### 1

#### Business investment is surging---that’s key to a sustained Recovery

Sarah Chaney Cambon 21, Reporter on Wall Street Economics, “Capital-Spending Surge Further Lifts Economic Recovery ,” https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Businesses are pouring money into equipment and technology, a boon to economic growth. Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery. Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook. Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak. [Orders for nondefense capital goods](https://www.wsj.com/articles/u-s-durable-goods-orders-rebound-following-dip-11619442529?mod=article_inline) excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.. “Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.” [Consumer spending](https://www.wsj.com/articles/consumer-spending-personal-income-inflation-may-2021-11624563378?mod=article_inline), which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic. Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists. Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence. The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’” Businesses appear to be less risk-averse now, he said. After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now [the supply of workers is tight](https://www.wsj.com/articles/hotels-and-restaurants-rebound-summer-held-back-by-shortages-of-everything-11624640378?mod=article_inline). Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital. Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

#### Expanding core antitrust disrupts business planning and confidence which disincentivizes investment

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

13. To address the perceived growth and abuse of market power that are said to afflict the American economy, the HJSMR and WCEGR have also proposed to amend and thereby “toughen” the core antitrust statutes, to alter burdens of proof in litigation, and to bestow a substantial increase in resources on federal antitrust enforcers. [16] The problem of scarce agency resources has long been highlighted by enforcement agency leadership, and certainly merits attention. The call for dramatic systemic change in antitrust enforcement norms, however, should be approached cautiously, with a jaundiced eye. In our common-law-based antitrust system, a major disruption to long-familiar statutory schemes would generate major uncertainty regarding antitrust enforcement principles and substantially disrupt business planning for an indeterminate amount of time. Many welfare-enhancing transactions could be sacrificed. The harm to consumer and producer welfare due to lost socially beneficial business initiatives would be hard (if not impossible) to measure, but nonetheless real. It is certainly possible that such losses would outweigh (perhaps substantially) whatever welfare gains might flow from statutory enforcement “reform.” In other words, it should not casually be assumed that “more and different” antitrust would be an unalloyed benefit. As in all other areas of law enforcement, likely costs as well as purported benefits should be central to the antitrust public policy calculus. (Costs would include, of course, the likelihood and magnitude of “false positives” under the new enforcement regime, not just the reduction in socially beneficial transactions.)

#### Economic Decline goes nuclear

Dr. Qian Liu 18, PhD in Economics from Uppsala University, Former Visiting Researcher at the University of California, Berkeley, Managing Director for Greater China at The Economist Group, Guest Lecturer at New York University, Tsinghua University, the Chinese Academy of Social Sciences and Fudan University, “The Next Economic Crisis Could Cause A Global Conflict. Here's Why”, World Economic Forum, 11/13/2018, https://www.weforum.org/agenda/2018/11/the-next-economic-crisis-could-cause-a-global-conflict-heres-why

The next economic crisis is closer than you think. But what you should really worry about is what comes after: in the current social, political, and technological landscape, a prolonged economic crisis, combined with rising income inequality, could well escalate into a major global military conflict.

The 2008-09 global financial crisis almost bankrupted governments and caused systemic collapse. Policymakers managed to pull the global economy back from the brink, using massive monetary stimulus, including quantitative easing and near-zero (or even negative) interest rates.

But monetary stimulus is like an adrenaline shot to jump-start an arrested heart; it can revive the patient, but it does nothing to cure the disease. Treating a sick economy requires structural reforms, which can cover everything from financial and labor markets to tax systems, fertility patterns, and education policies.

Policymakers have utterly failed to pursue such reforms, despite promising to do so. Instead, they have remained preoccupied with politics. From Italy to Germany, forming and sustaining governments now seems to take more time than actual governing. And Greece, for example, has relied on money from international creditors to keep its head (barely) above water, rather than genuinely reforming its pension system or improving its business environment.

The lack of structural reform has meant that the unprecedented excess liquidity that central banks injected into their economies was not allocated to its most efficient uses. Instead, it raised global asset prices to levels even higher than those prevailing before 2008.

In the United States, housing prices are now 8% higher than they were at the peak of the property bubble in 2006, according to the property website Zillow. The price-to-earnings (CAPE) ratio, which measures whether stock-market prices are within a reasonable range, is now higher than it was both in 2008 and at the start of the Great Depression in 1929.

As monetary tightening reveals the vulnerabilities in the real economy, the collapse of asset-price bubbles will trigger another economic crisis – one that could be even more severe than the last, because we have built up a tolerance to our strongest macroeconomic medications. A decade of regular adrenaline shots, in the form of ultra-low interest rates and unconventional monetary policies, has severely depleted their power to stabilize and stimulate the economy.

If history is any guide, the consequences of this mistake could extend far beyond the economy. According to Harvard’s Benjamin Friedman, prolonged periods of economic distress have been characterized also by public antipathy toward minority groups or foreign countries – attitudes that can help to fuel unrest, terrorism, or even war.

For example, during the Great Depression, US President Herbert Hoover signed the 1930 Smoot-Hawley Tariff Act, intended to protect American workers and farmers from foreign competition. In the subsequent five years, global trade shrank by two-thirds. Within a decade, World War II had begun.

To be sure, WWII, like World War I, was caused by a multitude of factors; there is no standard path to war. But there is reason to believe that high levels of inequality can play a significant role in stoking conflict.

According to research by the economist Thomas Piketty, a spike in income inequality is often followed by a great crisis. Income inequality then declines for a while, before rising again, until a new peak – and a new disaster. Though causality has yet to be proven, given the limited number of data points, this correlation should not be taken lightly, especially with wealth and income inequality at historically high levels.

This is all the more worrying in view of the numerous other factors stoking social unrest and diplomatic tension, including technological disruption, a record-breaking migration crisis, anxiety over globalization, political polarization, and rising nationalism. All are symptoms of failed policies that could turn out to be trigger points for a future crisis.

Voters have good reason to be frustrated, but the emotionally appealing populists to whom they are increasingly giving their support are offering ill-advised solutions that will only make matters worse. For example, despite the world’s unprecedented interconnectedness, multilateralism is increasingly being eschewed, as countries – most notably, Donald Trump’s US – pursue unilateral, isolationist policies. Meanwhile, proxy wars are raging in Syria and Yemen.

Against this background, we must take seriously the possibility that the next economic crisis could lead to a large-scale military confrontation. By the logic of the political scientist Samuel Huntington , considering such a scenario could help us avoid it, because it would force us to take action. In this case, the key will be for policymakers to pursue the structural reforms that they have long promised, while replacing finger-pointing and antagonism with a sensible and respectful global dialogue. The alternative may well be global conflagration.

### 2

#### COVID enforcement is key to effective recovery.

OECD 20 (The Role of Competition Policy in Promoting Economic Recovery – Note by the United States, 12-2, <https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/economic_recovery_us.pdf>, y2k)

