.** The leader of the trade association representing for-profit hospitals was quick to criticize the order. “The best of intentions can be misguided. Ensuring access to needed medical attention for rural Americans is not going to be assured by excessive anti-trust enforcement action of the FTC or Justice Department. Miring hospitals in legal and bureaucratic red tape will simply slow critical care to the bedside,” Federation of American Hospitals president and CEO Chip Kahn said in a statement. **Health industry mergers Biden’s broader instructions to the FTC could also prompt the agency to target vertical mergers, which shook up the health care industry in recent years but received little scrutiny from regulators and lawmakers**. Retail pharmacy giant CVS Health acquired health insurer Aetna in 2018, the same year that health insurer Cigna acquired Express Scripts, the nation’s largest pharmacy benefit manager. **The executive order underscores that the FTC retains authority to challenge previous deals** that were allowed under previous administrations. Health insurance markets are also mentioned in the order, and HHS will be directed to standardize plan options on HealthCare.gov. The order also highlights support for the Trump administration’s rules on hospital price transparency and a recent law on surprise medical bills, which HHS began implementing earlier this month.

#### The damage has already been done – antitrust reform won’t change large-scale consolidation patterns

Numerof 7/23 (Rita Numerof, Forbes healthcare contributor, 7-23-2021, Biden’s EO Is Too Little Too Late, But We Can Increase Competition In Other, More Meaningful Ways, Forbes, https://www.forbes.com/sites/ritanumerof/2021/07/23/bidens-eo-is-too-little-too-late-but-we-can-increase-competition-in-other-more-meaningful-ways/)

Earlier this month, President Biden put out an “Executive Order on Promoting Competition in the American Economy,” which called on the Justice Department and FTC to review and revise merger guidelines to ensure that healthcare players are still forced to compete over patients’ best interests.

Increasing scrutiny over consolidation in healthcare is needed, but quite frankly, **it’s too little too late.**

Hospital consolidation isn’t new. Bringing Value to Healthcare recalls how hospitals had “embarked on massive affiliations and buying sprees” in the 1990s in order to, they claimed, increase productivity as well as profitability. Few acquisitions delivered on their expectations for the purchasing provider, and though many may have promised that the union would decrease consumers’ healthcare costs, the opposite occurred. In a 2010-2013 analysis of 25 metropolitan areas with the highest rates of horizontal consolidations – that is, consolidations between two hospitals or health systems – the cost of the average hospital stay by private insurance increased in most areas between 11%-54% in the years that followed.

To an extent, that damage has already been done. Unlike other industries where consumers can tell what they are spending money on up front, in healthcare, consumers have grown accustomed to being left in the dark when it comes to evaluating the healthcare services they consume. A fundamental disregard for transparency **is the norm**, as is a system that has been largely paternalistic and opaque.

Only recently – and because costs have gotten so far out of control – have consumers begun to call for change. Where before they were less inclined to speak out on the issue because “somebody else,” i.e. their insurer, was paying, today, consumers aren’t afraid to send reporters their “surprise” medical bills – bills with expensive fees or out-of-network charges from an in-network hospital. If it were from anyone outside of a healthcare provider – an auto dealer, TV repair person, internet provider, landscaping company, etc. – consumers would have never accepted these surprise bills for nearly as long as they’ve tolerated them in healthcare.

All this is to say that the last few decades of consolidation have already done their damage on consumers. And the problems consumers currently have with high costs and lagging quality won’t be fixed by scrutinizing future consolidations alone, or by long court battles to unwind consolidations that have already been approved. There are other, more meaningful ways to improve care by instead enabling market-based competition over two things: healthcare costs and healthcare quality.

The Trump administration started to make progress on the former via the hospital price transparency rule that went into effect in early 2022. President Biden has wisely said that he would support that rule, but there’s more that can be done here. A starting point would be more robust enforcement than we have seen from this administration to date. Earlier this year, a systematic survey showed that 65 out of the country’s largest 100 hospitals were noncompliant with the transparency rule.

And once the data is posted, the next milestone would be making it comprehensible. Just a few weeks ago when Kaiser Health News’ Bernard J. Wolfson reported on his efforts to price shop for himself, he concluded:

“After three months of glazed eyes and headaches from banging my head against walls of numbers, I am throwing in the towel. It was a fool’s errand. My efforts ultimately yielded just one helpful piece of advice: Don’t try this at home.”

The Centers for Medicare and Medicaid Services (CMS) announced recently that it would be increasing the fines for those systems that aren’t complying to the hospital price transparency rule – a step in the right direction where transparency is concerned. However, to really get to consumers’ core concern, there must also be a hospital outcomes transparency rule. After consumers have an idea of what certain healthcare services will cost, then the next logical step is for them to be able to understand what level of performance they are getting for the price.

#### 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?

#### 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.

#### 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.

### healthcare

#### Unvaccinated people are a terminal alt cause.

LaPointe 9/15 (Jacqueline LaPointe, Director of Editorial. Jacqueline is a graduate of Brandeis University and King's College London, 9-15-2021, The Impact the Unvaccinated Are Having on Healthcare Spending, RevCycleIntelligence, https://revcycleintelligence.com/news/the-impact-the-unvaccinated-are-having-on-healthcare-spending)

The impact the unvaccinated population is having on healthcare spending is significant, according to a new analysis from Kaiser Family Foundation (KFF).

There were approximately 287,000 preventable COVID-19 hospitalizations this summer (June, July, and August) among unvaccinated adults, the analysis found using data from HHS and CDC. With the average cost of a preventable hospitalization at about $20,000, the preventable COVID-19 hospitalizations cost the healthcare system **almost $6 billion in just three months alone**, researchers reported.

