## 1NC

### T Per se

**‘Prohibiting’ a practice requires per se illegality.**

Lee **Mendelsohn 6**, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The **first step** in any **competition law** analysis is to **define** the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The **prohibition** on the fixing of a purchase or selling price or any other trading condition is one of the so-called **"per se"** prohibitions which are included in our Competition Act. The prohibition is **automatic** and **absolute** and the fixing of prices or other trading condition **cannot be justified** on the basis of any technological, efficiency or other procompetitive **gains** that could **outweigh** the potential **anticompetitive effect** of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

**Limits---many standards, requiring distinct answers, make the topic unmanageable.**

**Ground---fringe standards dodge links and allow bidirectional permissiveness.**

### Output CP

#### The United States federal government should

#### Maintain the consumer welfare standard

#### Clarify that consumer welfare includes output reductions in monopsonist hiring markets

#### The cp solves and doesn’t link

Herbert Hovenkamp 2020. James G. Dinan University Professor, Univ. of Pennsylvania Carey Law School and The Wharton School "Antitrust's Borderline" https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3656702

Most descriptions of the consumer welfare principle refer to prices: the goal of antitrust should be to combat monopolistic prices. Articulating the goal in this way raises conceptual problems when we think about suppliers, labor or others involved in production. For example, the antitrust concern with labor is with wage suppression, which means that wages are anticompetitively low.8 This seems inconsistent with an antitrust’s insistence on low prices. It can also collide with a common misperception, which is that low wages invariably produce low consumer prices. **One thing that buyers and sellers have in common**, however, **is that both are injured by anticompetitive output reductions**. Price and output move in opposite directions. While **monopoly** involves prices that are too high **and monopsony** (monopoly buying) involves prices that are too low, **both result in lower output**. As a result, when consumer welfare is articulated in terms of output rather than price, **it protects both buyers and sellers**, including sellers of their labor. In any event, when wage suppression is an act of monopsony it is likely to raise output prices in the product market and almost certainly will not lower them. While that result might seem counterintuitive, it is actually robust and results from the fact that the firm with monopoly power over laborers uses less labor and thus will produce less as well. In the unlikely event that firm is a perfect competitor in the product market it will simply sell less, although at the same price. In the more common case where it also has market power in the product market, its prices there will go up even as wages go down. 9 The basic theory is clear and uncontroversial. There are other reasons for preferring output rather than price as the primary indicator of consumer welfare. Firms almost always have more control over output than they do over price. This is most true in competitive markets, and less true as markets are more monopolized. A seller in a perfectly competitive market lacks any control over price but almost always controls its own output. For example, a corn farmer cannot meaningfully ask “what price should I charge” for this year’s crop. She will charge the market price. While she has the power to charge less, she has no incentive to do so because she can sell all she produces at the market price. The one absolute power she does have, however, is to determine output consistent with her own needs for profit. The decision whether to plant 1000 acres in corn, 500, 100 acres or even zero is entirely hers and depends only on her capacity to produce. **The consumer welfare principle in antitrust is best understood as pursuing maximum output consistent with sustainable competition**. In a competitive market this occurs when prices equal marginal cost. More practically and in real world markets, the principle tries to define and identify anticompetitive practices as ones that reduce market wide output below the competitive level. To be sure, output can sometimes go higher than the competitive level, but this would require that at least some prices be below cost. As a result, the definition refers to “sustainable” but competitive levels of output. If output is too high, some firms will be losing money and must eventually raise their prices or exit. Consumer welfare measured as output serves the customer’s interest in low prices and also in markets that produce as wide a variety of goods and services as a competition can offer. It **also serves the interest of labor, which is best off when production is highest**. Concurrently, it benefits input suppliers and other participants in the market process. For example, if the output of toasters increases, consumers benefit from the lower prices. Labor benefits because more toaster production increases the demand for labor. Retailers, suppliers of electric components, shipping companies, taxing authorities and virtually everyone with a stake in the production of toasters benefits as well.

### States

#### The attorney generals of 50 states and relevant territories, through the National Association of Attorneys General’s Multistate Antitrust Task Force, should prohibit anticompetitive private sector business practices that substantially reduce bargaining power of workers in labor markets.

#### A multistate AG antitrust enforcement over state antitrust statutes solves the aff---causes federal follow-on

Artega 19 (Juan A. Arteaga is an experienced antitrust attorney and a former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, The Role of US State Antitrust Enforcement, Global Competition Review, 11-19, <https://www.lexology.com/library/detail.aspx%3Fg%3Dd423301d-f4d1-4550-a99c-1880869e67e7+&cd=11&hl=en&ct=clnk&gl=us>, y2k)

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition. In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions. This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage. Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process. As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States. This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations. Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices. These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints. The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’. No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications. To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general have sued to block the transaction even though the DOJ, along with seven state attorneys general, have approved the deal after securing certain structural and behavioural remedies. After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who has been leading the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’

The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees)in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.

None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support. In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.

After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.

Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses:

the federal and state antitrust laws under which state enforcers operate;

the processes through which state enforcers coordinate with each other and their federal counterparts;

the opportunity for coordination and conflict between state enforcers and private counsel during litigation;

strategic and practical considerations when engaging with state attorneys general; and

certain noteworthy enforcement actions that state enforcers have recently prosecuted.

Statutory regime governing US state antitrust enforcement

Civil enforcement of federal antitrust laws

Enforcement actions on behalf of state governmental entities

Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services. In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.

In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges. In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market.

In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy. While general harm to a state’s economy can serve as a basis for injunctive relief, state attorneys cannot base their request for damages on such harm.

Parens patriae enforcement actions

A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’. Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations. In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees. State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’.

In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies. Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens. In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies.

State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their pending challenge to T-Mobile’s proposed acquisition of Sprint, nearly 20 state attorneys general have alleged that the transaction will result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies. Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three.

There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation; (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages); (3) exclude harm suffered by indirect purchasers of the goods and/or services in question; (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries; and (5) arise out of actual financial losses rather than general harm to their state’s economy. Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation.

In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing[ [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court. In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which the state attorneys general challenging the T-Mobile/Sprint merger have done.

Civil enforcement of state antitrust laws

Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act. In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.

State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’. Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.

### T mergers

**Practices are ongoing conduct---mergers violate---the merger itself is a one-off event, even if they’re evaluated because of their effects on ongoing practices.**

Stanley Mosk 88, Judge, California Supreme Court, “Cal. ex rel. Van De Kamp v. Texaco,” 46 Cal. 3d 1147, Lexis [italics in original]

The statute defines "unfair competition" to mean, as relevant here, "unlawful, unfair or fraudulent business *practice* **. . . ." ( Bus. & Prof. Code, § 17200,** italics added**.)** In so doing it effectively requireswhat the court variously described in the leading case of Barquis **v. Merchants Collection Assn. (1972) 7 Cal.3d 94 [101 Cal.Rptr. 745, 496 P.2d 817],** as "a 'pattern' . . . of conduct**" ( id. at p. 108), "**ongoing . . . conduct**" ( id. at p. 111), "**a pattern of behavior**" ( id. at p. 113),** and, "a course of conduct**" (ibid.).**

What the Attorney General challenges in this actionis the **Texaco-Getty** merger**.** Under the Barquis court's construction **of the statute,** however, the merger itself cannotbe characterized as "a 'pattern' . . . of conduct," "ongoing conduct," "a pattern of behavior," "a course of conduct," or anything relevantly similar: it is rather a single act.That the complaint, under **[\*\*\*\*156]** the Attorney General's reading, alleges that Texaco engaged in certain unlawful, unfair, or fraudulent business practices in the past and may engage in other such practices in the future is simply not enough: the complaint attacks not those past or future practices, but only the merger**.**

**Voting issue---forcing AFFs to regulate ‘patterns of conduct’ locks in NEG defenses of ways of doing business---any other interp allows review of individual transactions and decisions which are impossible to negate.**

### PTX

**The two-part package consisting of social spending and infrastructure will pass now---PC is key**

**Foran 10-28** (Clare Foran, House Democrats again delay infrastructure vote amid party divisions, <https://www.kake.com/story/45072366/house-democrats-to-again-delay-infrastructure-vote-amid-party-divisions>, y2k)

The decision to delay the vote came just hours after Biden **appealed** directly to House **Dem**ocrat**s** in a **closed-door meeting** on Capitol Hill, pitching them on a **framework** for a **separate**, larger **climate** and **economic** package.

The problem for party leaders is that **progressives** made clear they would **not** vote for the infrastructure bill **unless** the larger bill **moves in tandem** and said a framework was not enough to win their votes. That bill has not yet been finalized or publicly signed off on by all Senate Democrats.

Delaying the infrastructure vote is a significant setback for Democrats with Biden making clear privately for more than a week he wanted an agreement and passage of the bipartisan measure before he arrives at a UN Climate Conference on November 1. Biden departed for his foreign trip later in the day on Thursday.

Speaker Nancy Pelosi had told House Democrats earlier Thursday not to "embarrass" Biden by voting down the infrastructure bill during Biden's trip overseas.

This is the second time in two months that House leadership has had to delay the infrastructure vote after a similar scenario played out at the end of September. For now, it's unclear how long the vote on the bipartisan infrastructure bill will be delayed.

Amid resistance from progressives over moving ahead with the infrastructure bill, the House instead voted Thursday night to approve a short-term extension of highway funding.

The transportation bill vote was needed to avoid a lapse in funding for transportation projects starting Monday. The Senate agreed by unanimous consent that once the House passed the extension, it would be deemed passed by the Senate as well.

House Majority Leader Steny Hoyer's office sent a notice that the transportation extension vote would be the last of the week.

Hoyer later told reporters that "yes" he is disappointed they weren't able to vote on the infrastructure package.

Asked if it would take until December 3 to pass it, which is when highway funding would lapse after the stopgap was passed, Hoyer said, "no, I don't think," it will take that long.

On when they will finally vote on the infrastructure bill, he said, "I hope soon."

Some moderates expressed frustration over yet another delay, arguing that the bipartisan infrastructure bill should be passed now. That's especially a concern for some vulnerable incumbents looking for a tangible win as they head into the midterm elections.

"Unfortunately, a small number of Members within our own party denied the President -- and the American people -- a historic win," Democratic Rep. Stephanie Murphy of Florida, the co-chair of the Blue Dog Coalition, said in a statement. "We are extremely frustrated that legislative obstruction of the BIF continues—not based on the bill's merits, but because of a misguided strategy to use the bill as leverage on separate legislation."

Reps. Tom Malinowski of New Jersey and Dean Phillips of Minnesota both expressed deep frustration with their party's handling of the infrastructure vote -- and voted in protest against the short-term extension of transportation funding.

"I'm concerned about Virginia, I'm concerned about the message. I'm concerned about the message it sends to the world right now that is looking at our system of governance with increasing concern about its viability," Phillips said, alluding to Tuesday's gubernatorial election in Virginia, where Democrats had been hoping a legislative win for Biden would help boost Democratic nominee Terry McAuliffe.

Malinowski, whose district is targeted by Republicans, said of delaying the vote: "It is frustrating to a lot of us that we are now in a game of 'who goes first' when all sides seem to be in agreement on the substance. The country has been begging for this, my constituents have been begging for this."

Biden pitches Democrats but falls short

During the closed-door meeting with House Democrats, Biden laid out in person long-awaited details of his $1.75 trillion economic and climate package, trying to convince progressives who are skeptical of anything short of a fully written bill and commitments from all 50 members of the Senate Democratic caucus to back his framework.

But he came up short, with progressives still demanding that both bills move in tandem.

Phillips was critical of Biden because he did not explicitly say the infrastructure vote should occur on Thursday in the meeting; Pelosi is the one who pushed for the vote.

"I'm not afraid to say I wish he was more explicit. ... This is the commander in chief of the United States. When you spend political equity in front of a caucus two times in a month, I think it's got to be awfully explicit -- and be more forthright."

Phillips added: "If the President had led us down that hallway onto and on the House floor, I think it would have been close. .... I think with Republican votes, it would have passed."

The **personal pitch** to House Democrats marked **a concerted effort** by the President to **wrest** control of **an unwieldy process** that has led to **significant revisions** to Democratic goals in the effort to appease Sens. Joe Manchin **Manchin** and Kyrsten Si**nema**. While Biden's proposal isn't **finalized** in its entirety, **days of negotiations** have brought it to a place where the **key elements are all locked in.**

Not **all** Democrats have **signed off** on the framework that Biden announced Thursday morning, two people familiar with the plan cautioned, **but** the President believes it's a **consensus** all Democrats should be able to support.

Neither **Manchin** nor Si**nema** explicitly committed to backing the plan Thursday, though they both said they were **continuing** to negotiate after Biden's meeting with House Democrats.

Sinema reacted to the framework by saying in a statement, "We have made **significant progress**" and "I look forward to getting this done."

Manchin was noncommittal when asked by reporters whether he will support the framework agreement. Later on Thursday, he said, "We haven't seen the text yet. Everyone has to see it. I don't think anybody could say they could support it until they see the text."

Notably, however, **Manchin signaled support for a $1.75 trillion top line for the package**.

Asked by CNN if that price was too high, he said, "No," adding, "That was negotiated."

This is the **first** public indication that **Manchin** will accept **a price tag** higher than $1.5 trillion, which he had previously said was the figure he was **willing to settle on.**

And **despite** the **scrapped** infrastructure **vote**, the **W**hite **H**ouse expressed **optimism** that **both bills** would eventually **pass**. "Legislative text is starting to **become public**, and the **road to passing** both critical parts of the President's plan to make our economy deliver for middle class families—not just the wealthy—is **clearer than ever**," White House press secretary Jen Psaki said in a statement Thursday evening.

'We are going to pass both bills'

As she left the final House vote of the night, Rep. Pramila Jayapal -- the chair of the Congressional Progressive Caucus, who has said that just having a framework on the larger spending plan is not enough -- told reporters, "We are going to pass both bills."

"The President said he believes **he's got 50 votes** in the Senate and I think **it's a lot for him to say that**," the Washington state Democrat said. She has made clear, though, that progressives want a vote on both bills in the House at the same time.

Earlier in the day, after a separate meeting with House progressives, she had said, "Everyone in the room enthusiastically **endorsed** a resolution that approves in **principle the framework** the President laid out today."

"We intend to vote for both bills when the Build Back Better Act is ready," she said, referring to the larger climate and economic package. **But**, she added, "we do need the **vote** on **both** bills in the House at the same time."

"We have 96, **98% of the caucus on the same page**," Democratic Rep. Alexandria Ocasio-Cortez of New York said. "We just need to figure out what these **two folks** are willing to commit to and once we get real clarity on that, on what is a yes, then I think we'll be able to **move forward**," she said of **Manchin** and Si**nema**.

Senate **Dem**ocrat**s** cannot afford to lose **a single vote** to pass the bill under a process they plan to use known as budget **reconciliation**.

**Antitrust trades-off with Biden’s priorities**

**Carstensen 21** (Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>, y2k)

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.**

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!

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** **p**olitical **c**apital 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.

**The package solves climate**

**Davenport 10-28** (Coral Davenport, NYT Staff, President Biden unveiled a revised spending plan in an effort to try to pass a $1.85 trillion social safety net bill and a $1 trillion infrastructure measure, <https://www.nytimes.com/2021/10/28/climate/climate-change-framework-bill.html>, y2k)

WASHINGTON — **Climate** has emerged as the **single largest category** in President Biden’s **new** **framework** for a huge **spending bill**, placing **global warming** at the center of his party’s **domestic agenda** in a way that was hard to imagine just a few years ago.

As the bill was pared down from $3.5 trillion to $1.85 trillion, paid family leave, free community college, lower prescription drugs for seniors and other Democratic priorities were dropped — casualties of negotiations between progressives and moderates in the party. But $555 billion in climate programs remained.

It was unclear on Thursday if all Democrats will support the package, which will be necessary if it is to pass without Republican support in a closely divided Congress. Progressive Democrats in the House and two pivotal moderates in the Senate, Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, did not explicitly endorse the president’s framework. But Mr. Biden expressed confidence that **a deal was in sight.**

If enacted, it would be the **largest action** ever taken by the **U**nited **S**tates to address **climate change.** And it would **enshrine** climate action **in law**, making it **harder** to be **reversed by a future president.**

In remarks Thursday, Mr. Biden called it “the most significant investment to deal with the climate crisis that ever happened, beyond any other advanced nation in the world.”

The centerpiece of the climate spending is $300 billion in **tax incentives** for **producers** and **purchasers** of **wind**, **solar** and **nuclear power**, inducements intended to speed up a **transition** away from **oil**, **gas** and **coal**. Buyers of **e**lectric **v**ehicles would also benefit, receiving up to $12,500 in tax credits — depending on what portion of the vehicle parts were made in America.

The rest would be distributed among a mix of programs, including money to construct **charging stations** for electric vehicles and update the **electric grid** to make it more conducive to transmitting wind and solar power, and money to promote **climate-friendly farming** and **forestry** programs.

The plan would still fall short of the ambitious pledge Mr. Biden has made to halve the country’s greenhouse gases, from 2005 levels, by the end of this decade. Scientists say that nations must quickly and deeply cut emissions from burning oil, gas and coal to avert the most harrowing impacts of climate change.

As many of the social spending programs fell by the wayside, the primacy of climate remained during weeks of tense negotiations between the White House and progressive and centrist lawmakers.

Mr. Manchin, who played an outsized role in shaping the debate, was able to kill the most powerful mechanism in Mr. Biden’s climate plan — a program that would have rewarded power companies that moved from fossil fuels to clean energy, and penalized those that did not. Mr. Manchin’s state is a top coal and gas producer, and he has personal financial ties to the coal industry.

But during negotiations, Democratic lawmakers of different political leanings all made climate policy a priority.

Rising activists and a sustained push

Many Democrats said they were newly energized to take on climate change after cascading climate disasters over the past year. Record droughts, flooding, wildfires and heat waves — which scientists said are worsened by climate change — devastated nearly every corner of the country.

Liberals and many moderates in Congress, including vulnerable House members in swing districts, pushed the administration to focus on the issue. One group of moderate House Democrats even suggested that Democrats not worry about offsetting climate spending with tax increases.

There was also a sustained drive inside the administration to elevate the issue. Mr. Biden has repeatedly linked cutting emissions to job creation, echoing the views of many of his top economic advisers, like Brian Deese, who heads the National Economic Council. Mr. Deese has said he sees the fate of America’s middle class over the coming decades entwined with the country’s ability to dominate the industries powering emissions reduction.

At the same time, a new generation of climate activists has been advising the president on his agenda, and warning lawmakers that they risk losing young voters if they do not act.

Mr. Biden seemed to nod at the generational aspect of the crisis on Thursday, when he spoke about meeting an electrical worker in Pittsburgh worried that climate change threatened his children’s future. “Folks, we all have that obligation, an obligation to our children and to our grandchildren,” Mr. Biden said.

In Congress, House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer instructed committees to draft climate change legislation that would meet Mr. Biden’s targets to cut emissions.

And Mr. Biden has been under **growing pressure** to demonstrate that the **U**nited **S**tates, as the country that has **fueled** climate change by emitting the most greenhouse gases, is taking action when he appears Monday at a pivotal **United Nations summit on climate**. Showing up **empty-handed** would **damage** the United States’ **credibility** on the world stage.