1. The Antitrust Division of the Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC) (collectively the Agencies) offer this joint submission in response to the Competition Committee’s review of the role of competition policy in promoting economic recovery. In this paper, we highlight some key steps that the Agencies have taken to respond to the present COVID-19 crisis in the United States and to help promote a rapid and sustained economic recovery. 2. The U.S. antitrust agencies have undertaken initiatives in several categories to help spur recovery from the COVID-19 crisis, including stepped-up criminal enforcement, policy guidance to health and emergency-related government agencies, and expedited review of private sector cooperative efforts. The Agencies strongly believe that competition policy has an important role to play in the COVID-19 recovery process and intend to continue to engage in partnership with domestic and international counterparts to ensure the protection of competition and consumers. 2. Deterrence of Cartel Activity, Price Gouging, and Other Harmful Activity 3. Deterrence of unlawful commercial activities has long been a key mission of the Agencies, rendered even more critical by the social and economic disruptions caused by the COVID-19 crisis.1 While most Americans have acted to help their neighbors and communities during the past year, crisis-related disruption increases the risk that some individuals will make unlawful windfall profits at the expense of public safety and the health and welfare of their fellow citizens.2 4. While hoarding and exploitation are not themselves antitrust violations, such behaviors are often accompanied by criminal antitrust collusion, price fixing, and bid rigging, and other attempts to take advantage of the public. As with other natural disasters, the COVID-19 crisis increases the risk that individuals and organizations will engage in these unlawful commercial activities, necessitating increased vigilance by the Agencies. 2.1. COVID-19 Hoarding and Price Gouging Task Force 5. To coordinate enforcement efforts, the Attorney General in March 2020 announced the creation of the COVID-19 Hoarding and Price Gouging Task Force.3 The Task Force is charged with developing effective enforcement measures and best practices, and coordinating nationwide investigation and prosecution of illicit activities. Because health care products and markets are central in responding to the health care crisis and eventually to economic resilience and recovery, the Task Force focuses on protecting the availability of those products designated essential by the Department of Health and Human Services (HHS) under Section 102 of the Defense Production Act. The DOJ consults with HHS during this process, including advising on the antitrust implications of COVID-19 for affected markets and products. 6. The Task Force is currently being led by a coordinating U.S. Attorney, with assistance as needed from the Antitrust Division’s Criminal Program. Each United States Attorney’s Office, as well as other relevant Department components, is directed to designate an experienced attorney to serve as a member of the Task Force. The Antitrust Division’s role in the Task Force involves investigating allegations of criminal antitrust harms, such as price fixing and bid rigging, and responding to citizen complaints about collusive or anticompetitive disaster-related behavior. 2.2. Procurement Collusion Strike Force 7. The DOJ is also stepping up efforts to combat crisis-related disruption through the newly-created Procurement Collusion Strike Force (PCSF). COVID-19 recovery will require substantial investment by national, state, and local authorities, with $3.48 trillion appropriated to date.4 The size and pace of such efforts unfortunately create opportunities for fraud and collusion affecting government procurement and grant-making. Through the creation of the PCSF, DOJ is dedicating significant resources to help identify and prevent these unlawful activities.5 8. The PCSF is an interagency partnership dedicated to protecting taxpayer-funded projects from antitrust violations and related crimes at the federal, state, and local levels. Under the umbrella of the PCSF, prosecutors from the Antitrust Division’s five criminal offices and 13 U.S. Attorneys’ Offices have partnered with agents from the FBI and four federal Offices of Inspector General, including the U.S. Postal Service and Department of Defense, to conduct outreach and training for procurement officials and government contractors on antitrust risks in the procurement process. 9. Since its creation in 2019, over 50 federal, state, and local government agencies have already sought training and assistance from the PCSF, as well as opportunities to work with the PCSF on investigations. So far, the PCSF has led over a dozen interactive virtual training programs for approximately 2,000 criminal investigators, data scientists, and procurement officials.6 Over a third of the Antitrust Division’s current investigations relate to public procurement, and the PCSF marks an important effort to marshal enforcement resources to tackle these cases. Several grand jury investigations already have been opened as a direct result of the work of the PCSF. In addition to playing a meaningful role in COVID-19 economic recovery, the PCSF will continue to be an important resource for detecting fraud and collusion in government procurement for years to come. 2.3. Protecting Competition in Labor Markets 10. The DOJ and FTC are working to protect competition in labor markets, which have been subject to significant dislocation due to the economic impact of COVID-19. In April 2020, the Agencies issued a statement warning that antitrust enforcers are closely monitoring improper employer coordination that may disadvantage workers.7 The statement affirmed that antitrust laws with respect to hiring and employment remain fully in effect despite the crisis, and stated that “COVID-19 does not provide a reason to tolerate anticompetitive conduct that harms workers, including doctors, nurses, first responders, and those who work in grocery stores, pharmacies, and warehouses, among other essential service providers on the front lines of addressing the crisis.”8 11. Given the special impact of COVID-19 on medical staffing and employment, the Agencies are focused on preventing employers, including health care staffing companies and recruiters, from engaging in collusion or other anticompetitive conduct in labor markets, such as agreements to lower wages or to reduce salaries or hours worked. This announced focus continues the Agencies’ policy of devoting resources to preventing labor malpractice in critical industries, especially health care. As one example, the DOJ in April 2020 reached a significant resolution in the criminal investigation of Florida Cancer Specialists (FCS) for entering into a market allocation agreement that gave FCS a monopoly for services in a densely populated part of southwest Florida. As part of the deferred prosecution agreement reached in that case, the Division obtained a $100 million fine – the statutory maximum – and FCS agreed to waive certain non-compete provisions for current and former employees, including physicians and other healthcare professionals.9 In another important matter, early this year, the FTC investigated, and the parties abandoned a proposed tie-up between two providers of nursing staff. The proposed merger had likely anticompetitive effects in multiple localities across the country on markets both for nursing services and for private duty nursing care.10 2.4. Consumer Protection 12. The FTC has worked aggressively to address consumer protection issues arising from the COVID-19 pandemic. Since late March, as the coronavirus emerged, the FTC has received nearly 225,000 consumer complaints relating to COVID-19, including concerns about fraud related to the government’s economic impact payments.11 In addition, the FTC has been monitoring the marketplace for unsubstantiated health claims, illegal robocalls, privacy and data security concerns, online shopping fraud, and a variety of other scams related to the economic fallout from the COVID-19 pandemic. 13. Acting on this market information, the FTC has pursued a rigorous warning letter program and filed law enforcement actions for injunctive and other relief in federal courts.12 In the health claims area, for example, the FTC and the Food and Drug Administration (FDA) have, to date, issued over 90 joint warning letters to marketers regarding claims that their products will treat, cure, or prevent COVID-19.13 The FTC on its own has issued more than 225 additional warning letters to marketers.14 The letters warn recipients that their conduct is likely to be unlawful, that they could face serious legal consequences if they do not immediately stop, and require a response to the FTC within 48 hours. In nearly every instance, companies that have received FTC warning letters have taken quick steps to correct or eliminate their problematic claims. The FTC also has issued warning letters, in conjunction with the Small Business Administration, to companies making potentially misleading claims about federal loans or other temporary small business relief.15 14. The FTC has also filed court actions involving COVID-19 health claims, distribution claims, and government stimulus check claims.16 For example, the FTC filed four lawsuits in federal district courts against online merchandisers for failing to deliver on promises that they could quickly ship products like face masks, sanitizer, and other personal protective equipment (PPE) related to the coronavirus pandemic.17 15. Finally, the FTC has launched numerous consumer education campaigns, including a website on COVID-19 scams and a resource page that contains brochures, graphics, and videos in multiple languages.18 3. Guidance and Cooperation to Peer Agencies as Part of a Coordinated, GovernmentWide Response Effort 16. The FTC and DOJ also have shared their competition expertise with other international and federal agencies in order to facilitate COVID-19 response and recovery while preserving competitive markets. Among other efforts, the Agencies have been working closely with the Federal Emergency Management Agency (FEMA) to develop a Voluntary Agreement governing cooperation among industry participants seeking to respond to the pandemic.19 The purpose of the Agreement is to maximize the effectiveness of the manufacture and distribution of critical healthcare resources nationwide to respond to the pandemic. Organized under the authority granted by the Defense Production Act, participants to the Agreement receive antitrust immunity for actions taken to carry out the Agreement. Before the Agreement can become effective, however, the Attorney General must find that the purposes of the Agreement may not be achieved through a voluntary agreement having less anticompetitive effects. These efforts also have helped inform the Agencies’ responses to business review letters seeking approval for cooperation in the production of critical health care products, as discussed below. 3.1. International Advocacy 17. U.S. enforcers also have been leveraging our existing bilateral relationships and ties to multilateral organizations, such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD), to increase communication and cooperation. 18. In the immediate aftermath of the declaration of a state of national emergency in the United States, the Agencies played a key role in facilitating communication and cooperation among international enforcers by collecting and sharing on a regular basis rapidly developing information on how COVID-19 has impacted competition law enforcement efforts around the world. After DOJ successfully developed a regular internal process for collecting and disseminating this information, the ICN integrated this project into its ongoing work streams. In early April, as the economic impact of COVID-19 and possible enforcement challenges began to emerge, the ICN Steering Group issued a statement on key considerations related to competition law enforcement during and after the COVID-19 pandemic.20 The Agencies contributed with the FTC serving as a lead drafter of the statement recognizing the importance of competition to economies in crisis and urging agencies to remain vigilant regarding anti-competitive conduct. The statement also calls for transparency of operational and policy changes during the crisis and advocates for competition as a guiding principle for economic recovery efforts in the aftermath of the pandemic. 19. Since spring 2020, the Agencies have participated in several virtual events hosted by the ICN, the OECD, and the United Nations Conference on Trade and Development on international cooperation, investigations and competition law policy in the wake of COVID-19.21 In September 2020, the U.S. Agencies hosted the ICN 2020 Virtual Conference, which brought together enforcers from around the world to discuss antitrust developments, including how to address enforcement and policy challenges raised by COVID-19. 3.2. Doctrinal Responses 20. While procedural aspects of the Agencies’ work have changed as a result of COVID-19, the Agencies’ view of key U.S. antitrust standards has not changed. The Agencies have reiterated that the antitrust laws are flexible enough to account for changing market conditions, even during uncertain times.22 21. In particular, the Agencies continue to take the view that the failing firm defense is “narrow in scope,” and should be invoked selectively.23 The Agencies have continued to reiterate in speeches and publications that they will not relax the stringent conditions that define a genuinely “failing” firm and continue to apply the test set out in the U.S. Horizontal Merger Guidelines24 and reflected in our long-standing practice, and that they will require the same level of substantiation as was required before the COVID pandemic.25 As such, while it is possible that more firms may fail as a result of an economic crisis such as COVID-19, the view of the United States is that economic dislocation, on its own, does not provide a compelling reason why the assets of failing firms should be purchased by close competitors. 3.3. Competition Advocacy 22. The Agencies are continuing to advocate for changes to regulations that may impede competition, which may cause even greater harm in the context of the COVID-19 crisis. For example, the Agencies have submitted multiple letters to state legislatures in recent years expressing their concerns over “certificate of need” laws26 and other restrictions on the availability of health care resources.27 Given the extraordinary disruptions created by COVID-19, the United States views protecting the free functioning of health care markets as even more urgent, and the Agencies plan to continue our advocacy to remove regulatory impediments to competition in the health care sector. 23. Directly relating to the COVID-19 public health emergency, FTC staff submitted a comment to the Centers for Medicare & Medicaid Services (CMS) on its Interim Final Rule with Comment Period (IFC).28 The FTC comment supported the IFC’s provisions that reduce or eliminate restrictive Medicare payment requirements for telehealth and other communication technology-based services during the public health emergency. FTC staff noted that if telehealth practitioners’ entry is limited or reimbursement requirements are overly restrictive, consumers’ access to care and choice of practitioner might be unnecessarily restricted, especially in areas where there is a shortage of healthcare professionals. The IFC’s rule would reduce restrictions on Medicare reimbursement for telehealth services. This is especially important, not only to enhance the use of telehealth to care for Medicare beneficiaries, but also to encourage private payers to expand the use of telehealth. Reducing or eliminating restrictions on reimbursement of telehealth services could potentially enhance competition, improve access and quality, and decrease health care costs in both the public and private sectors. By connecting widely separated providers and patients, telehealth can alleviate primary care and specialty shortages. 24. The FTC continues to advocate against states issuing certificates of public advantage (COPA). For example, in September 2020 FTC staff submitted a public comment opposing issuance of a COPA to the Texas Health and Human Services Commission. FTC staff expressed concern that the proposed merger at issue would lead to significantly less competition for healthcare services in Midwest Texas.29 25. The FTC and its staff have also analyzed potential competitive concerns associated with professional regulations in the health care sector, including licensure and scope of practice.30 For example, FTC staff sent advocacy letters to the Texas Attorney General and the Texas Medical Board relating to regulations that could harm competition by impeding access to surgical and other health care services provided by certified registered nurse anesthetists.31 FTC staff recommended that Texas maintain only CRNA supervision requirements that advance patient protection and avoid adopting regulations that impede CRNA practice. 26. DOJ hosted a virtual joint workshop with the USPTO in July 2020 that included debate on the role of innovation and public-private collaboration in responding to the COVID-19 pandemic.32 The workshop, entitled “Promoting Innovation in the Life Science Sector and Supporting Pro-Competitive Collaborations: The Role of Intellectual Property,” comprised 10 sessions over two days. Panelists included leading figures from industry, government agencies, prominent research labs, the non-profit sector, academia, and the broader legal and economic community. Members of the public were also able to submit questions throughout the event. 4. Facilitation of Cooperative Public and Private-Sector Efforts to Resolve the Crisis 27. The Agencies are working together to bolster the recovery by providing guidance relating to recovery-related collaborations on an expedited basis.33 In a joint statement in April, the Agencies emphasized the potential importance of pro-competitive collaborations between private firms to bring essential goods and services to communities in need. In addition to providing high-level collaboration guidelines consistent with previous DOJ and FTC policies, the statement contained guidance specific to COVID-related business activities, including reaffirming that the Agencies will account for exigent circumstances in evaluating collaborative efforts to address the spread of COVID-19, and that medical providers’ development of suggested practice parameters to assist in clinical decisionmaking will not be challenged, absent extraordinary circumstances.34 28. The Agencies also announced an expedited business review letter program, under which all COVID-19-related requests will receive responses within seven calendar days of the Agencies receiving all necessary information. This expedited process for COVIDrelated business review letters is an outgrowth of the Agencies’ role in advising other executive branch agencies on facilitating COVID-related cooperation within the antitrust laws, and each of the letters issued through the expedited process in 2020 addresses proposed conduct that is critical to COVID-19 response. Since March 2020, DOJ has issued the following four expedited business review letters: 1. A letter approving a collaboration by McKesson Corporation, Owens & Minor Inc., Cardinal Health Inc., Medline Industries Inc., and Henry Schein Inc to expedite and increase manufacturing for the distribution of personal protective equipment (PPE) and coronavirus-treatment-related medication in a way unlikely to lessen competition;35 2. A letter approving a collaboration by AmerisourceBergen with FEMA, HHS, and other government entities to “identify global supply opportunities, ensure product, quality, and facilitate product distribution of medications and other healthcare supplies to treat COVID-19 patients;”36 3. A letter approving a collaboration by Eli Lilly and Company, AbCellera Biologics, Amgen, AstraZeneca, Genentech, and GSK to “exchange limited information about the manufacture of monoclonal antibodies that may be developed to treat COVID19” in order to optimize COVID-19 vaccine production as part of Operation Warp Speed;37 and 4. A letter approving a collaboration by the National Pork Producers Council (NPPC) and the U.S. Department of Agriculture (USDA) “to address certain hardships facing hog farmers as a result of the COVID-19 pandemic.”38 29. The Agencies also pledged to expedite the processing of filings under the National Cooperative Research and Production Act, which provides flexible treatment of certain standards development organizations and joint ventures under the antitrust laws. 5. Revised Rules Regarding Merger Enforcement 30. The Agencies have adapted to changing work conditions and reallocated resources to maintain continuity of core operations and enforcement efforts. COVID-19 initially necessitated temporary changes to ensure the continuation of expeditious and thorough merger review.39 Changes made by both Agencies include (1) extending standard timing agreement provisions so that the post-compliance period runs for sixty to ninety days (instead of thirty days) for pending or proposed transactions that may be subject to a Second Request, (2) requiring all merger filings with the FTC and DOJ to be submitted via the FTC’s electronic filing system, and (3) committing to conducting all meetings and depositions by phone or video conference when possible, absent extenuating circumstances.40 For the initial period of only two weeks at the start of the COVID crisis, the Agencies also suspended the granting of early termination, which can shorten the waiting period for non-problematic mergers. The option of early termination was resumed in March, and timing of grants of early termination has returned to pre-pandemic levels.41 31. Notably, COVID-19 did not sideline other important efforts to improve the Agencies’ enforcement programs. Among other efforts, in June 2020, the Agencies for the first time issued joint Vertical Merger Guidelines.42 In September, the Division also issued a modernized Merger Remedies Manual. As an update to the 2004 edition, the new manual provides “greater transparency and predictability regarding the Division’s approach to remedying a proposed merger’s competitive harm,” including an emphasis on structural remedies and a renewed focus on enforcing consent decree obligations. The Division also has continued to follow through on its September 2018 commitment to modernize banking merger review, with the goal of expedited and efficient resolution for uncomplicated merger matters.43 Economic downturns, as often occur in the wake of disasters such as the COVID-19 crisis, may impact merger activity, which is why continuing to improve the Agencies’ approach to reviewing and remedying potentially anticompetitive mergers remains a priority.