Those hospitalizations could have been prevented if the adults had gotten vaccinated, the analysis indicated. Of the total COVID-19 hospitalizations between June and August 2021, nearly 99 percent were among unvaccinated people, the analysis shows.

Researchers noted that they did adjust for the fact that COVID-19 vaccines do not prevent all hospitalizations among people diagnosed with COVID-19. The numbers in the analysis are also estimates and do not account for hospital prices, which vary widely. But they do point to a significant impact the unwillingness to get vaccinated is having on healthcare spending in the US.

“Still, this ballpark figure is likely an understatement of the cost burden from preventable treatment of COVID-19 among unvaccinated adults,” they wrote in the analysis.

Other costs may include spending on outpatient treatment for COVID-19, which studies have shown can cost upwards of $100 per visit. Patients with a coronavirus-related hospital admission averaged 3.2 outpatient visits, one Medicare study found.

High healthcare spending on preventable COVID-19 hospitalizations has significant implications for the industry at large.

#### COVID disproves protectionism – vaccine distribution hasn’t caused a war.

#### No protectionism impact – other countries’ don’t perceive internal U.S. healthcare decisions – they don’t have a modelling argument.

#### Global pandemics are a structural inevitability of modern capitalism

Foster et al 21 [John, Prof of Sociology at the Univ of Oregon, “The Contagion of Capital,” *Monthly Review*, 01/01/21, <https://monthlyreview.org/2021/01/01/the-contagion-of-capital/>, accessed 08/21/21, JCR]

Received economic ideology, with its compartmentalized view, treats the COVID-19 pandemic as simply an external shock to the economy emanating from the natural environment and thus unrelated to capitalism. However, as Rob Wallace and his colleagues have shown, contagions like COVID-19 arise from the worldwide circuits of capital associated with the global labor arbitrage and the accelerated extraction of the planet’s resources.38 This is tied especially to global agribusiness, which displaces, often forcibly, subsistence farmers while advancing into wilderness areas, destroying ecosystems, and disrupting wildlife. The result is a growing spillover of zoonoses (or diseases from other animals that are capable of being transmitted to human populations). From the standpoint of the Structural One Health tradition in epidemiology, the COVID-19 pandemic can therefore be seen as part of the larger planetary ecological crisis or metabolic rift engendered by twenty-first-century capitalism.39

#### Diseases don’t lead to extinction- they are evolutionarily wired to *adapt* to their hosts

Campbell 15

Executive at IMS (Brittany, “INFECTIOUS DISEASE: “THE HUMAN PROBLEM”,” IMS magazine, May 24, 2015, <http://www.imsmagazine.com/infectious-disease-the-human-problem/>). WM

Another part of the human problem that Dr. Kain pointed out is our tendency to shift blame away from ourselves when it comes to a number of emerging infectious disease threats, including antimicrobial resistance. We focus squarely on the microbe or virus itself, a squiggly illustration of the molecular structure plastered on magazine covers all over newsstands. Except, contrary to your average Economist headline, the bugs are not out to get us. “The microbe, once inside, is usually trying to adapt to you, at least over time. There is no evolutionary pressure for a bug to kill its host, because then it can no longer propagate its gene pool.” Moreover, focusing on the bug detracts from the responsibility we have as humans to reduce our activities that cause them to emerge in the first place and to establish living conditions and health systems that reduce the chances of transmission and spread. “We tend to demonize microbes, when in reality, many of these outbreaks have human fingerprints all over them,” he says. This phenomenon is all over our news outlets, instilling fear in the general public and even going so far as to create hostility towards West Africans.1

#### Burnout solves

Joshua Lederberg, prof of genetics at Stanford University School of Medicine, 1999, Epidemic The World of Infectious Disease, p. 13

The toll of the fourteenth-century plague, the “Black Death,” was closer to one third. If the bugs’ potential to develop adaptations that could kill us off were the whole story, we would not be here. However, with very rare exceptions, our microbial adversaries have a shared interest in our survival. Almost any pathogen comes to a dead end when we die; it first has to communicate itself to another host in order to survive. So historically, the really severe host – pathogen interactions have resulted in a wipeout of both host and pathogen. We humans are still here because, so far, the pathogens that have attacked us have willy-nilly had an interest in our survival. This is a very delicate balance, and it is easily disturbed, often in the wake of large-scale ecological upsets.

### Labor

#### Massive wealth gap rooted in financialization of the economy

Foster et al 21 [John, Prof of Sociology at the Univ of Oregon, “The Contagion of Capital,” *Monthly Review*, 01/01/21, <https://monthlyreview.org/2021/01/01/the-contagion-of-capital/>, accessed 08/21/21, JCR]

The U.S. economy and society at the start of 2021 is more polarized than it has been at any point since the Civil War. The wealthy are awash in a flood of riches, marked by a booming stock market, while the underlying population exists in a state of relative, and in some cases even absolute, misery and decline. The result is two national economies as perceived, respectively, by the top and the bottom of society: one of prosperity, the other of precariousness. At the level of production, economic stagnation is diminishing the life expectations of the vast majority. At the same time, financialization is accelerating the consolidation of wealth by a very few. Although the current crisis of production associated with the COVID-19 pandemic has sharpened these disparities, the overall problem is much longer and more deep-seated, a manifestation of the inner contradictions of monopoly-finance capital. Comprehending the basic parameters of today’s financialized capitalist system is the key to understanding the contemporary contagion of capital, a corrupting and corrosive cash nexus that is spreading to all corners of the U.S. economy, the globe, and every aspect of human existence.