**Extinction**

David **Spratt 19**, Research Director for Breakthrough National Centre for Climate Restoration, Ian Dunlop, member of the Club of Rome, formerly an international oil, gas and coal industry executive, chairman of the Australian Coal Association, May 2019, “Existential climate-related security risk: A scenario approach,” https://docs.wixstatic.com/ugd/148cb0\_b2c0c79dc4344b279bcf2365336ff23b.pdf

An **existential risk** to civilisation is one posing **permanent large negative consequences** to humanity which may never be **undone**, either **annihilating intelligent life** or permanently and drastically curtailing its potential. With the commitments by nations to the 2015 **Paris** Agreement, the current path of warming is 3°C or more by 2100. But this figure does not include “long-term” **carbon-cycle feedbacks**, which are materially relevant now and in the near future due to the **unprecedented rate** at which human activity is perturbing the climate system. Taking these into account, the Paris path would lead to around 5°C of warming by 2100. Scientists warn that warming of **4°C** is incompatible with an organised global community, is **devastating** to the **majority of ecosystems**, and has a **high probability** of not being stable. The World Bank says it may be “**beyond adaptation**”. But an existential threat may also exist for many peoples and regions at a significantly lower level of warming. In 2017, 3°C of warming was categorised as “catastrophic” with a warning that, on a path of unchecked emissions, low-probability, high-impact warming could be catastrophic by 2050. The Emeritus Director of the Potsdam Institute, Prof. Hans Joachim Schellnhuber, warns that “climate change is now reaching the **end-game**, where very soon humanity must choose between **taking unprecedented action**, or accepting that it has been left too late and **bear the consequences**.” He says that if we continue down the present path “there is a very big risk that we will just **end our civilisation**. The human species will survive somehow but we will destroy almost everything we have built up over the last two thousand years.”11 Unfortunately, conventional risk and probability analysis becomes useless in these circumstances because it excludes the full implications of outlier events and possibilities lurking at the fringes.12 Prudent risk-management means a tough, objective look at the real risks to which we are exposed, especially at those **“fat-tail” events**, which may have consequences that are damaging beyond quantification, and **threaten the survival of human civilisation**. Global warming projections display a “fat-tailed” distribution with a **greater likelihood** of warming that is well in **excess of the average amount of warming predicted by climate models**, and are of a higher probability than would be expected under typical statistical assumptions. More importantly, the risk lies disproportionately in the “fat-tail” outcomes, as illustrated in Figure 1.

### T CWS

#### Anticompetitive practices reduce competition and lead to higher prices

FTC No Date – Federal Trade Commission, “Anticompetitive Practices,” https://www.ftc.gov/enforcement/anticompetitive-practices

Anticompetitive Practices

The FTC takes action to stop and prevent unfair business practices that are likely to reduce competition and lead to higher prices, reduced quality or levels of service, or less innovation. Anticompetitive practices include activities like price fixing, group boycotts, and exclusionary exclusive dealing contracts or trade association rules, and are generally grouped into two types:

agreements between competitors, also referred to as horizontal conduct

monopolization, also referred to as single firm conduct

The FTC generally pursues anticompetitive conduct as violations of Section 5 of the Federal Trade Commission Act, which bans “unfair methods of competition” and “unfair or deceptive acts or practices.”

#### Violation – they explicitly designate new practices as competitive that go beyond price levels or reduced competition

#### Vote neg for limits and ground- any other interp allows any new practice to be classified as anticompetitive which allows bidirectoinally banning unproductive corporate behavior

### Inequality

#### The plan devastates American industry and innovation, undermining the entire financial system

Gary Shapiro 7/23—J.D. from the Georgetown University Law Center, sits on the State Department's Advisory Committee on International Communications and Information Policy, the No Labels Executive Council, the USO of Metropolitan Washington-Baltimore Board of Directors and the American Enterprise Institute Global Internet Strategy Advisory Board. ("Radical antitrust bills would be disastrous for consumers and innovation – Press Telegram," July 23, 2021, https://californianewstimes.com/radical-antitrust-bills-would-be-disastrous-for-consumers-and-innovation-press-telegram/452107/)

Consumers win when they can determine winners and losers so that Uber and Lyft can challenge the taxi monopoly. AirBnB provides an alternative to hotels, allowing working parents to save time and take advantage of next-day delivery from Amazon.

Innovation is built on innovation. I used to have a rotating phone, so I have an iPhone. I once had a Model T, so I have a self-driving car (Note: these were all invented in the United States).

The House of Representatives antitrust bill claims to protect the welfare of consumers, but in reality it is anti-consumer and anti-innovative. Initially, it meant that Amazon Prime’s free shipping, the pre-installed Find My iPhone app, and searching for YouTube videos in Google search results would end.

Aside from the clear and unavoidable consumer backlash, who knows what other inventions will get in the way in the future? Why are our parliamentarians trying to dismantle the products and services that Americans love? Why don’t these policy makers allow businesses to create more?

The bill targets “Big Tech,” but it actually hurt consumers, small businesses, and start-ups. Arbitrary rules contained in the drafted bill, such as merger and acquisition restrictions, will end opportunities for business growth. Today, SMEs looking to grow are usually considering two options. Either it’s bought by a big company and you get a lot of money, or you’re pursuing an IPO (which is much more difficult). What incentives or means do companies need to grow with these bills?

Similarly, venture capitalists and investors hesitate to invest in new and promising businesses. Challenges to the entire system of our financial opportunities and the status quo of old businesses are restrained. What happens to the American dream if it gets bigger, hires more people, invests in more startups, and can’t get the money back into the economy? The spillover effect is devastating.

If the bill is signed, the bill will also bring the United States a competitive disadvantage to China and other countries. The bill imposes obligations and restrictions on US companies and provides ammunition to the EU and other regulators targeting US companies.

What does that mean for the average American? Loss of work for Americans. Little investment in American companies. The price of technology is high. The product you purchase will be less transparent. As soon as China becomes a technology superpower, it will also become a political superpower. As the Atlantic wrote in 2020, “China will not be a pacifist force.” “Export value” with the product.

Finally, these bills are a threat to our cybersecurity. By requiring companies to expose the platform to all parties, this proposal eliminates the ability of services to monitor the site against hackers, terrorists, foreign governments, and other malicious individuals.

These bills do not take into account the views of people across the country, especially consumers and small business owners, who will be most affected by them. To make matters worse, these bills are being tracked quickly throughout the process without hearing or testimony.

We urge Congress to step out of the accelerator and take these complex issues into account. Thoughtful and careful. We work with innovators and consumers to protect America’s world-leading economy and those who are constantly striving to support it.

Out of the most challenging years of the century, we don’t need any more disciplinary law. Instead, we need lawmakers to prioritize growth and success.

#### Losing the innovation warfare battle to China causes World War III

Jeanne Suchodolski et al. 20—Attorney with the United States Navy Office of General Counsel where she currently serves as Patent and Intellectual Property Counsel for the Naval Undersea Warfare Center Division Keyport; Suzanne Harrison, Founder of Percipience, LLC, a board-level advisory firm focused on intellectual property strategy, management, and quantifying and mitigating intellectual property risk; Bowman Heiden, co-director of the Center for Intellectual Property, visiting professor at University of California, Berkeley. ("Innovation Warfare," December 2020, from North Carolina Journal of Law and Technology, Volume 22, Issue 2, Article 4, https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1416&context=ncjolt)

Innovation, in particular, technology-based innovation, is the key driver for both economic competitiveness and national security. Other nations, with interests adverse to the United States, recognize this fact. In an increasingly interconnected world, nation states seek to accumulate innovation prowess, and hence economic strength, as a key element of their geopolitical power. Especially savvy nation states also pursue such ends as a mechanism to influence or diminish the national security and geopolitical power of the United States. There is no need to inflict upon the world the carnage of war if one’s geopolitical aims can be achieved via alternative competitive means.

Several authors suggest China’s long-term ambitions include unseating the United States as the world’s economic and political leader.1 More compelling than opinions, several United States (“U.S.”) government and private studies document a systematic and coordinated effort by China to achieve technical and economic dominance through misappropriation of U.S. technology.2 These efforts are additionally supported by a companion effort to weaken international economic institutions and norms designed to protect U.S. intellectual property and free trade.3 The Chinese tactics include illegal means, and sophisticated use of legal means, to misappropriate U.S. technology and weaken the U.S. innovation infrastructure including: a) Leveraging the open university and laboratory ecosystem via direct sponsorship and engagement of Chinese nationals;4 b) Devaluing U.S. positions in patents and technology platforms;5 and c) Accessing private sector U.S. technology through acquisitions and ownership stakes in existing firms, funding of high-tech start-ups, and forced joint ventures and other contractual agreements as a prerequisite for entering the Chinese market.6

This particular form of competitive strategy targeting the innovation ecosystem in the United States is labeled by the Authors as “Innovation Warfare,”7 and it is defined as an executable competitive strategy: a) Reflecting an innovation, intellectual property, and technology strategy articulated and executed by the state (e.g. China); b) Using illegal means, political means, and legal economic activities—of the type previously residing solely in the province of commercial enterprise, to achieve the state’s objectives; c) Employing these economic and innovation activities to achieve both economic geopolitical power and to enhance military capabilities; and d) Functioning as a military, national security, and defense doctrine not solely as a reflection of the state’s economic policy goals nor commercial competition in the ordinary course.

Innovation Warfare does not just threaten American jobs and economic prosperity. By simultaneously co-opting and weakening the innovation capabilities of the United States, China seeks to advance its rise to world power. China’s prosecution of Innovation Warfare not only encompasses a rejection of a rules-based international order, but also poses an existential threat. A world where China dominates the technology landscape is not just about who earns the profits or prevails in an abstract geopolitical fight. According to the National Security Strategy of the United States of America (“National Security Strategy”), China pursues a world in which economies are less free, less fair, and less likely to respect human dignity and freedoms.8 China’s Innovation Warfare activities risk the type of economic and geopolitical aggressions that were a root cause of two World Wars.

#### Monopsony Power is not harming workers

#### Inequality is statistically insignificant – there’s zero need for antitrust.

Wright et. al ‘19 [Joshua D., Elyse Dorsey, Jonathan Klick, and Jan M. Rybnicek; University Professor and Executive Director, Global Antitrust Institute at Scalia Law School; Attorney Advisor to Commissioner Noah Joshua Phillips, United States Federal Trade Commission; Professor of Law, University of Pennsylvania; Counsel in the antitrust, competition, and trade practice of Freshfields, Bruckahus Deringer LLP; Arizona State Law Review, “REQUIEM FOR A PARADOX: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” vol. 51; KP]

2. The Empirical Evidence: Is Inequality Really Growing?

All of the papers discussed above assume that inequality has increased in recent years. This view is fairly common among economists and would seem to be borne out as seen in Figure 2 below, which presents the Gini coefficient for U.S. incomes for the last fifty years.166

Chart, line chart

Description automatically generated

Figure 3, which plots the ratio of the share of US income among the fifth quintile of income-earning households to the share among the first quintile of households167 tells a similar story.

Chart, line chart

Description automatically generated

Robert Kaestner and Darren Lubotsky underscore the point that inequality measures can be significantly affected by a failure to account for government transfers and employee benefits that presumably substitute for cash income.168 Given that healthcare costs have grown faster than inflation in recent years, a failure to account for health insurance benefits could significantly affect economic inequality measures. Reviewing estimates from the literature, Kaestner and Lubotsky find that including health insurance substantially reduces the gap between incomes at the high end of the distribution and those at the low end.169 Interestingly, however, the authors find that there is still an upward trend in inequality over time when the cash equivalent of health insurance and government transfers are included.170 The trend, however, is substantially muted.171 Specifically, including government transfers and the imputed value of employer subsidized health insurance, Kaestner and Lubotsky indicate that the ratio of income between households at the ninetieth percentile and the tenth percentile was about five in 1995, growing to 5.2 in 2004 and to 5.6 in 2012.172

Although yearly estimates of this more complete measure of income inequality are not available, and the time series span is somewhat limited, another approach might be to examine consumption inequality since consumption will be a function of effective income, and consumption data are more readily available. Also, consumption might be a better measure of welfare as argued by Bruce Meyer and James Sullivan.173 When determining the desirability of antitrust enforcement to address economic inequality, presumably one not only wants to examine the indirect effects on people’s incomes and wealth, but also the direct effect on consumer welfare, for which consumption might be a useful proxy.

Considering the arguments raised above regarding the desirability of using antitrust to fight inequality, one might reason that higher prices coming from increased concentration make both the well-off investors and executives and the lowly consumer worse off, but the investors and executives are compensated through high incomes due to their monopoly profits. Under these arguments, we should see an upward trend in the consumption ratio between the haves and the have-nots. Figure 4, which uses data on average consumption by households in the various income quintiles from the Bureau of Labor Statistics Consumer Expenditure Survey,174 shows that while the ratio has grown over time, the growth is much smaller than that found for income itself. Further, unlike income, the growth is not nearly as consistent with periods of increasing inequality and decreasing inequality alike.

Chart, line chart

Description automatically generated

Based on potentially better (i.e., more complete) measures of income and better metrics of welfare (i.e., consumption), perhaps the concerns raised in the papers discussed above are a little overblown. If so, perhaps the calls for a ramp-up of antitrust enforcement are not justified (at least on inequality grounds). That said, even by these measures, it appears inequality is growing, albeit slightly; therefore, it is worth discussing whether there is any association between antitrust enforcement and inequality.

#### Labor power high – post pandemic labor shortage and demographic trends.

Irwin ’21 [Neil; June 5; senior economics correspondent; New York Times, “Workers Are Gaining Leverage Over Employers Right Before Our Eyes,” <https://www.nytimes.com/2021/06/05/upshot/jobs-rising-wages.html>; KP]

The relationship between American businesses and their employees is undergoing a profound shift: For the first time in a generation, workers are gaining the upper hand.

The change is broader than the pandemic-related signing bonuses at fast-food places. Up and down the wage scale, companies are becoming more willing to pay a little more, to train workers, to take chances on people without traditional qualifications, and to show greater flexibility in where and how people work.

The erosion of employer power began during the low-unemployment years leading up to the pandemic and, given demographic trends, could persist for years.

March had a record number of open positions, according to federal data that goes back to 2000, and workers were voluntarily leaving their jobs at a rate that matches a historical high. Burning Glass Technologies, a firm that analyzes millions of job listings a day, found that the share of postings that say “no experience necessary” is up two-thirds over 2019 levels, while the share of those promising a starting bonus has doubled.

People are demanding more money to take a new job. The “reservation wage,” as economists call the minimum compensation workers would require, was 19 percent higher for those without a college degree in March than in November 2019, a jump of nearly $10,000 a year, according to a survey by the Federal Reserve Bank of New York.

Employers are feeling it: A survey of human resources executives from large companies conducted in April by the Conference Board, a research group, found that 49 percent of organizations with a mostly blue-collar work force found it hard to retain workers, up from 30 percent before the pandemic.

“Companies are going to have to work harder to attract and retain talent,” said Karen Fichuk, who as chief executive of the giant staffing company Randstad North America closely tracks supply and demand for labor. “We think it’s a bit of a historic moment for the American labor force.”

This recalibration between worker and employer partly reflects a strange moment: The economy is reopening, but many would-be workers are not ready to return to the job.

#### There’s no concentration locally—that’s more important

Joe Kennedy 20—Senior Fellow at ITIF, previously chief economist with the U.S. Department of Commerce, JD, and PhD in economics from George Washington University. ("Monopoly Myths: Is Concentration Eroding Labor’s Share of National Income?" October 13, 2020, from Information Technology & Innovation Foundation, https://itif.org/publications/2020/10/13/monopoly-myths-concentration-eroding-labors-share-national-income)

WHY MARKET POWER IS NOT LIKELY TO BE THE CAUSE OF A DECLINE IN LABOR’S SHARE OF INCOME

Central to the arguments presented in the previous section is the theory that lax antitrust enforcement has encouraged firms to acquire market power, which allows them to raise prices and reduce wages while increasing profits. Earlier papers in ITIF’s Monopoly Myths series challenge each of these arguments.27

First, although concentration has been increasing in many industries, in most, it is still far below the levels that normally trigger antitrust concern, especially when markets are defined more narrowly.28 Moreover, recent studies show that concentration in local markets—which are the most relevant for many industries, including restaurants and retail shopping—is actually decreasing. Esteban Rossi-Hansberg and two other economists looked at competition in local markets between 1990 and 2014 and found that while concentration increased at the national level, it fell in local markets. Although large firms captured a growing portion of the national market, their expansion into new markets increased local choice. The entry of a top firm reduced local concentration for at least seven years.29

Some studies have also shown concentration falling in labor markets. Kevin Rinz of the U.S. Census Bureau arrived at this conclusion using data from the Longitudinal Business Database and IRS W-2 forms. He estimated that in 2015 earnings were about 1 percent higher than they would have been if local competition had remained at its 1976 level.30 Economists Anna Stansbury and Lawrence Summers also noted that local labor market concentration has declined over time, which should help workers. Most workers are not in highly concentrated labor markets, especially when considering the full range of occupations many workers could fill.31

David Berger et al. looked directly at local labor markets using data from the Longitudinal Business Dynamics database and defining local labor markets through a combination of three-digit NAICS codes for tradable industries and commuting zones. He then looked at a series of changes to state corporate income taxes and compared the reaction of company establishments within the same state. The model shows that existing imperfections in local labor markets are significant; costing workers on average 5.4 percent of their lifetime consumption. These lower wages cause them to work 19.6 percent less than otherwise. But the problem has been getting better, not worse. The team found that rising labor market power has not contributed to the declining labor’s share because the concentration of local labor markets declined between 1976 and 2014. The change in concentration equates to going from 5.0 to 7.1 equal-sized employers within each commuting zone.32

Second, although markups have been rising in many industries, they are notoriously hard to measure. They may not have been rising at all if functions such as marketing and R&D are included in variable costs. Indeed, most of any increase can be explained by the rising importance of hard-to-measure intangible assets, high fixed costs, rapidly diminishing marginal costs, and significant network effects. In these situations, it is possible for a company to have high markups but still lose money.33

Finally, looking at nonfinancial domestic corporate profits as a share of net value added shows that, although the profits share rose significantly in the first six years of this century, it remained below its share from 1950–1965. Since then, it basically held steady for several years, before declining for the last six years, giving back almost half of its gain.34

The studies showing a rise in market power also have some weaknesses. The De Loecker paper in particular has come under criticism from other scholars. Susanto Basu, for example, pointed out that the authors’ model produces implausible estimates for other economic values, such as implying that adding more capital to the production process actually decreases output.35 Economist Chad Syverson noted that, even if profits were zero in 1980, De Loecker’s finding that the pure profit rate jumped from 1 percent to 8 percent means firms succeeded in turning 25 percent of all revenues into profits in 2016, which is significantly higher than other estimates.36 For example, in 2016, domestic corporate profits as a share of net value added was 17.7 percent. Syverson also pointed out that the fastest rise in markups occurred between 1980 and 2000, while much of the decline in labor’s share did not take place until after 2000.37

More broadly, these studies use econometric models and firm data to measure the relationship between concentration, profits, and margins on the one hand, and the decline in labor’s share and wages on the other. The outcomes can be heavily dependent on the specific model being used. In addition, their samples are never complete. At most, they show the relationships that prevail in a portion of the economy. Moreover, the models only show correlation. The causal relationships may run both ways and involve many more variables. Finally, some studies use a fairly comprehensive source of corporate data such as Compustat, and in doing so, ignore the noncorporate sector. Because corporations are on average larger and more efficient than other kinds of firms, this would skew the data toward a smaller labor share among these firms, but not necessarily in the broader economy.38 This gets to the importance of looking at the issue through macroeconomic data that is representative of the entire economy.