#### Plan causes a trade-off and devastates antitrust agency effectiveness

Sacher & Yun 19 (Seth B. Sacher, Economist, & John M. Yun, Antonin Scalia Law School, George Mason University, TWELVE FALLACIES OF THE "NEO-ANTITRUST" MOVEMENT, 26 Geo. Mason L. Rev. 1491, y2k)

VII. Fallacy Seven: Not Recognizing That Their Proposals Will Strain Competition Agency Resources, Increase Uncertainty, and Make These Agencies More Political and Subject to Capture Most of those that have worked within, or before, the antitrust agencies, despite their inevitable disagreement with certain actions or policies, are generally very impressed with the high degree of skill, professionalism, and dedication exhibited by the career staff. 131As will be discussed more fully in the [\*1515] context of Fallacy XI below, many proponents of neo-antitrust do not accept the proposition that the antitrust agencies and their staffs function relatively well, in spite of the views of many (on all sides of the political spectrum) who have had experience working within or before the antitrust agencies. Regardless of how neo-antitrust proponents view the agencies, many of their proposals run a serious risk of adversely affecting competition agency performance. There are a number of objective reasons to expect antitrust agencies to function relatively well. First, antitrust agencies tend to be small relative to many other regulatory agencies and bureaucracies in general. 132Second, their staffs tend to be highly trained professionals, consisting primarily of lawyers and Ph.D. economists. 133Third, they have a well-defined objective (i.e., the consumer welfare standard or some similar standard based on economic reasoning, such as the total welfare standard). 134Finally, although antitrust is considered a form of regulation, it is distinct from other forms of regulation in that it does not involve a continuing relationship between the regulated firms and the regulator. As a goal, antitrust seeks to enable markets to more nearly achieve certain social objectives on their own. 135 First, advocates of neo-antitrust would like to see the responsibilities of the antitrust agencies expanded in a number of ways. This includes more aggressively enforcing existing antitrust laws, as well as the consideration of issues beyond those currently within that purview. 136Further, many of their proposals, such as requiring data sharing, monitoring markets to prevent tipping, or approving platforms' algorithm changes, 137 will require significantly more active market supervision than is currently the case. While many [\*1516] proponents of modern antitrust would agree that the antitrust agencies are underfunded, 138 there is certainly a point at which expanding the antitrust agencies will have "bureaucratic" diseconomies of scale. Fully following the recommendations of neo-antitrust advocates could very well require many antitrust agencies to expand beyond some critical point, which will inevitably lead to significantly larger bureaucracies and associated inefficiencies. Second, many of the above proposals would require not only more staff, but also staff with differing expertise from that held by most agency lawyers and economists. For example, monitoring data sharing is far from straightforward, as it is frequently unclear where data begins and technology ends. Similarly, considerations of income inequality or environmental questions may involve tradeoffs beyond the expertise of mere law or economics, such as technology, ethics, or even psychology. While staff of the antitrust agencies will frequently contact market participants and other experts with specialized knowledge on an as-needed basis, it is unknown how well such expertise would function within the long-term framing of antitrust, which has been a legal and economic domain since its inception.

#### Failed COVID recovery triggers multiple hotspots

Wright 20 (Robin Wright, a contributing writer and columnist @ The New Yorker, The Coronavirus Pandemic Is Now a Threat to National Security, 10-7, https://www.newyorker.com/news/our-columnists/america-the-infected-and-vulnerable, y2k)

The broader danger is the world’s perception now of America as inept and vulnerable, Doug Lute, a retired lieutenant general who was the director of operations for the Joint Chiefs and a deputy national-security adviser to Presidents George W. Bush and Barack Obama, told me. “There are two things that would drive our competitors—the general sense of incompetence by the executive branch and a reading that we are totally self-absorbed internally,” he said. “There’s an overlapping of the pandemic, the protests, and now the election that amplifies that image. In broad terms, those conditions internally will be viewed by external competitors as opportunities.” America faces threats from a spectrum of overseas adversaries, the retired Marine General John Allen, who is now the president of the Brookings Institution, told me. “I’m deeply concerned that there will be foreign actors, all the way from jihadists to state actors, that try to take advantage of a level of duress that we haven’t seen for a long time. It has not been lost on our adversaries, or those who would seek to gain ground, that the United States has consciously chosen to withdraw.” The sense of “sheer confusion” surrounding American politics in 2020 compounds the temptation of foreign actors to make moves, either for their own gains or to diminish America, Allen said. The most obvious perils are from the big powers, which may calculate that the White House will not counter their moves elsewhere in the world during such domestic turbulence, especially on the eve of an election, former military and Pentagon officials told me. From Russia, President Vladimir Putin could dig deeper into Ukraine, meddle in unstable Belarus, or test the strength of the Baltic states to resist. From China, President Xi Jinping could further threaten Taiwan, exert its claim to islands in the South China Sea by deploying equipment or personnel, or take more draconian actions in Hong Kong. Both countries have moved steadily to deepen their presence and influence across Asia and deep into the Middle East—with its access to the Mediterranean and the West. For Moscow and Beijing, overt challenges would be a big bet, especially with an erratic and sometimes reckless President (currently on steroids) in the White House. Yet both countries will also understand that the American public has little appetite for more trauma, the military and security officials said. “I’m sure that foreign adversaries’ intelligence services have their collection systems turned up high so that they understand exactly how disruptive this pandemic is on our national-security structure,” the former C.I.A. director John Brennan said on CNN this week. North Korea and Iran may also try to exploit the moment, although both have fewer capabilities than Russia or China. Tehran is still smarting from the U.S. assassination, in January, of General Qassem Suleimani, the head of its élite Quds Force, a wing of the Revolutionary Guards, which supports several militias that have attacked U.S. troops in Iraq and Lebanon. “I suspect Iran is not done seeking revenge for the killing of Suleimani,” Lute told me. Tehran’s strength is in the proxy forces it arms, aids, and often directs across the Middle East, particularly Lebanon, Iraq, and Yemen. Since Suleimani’s death, attacks by the Popular Mobilization Forces on U.S. troops and the American Embassy in Iraq have steadily escalated; the P.M.F., backed and sometimes directed by Iran, is the umbrella for some sixty predominantly Shiite militias that operate in separate brigades. Last month, the campaign sparked a diplomatic crisis when Secretary of State Mike Pompeo warned the Iraqi government that the United States would close its Embassy in Baghdad—one of the largest American diplomatic facilities in the world—if the government did not prevent the militias from firing on the U.S. compound and American troops based elsewhere in Iraq. “Our global deterrence at the high end—nuclear and conventional deterrence in Europe, Asia, and the Gulf—will not be tested,” Lute said. “But there may be challenges at lower levels through cyber or by proxies.”

