# Generic 1nc v policy aff northwestern

## T – Increase Prohibitions

#### Interpretation

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

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

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

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

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

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

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

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

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

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

Examples of these unlawful, anticompetitive practices include:

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

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

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

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

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

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

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

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

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

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

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

#### Reasons to Prefer and Vote Negative

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

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

#### Vote neg

## 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

#### 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.").

\*\*\*Return to Main Text\*\*\*

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?

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

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

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

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

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

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