Measuring Labor’s Share Through Macroeconomic Data

Researchers within BLS recently estimated labor’s share going back to 1947 (see figure 1). Based on their data, the wage share of income was largely stable from 1947 to around 2001 at approximately 63 percent. Since then, it has fallen to around 57 percent (with a likely temporary increase this year due to the COVID-19 recession). In calculating labor’s share, BLS split proprietors’ income between wages and return on capital by assuming proprietors make the same hourly wage as employees. Michael Elsby, Bart Hobijn, and AyÅŸegÅ±l Åžahin argued that this method overstates the self-employed share of income, and that a more accurate method would reduce the measured decline in labor’s share by one-third.39

Figure 1: Wage share of output in the non-farm business sector (1947–2020)40

Economic models often assume there are only two types of inputs: labor and capital. Some papers follow this practice by defining capital’s share of income as 1 minus labor’s share.41 By this definition, any fall in labor’s share automatically goes to capital, which many people equate with profits.

BEA provides a finer-grained picture of national income, dividing it into several categories including compensation of employees, proprietors’ income, and corporate profits. In fact, the BEA statistics include a number of separate components in addition to corporate profits. One of these is rental income, a large part of which is the imputed value of housing homeowners get from living in their homes.

A closer look at the national income accounts shows that there has in fact been almost no decline in the share of U.S. national income going to labor once net income and the share going to rent are included. Depreciation (which BEA terms “capital consumption”) amounts to about 16 percent of gross domestic income (GDI). GDI also includes business taxes on production and imports, which have recently averaged 7 percent. When these are pulled out, labor’s share was around 84 percent of net domestic income in 2019. In 1947, this share was 87 percent (figure 2). Although the share declined in the early decades, the total share of income going to workers, proprietors, and rent has actually risen since the mid-1980s.

Figure 2: Total employee compensation, rental income, and proprietors’ income as a share of net domestic income (1947–2019)42

A greater breakdown shows that compensation to employees fell by 2.2 percentage points from 1998 (when labor’s share begins its steep fall in the BLS calculations) to 2019. This was matched by an identical fall in net interest payments. However, the decline in employees’ share was partially offset by an increase of 0.7 percentage points in proprietors’ income (many of whom were for all intents and purpose workers who happened to own their own very small business), leaving a total decline in labor’s share of approximately 1.5 percentage points.

Table 1: Percentage point change in components of GDI (1998–2019)43

Rather than simply assuming this loss was big monopolistic business’s gain, it’s important to look at the other components of national income. As table 1 shows, corporate profits rose only 0.4 percentage points between 1998 and 2019, accounting for just 27 percent of the loss of labor’s share. It is hard to reconcile this with the theory of increased market power decimating labor’s share of income. The biggest increases during this time period were rental income (1.9 percentage points) and consumption of fixed capital (1.6 percentage points). The rise in depreciation may actually be beneficial if it means firms are deploying more capital. It could also signal the increased importance of intangible, faster depreciating capital such as software and other intellectual property.

And the rise of rental income by such a large share means that the fall in the share of labor income had almost nothing to do with capital becoming more important than labor. It had more to do with housing becoming more important than labor, with demographic forces pushing up demand for housing, regional economic forces leading jobs to concentrate in places with already high housing prices, and government zoning rules limiting supply—all leading to higher rents and mortgage payments.44

Former Obama administration officials Jason Furman and Peter Orszag have agreed with this assessment, writing that “the decline in the labor’s share of income is not due to an increase in the share of income going to productive capital— which has largely been stable—but instead is due to the increased share of income going to housing capital.”45 According to the authors, in 2014, returns to labor were 3.8 percentage points below their 1970–1999 average. Yet returns to capital excluding housing rose only 0.3 percentage points. Returns to housing rose 2.8 percentage points (the remainder went to depreciation and government). If the price of housing rises substantially, the percentage share of labor and all other components must fall.

The point here is not that labor’s share has held steady; as conventionally measured, it has been falling, although not as much as some studies claim. But the lost share is not going to employers exercising market power. Most has gone instead to the owners of housing (including workers who own their homes) and to a lesser extent mismeasurement of self-employed income. We have a housing problem, not an antitrust problem. The solution is to relax zoning laws and permitting regulations so that more affordable housing can be built in the places workers want to live, coupled with a big federal government push to support economic development outside of already expensive and crowded large metro areas.

OTHER EXPLANATIONS

The rise in rental income is not the only alternative explanation with empirical support. The previous sections show why increased market power stemming from lax antitrust enforcement is unlikely to be a major cause of labor’s falling share and stagnant wages. Even when ignoring the macro data on income shares and focusing only on the studies of particular groups of firms, there are a number of alternative causes, which have better support in the literature. Several academic studies, including those emphasizing market power, contain a long list of other possible explanations.46

McKinsey Global Institute looked at Organization for Economic Cooperation and Development (OECD) industry-level data from 1998 to 2016 and concluded that the decline in labor’s share of income was due to several causes. The most important, explaining 33 percent of the decline, was due to business cycle effects. Other causes were rising and faster depreciation of capital (26 percent); superstar effects, together with industry consolidation (18 percent); capital substitution for labor and automation (12 percent); and globalization and reduced worker power (11 percent).47

Other studies have focused on a more limited set of explanations. For example, Elsby et al. identified globalization, specifically the offshoring of labor-intensive production, as the leading potential explanation for the rest of the decline.48 When firms move jobs abroad in order to reduce labor costs, total compensation of employees falls. Other explanations seem even more promising when compared with the theory that market power is the root cause of any decline in labor’s share.

Rising Competition Among Superstar Firms

One possible explanation is, rather than signaling the inadequacy of antitrust law, rising concentration in some markets is the result of increased competition between firms. Autor et al. found that the unweighted mean labor’s share across firms has not decreased much since 1982.49 What seems to have happened is a rise in competition caused largely by globalization and new technologies has allowed more competitive firms to gain market share at the expense of laggards. The “superstar” firms are winning, not because they have market power, but because they are more productive and more efficient, and have lower costs. Higher margins are thus not due so much to rising prices (which makes sense at a time when inflation is well below the Federal Reserve target of 2 percent) but to lower production costs, including from employing a relatively smaller share of workers. The decline of labor’s share within specific firms has been relatively constant, but more-efficient firms using less labor have been gaining market share.

Sharat Ganapati used U.S. Census data to measure market concentration between 1972 and 2012.50 Using industry-level estimates, he showed that concentration increases are positively correlated with productivity and real output growth, indicating they might be the result of enhanced competition rather than lax antitrust enforcement. Nor is concentration correlated with rising prices, a claim central to the market power theory. However, Ganapati also found that higher concentration is correlated with a decline in labor’s share. As market share migrates to more-productive firms, it is possible to produce the same amount using less resources, including labor.

Technological Change

A related theory is that the introduction of labor-saving technologies and mechanization has caused some companies to replace labor with capital. These changes have also increased the importance of fixed investment and declining marginal cost, thereby raising the size of markups needed to recover total costs, but keeping overall profits the same. A 2018 paper by Loukas Karabarbounis and Brent Neiman links the decline in labor’s share to technological changes facilitated by a steady decline in the cost of capital, which reduces the need for labor.51 These lower costs benefit consumers. They should also eventually benefit workers directly since worker income is tied to labor productivity, which increases with the amount of capital labor has to work with.52 Consistent with other studies, Karabarbounis and Neiman found that the decline in the labor’s share is not confined to the United States, the fall in labor’s shares occurred primarily within industries, and the average labor share not weighted by firm size did not fall much since 1982. In other words, declines in labor’s share were concentrated in more-productive industries, with less-productive firms gaining more employment. This is consistent with the theory of Baumol’s cost disease: the observation that employment and nominal spending grows faster in sectors that have lower productivity growth.

The Decline of Labor Power

Another compelling theory is that both the decline in labor’s share and rising inequality are the result of a broader decrease in labor’s economic and political power. Stansbury and Summers used a variety of individual-, industry-, and state-level data to measure the relationship between general indicators of labor power and outcomes such as labor’s share of income.53

Stansbury and Summers focused on a broader decline in worker power that is due to three significant macroeconomic shifts in the economy. The first is institutional changes, including a decline in both union power and the real value of the minimum wage. The second source of decline is changes within firms, including the rise of shareholder power and outsourcing. The final source of pressure is increased competition from technology and low-wage labor abroad. Both together and individually, these factors have weakened the bargaining power of employees over time. The result, however, has not been a decline in labor’s share of output within competitive markets.

But not every market is competitive. In some noncompetitive markets, firms have enough market power to earn profits that are above the level that would exist in a competitive market. Some of these excess profits are shared with labor. Stansbury and Summers found that the decline in worker power has resulted in a smaller share of these profits going to labor. They estimated that these profits fell from 12 percent of value added in the early 1980s to 6 percent in the 2010s.54 They found that total profitability of firms stayed roughly the same or even fell during that time, indicating an absence of greater market power. But the division of profits in industries that do have market power has changed, with labor getting less of a share.

Stansbury and Summers were unconvinced by other causes such as globalization, technological change, and rising monopoly power. Specifically, they found that rising concentration can explain only 10 percent of the fall in labor’s share.

#### Inequality doesn’t cause war

Elise Must 16, PhD student at LSE, this was her PhD thesis, “When and how does inequality cause conflict? Group dynamics, perceptions and natural resources”, http://etheses.lse.ac.uk/3438/1/Must\_When\_and\_how\_does\_inequality.pdf

Does economic inequality lead to conflict? This question has attracted the attention of prominent scholars at least since the time of Aristotle (Nagel 1974). The frequent assumption that unequal distribution somehow fuels rebellion has resulted in a vast amount of theoretical as well as empirical work. For long, results remained mixed. Despite countless qualitative studies asserting that inequality is a major reason for conflict outbreak, quantitative studies struggled to establish a firm relationship between the two (Blattman and Miguel 2010, Cramer 2005, Lichbach 1989). These quantitative studies, including the most influential ones by Collier and Hoeffler (2004) and Fearon and Laitin (2003), rely on analysis of individual measures of inequality. However, as most prominently set forth by Frances Stewart, it is minority groups or collectives of individuals who rebel, not the whole population, nor individuals (Stewart 2002). Stewart’s theoretical development has given rise to several quantitative studies which uniformly support the role of economic group inequality in inducing conflict (Buhaug, Cederman, and Gleditsch 2014, Cederman, Weidmann, and Bormann 2015, Cederman, Weidmann, and Gleditsch 2011, Deiwiks, Cederman, and Gleditsch 2012, Østby 2008a, b, Østby, Nordås, and Rød 2009). Hence, there is an emerging consensus in the literature that inequality causes civil conflict when it overlaps with relevant group identities. Promising as these studies are, they nevertheless neglect a potential crucial part of the inequality-conflict causal chain. Seemingly all studies of inequality and conflict, including those measuring group inequalities, are based on objective inequalities. Yet, as Stewart (2010, 14) herself notes, ‘People take action because of perceived injustices rather than because of measured statistical inequalities of which they might not be aware’. Economic inequality measured by the Gini coefficient, or by local GDP data, is most commonly used as proxies, leaving completely aside how economic inequality is actually interpreted and perceived by both groups and individuals (ref. Zimmermann 1983). It remains obvious, however, that in order for people to take action to address inequalities, the first step is to recognize them and to consider them unjust (Han et al. 2012). The use then, of objective measures in current empirical studies, is based on the assumption that both objective and perceived horizontal inequalities essentially amount to the same thing. Put another way it is assumed that all objective inequalities are actually perceived as inequalities by relevant groups, and conversely all perceived inequalities have an objective basis. These are strong claims that are so far largely untested. Existing studies of the link between objective and perceived horizontal inequalities range from concluding that there is no such link (Langer and Smedts 2013) to documenting imperfect correlations – ranging from 0.27 to 0.30 depending on indicators and datasets (Holmqvist 2012). While cross-country analyses of conflict have neglected perceptions of inequality, the case study literature does offer some examples demonstrating their importance. Interviewing Muslim immigrants in London and Madrid, Gest (2010, 178) finds that what distinguishes democratic activists from those who engage in anti-system behavior, is the nature of their individual expectations and perceptions about shared economic realities. Moving on to larger conflicts, a recent World Bank report concludes that the so called ‘Arab Spring’ was driven by a decrease in popular subjective satisfaction, while the objective economic situation actually improved in the years before the widespread mobilization (Ianchovichina, Mottaghi, and Shantayanan 2015). The report also points to the importance of inter-group inequality as opposed to individual inequality. My main argument is that in order to better capture the role of inequality in inducing civil conflict, measures have to account for relevant groups as well as for the perception of inequality in these groups. In addition, my analyses fill two other gaps in the literature. While Stewart emphasizes how groups can mobilize around different identities, current studies have almost exclusively focused on ethnic groups. However, a regional identity might be just as relevant (ref. Posner 2004). I will therefor look at the effect of regional economic inequality on civil war. And finally, most of the studies, and all of those with a global scope, rely on time invariant measures of economic horizontal inequality. This is commonly defended by referring to the demonstrated ‘stickiness’ of horizontal inequalities (see e.g. Stewart and Langer 2008, Tilly 1999). Still, a recent study covering 1992 to 2013 demonstrates a global decline of ethnic inequality (Bormann et al. 2016), while Kanbur and Venables (2005) compare case studies of 26 developing countries and conclude that regional inequalities are rising. The data used in this analysis also show that horizontal inequalities change quite substantially over time. Using inequality data from one particular year to analyze decades of conflict incidents is therefore questionable. Hence, my study represents the first time-variant analyses of the effect of both objective and perceived regional inequality on civil war covering developed and developing countries in all world regions14 . Analysing data for the period 1989 to 2014 from the World Values Survey (WVS), I find that countries with a high level of perceived regional economic inequality have an elevated risk of civil war outbreak. On the other hand, mere objective regional economic inequalities do not have any significant effect. The group aspect remains essential, as neither objective nor perceived individual inequality is linked to increased civil conflict risk.

#### ‘Slow growth’ is inevitable AND has no impact.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

#### Populism won’t cause great power war

Louis F. **Cooper 16**, His online writing includes “Reflections on U.S. Foreign Policy” at the U.S. Intellectual History Blog (July 16, 2014). His Ph.D. is from the School of International Service, American University., 12-6-2016, "WPTPN: Will Populist Nationalism Lead to Great-Power War?," No Publication, http://duckofminerva.com/2016/12/wptpn-will-populist-nationalism-lead-to-great-power-war.html

Several reasons present themselves. First, nuclear weapons have given the prospect of a global war, or any great-power war, a possibility of civilization-ending finality that it did not have in the past. Second, the security architecture created under U.S. leadership after World War II has arguably worked to reduce the likelihood of major armed conflict among the great powers. Third, the existence of a network of international institutions, both inside and outside the UN system, has pushed in the same direction. Fourth, it is very possible that, as John Mueller and Christopher Fettweis have argued, decision-makers have to come see great-power war as “subrationally unthinkable, or not even part of the option set for the great powers.”[ii] The extreme destructiveness of the twentieth century’s world wars, fueled partly by developments in technology, might well have produced long-term effects on how leaders and publics think about global or great-power war, in a way, for instance, that the Napoleonic Wars, for all their horror and bloodiness, did not. Phil Arena’s recent contribution to this series argues that if the U.S. under a Trump administration signals an unwillingness to defend its allies, then Putin might be tempted to gamble on an invasion of the Baltics or Kim Jong-Un similarly might gamble on an invasion of South Korea (and that would drag in China). Putting aside Kim Jong-Un for the moment as a special case, let’s consider Putin. As long as NATO exists – and Trump, despite his statements about the unfairness of the distribution of cost burdens, has not suggested, as far as I’m aware, that he wants to dissolve the alliance – then Putin would have to assume that an attack on the Baltics would trigger a NATO response. Even if Putin does not see great-power war as unthinkable or outside his “option set,” one would assume that for reasons of pure self-interest he would not want to risk a nuclear war. Nor, one might think, would he want to jeopardize the prospect of better (from his standpoint) relations with a U.S. administration less concerned with, among other things, his commission of war crimes in Syria or his annexation of Crimea than the Obama administration has been. For these reasons, I’m not too worried that the advent of the Trump administration will lead to a war with Russia over the Baltics. The Korean peninsula is, perhaps, a more worrisome situation. Chances are, however, that Trump, after taking office, will be prevailed upon to make reassuring noises about the U.S. commitment to South Korea, and that should suffice to deter Kim Jong-Un from doing anything too rash. The cautionary point here, admittedly, is that it’s not clear whether Kim can be counted on to behave in a minimally rational fashion. Putin, whatever one might think of him, is rational. It’s not entirely clear whether Kim is. However, if Kim is irrational then all bets are off regardless of what U.S. policy pronouncements are forthcoming. World politics is not invariably cyclical and states can learn from experience (as even Gilpin acknowledged). If one admits this and pays due attention to history, then it is plausible to think that the force of populist nationalism, as expressed in more erratic and/or less ‘internationalist’ official policy, will not, whatever its other effects may be, increase the low likelihood of a global war.

#### No modeling---other countries see US antitrust as irrational, even if we get things right.

William E. Kovacic 15, Professor of Law and Policy at George Washington University, former General Counsel for the Federal Trade Commission, J.D. from Columbia University, “The United States and Its Future Influence on Global Competition Policy,” George Mason Law Review, Vol. 22, 2015, accessed via Lexis

One force that reduces the perceived legitimacy of the U.S. system is a widely accepted narrative, reflected in popular discourse and scholarly commentary, which portrays federal enforcement as irrational and unstable. 65 [\*1172] In this interpretation of modern U.S. enforcement history, antitrust policy undergoes recurring erratic shifts, with a small number of lucid intervals. For the most part, the irrationality narrative suggests that U.S. antitrust policy embraced unsupportable extremes of over-enforcement in the 1960s and 1970s, under-enforcement from 1981 to 1988 and 2001 to 2008, and achieved a sensible, balanced equilibrium only from 1993 to 2000 and 2009 to the present. 66 This accounting of antitrust history raises a troublesome question: why should any jurisdiction outside the U.S. respect a system that has lost its mind in roughly 41 of the past 55 years?

Policy-making in the irrationality narrative is sharply discontinuous, and the enforcement institutions have little evident capacity for self-assessment or correction over time. 67 Individual leaders count for everything, and institutional arrangements fail to discipline policy-making; 68 appoint a wise official and you get good results, but pick a zealot and the agency swerves toward frantic hyperactivity or utter indolence. The irrationality narrative is the public policy equivalent of an interpretation of Formula One racing that attributes the outcome in races entirely to the driver and treats the quality of the car and supporting team as largely irrelevant.