#### These all go nuclear

David Kampf 20, senior PhD fellow at the Center for Strategic Studies at The Fletcher School, “How COVID-19 Could Increase the Risk of War,” World Politics Review, 6-16-2020, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right. Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis. The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent. In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors. If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good. The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

### 3

#### The United States federal government should substantially increase regulation of the actions that violate the worker welfare standard.

#### Regulation solves market failures best by mandating the competitive outcome. AND competes---it’s distinct from antitrust.

Niamh Dunne 15, lecturer in Law at King’s College London, *Competition Law and Economic Regulation*, Cambridge University Press, 2015.

III. Mechanisms to address market failure (II): the concept of economic regulation

Next, we turn to economic regulation, considering, specifically, its conceptualisation and use as a discrete legal instrument separate from competition law. As legal rules, the antitrust provisions are easily identifiable; disagreements tend to arise instead regarding their purpose and scope. The concept of regulation, by contrast, is much broader and rather amorphous in nature; the question of what it comprises is complex and unsettled.193 This section considers the literature on regulation and builds a functional definition of the concept for the purposes of our analysis. The objective here is primarily to identify and explain those instances of regulation that are likely overlap, in substance, with the operation of competition law, which, in practice, tends to be sector-specific economic regulation. This definitional exercise is not intended to exclude or challenge broader or competing conceptions of regulation as such; rather, we are simply defining the scope of enquiry for the purposes of this work.

We begin by considering the varying conceptions of regulation that have been advanced. Regulation as a concept within politics or social science is construed broadly. A common departure point is the formulation advanced by Selznick, of ‘sustained and focused control exercised by a public agency over activities that are valued by a community’. 194 This provides an expansive and rather abstract definition. More generally, regulation can be viewed as any conscious ordering of activity, meaning the act of controlling, directing or governing according to a rule, principle or system.195 Regulation, in this sense, is a synonym for State action intended to influence or control behaviour. It encompasses all forms of State market supervision, as well as contract and criminal law, and even soft law institutional arrangements.196 This conception of regulation is, however, too broad and insufficiently precise for our purposes, insofar as it fails to address the qualitatively different impact that certain forms of market regulation have on firm behaviour, in contradistinction to competition law’s impact.

Narrowing the definition, the ‘core conception’ of regulation has been described as State intervention into the operation of markets.197 Regulation, thus construed, comprises State activity to remedy market failures or defects. Jarass refined the notion of market intervention: if regulation and public enterprise are separated, regulation means State intervention into the economic conduct of private enterprises.198 Ogus suggested that this rationale of market failure marks regulation as a ‘collectivist’ enterprise, in contradistinction to law implementing ‘the market system’, 199 although few would claim that the mere presence of regulation within a market wholly displaces the latter. While this approach comes closer to our notion of regulation as a mechanism to remedy market defects, it cannot, however, account for the distinction between competition law and other forms of market supervision.

Under this narrower conception, a subdivision into different categories of regulation can be made, typically into economic regulation and social regulation.200 Stewart thus identified a primary distinction between types of regulation: sector-specific economic regulation of competition in particular industries through some combination of entry, service and price controls; and social regulation, comprising environmental, health, safety, anti-discrimination and consumer protection regulation through uniform standards applying to many or all industries.201 Ogus argued that both categories address types of market failure: economic regulation is a substitute for competition in industries with monopolistic tendencies, whereas social regulation corrects information inadequacies in transactions between individuals and firms plus externalities or spill-over effects.202 Although, in practice, competition law can interact and even conflict with social regulation,203 competition enforcement is rarely deployed to remedy the types of market failure that fall within the purview of social regulation.204 Since there is limited substantive overlap between the scope of application of competition law and social regulation – that is, generally these two forms of market regulation are deployed to address different market problems and cannot be considered interchangeable in terms of application – only economic regulation is considered in this work.

Scholars of regulatory economics typically view economic regulation as a relatively narrow concept, limited, in effect, to conventional forms of public utilities regulation. Such regulation has four distinguishing components: control of entry; price-fixing; prescription of quality and conditions of service; and universal service obligations.205 Unlike competition law, which provides a residual mechanism of market supervision applicable in most sectors, economic regulation is sector-specific in nature, and tends to prescribe particular market conduct, rather than merely proscribing broad categories of anticompetitive conduct. Yet often the market difficulties to be remedied through economic regulation stem from the same problem that is addressed by competition law: namely, excessive market power. Economic regulation thus provides a substitute of sorts for the market discipline of competition by emulating the competitive outcome.206 Kahn accordingly described the essence of economic regulation as ‘the explicit replacement of competition with governmental orders as the principal institutional device for ensuring good performance’. 207 Economic regulation as a discrete category of State supervision aimed at controlling market power has been repeatedly recognised by economic policy-makers.208 Within regulatory economics, moreover, competition law has been identified as a third facet in alongside economic and social regulation.209 Accordingly, it is possible to discern a notion of economic regulation that is distinct from, yet has overlapping spheres of application with, competition law, creating a potential for cumulative application of these mechanisms. This possibility is explored later in this work.

The focus on market defects as the rationale for regulation leads some commentators to advance a functional definition, framed in terms of what is to be remedied or achieved.210 Prosser favoured that approach, arguing that it provides a fuller account of what regulators do or should do.211 Considering Yeung’s claim that ‘[t]he aim of any form of regulation is to modify the behaviour of those subject to regulation in order to generate a desired outcome’, 212 the functional approach to regulation should encapsulate ideally both the desired outcome and the means to achieve it. It is necessary, therefore, to give some consideration to the purpose of regulation in order to understand the concept more fully.

The question as to why regulation is enacted can be answered from at least two distinct perspectives: an ‘interest theory’ viewpoint, which focuses on the causes or political motivations for regulation, or a ‘normative justificatory’ viewpoint, which focuses on the social or economic problem to be remedied or other regulatory task that legitimises the imposition of regulation.213 At this juncture, our focus is on the latter, because we are primarily concerned with the substantive issue of the use of regulation to address market defects rather than the political question of why regulation is implemented initially. Interest theory questions remain relevant, of course, given that the motivation behind a regulatory framework may dictate its structure, efficiency and the extent to which it prioritises special interests over general interests. Broadly, two interest theories are discernible, focusing on public interests and private interests (also known as public choice), respectively, while alternative conceptualisations of regulation address institutional aspects or transaction costs.214 These theories are considered further in Chapter 3. Unsurprisingly, where regulation is enacted at the behest of special interests, it is likely to favour those interests rather than society in general. In such circumstances, the ex post application of competition law to correct the resulting sub-optimal distribution may be more likely. Thus, the question arises, which is considered in Chapter 4, of the extent to which competition law can and should be deployed to correct regulatory failures.

Considering the second dimension – the normative justificatory viewpoint – a standard explanation for economic regulation is to correct inefficiencies that result from market failure.215 Yet, economic efficiency is not the sole imperative, and often not even the primary objective, in regulatory policy-making. In fact, the various rationales for regulation – described by Yeung as the ‘collective goals justifying regulatory intervention’ 216 – might be divided, roughly, into two categories. The economic rationale for regulation prompts intervention to maximise economic efficiency, correct spill-over costs or address information inadequacies. The social rationale focuses on distributional issues, seeking to avoid undesirable distributions of wealth or opportunity.217 It is important to emphasise that the division between economic and social rationales for regulation is not coextensive with concepts of economic and social regulation, considered earlier. Rather, Prosser pointed to a distinction in terms of regulatory goals that is more akin to the division between efficiency and equity, considered previously. Hence, for example, considerations of a social nature can inform the necessity for and content of economic regulation. In practice, furthermore, while some justifications for regulation conform to the economic/social divide (control of monopoly firms as an example of the former, continuity of service issues as the latter), others may contain aspects of both (e.g., internalising externalities may have distributive and economic aspects.) It is important to note, additionally, that the question of the substantive policy goals pursued by regulation is distinct from (although, of course, not unrelated to) the issue of whether that regulation is effective at achieving those goals, an issue considered further in Chapter 3. 218

The role of non-commodity or social values within the regulatory sphere is widely accepted, even within the realms of economic regulation. Insofar as regulation has social functions, it may therefore serve social ends that even perfectly functioning competitive markets cannot achieve.219 Bator, who viewed market failure as a static institutional problem, nevertheless suggested that market efficiency is ‘neither sufficient nor necessary for market institutions to be the “preferred” mode of social organisation’. Assuming that ‘markets might be ends as well as means’, it might be the case that alternative political, social and/or organisational values are so much better served by non-efficient market institutions as to require selection.220 Thus, Stewart argued that regulation may legitimately reflect a variety of non-commodity values, such as aspiration, diversity, mutuality, civic virtue, distributional equity, condemnation of behaviour viewed as morally wrong, access to justice, legitimate expectations and certainty.221 In distilling guiding principles for regulation, Sunstein applied the Rawlsian ‘original position’ to derive two criteria – welfare and autonomy – in an approach that is clearly at odds with pure efficiency-focused wealth-maximisation.222

Moreover, a regulatory regime may promote non-commodity values even while it addresses an ostensibly ‘economic’ problem, such as regulation of a natural monopoly. For example, regulated utilities are often subject to universal service obligations, under an equity rationale, in addition to regulatory requirements that aim more directly at remedying the problem of monopoly, such as rate regulation or mandatory access requirements.223 Indeed, Areeda and Hovenkamp argued that the primary objective of much economic regulation is the prevention of consumer exploitation,224 an approach that blurs the boundary between avoiding the inefficiencies of monopoly and securing distributive justice. The primary difficulty is that, by introducing non-economic goals into the equation, this complicates and can sometimes even work against realisation of the economic principles that underlie many regulatory regimes.225 Non-commodity values might, therefore, introduce considerable indeterminacy into regulatory analysis.226