The irrationality account of U.S. enforcement history derives power from the stature of the narrators. Despite its unreliable reading of U.S. experience, the narrative's academic pedigree is daunting. Some of the greatest scholars in U.S. competition law have contributed to the story. If nonentities constructed the narrative, foreign observers would dismiss it out of hand. Instead, the narrative of irrationality and instability, often presented with the metaphor of a wildly swinging pendulum, originated and developed in the work of some of the field's most influential commentators. On many occasions outside the U.S., I have heard enforcement officials, practitioners, and scholars speak of the irrationality narrative as though it were an established truth. To these observers, the stature of the scholars who popularized the irrationality narrative invariably lends verisimilitude to the story.

As described below, the irrationality narrative of the U.S. system serves the aims of the right and the left in the debate about federal enforcement policy. For those who favor more intervention or less intervention, alike, the image of a system dangerously out of control serves to frame their own "sensible" policy proposals. By this technique, the narrator emerges as the voice of wisdom in a crazed policy environment.

[\*1173] The architecture of the modern irrationality narrative took shape in 1978 when Professor Robert Bork published the first edition of his transformative treatise, The Antitrust Paradox. 69 Professor Bork's central thesis was that "modern antitrust has so decayed that the policy is no longer intellectually respectable." 70 Each institution with a role in the implementation of the antitrust laws--the courts, the Congress, and the federal enforcement agencies--caused the decay. On antitrust matters, the Congress displayed the mentality of "the sheriff of a frontier town" who "did not sift evidence, distinguish between suspects, and solve crimes, but merely walked the main street and every so often pistol-whipped a few people." 71 With few exceptions, the courts embraced a view of antitrust law that "teaches the necessity for government intervention when no such necessity exists, and even when intervention is positively harmful." 72 Without regard to adverse economic effects, the DOJ and the FTC "must continually press on to fresh territory, seeking theories that broaden the application of the law and make violations easier to establish." 73

In Professor Bork's telling, the implementing institutions were capricious, reckless, or bent upon self-aggrandizement. 74 As a group, the institutions have gone mad, for they have no tendency or, perhaps, any capacity to reflect on their experience, identify error, and make corrections. 75 Instead, the U.S. antitrust system had "an inbuilt thrust toward greater severity or further extension." 76 Nothing, Professor Bork warned, seemed able to contain the destructive march of intervention: "This process has no obvious stopping point." 77

The image of a system out of control served Professor Bork's rhetorical aims; it showed the urgency for reform by presenting a system in shambles. The image also distorted (more mildly, misread) current trends substantially. When The Antitrust Paradox appeared in January 1978, each institution Professor Bork rebuked--the Congress, the courts, and the federal enforcement agencies--had taken steps to rebalance the antitrust system. 78 The adjustments came slowly, but they were coming, nonetheless. If Professor Bork had acknowledged that the seemingly out-of-control institutions [\*1174] were making important adjustments, his book would have lost some (maybe much) of its force.

A second decisive contribution to the irrationality narrative came in the late 1980s and early 1990s from one of Professor Bork's harshest critics, Professor Robert Pitofsky. Though Professor Pitofsky scorned Professor Bork's calls for a vast retrenchment of antitrust enforcement, he used his own version of the irrationality narrative while setting out a more interventionist agenda. 79 Describing federal merger enforcement from the early 1960s through the early 1990s, Professor Pitofsky wrote:

American antitrust policy has tried to balance possible threats to competition against merger benefits, but remarkably, has careened from one extreme to another in this balancing process. For example, the United States had by far the most stringent antimerger policy in the world in the 1960s, striking down mergers among small firms in unconcentrated markets. By the 1980s, the United States maintained an extremely lenient merger policy, regularly allowing billion dollar mergers to go through without government challenge, even when they involved direct competitors. 80

Like Professor Bork in The Antitrust Paradox, Professor Pitofsky presented a system run amok. Federal policy "careen[s] from one extreme to another," like an automobile with an impaired driver swerving across the centerline. 81 No institutional feature in the U.S. system provided needed balance. 82

In Professor Pitofsky's version of the narrative, the solution to the aberrant enforcement behavior came by way of appointments--including his own--to the federal agencies. 83 In 2002, after chairing the FTC from 1995 to 2001, Professor Pitofsky said federal merger control by the late 1990s "stopped careening from aggressive enforcement based in some part on a populist ideology to minimalist enforcement based on hostility to the core assumptions of antitrust . . . ." 84 Under the Clinton Administration's appointees, federal policy stopped "careening," avoiding the extremes of an overheated, populist-inspired activism of the 1960s and the "minimalist" program of the Reagan presidency with its "hostility to the core assumptions of antitrust." 85

For Professor Pitofsky, like Professor Bork, the narrative of a system gripped by irrational, erratic variations in behavior served an important instrumental purpose. The portrayal of a regime swinging wildly between extremes allowed Professor Pitofsky to claim the role--as suggested in the [\*1175] title of his 2002 article, Antitrust at the Turn of the Twenty-First Century: A View from the Middle--of the wise centrist. 86 Professor Pitofsky underscored the rationality of his own program by juxtaposing it against the irrationality of his predecessors. 87 Clinton Administration antitrust officials strove to claim the mantle of wise centrism. 88 As the following passage from an essay in The Economist in 2000 shows, they framed their program as a sensible middle way between the irrational interventionism of the 1960s and 1970s and the inactivity of the 1980s:

It helps that [DOJ Assistant Attorney General Joel] Klein and his counterpart at the FTC, Robert Pitofsky, have been deliberately low-key in talking about their activities, claiming that they are modest and in the legal mainstream of legal thought and economics. They concede that they have been more interventionist than the laissez-faire ideologues of the Reagan years, but they say they are nothing like the trust-busting zealots of the 1960s who saw evil in every big company or merger. 89

In reporting on the Clinton administration strategy, The Economist presents the federal enforcement policy just as the DOJ and FTC leadership wished: a "modest" and "mainstream" program standing between two eras of irrationality; one guided by "trust-busting zealots" and the other led by "laissez-faire ideologues." 90

Taken on its own terms, the irrationality interpretation of U.S. antitrust history provides a grim picture of the American system. One should be wary of a system that intermittently has lucid policymaking intervals, but its normal state is irrationality. If everything depends on the appointment of wise centrists to head the agencies, nothing good can happen when the [\*1176] choice of DOJ or FTC leadership is not so inspired. Because personalities are decisive, when the wise centrists depart, nothing in the institutions themselves can prevent the system from returning quickly to bad old habits.

As the quotation presented above illustrates, the wise centrism story acquires force if periods of thoughtless extremism bracket the sensible policy era. As developed by Professor Pitofsky and other antitrust scholars, the irrationality narrative derives its power from the system's tendency to embrace extremes. 91 Dramatic variations in performance demonstrate the absence of thoughtful policy-making. The narrator seems sane by comparison if all others appear to be deranged. Professor Pitofsky's article in 2002 about the future of antitrust policy used this framing technique. 92 He wrote that "during the Reagan years, there was no enforcement whatsoever against non-horizontal mergers and joint ventures, boycotts, minimum resale price maintenance, exclusive dealing contracts, tie-in sales, attempts to monopolize, and monopolization." 93

The passage quoted above highlights two recurring features of the irrationality narrative. First, Professor Pitofsky's statement uses sweeping, categorical language ("no enforcement whatsoever") to describe the period of extreme inactivity. 94 In the 2002 article and in other papers, Professor Pitofsky made strong claims of inactivity to portray the Reagan Administration antitrust program as a gross departure from good practice. 95 Second, the portrayal of events, though written with the utmost self-assurance, often cannot withstand fact-checking and is verifiably incorrect. 96

[\*1177] Professor Pitofsky has plenty of esteemed company in telling the U.S. irrationality story by making bold claims belied by actual enforcement experience. As noted above, Professor Bork's denunciation of antitrust policy circa 1978 ignored important doctrinal and policy developments that fit poorly with a system out of control. 97 The story of horrible decay is less compelling if the asserted flaws are not so horrible. Other accounts of U.S. enforcement experience by the field's leading commentators include claims that during the Reagan Administration "merger enforcement ground to a halt," 98 that antitrust "[e]nforcement ceased," 99 and that the DOJ and the FTC "did not file a single vertical case." 100 Why did the U.S. system lose its mind? The answer, say two of America's best scholars, is that "extremists" took control of the enforcement agencies. 101 Experts in the U.S. might excuse these descriptions of federal enforcement as careless hyperbole. In my experience, foreign observers are more likely to take them at face value.

The story of U.S. antitrust policy in the 1980s is considerably more complex. Crucial factual tenets of the irrationality narrative are unsupportable. Merger enforcement never halted, 102 enforcement never ceased, 103 and vertical restraints cases (at least a few) still appeared. 104 To look beyond the categorical statements of inactivity and recount enforcement developments [\*1178] accurately would reveal a more thoughtful enforcement program at work. There is a major difference, for example, between saying a merger enforcement program has disappeared, and saying that boundaries have been reset, but policed actively.

Would a fuller, more accurate account of federal enforcement trends over time reveal intense debate about the proper direction of policy? Of course. Has policy shifted across administrations, especially after a regime change? No doubt. Yet, liberated from the irrationality narrative's determination to accentuate the magnitude of changes and cast decision-makers as senseless extremists, a more faithful account of U.S. federal enforcement history would portray adjustments as more gradual and nuanced, in most cases, than the irrationality narrative suggests. The discipline imposed by institutional arrangements, not simply patterns in leadership appointments (whether irrational officials or prudent centrists), would account for refinements over time.

#### No empirical or statistical evidence that antitrust decreases inequality

Jonathan Klick et al. 19—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the 1st and 5th quintile households by income. For brevity, we only present the specifications with 2 lags and the time trend.

Table

Description automatically generated

On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

Table

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As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.16

### FTC

#### 3---Their spillover evidence is about the Consumer Protection Recovery Act

Testimony of Ted Mermin 21. Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law. Before the United States House of Representatives Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing on “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers”. https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf

10. Trust the FTC. This final step informs all the others. There can be no doubt that there is more work to do protecting consumers than the FTC currently has the tools or resources to accomplish. There is also no doubt that the FTC has been trammeled in ways that its sister agencies, federal and state, have not. Whatever the reason, it is high time to retire the “zombie ideas” about the FTC – that the Commission is unnecessary, or overreaching, or heavy-handed, or inefficient.23 It is time, as one commissioner stated in Senate testimony last week, to “turn the page on the FTC’s perceived powerlessness.”24

For an American public eager for greater – not lesser – protection from increasingly sophisticated scam artists, deceptive advertisers, and privacy violating tech companies, building an effective FTC is an easy decision. It can and should be for this committee as well.

IV. Conclusion

This subcommittee meets at a remarkable historical moment, when the COVID-19 pandemic has revealed the profound need for a robust Federal Trade Commission just days after the Supreme Court made action by Congress an absolute necessity. This is a perilous time, with the chief protector of American consumers rendered nearly powerless just when those consumers are experiencing a heightened threat resulting from a once-in-a-century pandemic. The Consumer Protection and Recovery Act provides a critical first step toward restoring authority and effectiveness to the nation’s leading consumer protection agency.

Swift action to restore the FTC’s traditional 13(b) authority means that when constituents contact your office, and tell your staff that they have lost their life’s savings to a work-at-home scam, or their identity has been stolen and someone has opened accounts in their name, or they just spent their stimulus payment on a supposed cure for COVID for their grandmother who’s on a respirator – there will still be an agency to refer them to. No one wants that staffer to have to add: “Well, we could send you to the FTC, but they don’t actually have the power to get you your money back.”

Inaction or delay will mean no recovery for millions of wronged American consumers. The time to pass the Consumer Protection and Recovery Act is now.

#### AND- That already happened---both DOJ and FTC are increasing enforcement under the act

Fair 10-28 (Lesley, FTC and DOJ use new law to challenge COVID claims for nasal spray, <https://www.ftc.gov/news-events/blogs/business-blog/2021/10/ftc-doj-use-new-law-challenge-covid-claims-nasal-spray>, y2k)

If businesses make coronavirus prevention or treatment claims for their products, it’s time to get up to speed on the COVID-19 Consumer Protection Act. The Department of Justice and the FTC just filed their latest action under the law, seeking civil penalties from the marketers of Xlear, a nasal spray the complaint alleges has been deceptively advertised to offer “up to four hours” of protection from COVID-19 and as “part of a layered defense to prevent getting COVID-19.” What’s more, this isn’t the first time that Utah-based Xlear, Inc., and company president Nathan Jones have heard from the FTC about their allegedly misleading COVID representations.

Xlear Complaint Exhibit DUnder the Xlear Sinus Care brand, the defendants sell saline nasal sprays that also contain grapefruit seed extract and the sweetener xylitol. The defendants have promoted Xlear sprays on Facebook, Instagram, YouTube, podcasts, and sponsored TV appearances. They also sell them through national and online retailers. According to the complaint, beginning in March 2020, the defendants shifted their marketing focus to promote Xlear as “a simple, safe, and cheap option that could be an effective solution to the pandemic.” The company cited studies at the University of North Carolina and the University of Tennessee that purported to support their advertising claims.

The lawsuit alleges the defendants don’t have proper support to back up their promises that Xlear will prevent COVID-19 infection and reduce its severity or duration. What about the defendants’ representations that scientific studies at universities substantiate what they say? The FTC and DOJ allege those claims are false.

In the two-count complaint, the FTC and DOJ are asking for – among other things – refunds for consumers, civil penalties, and a permanent injunction to prevent future law violations. The filing of the case sends two important messages to other companies.

When challenging unsubstantiated advertising claims, the FTC will seek the remedies authorized by the COVID-19 Consumer Protection Act. Deceptive COVID-related claims put consumers’ health at risk and cause substantial financial injury. For the duration of the public health crisis, the law allows the FTC to seek financial penalties from companies and individuals that engage in deceptive practices associated with “the treatment, cure, prevention, mitigation, or diagnosis of COVID-19.”

#### AND, there are more Alt causes---inserting below.

Marianela 1AC Lopez-Galdos 21. Global Competition Counsel at the Computer& Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines.

It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust.

What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril.

The FTC’s Rulemaking Authority

Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations.

However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people.

Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place.

Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation.

The Future of the FTC

One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future.

Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

#### Win rates are empirically high but don’t matter for credibility

Shapiro 21 (Carl Shapiro is a Professor at the University of California at Berkeley, Judicial Response to the 2010 Horizontal Merger Guidelines, <https://link.springer.com/content/pdf/10.1007/s11151-020-09802-x.pdf>, y2k)

Some observers regard the DOJ and FTC’s win/loss records as the ultimate test of whether the agencies’ approach to merger enforcement is being accepted or rejected by the courts. For the record, of the 19 merger cases that the DOJ and FTC litigated to a decision in federal court in the 10 years after the 2010 Guidelines were issued, they won 15: a 79% win rate.7 This is higher than their combined win rate in federal court over the previous decade—8 of 13, or 62%.8 Regardless of the numbers, we caution against making too much of the DOJ and FTC win/loss records. Only a tiny share of all proposed mergers are litigated, and litigation leads to a decision only if no settlement can be reached and the merging parties do not abandon the transaction in the face of a challenge. In this paper, we are less interested in the win rates and more interested in whether the courts have followed the analytical framework of the 2010 Guidelines—particularly in areas where the 2010 Guidelines difer from their predecessor.

#### The FTC is all-in on privacy regulations---proves enforcement is high and effective

Boggs 10-19 (Squire Patton Boggs, Lexology, Data Privacy and Cybersecurity FTC Priorities Going Forward, 10-19, <https://www.lexology.com/library/detail.aspx?g=f65502dd-d96e-44c3-a636-428f76def9e4>, y2k)

The Federal Trade Commission (FTC) has made it clear: data privacy and cybersecurity are now a priority, and will be for years to come. In the wake of PrivacyCon 2021, the FTC’s sixth annual privacy, cybersecurity and consumer protection summit, held this summer, the FTC finally took official and sweeping action on privacy and cybersecurity. In particular, the Commission recently designated eight key areas of focus for enforcement and regulatory action, three of which directly implicate privacy, cybersecurity, and consumer protection. Below, we discuss the FTC’s action and what it means for businesses, the three key areas of interest to consumer privacy that are now in the FTC’s spotlight, as well as their relation to state privacy legislation and their anticipated impact to civil litigation. Full details on PrivacyCon 2021 and the FTC’s resolutions following the summit can be found on the FTC’s website, linked here for your convenience.

The FTC’s Actions and Areas of Focus

In mid-September, the FTC voted to approve a series of resolutions, directed at key enforcement areas, including the following, each discussed in further detail below:

Children Under 18: Harmful conduct directed at children under 18 has been a source of significant public concern, now, FTC staff will similarly be able to expeditiously investigate any allegations in this important area.

Algorithmic and Biometric Bias: Allows staff to investigate allegations of bias in algorithms and biometrics. Algorithmic bias was the subject of a recent FTC blog.

Deceptive and Manipulative Conduct on the Internet: This includes, but is not limited to, the “manipulation of user interfaces,” including but not limited to dark patterns, also the subject of a recent FTC workshop.

The approval of this series of resolutions will enable the Commission “to efficiently and expeditiously investigate conduct in core FTC priority areas. Through the passage of the resolutions, the FTC has now directed that all “compulsory processes” available to it be used in connection with COPPA enforcement. This omnibus resolution mobilizes the full force of the FTC for the next ten years and gives FTC staff full authority to conduct investigations and commence enforcement actions in pursuit of this goal. The FTC has offered very little elaboration on this front, however, regarding how it will use such “compulsory processes,” which include subpoenas, civil investigative demands, and other demands for documents or testimony.

What does seems clear, however, is that the FTC is buckling down on the enforceability of its own actions. Previous remarks by Chair Lina M. Khan before the House Energy and Commerce Committee expressed frustration at the frequent hamstringing of the agency at the hands of courts in its enforcement efforts in the past. With this declaration of renewed energy, the FTC is summoning all the power it can to do its job, and we should expect to see an energized FTC kick up its patrol efforts in the near future. Businesses that conduct activities that implicate these renewed areas should be aware of the FTC’s focus and penchant for investigations and enforcement in such areas.

#### No terror.

Mueller 18 John Mueller, Political Science Professor at Ohio State University. [Nuclear Weapons Don’t Matter but Nuclear Hysteria Does, Foreign Affairs, https://www.foreignaffairs.com/articles/2018-10-15/nuclear-weapons-dont-matter]

As for nuclear terrorism, ever since al Qaeda operatives used box cutters so effectively to hijack commercial airplanes, alarmists have warned that radical Islamist terrorists would soon apply equal talents in science and engineering to make and deliver nuclear weapons so as to destroy various so-called infidels. In practice, however, terrorist groups have exhibited only a limited desire to go nuclear and even less progress in doing so. Why? Probably because developing one’s own bomb from scratch requires a series of risky actions, all of which have to go right for the scheme to work. This includes trusting foreign collaborators and other criminals; acquiring and transporting highly guarded fissile material; establishing a sophisticated, professional machine shop; and moving a cumbersome, untested weapon into position for detonation. And all of this has to be done while hiding from a vast global surveillance net looking for and trying to disrupt such activities.

#### No emerging tech impact.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

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### Inequality

#### Wrong—big firms are the largest contributors to R&D spending, anticipate new competition, and create new markets

Jan Rybnicek 20—Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("Innovation in the United States and Europe," November 11, 2020, from The Global Antitrust Institute Report on the Digital Economy 13, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733698>) edited for ableist language

A key indicator of a vibrant economy that is characterized by vigorous competition and intense innovation is high levels of spending on research and development. Research and development fuels economic growth, job creation, and competition by allowing researchers and entrepreneurs to discover new technologies, design new products, tap new markets, and improve efficiency and enhance performance. Critics of U.S. competition policy have argued that today’s largest firms have become so large that they are untouchable by competition from current or future rivals and, as a result, have lost the incentive to innovate that once may have been part of their core identity as scrappy upstarts but that has since faded as they rest on their laurels, happy in their dominant positions.37 They further argue that dominant firms snuff out would-be entrants that otherwise would be devoting capital to research and development initiatives to build competing offerings for consumers.38 These critics allege that this purported dampening in the incentive to innovate has deprived consumers of better products and services that would otherwise arise through the push and pull of competition.

But the actual data tell a different story about the state of research and development in the United States and how it compares to its counterparts in Europe. In fact, companies in the United States lead the world in research and development. As shown in Figure 6, out of the top companies globally investing in research and development spending, 11 out of the top 20 (55 percent) and seven out of the top 10 (70 percent) are based in the United States as of 2018.39 By comparison, only six of the top 20 are located in Europe (30 percent), and only two find themselves in the top 10 (20 percent). The remaining firms on the list based on research and development spend are based in Asia.

Contrary to critics’ claims, there is no lack of research and development in the United States, and U.S. firms continue to outpace global counterparts in investing in new technologies and products. The reality is that companies in the United States invest in a broad range of research and development initiatives despite the presence of large, successful tech companies. Unsurprisingly, just as no one today would invest in developing a new combustion engine-powered car that would have to compete against established and mature competitors that have considerable expertise in the market, it would be unwise to try to compete against any of the large tech companies with a “me too” product. Instead, innovators (and, as discussed below, the venture capital and other sources of capital that fund them) devote resources to discovering new and different solutions that may indirectly replace incumbents by disrupting old markets and creating new ones. Indeed, this how many of today’s most successful tech firm achieved success— by building new products and creating new markets, not by mimicking yesteryear’s giants, such as IBM, Microsoft, and Intel.

A closer look at research and development investment in the United States further shows that tech firms are leading the way. In fact, many of the tech firms that have allegedly contributed to the decline of competition and innovation in the United States are the biggest spenders. As shown in Figure 7, Amazon, Alphabet, Intel, Microsoft, and Apple comprise the nation’s topic five spenders, with investments totaling more than $75 billion in 2018.40 These companies are pouring money into innovation not because they have nothing else to do with it but because they are attempting to stay ahead of the competition in their core markets by introducing even better products and services, and to break into adjacent markets where they see opportunities to use their expertise to be disruptive forces

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#### OECD finds that superstar firms aren’t cheating – their productivity spreads economy wide and are better than small firms

Joe **Kennedy 21**. Senior fellow at ITIF, Previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. 1-11-21. “Monopoly Myths: Are Superstar Firms Stifling Competition or Just Beating It?” https://itif.org/publications/2021/01/11/monopoly-myths-are-superstar-firms-stifling-competition-or-just-beating-it

OECD looked at the relationship between spending on intangible assets and concentration (measured by the market share of the top eight groups of jointly owned companies) between 2002 and 2014. The data covered manufacturing and non-financial market services in nine countries, including the United States. Concentration increased in about 70 percent of country-industry pairs. The average increase was around 5 percentage points (from 39 percent to 44 percent of the industry, or an average of 0.5 percentage points per firm).25 A 10 percentage point increase in intangible investment within an industry (measured by patents) was associated with 1.5 to 2.2 percentage points more concentration over four years. The linkage was strongest for industries that were more digitized, open to trade, and more concentrated to start with. It was also strongest for investments in innovative property such as patents, research and development (R&D), and new products and systems. The authors summarized that the **results “suggest that [increased concentration]** **may be mostly of the ‘good’ variety** **in the sense** that **it was associated with investment in innovative assets** **and new intangible business models rather than anti-competitive forces.”**26 A subsequent OECD study finds differences in multifactor productivity between companies, looking specifically at the dynamics within both the top and bottom half of companies across 34 industries between 2000 and 2015. Using cross-country data on both productivity dispersion within industries and levels of intangible investment, it concluded that a 10 percentage point increase in intangible investment within an industry is associated with a 1.5 percentage point increase in the dispersion between firms at the 90th and the 10th percentile of the productivity distribution.27 Different forces were operating in the top and bottom halves of the market. Again, industries with higher levels of intangible investment experienced higher increases in productivity dispersion between firms. The dispersion in productivity at the top of the market was associated with the ease of extending intangible capital to other parts of a firm since bigger firms can spread these costs out over a larger volume of production. However, dispersion at the bottom half was linked to synergies between intangible capital and factors such as digital intensity, exposure to trade, and the availability of venture capital. Laggard firms seem to have difficulty effectively making the complementary intangible investment needed to fully exploit digital technologies. Unlike the earlier OECD study, the authors found that the most important type of intangible investment was in economic competencies (branding, market research, employer training, and organizational structure) rather than innovative property such as patents. These are the costs that Eggertsson et al. omitted, arguing that they only diverted sales from one company to another.

#### Even if small businesses innovate, they rely on bigger firms to compete

Joshua D. Wright & Jan M. Rybnicek 21—Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("A Time for Choosing: The Conservative Case Against Weaponizing Antitrust," Summer 2021, from National Affairs, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust)

But that is only part of the story. These major tech firms not only directly employ Americans, but through their investment and innovation, they have created entirely new markets that also have created millions of jobs. Take for instance the app economy—a more than $1 trillion global industry—that has created millions of U.S. jobs since Apple’s iPhone launched in 2007. According to one estimate, the U.S. had more than two million app-related jobs as of April 2019.[xvii] America’s large tech companies also benefit small businesses in yet another way: by connecting them to new markets that they could not access before. Today small businesses are able to take advantage of the major tech firms’ size and scale to grow domestically and compete globally with affordable and secure services.

#### Their evidence doesn’t account for cost spreading and returns on innovation

#### Plan can’t solve even if concentration’s eliminated

Eric A. Posner 8/13/21. Kirkland & Ellis Distinguished Service Professor at University of Chicago. How Antitrust Failed Workers. Oxford University Press, 2021.

While antitrust law is an important response to labor market monopsony, it cannot solve all the problems of labor monopsony. A significant degree of labor market power is “frictional,” that is, without artificial barriers to entry or excessive concentration of employment. The two major sources of such friction are search costs and job differentiation. Search costs refer to the costs a worker must incur in order to find a job. Job differentiation refers to the variations in amenities and other conditions that distinguish otherwise similar-seeming jobs. A simple mathematical exercise, drawing on estimates of concentration and aggregate and firm-specific labor supply elasticities, shows that even if labor market concentration were eliminated, workers would be paid less than 60% of the competitive wage.

#### No empirical support for downsides.

Michael D. Bordo 12, Professor of Economics and Director of the Center for Monetary and Financial History at Rutgers University, PhD from the University of Chicago, and Christopher M. Meissner, professor of economics at UC Davis, PhD in Economics from UC Berkeley, “Does Inequality Lead to a Financial Crisis?” NBER Working Paper No. 17896, March 2012, <http://www.nber.org/papers/w17896.pdf>

Our paper looks for empirical evidence that might corroborate Rajan (2010) and Kumhof and Rancière (2011). Both attributed the US subprime crisis to rising inequality, redistributive government housing policy and a credit boom. Using data from a panel of 14 countries for over 120 years, we find strong evidence linking credit booms to banking crises, but no evidence that rising income concentration was a significant determinant of credit booms. Narrative evidence on the US experience in the 1920s, and that of other countries in more recent decades, casts further doubt on the role of rising inequality.¶ We do find significant evidence that rising real income and falling interest rates are important determinants of credit booms. This evidence is more consistent with the alternative story of Borio and White (2003) attributing credit booms and crises in the past three decades to the Great Moderation which created a benign environment conducive to rising credit. It is also consistent with other empirical work that covers the period 1960-2002 (Mendoza and Terrones, 2008). The negative and significant relationship of short-term interest rates and credit growth may also be consistent with the story of for example Taylor (2009) or Meltzer (2010) who attribute the U.S. housing boom to expansionary policy by the Federal Reserve in the early 2000s in an attempt to prevent perceived deflation. Moreover, housing booms and busts in other countries did not reflect redistributive housing policy. In the period before the Great Moderation they occurred during episodes of expansionary monetary policy. Regardless of whether the Borio and White story or a simpler monetary policy story is the true explanation for credit booms that lead to financial crises it now seems fairly clear from our examination of the data that neither have much to do with rising income inequality.

#### Link outweighs the link turn because takes decades to build a doctinral base

Elyse **Dorsey et al 18**. Elyse Dorsey is an Associate at Wilson Sonsini Goodrich & Rosati. Jan M. Rybnicek is a Senior Associate at Freshfields Bruckhaus Deringer. Joshua D. Wright is the University Professor, Antonin Scalia Law School at George Mason University, Executive Director, Global Antitrust Institute, and Senior of Counsel, Wilson Sonsini Goodrich & Rosati. T "Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent-Seeking" <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3165192>

Moreover, a **new public interest test would take years to deploy** **and even longer before meaningful** **guidance could be issued** similar to that which the consumer welfare standard offers today. **In the meantime, firms could use the new standard as leverage over the antitrust agencies**. Once allowed to influence agency enforcement practices during the initial period when no framework exists, **it will be difficult to establish guidelines that do not leave room for such manipulation to continue**. By calling to replace the consumer welfare standard with a vague multi-factored public interest test and elevating a focus on market structure over the application of economic theory and empirical evidence to determine actual anticompetitive effects, Hipster Antitrust ironically would grant large, powerful corporations the ability to exert undue influence over the decision-making process at the antitrust authorities, all to the detriment of consumers.

#### That uncertainty is key

Alden Abbott & Tracy C. Miller 21—Senior research fellow with the Mercatus Center at George Mason University, formerly served as the Federal Trade Commission’s General Counsel; Senior policy research editor with the Mercatus Center at George Mason University. ("Antitrust Should Stay Focused on Consumer Welfare," April 2, 2021, from National Review, https://www.nationalreview.com/2021/04/antitrust-should-stay-focused-on-consumer-welfare/#slide-1)

Yet these critiques of consumer welfare miss the mark. Abandoning this approach in favor of broad-based interventionist antitrust policies would prove harmful.

Proposed reforms such as breaking up dominant firms or prohibiting most mergers and acquisitions are likely to make consumers worse off, sacrificing the cost reductions that result from one firm producing a growing share of output and integrating many complementary services.

Considering a broader range of conduct to be in violation of antitrust law would likely increase uncertainty for firms as they endeavor to compete to attract additional customers. Moreover, having to assign weights to ill-defined objectives of labor rights and fairness (among other new goals) would create confusion. The resulting decisions could be arbitrary and inconsistent with the rule of law.

Furthermore, oft-cited studies claiming that competition is weakening are based on questionable evidence. The 2020 Economic Report of the President showed that those studies rely on overbroad market definitions that tell us nothing about competition in specific markets, let alone across the entire economy.

What’s more, while leading digital platforms often have large market shares, they still face competitive pressure from existing firms and startups to develop innovative new products and services. Indeed, market-leading platforms that fail to innovate can be displaced — just ask Yahoo and MySpace.

Finally, the benefits that consumers derive from participating in some digital platforms will grow as the platforms expand their membership. Antitrust attacks aimed at “cutting monopoly platforms down to size” could undermine these benefits, harming consumers.

The antitrust consumer-welfare standard has served consumers well. Competitive forces have yielded a bounty of highly affordable and greatly enhanced digital products and services. The pace of innovation has been breathtaking. The last thing we should do is quickly impose new and amorphous antitrust restrictions that threaten this success story.

#### Venture capital investment—increasing regulations *dramatically reduces* it, which decks broader innovation

Jan Rybnicek 20—Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("Innovation in the United States and Europe," November 11, 2020, from The Global Antitrust Institute Report on the Digital Economy 13, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733698>)

The disparity between the United States and European venture capital markets is one reason why the U.S. has consistently been home to the most innovative companies and technological development. But it also is evidence that investors view the United States as a better place to invest, in part because of its more favorable innovation climate.

Venture capital investing is based on the premise that investors who are willing to risk capital on a new idea have the opportunity to reap the rewards of that investment once the company has traversed the difficult process of developing its ideas from untested concepts and business plans into mature and successful businesses.54 Of course, not all venture-backed startups succeed. Indeed, by one estimate, as many as 75 percent never return cash to their investors, showing that the risks are real.55 But for those startups that are successful, investors look for ways to exit once they can make an acceptable return. While initial public offerings (IPOs) may be a possibility for certain companies willing to go public, by far the most common mechanism for exit is through an acquisition by another firm.56 The ability to predict the likelihood of a successful exit therefore significantly influences venture capitals’ willingness to invest in one startup or another, as well as whether to invest in startups at all or instead to place their capital in other investment vehicles that present a better combination of risk and reward. The current growth in venture capital investing is due, in part, to the perception that investing in startups presents an attractive risk-reward profile based on the ability of investors to earn returns following an exit event.

Much has been written regarding concerns that tech startups are increasingly being acquired by large dominant firms in an effort by those dominant firms to arrest the future competition that they might face from the startup.57 The most frequently cited examples are Facebook’s acquisitions of Instagram in 2012 and WhatsApp in 2014, which many today perceive to have been growing competitive threats to Facebook.58 Others argue that it is only as a result of being acquired by Facebook that Instagram and WhatsApp were able to grow into the successful products they are today.59 In response, some policymakers and commentators have introduced proposals that would make acquisitions by certain companies more difficult to complete, either by making them presumptively unlawful or banning those mergers in their entirety.60

But while the antitrust laws should (and can) prevent anticompetitive mergers of nascent61 or potential competitors,62 and the antitrust authorities must develop strategies for effectively demonstrating such harm in deals where it exists, imposing broad prohibitions on a large swath of acquisitions (most of which present no competitive issues) inevitably will make investor exit more difficult and costly. Such changes likely would reduce the incentive to invest and could smother the investment that has fueled new business development and innovation in the United States.

Proposals to completely ban acquisitions by companies of a certain size or make them presumptively illegal absent persuasive evidence that they are procompetitive (regardless of whether any competition concerns exist),63 would add friction to venture capital’s exit opportunities without improving antitrust enforcement.64 Because capital has other alternatives into which it can flow, decreasing the ability for investors to exit may make it relatively more attractive for investors to put their capital in other markets or investment vehicles. This result could reduce venture capital investment in the United States and dampen technological innovation and new business creation.

The notion that new regulations may inadvertently reduce incentives to invest and thereby potentially harm long-term innovation is not merely theoretical. In 2018, the European Union enacted the landmark General Data Protection Regulation (GDPR), which established news rules governing data protection and privacy for firms operating in the European Union.65 The regulation was widely criticized by many for imposing a broad new regime that was overly burdensome and imposed significant compliance costs, the ultimate effect of which would be to create advantages for incumbents with deeper pockets and resources than smaller firms and startups66 For investors, GDPR introduced additional due diligence and other acquisition costs when considering investment options. One study shows that in response to the increase in relative costs and uncertainties, foreign investors reduced their per-deal investment by nearly 41 percent, and the monthly number of EU foreign deals dropped 22 percent.67 The decline was lower but still substantial for investors from within the EU, resulting in a reduction in investment of nearly 36 percent and nearly 16 percent fewer monthly deals.68 These dramatic declines in investment demonstrate the tradeoff that occurs by imposing additional regulations. The experience with GDPR shows that increasing relative regulatory costs has a negative effect on investment and, as a result, may lead to lower levels of business development, slower growth, and less technological innovation.

#### Mergers provide a safe exit option and encourage *more innovation*

Jennifer Huddleston & Juan Londoño 21—Director of Technology and Innovation Policy at the American Action Forum; Technology & Innovation Policy Analyst at the American Action Forum. ("Technology and Telecommunications Policy in the Executive Order on “Promoting Competition in the American Economy”," July 12, 2021, from AAF, https://www.americanactionforum.org/insight/technology-and-telecommunications-policy-in-the-executive-order-on-promoting-competition-in-the-american-economy/)

This argument provides an extremely limited vision of the dynamics and the benefits of mergers for both big and small players, but, more important, for consumers. For entrepreneurs and innovators, mergers and acquisitions provide an exit option when they lack of financial resources, marketing power, regulatory burdens, or a desire for expansion becomes a barrier for further growth. Merging or being acquired allows these innovators to receive compensation for their idea and can result in teams that may be able combine talents more easily. Mergers also allow those innovators who desire to move on and start another innovative product to do so with valuable seed capital from a prior acquisition. For their part, big companies receive valuable talent and product improvements. But it is not just the businesses that benefit from mergers and acquisitions. Consumers benefit from having access to better products and services that could possibly not exist had the merger not taken place. The focus of merger analysis should remain on the impact on consumer welfare, not on a belief that a certain number of competitors determined by policymakers rather than the market is ideal.

The reasoning for allowing challenge of past mergers often focuses on whether mergers such as Instagram and Facebook or Google and DoubleClick received the appropriate scrutiny. But focusing on past unchallenged mergers could also impact future, consumer-benefitting mergers by deterring risky acquisitions harming small developers in the process. The counterfactual of how a company would have evolved without a merger is often difficult to know and will have to rely on multiple assumptions that would be difficult to prove with any empirical evidence.

#### Opens the door to future antitrust and future court intervnetino.

Auer et al. ‘18 [Dirk, Justin (Gus) Hurwitz, and Geoffrey A. Manne et al.; October 14; Senior Fellow, International Center for Law & Economics; Comments of the International Center for Law & Economics; Director of Law & Economics Programs, International Center for Law & Economic; President & Founder, International Center for Law & Economics; “FTC Hearings on Competition & Consumer Protection in the 21st Century,” no. P181201; KP]

Whatever benefits might conceivably come from giving weight to non-economic values, even just at the margin, they would inevitably come at the expense of the core, competitive values of modern antitrust. As Ernest Gellhorn noted in his masterful critique of Pertschuk’s “socially conscious” vision for the FTC:

Competitive values must be sacrificed if social values are to be given primacy — or else the new policy is nothing more than rhetoric and official deception. The second and equally important point is that the new chairman’s “humanistic model” for antitrust is formless, shapeless, and unpredictable. There simply are no generally accepted “demo- cratic and social norms” for applying the antitrust laws — and some of the new chairman’s announced values are worrisome, at least to the extent they are offered as the basis for determining the shape and operation of much of our economy.