The parameters of regulation as a legal or economic term of art are inherently unsettled.227 Insofar as this work considers the substantive legal relationship between competition law and regulation as mechanisms of market control, it focuses upon economic regulation alone, because it is within this area where questions of substantive overlap typically arise. Yet a precise definition of economic regulation as a legal construct remains elusive, principally because, in practical terms, economic regulation is imposed on a case-by-case basis in many different market sectors to solve individual market failures. The elements contained within a particular regulatory regime are therefore dictated by the specifics of the market problem to be addressed, as well as the political environment and societal disposition towards market intervention. A broad range of potential regulatory strategies or techniques exist: from, for example, classical ‘command and control’ approaches such as centralised price-setting, or licensing requirements that set entry and/or services standards within the market; to incentive-based regulation such as emissions trading schemes that seek to induce efficient or desirable conduct by market actors; to disclosure obligations intended to address information asymmetries; and even self-regulatory or ‘meta-regulatory’ approaches. Moreover, as will be discussed in Chapter 3, recent decades have seen a concerted effort to improve the quality and effectiveness, howsoever this is defined, of much economic as well as social regulation. The choice of regulatory instrument can be of central importance to the success of the regulated outcome, and thus is of relevance for our purposes, insofar as ineffective regulation may prompt calls for deregulation or the concurrent application of competition law in regulated markets. A detailed account of the full range potential regulatory strategies approaches available is, however, beyond the scope of this work.228

### 4

#### The 50 state governments territories should …

#### Offer substantial personal financial rewards to prosecutors who win antitrust suits against private sector business practices that violate an antitrust worker welfare standard

#### Enact substantial personal financial punishment to prosecutors who fail to pursue antitrust litigation

#### Direct vastly supernormal resources to antitrust state prosecutors

#### The CP solves better – States consistently pursue antitrust action, even during periods of weak federal enforcement.

**Arteaga and Ludwig 21** (Juan A Arteaga (Former senior official in the Antitrust Division of the US Department of Justice) and Jordan Ludwig, 1-28-2021, "Global Competition Review," Private Litigation Guide - Second Edition, <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement> TJR)

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[d] 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.

#### The incentives planks checks solvency deficits

Rauch, 20

(Daniel E. Rauch, JD Yale School of Law, “Sherman's Missing Supplement: Prosecutorial Capacity, Agency Incentives, and the False Dawn of Antitrust Federalism,” 68 CLEV. St. L. REV. 172 (2020) NL)

(2020).State attorneys general are having a moment. In recent years, they have been main players in some of the country's most important legal and political dramas. They have checked the Trump Administration on abortion rights,3 air quality,4 and the United States Census.5 They have checked the Obama Administration on water rights, 6 immigration policies,7 and the Affordable Care Act.8 They have formed a (very public) front line on issues from the opioid epidemic9 to net neutrality.10 And in a time of federal-level gridlock, they are increasingly seen as critical sites of governance offices that can still "get things done."" As their profile grows, many suggest state attorneys general ought to take a more central role in antitrust enforcement. Sometimes, these calls are motivated by concerns that the federal government is not vigorously enforcing antitrust laws, leaving a "void" to be filled. 12 Sometimes, the calls are motivated by the suggestion that states enjoy institutional advantages in antitrust enforcement, such as superior knowledge of "market-specific information," that make them superior enforcers.13 And sometimes, the calls are motivated by doctrinal differences between state and federal antitrust statutes, differences that might afford states greater freedom of action.14 In any case, these calls point in the same direction: when it comes to American antitrust law, state attorneys general can, and should, be leaders. Rhetorically, the suggestion that states should "step up" as leading antitrust enforcers is a powerful one. It is not, however, new. When the Sherman Act was passed in 1890, the states (as opposed to the federal government) were widely expected to take the lead in antitrust enforcement. John Sherman himself asserted that his Act's "single object" was to "supplement the enforcement of the established rules of the common and statute law by the courts of the several States."1 5 Nor was he alone: at the time of the Act's passage, scholars, politicians, and shareholders all shared Senator Sherman's prediction that state enforcement agencies would be a central, if not decisive, force in American antitrust policy.16 What happened next defied this expectation. In the years following the Sherman Act's passage, from 1890 until the First World War, state antitrust enforcement had remarkably little impact or efficacy. Many scholars have noted this unexpected failure.1 7 None, however, have accurately or rigorously explained it.1 This Article does. Using novel historical and empirical research, I contend that the best explanation for the early failure of state antitrust enforcement was prosecutorial incapacity: state attorneys general and local prosecutors without the incentives or resources to handle antitrust cases. Along the way, I also provide a rigorous rejection of the leading alternative explanations for the states' early failure to act, including those based on doctrinal constraints, statutory text, and contemporary politics. Finally, I close by suggesting some implications that this first, failed era of antitrust federalism has for our own times, times where, once again, state enforcement agencies are held out as promising leaders in American antitrust enforcement. The remainder of this work proceeds as follows. Part II provides historical context for the passage of the Sherman Act and for early state antitrust statutes, the role state enforcement was expected to play, and its unexpected failure to do so. Part III then turns to the historical and empirical record to discern why state enforcement, widely expected to assume a central role, took almost no role at all. Analyzing a comprehensive and novel data set of state antitrust prosecutions, this Part quantitatively underscores the absence of state antitrust enforcement during this period. However, the data also reveals a critical nuance: a set of "high-enforcement states" in which state antitrust law was, in fact, enforced with at least some vigor. Armed with this insight, Part IV returns to the initial question: why, as a general matter, did early state antitrust enforcement fail to take root? This Part assesses four prominent explanations that have been suggested as answers to the question: (1) doctrinal arguments on the legality of state-level enforcement; (2) economic arguments based on the practical efficacy of state-level enforcement; (3) institutional arguments that the federal government's Sherman Act authority somehow "displaced" state activity; and (4) political arguments that public opinion or elected officials lost interest in antitrust enforcement after passing their initial state statutes. Ultimately, this Part rejects each of these explanations. Part V, however, considers and rigorously tests a different explanation: that the cost and complexity of antitrust litigation was simply beyond the capabilities of state prosecutors. On this account, the crucial factor was a lack of "prosecutorial capacity." To date, this explanation has never been systematically explored, examined or established. 19 This Part does so, analyzing the novel data set of state antitrust caselaw, the text of the states' early antitrust laws, the structure of each state's prosecutorial bureaucracy, and the workings of each state's budget processes. Through this empirical and documentary analysis, a striking pattern emerges. In overwhelming measure, the "high-enforcement" states, those where at least some antitrust enforcement took place: (1) offered substantial personal financial rewards to prosecutors who won antitrust suits; (2) offered substantial personal financial punishment to prosecutors who failed to pursue antitrust litigation; (3) directed vastly supernormal resources to antitrust state prosecutors; or (4) pursued some combination of these strategies. In short, these states offered incentives or capabilities that would make it personally easier (or more lucrative) for resource-limited prosecutors to act. By contrast, where such direct prosecutorial incentives and resources were absent, so was enforcement. Even in states that were politically progressive antitrust bastions. Even in states that imposed draconian statutory penalties for antitrust violations. Thus, the best explanation for the failure of early state antitrust enforcement was insufficient prosecutorial enforcement incentives and capacity

### Adv 1

#### Concentration down and no impact to ‘market power’.

**Atkinson ‘10/18** [Robert; 10/18/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "No, Monopoly Has Not Grown," <https://www.nationalreview.com/2021/10/no-monopoly-has-not-grown/>]

Over the past several years, advocates of much **stricter antitrust** laws and enforcement have grounded their case on a **simple** claim: U.S. industry concentration (**monopoly**) has **increased** to crisis proportions and the only solution is a radical overhaul of our nation’s **antitrust laws**, imposing much stricter **limits** on mergers and breaking up leading companies.

There is only one problem: Concentration has **not increased**, even though the “fact” of rising concentration has been picked up by a large number of pundits and commentators. The Economist got the ball rolling in 2016, concluding that two-thirds of the economy’s roughly 900 industries had become more concentrated between 1997 and 2012. Paul Krugman writes that “growing monopoly power is a big problem for the U.S. economy.” The anti-business advocacy group Open Markets refers to “America’s concentration crisis.” And now leading **politicians parrot** the claims. Senator Amy Klobuchar (D., Minn.), chair of the Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, states: “We are seeing higher levels of market concentration across our economy.” Congressman David Cicilline (D., R.I.), chair of the House Antitrust Subcommittee, warns that America has a “monopoly problem.” And new Federal Trade Commission chair Lina Khan alleges that the United States faces a “sweeping market power problem.”

You’d think that **pundits**, **advocates**, and **public officials** would make some attempt to **rely on data**. But alas, that is not the case. The definitive source of data to measure economic concentration comes from the U.S. Census Bureau’s newly released 2017 Economic Census data for over 850 industries, from cane-sugar manufacturing to cable-TV providers. Comparing data from 2017 (the most recent year for which figures are available) and 2002 shows what has really happened with industry concentration. And the **data** are quite **clear**: This is much ado about little.

Just **35 of 851** industries are highly concentrated, with the top four firms’ sales accounting for more than 80 percent of industry sales (this is called the C4 ratio). In 2002, 62 percent of industry output was from industries with low levels of concentration (a C4 ratio below 50 percent), but by 2017, 80 percent of industries had low concentration. Moreover, of the 115 industries with a C4 ratio of 60 percent or more in 2002, the majority **got less concentrated**. Overall, the average C4 ratio for American industry increased only slightly, from 34.3 percent to 35.3 percent.

In addition, many highly concentrated industries, such as luggage and leather-goods stores (a C4 ratio of 81 percent), performing-arts companies, geothermal power generation, and paint and wallpaper stores, all face **significant competition** from firms in **other industries**, such as movie theaters, department stores, and natural-gas power generation. Moreover, over those 15 years, **imports** as a share of GDP have **increased**, adding even **more competition** in many sectors. And technology has created **new competitors** in **different industries**. Satellite radio and smartphones now compete with over-the-air radio stations, for example.