The problem is that unless antitrust law has an objective and principled foundation, antitrust enforcement can become the personal plaything of enforcement personnel, or the stock in trade of lobbyists and influence-peddlers.44

While it is perfectly reasonable to care about political corruption, worker welfare, and income inequality, it is not at all reasonable to try to shoehorn goals based on these political concerns into antitrust — a body of legal doctrine whose tools are wholly inappropriate for achieving those ends. As Carl Shapiro has noted, “The fundamental danger that 21st century populism poses to antitrust is that populism will cause us to abandon this core principle and thereby undermine economic growth and deprive consumers of many of the benefits of vigorous but fair competition.”45

Before contorting antitrust into a policy cure-all, it is important to remember that the competition- focused consumer welfare standard evolved out of sometimes good (price fixing bans) and sometimes questionable (prohibitions on output contracts) doctrines that were subject to legal trial and error. This evolution was marked by “increasing economic sophistication”46 and a “high level of careful analysis and insight being displayed by government agencies charged with enforcing the an- titrust laws.”47 And the vector of that evolution was toward the use of antitrust as a reliable, testable, and clear set of legal principles that are ultimately subject to economic analysis, and away from po- litically-oriented antitrust.

When the populists ask us, for instance, to return to a time when judges could “prevent the conversion of concentrated economic power into concentrated political power”48 via antitrust law, they are asking for much more than just adding a new gloss to existing doctrine. They are asking for us to unlearn the lessons of the twentieth century that ultimately led toward the maturation of antitrust law.

What’s more, constraining firm size — the antitrust populists’ catch-all, cure-all to virtually all alleged social problems — in order, ostensibly, to promote consumer political and economic power, may actually have the opposite effect.

To begin with, if growth in size and output are limited in order to meet political antitrust priorities, firms will seek instead to raise their profits through political influence. Erecting barriers to entry and raising rivals’ costs through regulation are time-honored American political traditions,49 and rent- seeking by smaller firms could be both more prevalent and more effective, and could, paradoxically, ultimately lead to increased concentration.

As a slight, but crucial, aside, it must be noted that critics of “bigness” resolutely assert a correlation between firm size and the effective exercise of political influence50 — e.g.: “There is a direct connec- tion between economic power, bigness, and political power” (Luigi Zingales); “Market power begets political power, and political power influences policy outcomes” (Diana Moss). Yet there is little evidence to suggest that such a correlation actually exists or is very strong. While it is frequently noted, for example, that Alphabet, Google’s parent company, spends more on lobbying than any other company, it is never noted that the top eight spots are held by associations, at least some of which (e.g., the American Medical Association) have interests that are likely antithetical to Google’s. Nor is it noted that the Open Society Policy Institute holds the number four spot.51

But more to the point, size does not equal spending, and spending does not equal influence. For all the claims of massive spending and political power, the reality is that even the total of Google’s lobbying spending — $11 million so far in 201852 — is a drop in the bucket of the annual profits of hundreds of companies. For example, 230 of the firms in the 2017 Fortune 500 had profits in excess of $1 billion. For these firms Google’s total lobbying spending would amount to no more than 1.1% of profits, and for most of them considerably less. Targeted spending on particular issues at the same level as that of the largest companies is hardly out of reach for a huge number of firms, and not remotely out of reach for virtually every firm if acting through an association or otherwise in concert. There is just no basis to assume that size has much effect on political influence.

Moreover, many things other than dollars influence political decisionmaking, and it can hardly be said that Google, or any other large company, succeeds in all its efforts to influence politics — just as it must be acknowledged that relatively small companies, labor unions, and activist organizations often succeed in theirs.53 As Henry G. Manne noted in his testimony on the 1973 Industrial Reor- ganization Act:

There is, however, a “political” argument that should also be considered. It is that some corporations are so large that they are able to “control” the Government, presumably as it were, to “buy” the protection, the subsidy, the transportation system, the war, or what- ever they want from the Government.

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Unfortunately, the energy utilized in making these assertions is about the only force behind them, and again it does not require complicated empirical studies to show the error, or perhaps the mendacity, for example, behind these assertions.

Has the automobile industry, for example, been more successful in Washington than the environmentalists? Have the petroleum companies spent as much money lobbying for protective legislation as has the National Education Association? Has the steel industry received as much bounty from our seemingly universal Federal welfare system as have the elderly, the uneducated, or those stricken with a strange desire to engage in farming? One could go on like this almost endlessly. But to ask these rhetorical questions is suffi- cient to make the point.

There is simply no correlation between the concentration ratio in an industry, or the size of its firms, and the effectiveness of the industry in the halls of Government. This scare argument about the political power of large corporations is a sham.

We all know that the institutions that influence policies in Washington are those that can deliver the votes or utilize their finances to secure votes. And these are the very prac- tices that large corporations are relatively weakest in performing, especially as compared to unions, farmers, consumer organizations, environmentalists, and other large voting blocks.54

Further, by imbuing antitrust with an ill-defined set of vague political objectives, antitrust becomes a sort of “meta-legislation.”55 As a result, the return on influencing a handful of government appoint- ments with authority over antitrust becomes huge — increasing the ability and the incentive to do so.

And finally, if the underlying basis for antitrust enforcement is extended beyond economic welfare effects, how long can we expect to resist calls to restrain enforcement precisely to further those goals? All of a sudden the effort and ability to get exemptions will be massively increased as the persuasiveness of the claimed justifications for those exemptions, which already encompass non-economic goals,56 will be greatly enhanced. We might even find, again, that we end up with even more concentration because the exceptions could subsume the rules.

All of which of course highlights the fundamental, underlying problem: If antitrust becomes more po- litical, the outcome will be less democratic, more politically determined results — precisely the opposite of what proponents claim to want.

The Commission’s current inquiry is thus timely and highly relevant to the ongoing debate. Through these proceedings, the ongoing conversation can be focused on how best to take an effects-based, error-cost oriented approach to enhancing the consumer welfare standard.

#### Antitrust regulation is low *across the board*

Joshua Wright 21—Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("5 questions for Joshua D. Wright on antitrust and Big Tech," February 18, 2021, from American Enterprise Institute, https://www.aei.org/economics/5-questions-for-joshua-d-wright-on-antitrust-and-big-tech/)

What would it mean if policymakers used antitrust law to break up four or five Big Tech companies?

It would be historic, and it would also be wrong-headed. For one, we’re in the middle of a pandemic, in a time where lots of people are really benefiting from the goods and services these firms provide. Furthermore, the world’s most successful and innovative companies are here in the US, and, from a competitive policy lens, our antitrust regime has largely avoided ex-ante regulation of these firms.

A signature feature of the US system is that our antitrust laws do not punish companies for competing successfully and becoming large — or even becoming a monopoly. You can’t make an antitrust cause of action out of successful innovation in the US. Instead, the US punishes abuses of monopoly power — you can’t climb to the top of the ladder and then burn it down. We have antitrust cases for that, some of which the government can win if they go to court and prove that the firms are monopolists and harm competition. That’s a feature, not a bug, of the US system.

#### Tech innovation *requires* industry

Ferial Ara Saeed 21—CEO at Telegraph Strategies LLC, a risk management firm focusing on the analysis of political and economic trends, former deputy U.S. coordinator for information and communications technology policy at the State Department. ("The Sino-American Race for Technology Leadership," April 23, 2021, from War on the Rocks, https://warontherocks.com/2021/04/the-sino-american-race-for-technology-leadership/)

Setting the right foundation is crucial. Sound analytical judgments about China’s policies, plans, and prospects, along with a new framework for the relationship, are the starting point. Neither wholesale confrontation nor wholesale engagement are adequate to address U.S. concerns, but the relationship should be stable for this approach to have any chance of success. The view that economic competitiveness, innovation, and democratic norms are core components of national security should drive the development of a comprehensive strategy into which discrete policies of pressure, negotiation, multilateralism, high-level dialogue, and domestic measures fit. Industry should work closely with the government to ensure this perspective underpins U.S. policy, and the government should recognize that industry is central to the United States winning the technology race and therefore should get a vote on how to run it.

Out-competing and out-innovating China requires that America remain the world’s most attractive innovation hub, enticing the best talent, drawing in the most venture capital, and generating the largest revenues to support U.S. leadership of technology’s newest frontiers. It means continuing to “move fast and break things.” The ethos that made America a technology superpower can keep it so. It also means injecting some strategic realism into U.S. policy. As former Secretary of Defense William Cohen put it, China’s actions have caused the United States to say, “we can’t do business the way we’ve been doing business,” but, “we still have to do business.”

#### Sitaraman is wrong---firm’s size and market structures don’t determine the rate of innovation and leaving the Chinese market kills competitiveness and influence

Jamison 20 (Mark Jamison is a nonresident senior fellow at the American Enterprise Institute, where he works on how technology affects the economy, and on telecommunications and Federal Communications Commission issues. He is concurrently the director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business. Breaking up Big Tech will not help the US innovate or compete with China, 8-19, <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>, y2k)

Facebook and Google have argued that breaking them up would damage US competitiveness with China. Vanderbilt Law Professor — and former advisor to Sen. Elizabeth Warren (D-MA) — Ganesh Sitaraman and former Federal Communications Commission Chairman Tom Wheeler (now at the Brookings Institution) take exception. Sitaraman argues in Foreign Affairs that breaking up Big Tech companies would bolster US national security. Wheeler writes that US tech innovation would improve if Big Tech companies were required to make their data assets available to rivals.

It is an open question how regulation might affect whatever competition there might be between the US and China, but Sitaraman and Wheeler are wrong. Sitaraman seems unaware of the five decades of academic research showing that market structure — the number and relative sizes of firms in a market or industry — does not determine the amount of innovation. Wheeler also seems unaware of how markets for ideas work. Here are my explanations.

Regulation and market structure

Both Sitaraman and Wheeler assume that government regulation can define an industry’s market structure, but they are wrong for two reasons.

First, more regulation results in industries having larger firms, not smaller ones, and it also lowers labor productivity. This has been confirmed in several economic studies (see examples here, here, and here). Regulations raise the cost of a firm being in business, which means firms need to be larger to cover those fixed costs.

The other reason is that the economics of social media, search, and e-commerce, etc. have determined today’s market structures. Breaking up the companies wouldn’t repeal these economic realities, so the current market structure would reemerge, except with possibly even larger firms.

Market structure and innovation

Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case.

In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation.

But in the 1960s, economists began testing the hypothesis. Studies examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a paper summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation.

Ideas and data

Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in academic research about 20 years ago and still holds.

What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business.

Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong.

Market structure and geopolitical competitiveness

Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness.

What’s to be done?

Clearly, some writers need to spend more time reviewing the literature: The flaws in Sitaraman’s and Wheeler’s analyses were refuted long ago by scholarly research. It would also be helpful if advocates for hands-on control of companies were humbler in their beliefs that they fully understand businesses and can redesign them at will.

#### Inequality’s declining.

Gramm ’21 [Phil and John Early; March 23; a former chairman of the Senate Banking Committee and a visiting scholar at the American Enterprise Institute; served twice as assistant commissioner at the Bureau of Labor Statistics; Wall Street Journal, “Incredible Shrinking Income Inequality,” <https://www.wsj.com/articles/incredible-shrinking-income-inequality-11616517284>; KP]

Twice over the past 50 years, the Census Bureau has significantly changed how it collects and records income statistics. In 1993 and 2013 the Census Bureau changed its methods in an effort to collect better information from high-income households. These changes created two major discontinuities and distorted the time-series so that the change in measured income inequality in those years was as much as 15 times the average annual change found for the entire 50-year period. At the time, the Census Bureau explained in detail what it had done. It also explained the limitations the changes imposed on the use of its income-inequality measure to look at changes over extended periods. In subsequent use of the data by the Census Bureau and others, however, those warnings have been neglected.

The simple solution would have been to isolate the distortions caused solely by the changes in data-collection techniques and adjusted the previous years’ measures to reflect the effect of the changes. We made these adjustments and they are shown in the nearby figure. The blue line is the actual reported Census Bureau measurement of income inequality. The yellow line eliminates the effects of the 1993 and 2013 discontinuities caused solely by changes in measurement technique. The black line shows income inequality when the value of all transfer payments received is counted as income, income is reduced by taxes paid, and the two technical corrections are made.

Lo and behold—income inequality is lower than it was 50 years ago.

The raging debate over income inequality in America calls to mind the old Will Rogers adage: “It ain’t what you don’t know that gets you into trouble. It is what you do know that ain’t so.” We are debating the alleged injustice of a supposedly growing social problem when—for all the reasons outlined above—that problem isn’t growing, it’s shrinking. Those who want to transform the greatest economic system in the history of the world ought to get their facts straight first.

#### Their ev about increasing inequality omits important benefits

Elyse Dorsey et al. 20—Adjunct Professor at Antonin Scalia Law School; Geoffrey A. Manne, president and founder of the International Center for Law and Economics; Jan M. Rybnicek, Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal; Kristian Stout, ICLE’s Director of Innovation Policy; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement," June 2, 2020, from Pepperdine Law Review, Vol. 47, No. 861, https://ssrn.com/abstract=3592974)

First, consider the evidence on inequality trends. Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for US incomes over the last 50 years, which appears to show a steep increase in inequality. Examining the ratio of the share of US income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.83

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.84 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.85 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5 in 1995, 5.2 in 2004, and 5.6 in 2012.86 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between consumption and well-being.”87 Consumption trends would also seem to be relevant when considering antitrust enforcement efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a muted rate.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially more-accurate

\*\*MARKED\*

measures of income and welfare, however, suggest this trend is not as significant as populists claim. So, the first assumption in this particular populist theory appears to be valid, if often overstated. That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

#### Wages high and rising

Patti Domm 21—CNBC Markets Editor. (“Workers’ wages are rising at the fastest pace in years. Companies’ profits could take a hit,” May 22, 2021, from CNBC, https://www.cnbc.com/2021/05/22/wages-rise-at-the-fastest-pace-in-years-firms-profits-could-take-a-hit.html)

Workers are getting higher wages, but at some point that could bite into companies’ profits.

As the economy reopens, costs are climbing for everything from packaging and raw materials to shipping. In addition to these expenses, companies are also paying more to get workers to come in the door.

But the disparity between labor costs and profits has been so wide for so long, that employers should be able to increase pay if they can raise prices for goods and services or improve productivity.

McDonald’s said last week that it was boosting wages for the 36,500 hourly workers at company-owned stores by 10%, and Chipotle announced it will raise wages to an average of $15 an hour by the end of June. Bank of America said it would raise minimum wages for its hourly workers to $25 an hour, from the current $20, by 2025.

Sports equipment company Under Armour also announced it would boost the minimum hourly wage for its retail and distribution workers to $15 from $10.

“It’s some of the strongest wage growth we’ve seen in a quarter century,” said Mark Zandi, Moody’s Analytics chief economist. He said the 3% wage growth for private workers in the first quarter was the strongest since the 1990s and productivity has picked up at the same time.

“All the anecdotes we were getting in the last few months would suggest it’s continuing,” he said.

#### Slow growth inev in long term

Duprat 21. Marie-Hélène Duprat - Senior Advisor to the Chief Economist at Societe Generale. “COVID-19 and Secular Stagnation” https://www.societegenerale.com/sites/default/files/documents/2021-01/COVID-19-and-Secular-Stagnation-EN.pdf

Despite extraordinary fiscal and monetary policy support, the COVID-19 pandemic, along with the measures taken to contain it—including unprecedented lockdowns and economic shutdown—has plunged the world economy into the deepest recession in modern history. In addition to its toll on public health and momentous short-term output losses, **the pandemic has already left an indelible mark on the global economy**. This paper suggests that, absent a more audacious policy action plan, the COVID-19 shock will leave deep and lasting scars on the global economy by exacerbating preexisting vulnerabilities, eroding potential output, and strengthening the forces of “secular stagnation”. **This is** partly **because of an anticipated long-term shift in behaviours and beliefs**. Indeed, the COVID-19 shock **is likely to trigger a structural increase in risk aversion** in the private sector **that will operate both to raise precautionary household savings** **and to reduce business investments**, **leading to a chronic deficiency of aggregate demand that will prevent economies from fulfilling their potential**. Moreover, the pandemic is giving a tremendous boost to the digital transition, which will contribute to widening social inequalities, themselves a force of secular stagnation in that they lead to the increased propensity of populations to save.

#### Secular stagnation will come back

Duprat 21. Marie-Hélène Duprat - Senior Advisor to the Chief Economist at Societe Generale. “COVID-19 and Secular Stagnation” https://www.societegenerale.com/sites/default/files/documents/2021-01/COVID-19-and-Secular-Stagnation-EN.pdf

Conclusion **The COVID-19 pandemic is bound to leave long-term legacies** that will affect private savings, aggregate demand, and economic growth. In response to the crisis, both consumers and firms are altering their behaviours, and many of these behavioural shifts are expected to persist for years to come. Populations may well become more risk averse, leading to a rise in the relative supply of (precautionary) savings, when the underlying pace of growth will decline, making investment less attractive. As societies become ever more unequal, t

he collective propensity to consume will likely decline, reducing aggregate demand and slowing growth. As a result, there is a real risk that the **COVID-19 shock worsens the already existing problem of excess private savings,** thus pulling the natural rate of interest further down and strengthening the forces of secular stagnation. But secular stagnation may not be a foregone conclusion, as policymakers do have tools and policies at their disposal to combat it. In this regard, the COVID-19 shock and the extraordinary fiscal response to it may prove to be a game-changer, as these challenging times present a formidable window of opportunity to rethink narratives, to review incentives and policies, and to reform policymaking. A rethinking of the role of fiscal policy, together with the implementation of a set of adequate incentives and reforms in the current circumstances, has the potential to create a framework for a healthy, long-term, inclusive and environmentally sustainable economic growth. And of course, if the long-awaited productivity shock from digital transformation were to materialise, the risk of secular stagnation would melt away.

#### No impact---populist governments aren’t sustainable

Denis **MacShane 17**, Former UK minister for Europe, 4-26-2017, "Judy Asks: Is Populism on the Run?," Carnegie Europe, http://carnegieeurope.eu/strategiceurope/68775?lang=en

Populism is the most overused word in today’s political lexicon. The most populist parties after 1945 were the Communists, then the Greens. The EU and immigration are targets of choice for populist parties, as are globalization and the Bilderberg Group of transatlantic elites. Populist movements of the Left like Spain’s Podemos or Greece’s Syriza have been as strong as those of the Right like the Alternative for Germany (AfD) or the UK Independence Party (UKIP). Populists announce they represent the true interests of the people against the elite establishment and its ruling parties. Populists promise much but deliver little. The problem for populism is that when it succeeds, it becomes part of the establishment and the target for the next anti-elite populist demagogue. In most cases, existing parties adopt populist ideas—many parties have become green, and the British Tories have adopted UKIP’s anti-European rhetoric. Extreme populism as embodied in Britain’s vote to leave the EU and the election of U.S. President Donald Trump can win. Then comes a backlash. The military-judicial state in America is exerting counterpressure against Trump’s populism. The electoral wins for pro-EU forces in Austria, the Netherlands, and France followed the triumph of Brexit populism, which is mainly confined to England outside London. When she wins her populist election on June 8, UK Prime Minister Theresa May will have to swap populism for realism unless she wants to do lasting damage to Britain.

### Adv

#### Credibility is overwhelmingly high---single cases like the aff wouldn’t make a dent

Pepson 8-31 (Michaell Pepson, Axon Enterprise v. FTC gives Supreme Court a chance to protect separation of powers, <https://americansforprosperity.org/axon-enterprise-v-ftc-brief/>, y2k)

“Axon claims—and FTC does not appear to dispute—that FTC has not lost a single case in the past quarter-century. Even the 1972 Miami Dolphins would envy that type of record. Indeed, a former FTC commissioner acknowledged that the FTC adjudication process might unfairly favor the FTC given the agency’s stunning win rate. Axon essentially argues that the FTC administrative proceeding amounts to a legal version of the Thunderdome in which the FTC has rigged the rules to emerge as the victor every time.”

Axon is correct.

#### No one can finance a weapon.

Mueller 17 John Mueller, Political Science Professor at Ohio State University. [Nuclear Weapons: Proliferation and Terrorism, CATO Handbook for Policymakers, 8th Edition, <https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2017/2/cato-handbook-for-policymakers-8th-edition-76_0.pdf>]

One route a would-be atomic terrorist might take would be to receive or buy a bomb from a generous, like-minded nuclear state for delivery abroad. That route, however, is highly improbable. The risk would be too great—even for a country led by extremists—that the source of the weapon would ultimately be discovered. Here, the rapidly developing science (and art) of “nuclear forensics”—connecting nuclear materials to their sources even after a bomb has been detonated—provides an important deterrent. Moreover, the weapon could explode in a manner or on a target the donor would not approve—including, potentially, the donor itself. Almost no one, for example, is likely to trust al Qaeda: its explicit enemies list includes all Middle Eastern regimes, as well as the governments of Afghanistan, India, Pakistan, and Russia. And the Islamic State, or ISIS, which burst onto the international scene in 2014, has alienated just about every state on the planet.

#### No emerging tech impact.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

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## Da

**Infrastructure solves slow growth – spending it targeted to those with a higher marginal propensity to consume**

**Pearkes 21** - George Pearkes is the Global Macro Strategist for Bespoke Investment Group. He covers markets and economies around the world and across assets, relying on economic data and models, policy analysis, and behavioral factors to guide asset allocation, idea generation, and analytical background for clients of ranging from individual investors to large institutions. 2021 (“Bush, Obama, and Trump all failed to jolt the US out of its economic malaise. Biden's huge stimulus package could finally break that trend.”, available online at <https://www.businessinsider.com/bush-obama-trump-failed-boost-us-economy-biden-stimulus-covid-2021-3>, Business Insider)

For nearly more than a decade, the US economy has been stuck in a low growth, low inflation, and low investment malaise that emerged after the global financial crisis. Despite myriad attempts from three presidents and a bevy of lawmakers in Congress, no fiscal action has been able to break the US out of this funk. But now, President Biden's plans have a chance to finally do just that.

The recently-enacted American Recovery Plan (ARP) stimulus and the forthcoming Build Back Better (BBB) infrastructure package represent a fundamental change in how fiscal policy operates. This change could finally spark a change in the trend of consumer spending, total output, and more robust inflation that policymakers have sought in vain.

Fiscal policy's fumbles

This isn't to say that previous administrations haven't tried to kick the economy into gear with some sort of stimulus or federal spending. But those previous attempts were either too restrained or totally misdirected.

During the Bush Administration, the US Treasury did send out stimulus checks to American households, but the overall size of the Bush stimulus in early 2008 was too small to avert the ongoing housing collapse and resulting recession.

The Obama Administration's American Recovery and Reinvestment Act of 2009 didn't include significant direct payments to taxpayers and spent just $111 billion on infrastructure, spread across a range of direct purchases, grants, and tax incentives.

Republicans' surge in the House in the 2010 elections ended any chance of further direct stimulus, and the US entered a period of slow and grinding austerity — cuts to federal spending and little support for the economy — that was a steady brake on the recovery from 2011 onwards.

Then came President Trump, who introduced a package of tax cuts that started to widen the federal deficit. Some mainstream economists fretted at the time that the Tax Cuts and Jobs Act might kick off an inflationary spiral, driving prices higher and higher.

While the $1.5 trillion price tag on Trump's tax cuts with relatively little spare economic capacity could have had an impact on the overall economy — unlike Bush and Obama efforts at stimulus that were relatively small versus slack economic capacity — it was never going to kick off a virtuous cycle of higher demand that drives real growth, investment, and inflation.

The reason was who the tax cuts benefited. The Tax Policy Center estimated households in the bottom 80% of the income distribution would see an income boost of 2% or less from the cuts, while higher income households reaped larger benefits.

That was a huge problem, because higher income consumers spend a much smaller share of their income gains than lower-income consumers. In the chart below, I show the increase in dollars spent as a percentage of after-tax income by decile of pre-tax income over the 5 years from 2014 to 2019. That is, for every additional dollar in income that a household received how much of it went back out into the economy as new spending?

As shown, consumers in the bottom half of the income distribution on average raised spending more than their increase in incomes over the five year period. Conversely, the highest 10% of earners raised spending by less than half as much as their increase in income. Basically, as low-income households get more cash, they tend to spend it on things they need — in turn boosting the economy. By comparison, high-income households save most of that increased income.

Economists call this "marginal propensity to consume", or MPC for short, and the implications are clear: if you want to generate economic activity via consumer spending, you're far more likely to do so by giving more income to lower-income households.

A practical example may be helpful. A $1000 tax cut for the top decile would lead to roughly $470 in new consumer spending, all-else equal. For consumers below the median, it would lead to more than $1000 of new consumer spending.

An ambitious attempt

While the Trump tax cuts barely benefitted low-income households — and thus stifled any chance of a real economic boost — the ARP does just that. Tax Policy Center estimates suggest the $1.9 trillion package will raise the income of those in the bottom 20% of the income distribution by a staggering 20%. By contrast, the top quintile of earners sees a scant 0.7% gain.

From an MPC perspective, the ARP isn't just large. It's also highly likely to generate substantial economic activity via consumer spending because of who it benefits. That makes it unique among fiscal packages over the last several presidential administrations.

Earlier this week, reports started to circulate that the Biden Administration is also eyeing as much as $3 trillion in spending with investments in manufacturing, transportation infrastructure, clean energy, rural broadband, and housing, as well as further transfers to households via free community college, universal pre-kindergarten education, and subsidies for child care.

While this would also likely be coupled with higher taxes on corporations and the wealthy — and therefore be smaller from a simplistic budget deficit perspective — it still represents large increases in government spending on specific goods and services that were missing from prior fiscal plans passed over the past couple of decades.

The combination of huge stimulus for low-income consumers and material government spending to mobilize real resources make Biden's fiscal approach a big shift from recent history. It's too early to have confidence that the plan will boost US economic growth to its stronger pre-2000 trend (as I've discussed previously), but the basic approach of scale and design give Biden's bills a far better shot than other recent attempts by Democrats and Republicans alike.

**Biden’s plan cuts emissions in half by 2030**

**Freedland 10-29** (Jonathan Freedland, Guardian staff, The battle to get here was ugly, but the impact of Joe Biden’s climate plan will be huge, <https://www.theguardian.com/commentisfree/2021/oct/29/joe-biden-climate-plan-emissions-cop26>, y2k)

Besides, **$555bn is not to be sneezed at**. I spoke on Thursday with Ben Rhodes, former adviser to Barack Obama. In 2009, Obama set aside **a mere $90bn** for climate-related action. But even that sum worked **wonders**. Despite Trump’s “**ranting** and **raving**”, and despite his **withdrawal** from the Paris accords, Rhodes notes that the US **actually** met its Paris targets in **the Trump period**.

That’s because Obama’s move had signalled where the economy was going, setting in train a shift that Trump could not reverse: “Companies were **adjusting**, the markets were **adjusting**, money was **moving**.” Now, a decade later, “people are not building **new coal plants** in the United States; they’re building **windfarms** and **solar panels.”**

**Biden is sending a much bigger signal now**. Combined with various **executive actions** he can take as **president** – moves he can make without the blessing of the senate or Manchin or anyone else – the legislation should help US greenhouse emissions fall to **half** their 2005 levels by **2030**.

**That solves the worst impact of climate change**

**Carlock 21** (Greg Carlock, Manager for Climate Action and Data in WRI United States, 5 Reasons the US Should Cut its GHG Emissions in Half by 2030, <https://www.wri.org/insights/5-reasons-us-should-cut-its-ghg-emissions-half-2030>, y2k)

Based on **available research**, our recommendation is that the **U**nited **S**tates should aim to cut emissions in **half** by **2030** compared to 2005 levels. This target is both **ambitious** and **attainable** and offers major economic and social benefits for America.

Here are five reasons why the United States should cut its emissions in half by 2030:

1. A stronger U.S. emissions-reduction target is achievable and necessary.

The Intergovernmental Panel on Climate Change (IPCC) made it clear that **unprecedented action** is required to keep global **warming** below **1.5 degrees** C (2.7 degrees F) above pre-industrial levels, the threshold scientists say is necessary for averting the **worst** impacts of **climate change**. Achieving that goal requires that global greenhouse gas emissions drop by half by 2030 and reach net-zero around mid-century. The **U**nited **S**tates bears a **significant responsibility** as the source of **13%** of current global emissions and more **cumulative emissions** than any other country.

Preliminary estimates show that economy-wide emissions fell by 10.3% between 2019 and 2020, or 21% between 2005 and 2020. This technically means the United States met its commitment to reduce emissions by 17% below 2005 levels by 2020 under the Copenhagen Accord, and appears to put the country on track to meet its 2025 goal. However, appearances can be deceiving. This decline in 2020 was mostly driven by the COVID-19 lockdowns and economic recession; without a green recovery, emissions will likely rise again as the economy rebounds, putting the United States off-track for achieving its 2025 target.

To ensure emissions do not revert to pre-pandemic levels, the United States must respond to the COVID-19 crisis by investing in clean energy and deploying a whole-of-society approach to tackle the climate crisis. It must tap into the climate leadership of U.S. states, cities and business that proliferated after President Trump withdrew from the Paris Agreement. Today, one in three Americans lives in a jurisdiction committed to 100% clean electricity. In 2017, only Hawaii and 33 cities had committed to 100% clean electricity; now, 13 states, Puerto Rico and 165 cities have 100% clean energy commitments.

The 2019 Accelerating America's Pledge analysis found that the rapid expansion of ambitious actions taken by states and local actors could reduce emissions 37% below 2005 by 2030. An “All-in” strategy that pairs local climate action with aggressive federal engagement could reduce emissions by around 50% by 2030.

The America’s Pledge analysis laid out sector-specific pathways to achieve this level of emissions reductions. Over 60% of the estimated emissions reductions in the “All-in” scenario in 2030 were in the power sector, demonstrating the critical importance of aggressive clean electricity standards at the state and federal level over the next decade. Other sectors such as buildings and transportation, which together accounted for roughly 12% of estimated reductions, require rapid electrification and efficiency efforts for longer-term decarbonization. Finally, curbing non-CO2 emissions, including hydrofluorocarbons (HFCs) and methane, could largely be achieved through existing technology and abatement strategies. These sources account for roughly 17% of emissions reduction potential by the end of the decade.

US emissions by sector (Gross) in 2018 and 2030

This graph highlights emissions sectors assessed in the America's Pledge analysis. Sources of emissions and sinks from Land Use, Land Use Change, and Forestry (LULUCF) are excluded from these totals. Due to stock and flow constraints, sectors with smaller 2030 emissions reductions — such as buildings and transportation — ramp up reductions significantly after 2030.

Despite the challenges posed by the COVID-19 pandemic, a sector-by-sector assessment by America’s Pledge released last September gives us increased confidence that bottom-up action can achieve rapid emissions reductions.

2. A stronger emissions-reduction target would boost American businesses and support millions of jobs.

According to a recent WRI report on America’s New Climate Economy, the low-carbon transition is an immense opportunity for the U.S. economy. Even now, 41 U.S. states are growing their economies while also reducing their emissions.

In the short-term, clean energy and other green investments associated with a stronger climate commitment and economic recovery can create more jobs than fossil fuels. Currently, wind and solar energy generation provide double the number of jobs as fossil fuel production. Research shows that $1 million spent on renewable energy or energy efficiency in the United States generates more than twice as many jobs in the short- to medium-term as $1 million spent on fossil fuels. The mean hourly wages for clean energy jobs are higher than the national average by 8–19%. Many are available to workers without college degrees, though job security and access to benefits remain important concerns.

In the medium-term, a low-carbon economy will create more than enough jobs to replace those lost in fossil fuel industries. According to a recent analysis, widespread electrification of the economy, which is essential for reducing emissions, will require public investments of about $300 billion per year for 10 years. This could support up to 25 million good-paying jobs over the next 15 years and 5 million sustained jobs by mid-century. Meanwhile, the average household could see up to $2,000 in annual savings on energy costs and better health outcomes. However, executing a just transition for fossil fuel workers must be a deliberate process. There are a number of steps the United States can take, including through economic development programs, innovative financing programs, and the rehabilitation of abandoned mines and orphaned wells.

Most importantly, in the long-term, rapidly reducing emissions will help stave off the economic consequences of unchecked climate change. Without new policies, the annual economic damages from climate change could reach 1-3% of U.S. GDP by the end of the century, with extreme heat, sea level rise and crop yield declines hitting the South and parts of the Midwest the hardest. In the worst-case scenario, the damages could reach 3.7-10% of GDP.

3. An ambitious emissions-reduction target would support economic recovery from COVID-19.

The types of investments that support an ambitious 2030 emissions-reduction target would also support economic recovery after COVID-19. The 2009 recovery efforts revealed two important lessons: 1) major investments in clean energy launched the domestic industry and supported 900,000 jobs; and 2) this investment could have been greener. Only 12% of U.S. spending during the 2009 recovery went to green measures, even though much of the green spending created more jobs than other types of investments. For example, public transit projects resulted in 70% more job-hours than similar spending on highways. We must learn from history and make win-win investments that create good jobs, jolt the economy to life, reduce climate pollution and improve public health.

WRI’s COVID-19 Recovery Expert Note series includes several recommendations to generate a large number of jobs through targeted investments in electric buses, public transit, energy-efficient buildings, grid infrastructure, and conservation and restoration of natural and working lands. These near-term investments would put communities back to work; reduce pollution in our air and water; and serve as a down payment on the energy transition necessary to cut emissions in half over the next decade.

4. **A 50% emissions-reduction target would serve as a north star for greater domestic climate action**.

President Biden campaigned on the most ambitious climate platform of any presidential candidate in history. It included achieving net-zero emissions from electricity by 2035 and the full economy by 2050 — a step further than the 80% reduction target in the current U.S. Mid-Century Strategy. He promised near-term goals to reduce emissions from vehicles, buildings and industry. Now as president, his early “climate blitz” and emerging Build Back Better Economic Recovery Plan will make progress along a number of **climate action priorities.**

In addition, the federal government and private sector have made progress that signals the United States can mobilize toward an ambitious 2030 reduction goal. For example:

In December 2020, Congress passed major energy legislation that will phase down the use of hydrofluorocarbons (HFCs), super-pollutants used in refrigeration and air conditioning, as well as expand investments in wind, solar, the electricity grid, energy storage, weatherization of low-income housing, and energy efficiency upgrades of schools and federal buildings.

The U.S. electric vehicle market doubled since 2017. Earlier this year, General Motors announced it will only sell zero-emission vehicles by 2035, a significant move that could prompt other automakers to accelerate their transition to electric vehicles.

In 2019, the United States consumed more renewable energy than coal for the first time ever, and in 2020, U.S. wind energy capacity increased by 17 gigawatts, 85% more than the previous year. This is in part due to the rapid decline in costs for wind and solar power.

In 2020, building renewable forms of energy such as wind and solar officially became more cost-effective than building a new coal power plant.

An ambitious 2030 goal would **anchor** and **guide** the Biden administration’s and Congress’s approach to push **further** on cleaner forms of **energy**, **zero-emission cars** and buildings, **healthier forests** and **improved agricultural practices**. For example, it could help drive 100% zero-emission electricity and light-duty vehicle sales, as well as development of all the related grid and charging infrastructure to support them. It could spur **strong energy standards** for appliances and emissions-performance standards for heavy-emitting industries like cement, steel and plastic. It could also mean **innovation** in carbon dioxide removal and green hydrogen to create the clean energy technology and careers of the future.

5. An ambitious U.S. climate goal would inspire the international community to take bolder climate action.

**As the world’s second-largest emitter** — responsible for 13% of global emissions — the **U**nited **S**tates must use its position of **leadership** to encourage greater ambition and faster action by peer nations. A strong emissions-reduction commitment ahead of the Leaders’ Climate Summit can help build **momentum for enhanced targets** from countries **around the world.**

This will be particularly critical in the run-up to the **COP26 climate summit** in Glasgow this November. Strong commitments from China, Japan, South Korea, Canada, India, South Africa and other major emitters will be especially important. Ambitious action from the United States can help persuade them to step up their **emissions-reduction targets** to be commensurate with the scale of the climate change challenge. A strong U.S. target is also critical for demonstrating **credibility**, as others like the European Union and UK have already adopted ambitious emissions-reduction targets for 2030 that would go even further than a 50% cut by the United States.

**Warming leads to extinction**

**Kareiva 18**, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose **existential risks**. This is because of intrinsic **positive feedback loops**, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield **surprises**. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of **food** and **water**, and shortages of food and water can create **conflict** and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to **exacerbate drought** and **water scarcity**, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases **storm frequency** and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, **coastal communities will be exposed to unprecedented storm surge**—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare **extreme events** because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have **adapted** to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, **the Earth’s climate system is rife with positive feedback loops**. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could **catch humanity off-guard** and produce a true **apocalyptic event**. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that **runaway climate change**, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends **even greater existential risks**. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

**Framing issues:**

**First---PC overcomes opposition**

**Collinson 10-25** (Stephen Collinson, CNN analyst, A week that could transform Joe Biden's presidency, <https://www.cnn.com/2021/10/25/politics/joe-biden-presidency-this-week-social-spending-and-infrastructure/index.html>, y2k)

Joe Biden is **tantalizingly** **close** to fulfilling what supporters see as the **historic promise** of his presidency in the coming days, at a critical moment for his social policy transformation at home and his hopes of reclaiming US leadership overseas.

After weeks of **feuding** between **moderate** and **progressive** Democrats and his agenda's several brushes with **extinction**, the President's **double play** of **social spending** and **a bipartisan infrastructure program** may **finally come to fruition** this week. Democrats hope to **agree** on a **f**rame**w**ork on a **trimmed down** package of **social**, **health care** and **education programs** in order to **lift** a House **progressive blockade** on a vote on the **bipartisan bill** fixing roads, bridges and railroads.

"I think **we're pretty much there now**," House Speaker Nancy Pelosi told CNN's Jake Tapper on "State of the Union" on Sunday. A Democratic source told CNN's Manu Raju the goal is now for the House to have a vote on the infrastructure package on Wednesday or Thursday and send it to Biden's desk. The exact content of the final social spending bill is not yet known, since negotiations on **paring** back a more **ambitious program** to win moderate votes have been taking place behind **closed doors.** But Democrats still appear to be determined to provide free pre-kindergarten education, an extension of Medicare, home care for seniors and more affordable child care. Another **uncertainty** is the way the **final package** will play with the most **progressive members** of the House who had wanted a much larger spending blueprint and had **held up the infrastructure bill** as a result in **prolonged standoffs** within the Democratic Party.