Anti-corporate populists have taken particular aim at “Big Tech.” However, of the 135 advanced-technology industries, only eight have C4 ratios above 80, with a **majority of sectors** becoming **less concentrated** by 2017. And most sectors still face **tough competition**. For example, even with the rise of Amazon, the C4 ratio of electronic shopping and mail-order houses increased, but only from 24 percent to 37 percent.

Finally, even in sectors where concentration grew to high levels, **consumers** usually **benefited**. The C4 ratio in the wireless-telecommunications industry increased from 63 percent to 86 percent. But industry productivity grew 84 percent faster than economy-wide productivity, while **capital-investment rates doubled** and **nominal prices fell** by 31 percent from 2011 to 2020.

But surely firms in the few concentrated industries must be making huge profits and jacking up prices, right? In fact, prices rose less from 2002 to 2017 in industries with higher levels of concentration than did the overall producer price index. And looking at the 80 industries for which both IRS profit data and Census Bureau concentration data were available, it turns out that there is **no statistical relationship** between **profits** and **concentration**. This is consistent with the finding that U.S. non-financial domestic business profits were **no higher** in the few years before COVID than in the late 1970s, when antitrust regulations were supposedly more vigorously enforced.

As Daniel Patrick Moynihan once famously stated, everyone is entitled to his own opinion, but not his own facts. It is time for the **debate** about “monopoly” and industry concentration to be **grounded in** facts.

#### It protects labor and buyer power – expansion undermines industry competition

**Kennedy ’18** [Joe; 2018; Ph.D. in Economics from George Washington, former Chief Economist with the U.S. Department of Commerce; Information Technology and Innovation Foundation, “Why the Consumer Welfare Standard Should Remain the Bedrock of Antitrust Policy,” <https://www2.itif.org/2018-consumer-welfare-standard.pdf?_ga=2.192427434.1418038939.1629691609-110184707.1628807018>]

A key criticism of the **c**onsumer **w**elfare **s**tandard is it **ignores buyer power**—whether of labor or goods. Marshall **Steinbaum** et al. have criticized Walmart and other big retailers for squeezing small suppliers.28 Others argue that big companies are exerting monopsony power within **labor markets**.29 Carl Bogus, for example, complains that after a merger, “workers at all levels face a reduction in potential employers.”30

There are two possibilities here. One is the case in which, because of anticompetitive behavior or a merger, a company gets monopsony power over a specific market and uses it to engage in deliberate anticompetitive acts to harm suppliers, including labor. These cases can create harms even though the company is a buyer rather than a seller. The other is the general argument that every time a company merges there is one fewer potential buyer or employer (but not necessarily less demand or fewer jobs). It is clear the consumer welfare standard covers the **former cases**, because in reality, “consumer” is just a convenient substitute for “**counterparty**.” A report put out by the American Antitrust Institute, which favors tougher antitrust policy, points out: “[C]onsumer welfare” **does not mean** that antitrust protects **only consumers**. It protects all buyers, including companies, from seller market power. Antitrust also protects **sellers** from being **exploited** by powerful buyers and it promotes open markets and entrepreneurial freedom. Moreover, properly conceived, consumer welfare takes into account not only effects on price and output, but also product or service **quality** and **innovation**.31

In a recent article, Herbert Hovenkamp and Carl Shapiro stated: “As we use this term, applying the ‘consumer welfare’ standard means that a merger is judged to be anticompetitive if it disrupts the competitive process and harms trading parties on the other side of the market.”32

Existing competition policy also applies not just to **monopsony**, but to anticompetitive behavior toward **suppliers**, whether businesses or workers. For example, when a company takes specific action to **limit** competition within the **labor markets**, antitrust laws apply. In 2010, the Department of Justice (**DOJ**) filed a civil antitrust complaint against six hightech companies that had agreed not to cold call one another’s employees but used other means to attract workers.33 A class action suit resulted in a recovery of $415 million.34 Earlier this year, the Department sued two railroad equipment **suppliers** for entering into agreements not to solicit each other’s employees.35 A joint document by the two leading antitrust agencies clearly states, “The DOJ will **criminally investigate** allegations that employers have agreed among themselves on employee **compensation** or not to solicit or hire each other’s employees.”36 More recently, several national fast-food chains dropped the practice of using noncompete agreements after being challenged by a group of state **attorneys general**. 37

#### Reforming the consumer welfare standard harms economic growth.

**Muris ‘19** [Timothy; 3/20/19; Foundation Professor of Law at George Mason University, former Chairman of the Federal Trade Commission, J.D. from University of California, Los Angeles; Jonathan E. Nuechterlein; former General Counsel at the Federal Trade Commission, J.D. from Yale Law School. Partner and Co-Lead of Telecom & Internet Competition Practice at Sidley Austin LLP; "Antitrust in the Internet Era: The Legacy of United States v. A&P," Review of Industrial Organization, Volume 54, p. 651-681]

Increasingly one hears that **current antitrust** doctrine is **ill-equipped** to address the **competitive dynamics** of the internet age and should be fundamentally **altered** to address the putative “monopoly” power of large technology companies: The Economist, normally a beacon of journalistic sobriety, worries that internet “titans— Alphabet (Google’s parent company), Amazon, Apple, Facebook and Microsoft— look unstoppable.… Old ways of thinking about competition, devised in the era of oil, look outdated in what has come to be called the ‘data economy.’… A new approach is needed.”1 Various advocacy groups call for a **dramatic overhaul** of antitrust doctrine.2 Senate Democrats vow to “revisit our antitrust laws to ensure that the economic freedom of all Americans—consumers, workers, and small businesses— come[s] before big corporations.”3 And on the other end of the political spectrum, the American Conservative urges its readers “to break from the principles of free market fundamentalism” and join “in a bipartisan war” against “modern-day robber barons” on the West Coast.4

These **proposals** to overhaul antitrust doctrine share a few **key attributes**: First, advocates of radical change express **nostalgia** for 1960s antitrust, when the field had **no clear objectives** and cases were decided on **impressionistic notions** of “**fairness**.” During that pre-economic era, conduct was **punished** and **mergers blocked** simply because they **disadvantaged competitors**, even if they also increased **consumer welfare**.5

Second, the critics identify modern antitrust with “the Chicago School,” which they **lampoon** and **excoriate**. Barry Lynn writes in the Nation: “A generation ago, when a small crew within the Reagan administration set out to clear the way for a radical reconcentration of power, they did so not by openly assailing our antimonopoly laws but by altering the intellectual frames that guide how we enforce them.… [T]he new goal was ‘efficiency.’ Rather than protect the ‘opportunity’ of the citizen producer, the new goal was to promote the ‘welfare’ of the ‘consumer.’”6 According to Lynn, these developments were somehow malign.

Third, the adherents of this new movement argue that so-called “tech giants need to be cut down to size, immediately,” because they are “killing competitors and other industries” and are poised to “destroy … democracy itself.”7

This article exposes the intellectual void at the heart of this populist antitrust movement. In Part 1, we begin by following Justice Holmes’ tenet that “a page of history is worth a volume of logic.”8 More than 80 years ago, the A&P grocery chain was a vertically integrated retailer that made use of unprecedented scale and innovation to offer consumers a wider range of products than the competition and at lower prices. Like today’s leading online companies, A&P was exceptionally popular with consumers, which made it harder for smaller rivals to maintain their margins.

Yet A&P’s very popularity triggered a backlash. First, Congress passed the nownotorious Robinson–Patman Act to handicap A&P and other growing chain stores. Then the Justice Department criminally prosecuted A&P and its senior executives for offering consumers too good a deal; and, having secured their convictions, the Justice Department filed another case to break up the largest and most innovative retailer in American history. Although that case was ultimately unsuccessful, A&P’s management spent years fending off the government’s relentless pursuit, while new companies—not so burdened—ultimately eclipsed it.

This article recounts the attacks on A&P in some detail because, as discussed in Part 2 below, they bear an eerie resemblance to attacks today on leading online innovators. Increasingly **integrated** and **efficient** retailers—first A&P, then “big box” brick-and-mortar stores, and now online retailers—have challenged traditional retail models by offering consumers **lower prices** and **greater convenience**. For decades, critics on the right and left have reacted to such disruption by urging **Congress**, the **courts**, and the enforcement **agencies** to stop these American **success stories** by **revising antitrust** doctrine to protect small businesses rather than the interests of consumers. Using antitrust law to **punish pro-competitive behavior** makes no more sense today than it did when the government attacked A&P for offering consumers too good a deal on groceries.

Finally, as discussed in Part 3, antitrust doctrine does **not need** an **overhaul**. It is shaped by many **economic perspectives**, follows no one “School,” and is **flexible enough** to address any monopoly abuses in the twenty-first century.9 It is also **well calibrated** to serve its central function: promoting consumer welfare. It does so not only by prohibiting conduct that harms consumers in the **long run**, but also by **avoiding interference** with conduct that might **appear problematic** to non-economists but that **demonstrably benefits** consumers **over time**.

The advocates of doctrinal overhaul cannot show that consumers would benefit if we ripped up the current antitrust rulebook and replaced it with a more impressionistic “big is bad” doctrine. They argue instead that antitrust should be **redesigned** to **promote objectives** in addition to (and often in **conflict** with) consumer welfare, such as **protecting existing jobs** from dislocation, **preserving** the **profit margins** of inefficiently small businesses, and **shielding** the **political system** from influence by large corporations. But it is **folly** to pursue those **non-consumer-oriented** objectives, whatever their **policy merits**, through case-by-case antitrust litigation. Doing so would **harm consumers**, offer **little guidance** to successful businesses, **hinder economic growth**, and make antitrust enforcement more **subjective** and **susceptible** to charges of **political manipulation**.

#### 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.

#### Wages are at historic highs.

**Domm ’21** [Patti; May 22; CNBC Markets Editor, responsible for news coverage of the markets and economy; CNBC; “Workers’ wages are rising at the fastest pace in years. Companies’ profits could take a hit,” <https://www.cnbc.com/2021/05/22/wages-rise-at-the-fastest-pace-in-years-firms-profits-could-take-a-hit.html>; KP]

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.