If Democrats finally agree on the makeup of the bills, and Biden manages to include billions of dollars in funding to slow global warming, he will get a huge boost on a foreign trip beginning Thursday that includes the G20 summit in Rome and the United Nations climate summit in Scotland. A strong environmental component of the bill is crucial to Biden's credibility as he seeks to put the US back at the front of the global campaign to save the planet -- one of his top foreign policy goals -- and would put pressure on other top polluting nations to follow suit.

But Democrats are struggling to come up with replacement provisions after one of the moderate senators responsible for scaling back the package, Joe Manchin from coal-producing West Virginia, derailed a $150 billion incentive scheme designed to wean utilities onto renewable forms of electricity generation. In a further sign that Biden is driving the roller coaster drama over the bills toward a conclusion, he hosted Manchin at his home in Wilmington, Delaware, on Sunday. The two long-standing friends were joined at the breakfast meeting by Democratic Senate Majority Leader Chuck Schumer and continued to make progress, the White House said.

The social care package is expected to be far smaller than a previous $3.5 trillion proposal and the $6 trillion top-line number originally called for by Sen. Bernie Sanders, an independent from Vermont who chairs the Senate Budget Committee. Sources told CNN Sunday that Manchin was on board for $1.75 trillion. The shrinking of the bill means it will be shorn of a number of popular proposals that Biden campaigned on -- including free community college, which is a painful concession since first lady Jill Biden has long worked in the sector. But as Biden explained in a CNN town hall on Thursday evening, compromises must be made to pass the measure, even if there is not sufficient support among Democrats for all of the cherished programs.

Even so, the passage of several huge infrastructure and social care bills would secure one of the most significant legislative legacies of any modern president. The programs could fulfill Biden's goal of using government power to tilt the balance of the economy back to working people. Original plans included funding for home care for sick and elderly Americans, paid family leave, free pre-kindergarten schooling and a flurry of other programs Democrats say will create jobs. And, if actually passed this week, the legislative victory might even give Virginia Democrat Terry McAuliffe a late boost in his gubernatorial campaign, which has been hit by lethargy among progressive voters, ahead of the November 2 content.

"It is less than we had...projected to begin with, but it's still bigger than anything we have ever done in terms of addressing the needs of America's working families," Pelosi told Tapper.

Another promise that could be kept

The $1 trillion infrastructure bill, meanwhile, would honor Biden's inaugural call for national unity and for Republicans and Democrats to find areas to cooperate despite gaping ideological divides. One of the core principles of Biden's presidency and his effort to tame the populist anger that led to the Trump presidency is to show that government can be an effective force for good in the lives of working Americans denied the benefits of several decades of economic expansion.

Passing any large bill in an era when the country is bitterly polarized and operates on the basis of typically small congressional majorities is highly unusual. Yet Biden could walk away with nearly $3 trillion in infrastructure and social spending bills on top of an earlier $1.9 trillion Covid-19 rescue bill. Such a list of achievements may go some way to tempering Democratic angst after a brutal summer in which the President's stature took a pounding over the chaotic withdrawal from Afghanistan, a surge in coronavirus infections, rising inflation, peaking gas prices, a mismatched labor market and a supply chain crunch.

It would also allow him to argue to Americans that he and his party had made good on their campaign promises and leveraged a moment when they control power in Washington to make significant political change.

**Until now,** there has been **vast mistrust** between House **progressives** and **moderates** in the Senate, including Arizona Sen. Kyrsten Sinema, who is opposed to raising the corporate tax rate and the top marginal rate of income tax for individuals, CNN has reported. Such hikes were originally seen as critical to paying for the social spending plan. Pelosi told CNN Sunday that potential alternative financing for the bill could involve a billionaires' tax and IRS tax enforcement.

How Biden's infrastructure bill could help prevent the next supply chain crisis

The **internal Democratic disconnect** thwarted a previous attempt by the House to pass the **infrastructure bill** on the basis of a separate agreement by senators on the content of the spending plan. **But** there are signs that **Biden's intense role** in the negotiations in **recent** days may have **eased that impasse.**

"My view is that the **President's word,** saying, 'I have the commitment of **50 senators**, and those 50 senators are going to vote for this bill and here are the details, that **that's good enough**,'" Rep. Ro Khanna, a progressive Democrat from California, said on "Fox News Sunday." "I don't think proceduralism will hold us back. If the President gives his word and has a clear commitment, that will be good enough."

**AND-Biden push breaks the log jam**

**Lillis 10-28** (Mike Lillis, The Hill Staff, Lack of trust mangles Democratic efforts to reach deal, <https://thehill.com/homenews/house/578844-lack-of-trust-mangles-democratic-efforts-to-reach-deal>, y2k)

Some progressives singled out **one figure** they said could **break the logjam** and win their vote on **infrastructure**: **Biden**.

“There is **mistrust** when it comes to the **Senate**. There is **trust** when it comes to the **White House**. So if Biden says, ‘**X**, **Y** and **Z** is gonna happen, **you have my word**,’ I trust him at his word,” Bowman said. “So his word, plus a **solid framework** could get **things moving on** the House side **without the actual bill** — potentially.”

**Vote Tuesday, progressive support now – best and most recent card**

**CNN 10/31/21** (Updated 10:40 PM ET, Sun October 31, 2021, “Progressives signal they'll back both economic bills ahead of likely vote later this week”, By Daniella Diaz, Annie Grayer and Manu Raju, CNN, https://www.cnn.com/2021/10/31/politics/house-biden-economic-agenda/index.html)

(CNN) Most House progressives signaled during a virtual meeting Sunday they are likely to back the **bipartisan infrastructure** bill and the social safety net bill when they both come up for a vote, which is likely to happen after Tuesday.

Several sources on the call told CNN that President Joe Biden has committed to progressives that all 50 Democrats in the Senate would support the legislative text as voted on by the House and that the Congressional Progressive Caucus is taking the President at his word. Moderate Democratic Sens. Kyrsten Sinema of Arizona and Joe Manchin of Virginia, who are key votes, have not yet publicly endorsed the framework.

House Democratic leaders had said Saturday they planned to push for votes on both the $1.2 trillion infrastructure bill and the larger $1.75 trillion economic plan as soon as Tuesday, CNN had previously reported.

Meanwhile, shortly after, a House Democratic leadership aide told CNN that while there has been "extensive progress" on drug price reform, a key initiative for Senate Budget Chairman Bernie Sanders, the Rules committee will not be meeting Monday -- meaning a full vote will likely not take place on Tuesday.

The aide said **they "intend to vote as early as possible this week**," but there wasn't a firm timetable.

It's unclear how many progressives will support the two bills, but the meeting is a hopeful sign that the weeks-long **legislative logjam may be broken when the bills come up for a vote.**

**Second---predictive uniqueness---passage might seem unlikely now, but the negotiation will reach an arc---prefer insider sources**

**Viser 10-28** (Matt Viser is a national political reporter for The Washington Post, Biden raises the stakes with the biggest gamble of his presidency, <https://www.washingtonpost.com/politics/biden-deal-presidency/2021/10/28/52a273cc-37ff-11ec-91dc-551d44733e2d_story.html>, y2k)

One close **ally** of the White House, who has **knowledge** of the **internal dynamics**, said the desire to **seize on the moment** to spur action and strengthen his position before heading abroad was **a clear factor** in setting the stage for Thursday’s **rollout**. Biden himself had **pleaded** with lawmakers in to help him get a **deal** before his trip — even appealing to their patriotism in at least one meeting.

Beyond that, there was a sense around Biden that deadlines can move things along, said the ally, who spoke on the condition of anonymity to be candid. Now Biden allies hope he looks stronger both at home and abroad.

Sen. Christopher A. Coons (D-Del.), a close friend of Biden’s, said the president’s trip to Europe, combined with the need to move ahead with other legislative priorities like the defense authorization bill and dealing with the debt ceiling, spurred the president to act on Thursday.

“We’re out of runway. In the caucus, we’ve been sort of circling this airport for weeks, and it’s time to the land the plane so that he can take off and focus on world leadership and so that the average American can see the positive outcomes,” Coons said. “There’s also the small but very urgent matter of the election in Virginia coming up.”

Biden, **a veteran of the Senate**, also is in tune with the **rhythms** of legislative negotiations and struck the **right** closing tone at the **right moment**, Coons said. “He understands that the **legislative process** has **an arc** to it,” he said.

**House Dems are just waiting for the Senate---this assumes the Thursday vote**

**Glasser 10-28** (Susan Glasser, Letter from Biden’s Washington, <https://webcache.googleusercontent.com/search?q=cache:-EUiQorD-LYJ:https://www.newyorker.com/news/letter-from-bidens-washington/biden-cant-quite-close-the-deal-with-his-own-party+&cd=1&hl=en&ct=clnk&gl=us&client=safari>, y2k)

By next week, this could be just another forgotten congressional dumpster fire. The **agonizingly** slow **negotiations** on Biden’s agenda over the last few months are not the first time and will not be the last that the **legislative sausage-making process** has left legislators feeling, as Representative Debbie Dingell put it, “sick to your stomach.” **Biden** and **Pelosi** are betting on some basic principles of **politics** to help **smooth it all over**. They are betting that the memories of the enervating process, like a painful childbirth, will **fade** with time. They are betting that delivering something is better than delivering nothing. And they are betting that the mechanics of passing the legislation are much less significant than the politically popular proposals, such as raising taxes on wealthy corporations and child-care tax credits, contained within the bills. The House progressives **quickly** put out a statement saying that, **while** they were **balking** at having an infrastructure vote on **Thursday**, they were, in fact, **committed** to supporting **both that bill** and the **bigger social-spending bill**—whenever they **do** come to the floor. Winning tends to erase the pain of getting there.

But what I keep coming back to is that **Biden has struggled so much**—and had to put so much of his personal prestige and **pol**itical **cap**ital **on the line**—for a deal he can’t quite close with his own party. These are Democrats he is negotiating with. No Republicans—or Russians or Chinese, for that matter—were involved in the making of the deal, to the extent that there is a deal. And why, exactly, was it such a heavy lift that it took so long to get to the pretty inevitable top-line number? A month ago, the big breakthrough was the revelation that Manchin was for a $1.5-trillion bill and that Biden and the Democratic leadership wanted to get to approximately two trillion dollars. It did not take a negotiating genius to figure out that they were going to end up at $1.75 trillion. This is what practically broke Washington? You can’t blame that one on Donald Trump.

**They are re-assured now by Biden**

**Mucha 10-28** (Sarah Mucha, Axios, The progressive promise, <https://www.axios.com/progressive-infrastructure-spending-promise-1fc18d7f-4988-407f-b983-229ab695a23f.html>, y2k)

Why it matters: **A key sticking point** for **progressives** supporting the $1.2 trillion bipartisan infrastructure bill was their **requirement** the Senate **first** pass the nearly **$2 trillion social safety net** expansion they favor. Now, they say senators only have to promise they'll do so before they support the BIF.

A lingering condition: the House has to hold its votes on both bills the same day.

Driving the news: Rep. Mark Pocan (D-Wis.) told Axios 30 members of the **Progressive Caucus** executive board were **reassured** by President **Biden's pledge** that all 50 Democratic senators will pass the **social spending** bill.

“I trust the president. He was emphatic when we met with him that he's not going to do anything to jeopardize, you know, his word, because then we won't be able to get anything else done," Pocan said.

Rep. Pramila Jayapal (D-Wash.), the caucus chair, said she has "**dozens**" of members **on board** with the agreement.

**It will pass---progressives are on board, but the sequencing is key**

**Alemany 10-29** (Jacqueline Alemany, WaPo staff reporter, There is reason for optimism yet on Biden's agenda, <https://www.washingtonpost.com/politics/2021/10/29/there-is-reason-optimism-yet-biden-agenda/>, y2k)

President Biden landed in Italy without the deal he begged lawmakers to help him clinch before leaving for his trip abroad.

But there was some reason for **optimism** he could return home with a **victory on an agenda** he predicted would determine the fate of his presidency and whether Democrats continue to control Congress.

One of the **leading** House progressives, Rep. Pramila **Jayapal** (D-Wash.), told Hill reporters yesterday she **expected** to pass both the **infrastructure package** (a vote was delayed on it yet again yesterday because of progressives) and the **$1.75 trillion** social spending package in the next week. House Appropriations Committee Chair Rosa DeLauro (D-Conn.) echoed Jayapal's **optimism** the House would move “**quickly**” in an interview with The Early. But she was less certain about persuading Manchinema — the Senate duo of Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — of restoring progressive priorities to the spending package, including family leave.

**Manchinema supports the new framework**

**Bolton 10-29** (Alexander Bolton, Manchin, Sinema put stamp on party, to progressive chagrin, <https://thehill.com/homenews/senate/579031-manchin-sinema-put-stamp-on-party-to-progressive-chagrin>, y2k)

**Manchin** and **Sinema** “were very **influential**” in shaping the **framework**, Senate Majority Whip Dick Durbin (D-Ill.) acknowledged, before adding after a pause: “for better or worse.”

The **centrist duo** were on **speed dial** with **W**hite **H**ouse aides and the **president** in the **stretch** leading up to Thursday, underscoring their influence on the final product.

Sen. Ed Markey (D-Mass.), a leading progressive, observed that the two centrists “were in the room right from the very beginning.”

And in the 50-50 Senate, each effectively had a veto on the final bill.

Democrats are passing the measure through budget rules that prevent a GOP filibuster. But that means they can’t afford a single defection in their caucus.

**Manchin** and Si**nema** left their fingerprints **all over** the framework.

It would expand Medicare to cover hearing, but not dental and vision because of Manchin’s concerns over cost and Medicare’s own solvency.

A clean electricity program was jettisoned, and Manchin raised a red flag over a proposed carbon fee last month when he argued it would do little to bolster the development of new technologies and would more likely become a bludgeon against the coal industry.

He has also voiced concerns over any methane fee that would penalize natural gas companies, telling The Hill this week: “You’ve got to give an incentive to do the right thing. ... Methane pricing done wrong is very detrimental, it won’t happen.”

Corporate tax rates could not be raised because of Sinema’s objections. The Arizona Democrat also said no to hikes on individual rates for the wealthy.

Manchin described an effort to tax the wealth of billionaires’ investments as “convoluted,” and it didn’t make the final package. “I don’t like it. I don’t like the connotation that we’re targeting different people,” Manchin told reporters when asked about it.

The White House also discarded a plan to raise the capital gains rate from 20 percent to 39.6 percent for people earning more than $1 million.

The framework does include a 15 percent corporate minimum tax that would apply to companies with more than $1 billion in profits, which both Manchin and Sinema have endorsed.

It all left progressives grumbling.

“Clearly to my mind it has some major gaps in it,” Sen. Bernie Sanders (I-Vt.) said of the White House framework on Thursday.

**Manchin** and Si**nema**, by contrast, seemed **quite pleased**. Manchin told colleagues that it’s something **he can “work with,”** while Sinema hailed “**significant progress**” and said she looked “forward to **getting this done.”**

**2---The DA is the top priority**

**Chalfant 10-26** (Morgan Chalfant, White House to host lawmakers as negotiations over agenda hit critical stage, <https://thehill.com/homenews/administration/578481-biden-to-host-lawmakers-as-agenda-hits-critical-stage>, y2k)

President Biden **hosted** lawmakers at the White House on Tuesday as Democrats raced to find an agreement on **a sweeping climate** and **social spending package** including much of his **domestic agenda.**

“The president will have more members down here today. He could certainly have more members down here tomorrow,” White House press secretary Jen Psaki told reporters at a briefing Tuesday morning before the meeting.

“He has flexibility in his schedule to ensure that he can make those calls, he can invite people into the Oval Office,” she added. “Obviously **this is a top priority to keep moving his agenda** forward in advance of his trip.”

The White House subsequently said members of the Tri-Caucus, Women’s Caucus and LGBTQ+ Equality Caucus would meet with White House senior staff.

The meetings came two days before Biden is scheduled to depart for the second overseas trip of his presidency. Biden has said his preference is for lawmakers to come to an agreement on the spending package before he leaves on Thursday, but it’s unclear whether that will happen.

The White House has sought to manage expectations, saying that Biden is **prepared** to engage with lawmakers and staff on his **domestic** agenda **even while in Europe.**

“I would also say that there are **phones** on Air Force One and also in Europe,” Psaki said Tuesday. “He will **continue to be engaged** even as we move to the trip.”

**Even popular bills require debate and PC---it’s a train-wreck!**

**Hulse 9** (Carl Hulse, New York Times staff, Legislative Pileup Looms in the Senate, 11-21, <https://www.nytimes.com/2009/11/22/us/politics/22hill.html>, y2k)

In the polarized Senate, **even popular bills** and generally acceptable executive branch nominees that **eventually** win easy approval first have to **crawl though** time-consuming **procedural thickets.** Now it is **hard** to see how Congress will **make up for the lost time**. While the Senate hopes to devote most of December to a **landmark debate** on health care, time is **running out** on a number of other difficult and significant issues that must be resolved by the end of the year. What follows the Thanksgiving recess may be a headlong rush into a **legislative train wreck.** Among the obstacles on the track is raising the national debt limit, always a wrenching vote for lawmakers trying to avoid looking like out-of-control spenders.

**Unexpected agenda items cause trade-off**

Anthony J. **Madonna 12** Assistant Professor¶ University of Georgia, et al Richard L. Vining Jr.¶ Assistant Professor¶ University of Georgia and James E. Monogan III¶ Assistant Professor¶ University of Georgia 10-25-2012 "Confirmation Wars and Collateral Damage:¶ Assessing the Impact of Supreme Court¶ Nominations on Presidential Success in the¶ U.S. Senate"

It is often overlooked" that presidents operate in a world they **do not control**" (Beckmann 2010, 13). Supreme Court vacancies yield important (and often **unexpected additions to the** president's \**to do" list**. Despite the president's power to infence the legislative agenda and achieve con rmation for his judicial nominees, **unanticipated exogenous shocks can distract from these priorities**. These events **divert** lawmakers' efforts to new concerns at **the expense of preexisting agenda items**. **Exogenous shocks cost** president's **time, resources, and attention** previously **devoted to other endeavors**. We theorize that Supreme Court vacancies and the nominations that follow function as exogenous shocks to the presidential agenda and in uence success in both the legislative arena and the lower court con rmation process.

**Lobbying by large firms guarantees political backlash**

**Jones 20** (Alison Jones, Professor of Law, King's College London, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, 3-20, The Antitrust Bulletin. 2020;65(2):227-255. doi:10.1177/0003603X20912884, y2k)

E. **Opposition** to Legislative Reform

Although statutory reform might at first sight appear to be a direct, effective solution to some of the impediments (such as entrenched judicial resistance to intervention), there are good reasons to expect that **powerful business interests** will also stoutly **oppose** any proposals for legislation to **expand the reach of the antitrust laws** or to create a new digital regulator.128 One can envisage the **formidable** financial and **political resources** of the affected **firms** will **amass** to stymie **far-reaching legislative reforms**. Legislative steps that threaten the **structure**, **operations**, and **profitability** of the Tech Giants and other **leading firms** are **fraught with political risk**. These risks are surmountable, but only by means of a clever strategy that anticipates and blunts political pressure. One element of such a strategy is to mobilize countervailing support from consumer and business interests to sustain an enabling political environment to enact ambitious new laws.