#### Antitrust unnecessary and ineffective for resolving inequality.

**Gotts ‘18** [Ilene Knable; February 2018; J.D. from Georgetown University Law Center, antitrust partner at Watchtell, Lipten, Rosen & Katz, recognized as one of the world’s top antitrust lawyers by the Euromoney’s Women in Business Law Lifetime Achievement Award; "Back to the Future: Should the “Consumer Welfare” Standard Be Replaced in U.S. M&A Antitrust Enforcement?" Antitrust Review, Volume 1, p. 1-31]

But what does income inequality have to do with antitrust enforcement generally, and with M&A activity specifically? Some Progressive think tanks, scholars, advocates, and others have issued reports blaming inadequate antitrust enforcement for **high profits**, **concentration**, and, ultimately, **inequality effects**.68 University of Chicago Economics Professor Luigi Zingales similarly has indicated that there is “a direct connection between economic power, bigness, and political power.”69 The University of Chicago’s Booth School of Business held a conference in March 2017, entitled “Is There a Concentration Problem in America?.” Many of the speakers at the conference endorsed the need for antitrust enforcement to be strengthened: The Economist article on the conference is accurately entitled “The University of Chicago worries about a lack of competition. Its economists used to champion big firms, but the mood has shifted.”70

So, too, did the Obama Administration’s leaders of the antitrust authorities express concerns. For instance, Renata Hesse, while Acting Assistant Attorney General (“AAG”) in September 2016, said that the “legislative history of the Sherman Act makes it clear that the antitrust laws were intended to benefit participants in the American economy broadly—not just in their capacity as consumers of goods and services.”71

The **data** may **not actually support** the claim that **increased concentration** is the **source** of political and economic inequality. More fundamentally, as DOJ economist Greg Werden and Vanderbilt University Economics Professor Luke Froeb point out, none of the Progressive advocates have demonstrated **increased** concentration of **antitrust cognizable markets**, but instead make these claims based on **data** that are **far too aggregated**.72 In addition, Werden and Froeb indicate that, even where market concentration has increased, that does not mean that there has been a **failure of antitrust law** or its enforcement; market concentration naturally increases when the most innovative and efficient firms grow, and correlates with the conclusions on concentration, as well as whether such an increase in concentration necessarily proves a decline in competition.73 However, assuming that both of the concentration concerns were true, Professor Carl Shapiro indicates:

Antitrust policy can address concerns about rising concentration and high corporate profits

(a) by increasing cartel enforcement efforts; (b) by imposing tighter controls on mergers; and (c) by taking a tougher approach to exclusionary conduct by dominant firms. Looking at competition policy more broadly, additional tools can come into play: (d) adopting policies that reduce entry barriers;74 (e) actively breaking up large firms in concentrated markets;75 and (f) regulating firms deemed to have substantial market power.76

Professor Shapiro stops short of suggesting that the last three of these actions be undertaken as a part of antitrust enforcement.

Professor Herbert Hovenkamp further argues that an antitrust policy that focuses on **wealth inequality** could actually **harm consumers**.77 For instance, a policy that condemned firms that **produce lower prices** or **higher quality** than rivals might “improve” distribution of wealth or protect smaller competitors, but at what cost to consumers? Or, for that matter, at what cost to the **creation** of **new jobs** from the increased output achieved by the **efficient firm**?

#### 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

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.

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.

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.

#### Their studies manipulate statistics, ignore local and global levels, and falsely assume antitrust enforcement is causal.

**Atkinson ‘21** [Robert; 3/10/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "How Progressives Have Spun Dubious Theories and Faulty Research Into a Harmful New Antitrust Doctrine," <https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new>]

Neo-Brandeisians have spent that last decade promulgating a **series of myths** related to the industrial organization of big companies in order to paint as dire a picture as possible. As we noted in ITIF’s “Monopoly Myths” series, most of these claims are **either wrong** or **significantly overstated**.14 The problem, however, is that in the **echo chamber** that pretends to be objective policy discourse, these ideas have by and large become **conventional wisdom**, even among non-Brandeisians—which is precisely what neo-Brandeisians want. For example, we all know that an increase in economic concentration causes a decline in start-ups; the fall in the share of income going to labor is caused by concentration; price markups, profits, and concentration have skyrocketed; “superstar” firms only exist from predation; and Big Tech creates “innovation kill zones.” The problem is all of these claims are either **wrong or vastly overstated**.

Myth 1: Industry Concentration Levels Have Increased to Dangerous Levels15

The core argument neo-Brandeisians have relied on to move the Overton window is that **lax antitrust enforcement** has led to **market concentration** rising to **dangerous levels**, and in turn leading to a decline in competition.

Yet, when looked at more **closely**, the problem is far less serious than the broad pronouncements would suggest. Despite the measured rise in concentration in **some industries** (at least from 2002 to 2012, the last year of government-provided data), in the vast **majority of markets**, it remains well below the levels that would normally trigger antitrust concern. Moreover, while concentration has grown in many industries, that growth is usually from **very low to low levels**. Census data from 2002 and 2012 shows 792 six-digit NAICS (North American Industry Classification System) industries (out of approximately 1,066 total industries) for which a percentage change between the two years could be calculated. Of these, the market share of the top 4 companies either fell or remained constant in 319 industries (40 percent). Another 116 showed an increase of 10 percent or less. Of the 473 industries where concentration increased, the C4 market share remained less than 20 percent in 142 industries and under 40 percent in 281 industries. Only 95 industries saw an increase in concentration that produced a C4 of 60 percent or more (and even at 60 percent, if each firm held an equal market share, this would mean each firm had just 15 percent of the market) and of these, just 45 had increases of more than 10 percentage points.

But there are **measurement issues** as well. For one thing, most studies often use an **inappropriately broad definition** of “the market,” and **omit** the role of **imports** that **reduce concentration**. Second, most look only at **national concentration** levels, when many **markets are local** in nature. Recent studies conclude that concentration in most local markets has been **steady**, or **even falling**. Third, a certain degree of **concentration can be good**. Rather than leading to a decline in competition, it may result in **increased competition** in which more **productive firms** increasingly **gain market share** over their less-productive and less-innovative rivals.

Finally, the definition of relevant markets for antitrust purposes has continuously been criticized and questioned as being excessively narrow and out of touch with market realities. Indeed, relevant product markets are defined as narrowly as possible to make any company with a certain market power look like a monopolist. Equally, geographically relevant markets are **drawn so narrowly** that **global competition** is often **overlooked**. And potential competition with dynamic entry does not represent a sensible criterion for market definition, contrary to competitive constraints exerted on the market. Consequently, neo-Brandeisians want to narrow the definition of relevant markets to the smallest possible size (only one firm), contrary to academic antitrust literature, which advocates for broader and more-accurate market definitions. Once labeled as a monopolist (akin to Brandeis’s mark of Cain), the resulting backlash and techlash can spread even farther, soon followed by antitrust reforms.16

#### Effects of concentration are too small to influence aggregate wages or income inequality.

**Schubert et al. ‘21** [Gregor; 1/18/21; Ph.D. Candidate in Business Economics at the Harvard Economics Department and the Harvard Business School; et al.; "Employer Concentration and Outside Options," <https://scholar.harvard.edu/files/stansbury/files/stansbury-jmp-jan18.pdf/>]

Policy and academic debates have become **increasingly focused** in recent years on the issue of **employer concentration**. A lack of choice of **job options** for workers - as a result of a **few large firms** dominating their local labor market - has been **posited** as a **possible explanation** for **inequality**, **low wages**, and stagnant **wage growth**. Antitrust authorities have been called upon to consider employer concentration when reviewing mergers and acquisitions. Concerns have been raised that high employer concentration may facilitate (legal or illegal) restrictions to labor market competition, such as the use of no-poaching agreements or non-compete clauses. And, since employer concentration can be a source of monopsony power in labor markets,1 concerns around high employer concentration have bolstered calls for higher minimum wages and for a strengthening of workers’ collective bargaining power.2

But to **assess** whether – or in which cases – policy should respond to employer concentration, we need a **deeper understanding** of the **nature** and **effects** of employer concentration in the **U**nited **S**tates. Two major open issues remain. First, **endogeneity**: while there is a well-documented negative correlation between local employer concentration and wages, the extent to which this is **causal** – and the **magnitude** of any such causal effect – is **unclear**. Second, **market definition**: assessing the effect of local **employer concentration** on wages, and pinpointing the workers who are **most affected** by it, requires a **good definition** of the relevant local labor market for workers.3

Our paper addresses both of these issues, estimating the effect of employer concentration on wages across the majority of U.S. occupations and metropolitan areas. To address the endogeneity issue, we develop a new identification strategy based on differential local exposure to national firms’ hiring growth. To address the market definition issue, we segment our analysis by the degree of outward mobility from different occupations. We also develop a new measure for the outside option value of local jobs in other occupations, proxying for workers’ ability to find a job in another occupation using new occupational mobility data which we construct from 16 million U.S. workers’ resumes, and use our new measure to estimate the joint effect of within-occupation employer concentration and outside-occupation options on wages.

Our baseline results suggest an important effect of employer concentration on wages: moving from the degree of employer concentration faced by the median worker to that faced by the worker at the 95th percentile results in a roughly 3% lower wage, holding all else equal. This average, however, masks substantial heterogeneity: the effect of employer concentration is at least six times higher for the least outwardly mobile than the most outwardly mobile occupations. A back-of-the-envelope calculation, using our coefficient estimates, suggests that over 10% of the 110 million workers covered in our data experience wage suppression of 2% or more as a result of employer concentration.

Overall, our findings point to a **middle ground** between two prominent views about the effects of employer concentration in the U.S. **labor market**. On the one hand, employer concentration is not a niche issue confined to a few factory towns: our results suggest that a material subset of U.S. workers see non-trivial effects of employer concentration on their wages. On the other hand, employer concentration does not seem to be an **important determinant** of wages for the majority of U.S. workers, and the effects of employer concentration **do not seem big enough** to have a **substantial effect** on the **aggregate wage level** or degree of **income inequality** in the U.S. economy.

### Adv 2

#### No one would actually follow on the aff —courts take years, political will, Biden won’t, etc.

Hirsh 21 — Michael Hirsh (Senior Correspondent, Foreign Policy); “Big Talk on Big Tech—but Little Action;” Foreign Policy; April 6th, 2021; <https://foreignpolicy.com/2021/04/06/big-tech-regulation-facebook-google-amazon-us-eu/>

Problem is, that’s just about where the consensus ends. And even if you add more lawyers, antitrust cases move glacially, and federal judges are extremely cautious about punishing behavior deemed anti-competitive, especially in an era when antitrust experts disagree vehemently about remedies. Plus, now every case faces the prospect of being squelched by a very conservative Supreme Court.

Despite the documented actions of Facebook and other companies in crushing would-be competitors, there is also good reason for judicial caution. Consider the irony that Microsoft—itself the target of a major antitrust action a quarter century ago—now considers itself the aggrieved party in the recent Department of Justice case against Google, since it is trying to raise the profile of its Bing search engine, which has a meager 2.5 percent of the market. Or that Facebook’s own dominance may someday fall victim—without any help from government at all—to new blockchain technology that could allow users to run their own web services and applications. (Ironically, among the key innovators pushing for that are Zuckerberg’s old antagonists from Harvard University, Tyler and Cameron Winklevoss, who [famously claimed](https://www.forbes.com/sites/michaeldelcastillo/2021/04/05/revenge-of-the-winklevii-facebook-winklevoss-bitcoin-nft-billionaire-revenge/?sh=543f9e791572) that he stole the social network idea from them.) Even today, many antitrust experts say it’s probably a judicial and legislative bridge too far for the government to try to proactively promote competition in the tech world; let the markets take care of that instead.

But so changed is the political environment that U.S. President Joe Biden and some of his top regulators, such as Lina Khan, a Yale Law School wunderkind who was recently nominated to the FTC, might seek to break up the big tech firms. Biden, on the campaign trail, said that breaking up tech quasi-monopolies such as Facebook is “something we should take a really hard look at.”

That is almost certainly not going to happen: The political will simply isn’t there, even among many Democratic legislators influenced by Khan and other progressive thinkers.

“I don’t think Biden has the stomach for that,” said Herbert Hovenkamp, an antitrust expert at the University of Pennsylvania. The reason is simple: Today’s monopolistic abuses are quite unlike the monopoly power of old, when big cartels like John D. Rockefeller’s Standard Oil inflicted predatory high prices on consumers and political will was high to “bust trusts.” On the contrary: Most consumers love the fact that they can buy all kinds of inexpensive stuff on Amazon and have it delivered the next day, and that Facebook doesn’t charge them a cent, even as it makes a mint selling their private information to advertisers and market manipulators.

“The Democrats need to be cautious here,” Hovenkamp said. “Consumers are their constituency. And these companies are among the biggest producers of growth in the U.S. Biden certainly doesn’t want to ruin that.” Instead, the administration may well decide to focus more on smaller fish in other industries, as the FTC did last week by [challenging](https://www.barrons.com/articles/ftcs-challenge-of-illumina-is-a-boost-for-rivals-in-cancer-test-race-51617228262) Illumina’s $7 billion purchase of cancer test developer Grail. In a sign of how aggressive the FTC might be under Biden, it was the first time in decades that the commission sought to block a so-called vertical merger, alleging that ownership of Grail would incentivize Illumina, a gene-sequencing company, to raise costs on Grail’s competitors.

#### Biotech key to solve poverty and hunger

Makinde 2007—(The Role of Agricultural Biotechnology in Hunger and Poverty Alleviation for Developing Countries. Prof. M .O. Makinde, Prof. J. R. Webster, Mr. N. Khumalo&Dr. D .P. Keetch 7 May 2007 EuropaBio http://www.europabio.org/GreenManifesto/SUMMARY%20REPORT.pdf)

Over the last decade, agricultural biotechnology has demonstrated that it can play a role in alleviating poverty and hunger because it has the potential to make farming more efficient and to generate higher yields. Satisfaction with agricultural biotechnology is reflected in the adoption rate by farmers since 1996, which has stood at a double digit rate of increase every year. Agricultural biotechnology can increase crop productivity and the stability of productivity and therefore improve food security. Genetically Modified (GM) crops are less labour-intensive and easier to use for resource poor farmers. This is hugely beneficial as it increases food security and makes it easier for a largely female, elderly, or underage population to work the land. Furthermore, the Green Revolution of the 1960s had little benefit for Africa because it required large scale upfront investments but GM crops are knowledge intensive, not capital/labour intensive and therefore accessible to resource-poor farmers.

#### Bioweapons attack is small magnitude and probability

Mendelsohn 2006—Jack Mendelsohn adjunct professor at George Washington University and American University, was a member of the U.S SALT I and START II delegations and is the former deputy director of the Arms Control Association. 2006 National Academy of Sciences “Deligitimizing Nuclear Weapons” http://www.issues.org/22.3/mendelsohn.html

Second, despite efforts by the Clinton and Bush administrations to equate the dangers of chemical, biological, and nuclear weapons by lumping them together as weapons of mass destruction, nuclear weapons are the only ones that could devastate the **U**nited **S**tates, irreparably altering the lives its citizens. Chemical weapons (CWs) tend to be localized in their effects and difficult to deliver over large areas. They can be detected by sensors and their effects mitigated by protective measures. Biological weapons (BWs) are a more serious threat, but they can be tricky to produce, difficult to disseminate, and unpredictable in their effects. Against unprepared civilians, BWs could be devastating, although the severity of an attack could be attenuated by vaccinations, masks, antidotes, protective clothing, quarantines, and small-scale evacuations. On the other hand, there might be no discernable sign of the launch of a BW attack, in which case those responsible might be impossible to identify. The devastating efforts of nuclear weapons as compared with CWs and BWs are indicated in a comparative lethality risk model developed by the now-defunct congressional Office of Technology Assessment (OTA). The release of 300 kilograms of sarin nerve gas would create a .22-square-kilometer lethal area and cause 60 to 200 deaths. The release of 30 kilograms of anthrax spores would create a 10-square-kilometer lethal area and cause 30,000 to 100,000 deaths. But the explosion of a hydrogen bomb with a 1-megaton yield would create a 190-square-kilometer lethal area and cause 570,000 to 1,900,000 deaths.

No impact—Trump twitter post proves

#### No scammers impact.

**Pinker 18** Steven Arthur Pinker is a Canadian-American cognitive psychologist, Professor at Harvard University. [Enlightenment Now: The Case for Reason, Science, Humanism, and Progress, Viking, Penguin Group]

Serious threats to the integrity of a country’s infrastructure are likely to require the **resources of a state**. 50 Software hacking is **not enough**; the hacker needs **detailed knowledge** about the **physical construction** of the systems he hopes to sabotage. When the Iranian nuclear centrifuges were compromised in 2010 by the Stuxnet worm, it required a coordinated effort by two technologically sophisticated nations, the United States **and** Israel. State-based cyber-sabotage escalates the malevolence from terrorism to a kind of warfare, where the constraints of international relations, such as norms, treaties, sanctions, retaliation, and military deterrence, inhibit aggressive attacks, as they do in conventional “kinetic” warfare. As we saw in chapter 11, these constraints have become increasingly effective at preventing interstate war. Nonetheless, American military officials have warned of a “digital Pearl Harbor” and a “Cyber-Armageddon” in which foreign states or sophisticated terrorist organizations would hack into American sites to crash planes, open floodgates, melt down nuclear power plants, black out power grids, and take down the financial system. Most cybersecurity experts consider the threats to be inflated—a pretext for more military funding, power, and restrictions on Internet privacy and freedom.51 The reality is that so far, not a single person has ever been injured by a cyberattack. The strikes have **mostly been nuisances** such as doxing, namely leaking confidential documents or e-mail (as in the Russian meddling in the 2016 American election), and distributed denial-of-service attacks, where a botnet (an array of hacked computers) floods a site with traffic. Schneier explains, “A real-world comparison might be if an army invaded a country, then **all got in line** in front of people at the **D**epartment of **M**otor **V**ehicles so they couldn’t renew their licenses. If that’s what war looks like in the 21st century, **we have little to fear**.”52

**No extinction from disease.**

**Barratt 17**, PhD in Pure Mathematics, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute. (Owen Cotton-Barratt et al, “Existential Risk: Diplomacy and Governance”, pg. 9, <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>)

1.1.3 Engineered pandemics

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are **very unlikely** to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than **4%** (31 species) were ascribed to infectious disease.38 **None** of the mammals and amphibians on this list were globally **dispersed**, and **other factors** aside from infectious disease also **contributed to their extinction**. It therefore seems that our **own** species, which is very **numerous**, **globally dispersed**, and capable of a **rational response** to problems, is **very unlikely** to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can **kill their hosts** before they have a **chance to spread**, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

**Terrorists won’t build a bomb**

**Mueller 20** (John Mueller – senior fellow @ CATO, political science professor & senior research scientist with the Mershon Center for International Security Studies @ Ohio State University, visiting fellow at the Brookings Institution, the Hoover Institution at Stanford University, and the Norwegian Nobel Institute in Oslo. <KEN> “Nuclear Alarmism: Proliferation and Terrorism," Cato Institute. June 2020. https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism)

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, **cumbersome**, unsafe, **unreliable**, unpredictable, and **inefficient**.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are **incapable** of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an **industrial scale**. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to **steal** or illicitly purchase the crucial material.

A successful armed theft is **exceedingly unlikely**, not only because of the **resistance of guards** but also because chase would be **immediate**. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of **improved safeguards** and **accounting** practices, it is decreasingly likely that the theft would **remain undetected**.48 That development is important because if any missing uranium is noticed, the authorities would **investigate** the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to **arrest their attention** right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and **go to the authorities**. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to **cover their trail**, beginning with **eliminating their confederates**.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, **more than 100 pounds** are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it **out of the country** over **unfamiliar terrain**, probably while being **pursued by security forces**. Then, they would need to set up a **large** and **well‐​equipped machine** shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential **suspicions** among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that **precise blueprints** are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be **forced to redesign**.” They also stress that the work, far from being “easy,” is difficult, **dangerous**, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could **weigh a ton** or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The **financial costs** of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.