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#### Anti-trust reform is based in free market logics of upholding competition which strengthens free enterprise and saves capitalism.

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Antitrust laws have historically been associated with countries that possess a free-market capitalist economy, which is understood as an economic system in which competition and the market forces of demand and supply determine economic outcomes. This historical association between capitalism and antitrust laws is evident from the fact that the countries that first adopted national antitrust laws, such as Canada, the United States, and the countries of Western Europe, are countries that have long embraced a market economy. On the contrary, the statist economies of the erstwhile Soviet bloc and many developing countries, for the most part, did not institute antitrust laws of the type associated with free market economies.

Notwithstanding these country examples, which indicate a positive association between a capitalist economic system and antitrust laws, there exist arguments that both support and oppose antitrust laws for a capitalist economy. Arguments in support of antitrust laws for a capitalist economy begin with the fundamental understanding that the most important ingredient of a capitalist system is market competition. The presence of a competitive market is vital to achieving the efficiency levels that a capitalist economy seeks. Therefore, competitive forces need to be protected to discipline the market players, especially the dominant ones. By preventing and punishing anticompetitive practices by market players, an antitrust law protects and promotes market competition. 1

In the United States, which is commonly understood to be the leading bastion of free-market capitalism and one of the first countries to enact an antitrust law, the role of antitrust legislation in preserving the capitalist character of its economic system is underscored by the near-constitutional status accorded to its antitrust statues by the U.S. Supreme Court. 2 The Court described these statutes as “the Magna Carta of free enterprise” and “as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”3 Such a sentiment is appropriate, given that the American antitrust law, the Sherman Act, was passed in 1890 to protect economic competition from rapidly-growing “trusts.”4

While the social and political zeitgeist has changed considerably since the passing of the Sherman Act, the fact remains that antitrust is perceived as key to “protecting consumers against anticompetitive conduct that raises prices, reduces output, and hinders innovation and economic growth.”5 Moreover, it is understood that “competition is a public good, and society cannot expect the victims of anticompetitive conduct to protect themselves.”6 The implication therefore is that government power, through the enforcement of antitrust statutes, is critical to reining in corporate power in order to protect economic competition and capitalism.

Taking a global perspective, the idea that antitrust laws serve as a legislative bulwark against anticompetitive practices is not exclusive to the regulatory environment of the United States. Many other countries have adopted antitrust laws for the same goal, among others. And for the many developing and transition countries that adopted antitrust laws in recent decades, these laws are viewed as tools to promote economic development as well.

The view that antitrust laws are required to protect and promote competition has, however, been seriously contested, especially since the publication in 1978 of The Antitrust Paradox: A Policy at War with Itself by law professor and federal appellate court judge Robert Bork. 7 The subtitle to Bork’s highly influential book sums up the critique commonly leveled against antitrust laws: “[C]ertain of its doctrines preserve competition, while others suppress it, resulting in a policy at war with itself.”8 The fundamental problem stems largely from the difficulty in deciding which values should be ultimately promoted through the application of antitrust laws—consumer welfare or business efficiency? If the answer is both, then how much emphasis should be placed on each? Even if the goals are unambiguously certain and universally agreed upon, the question still remains as to what body of knowledge the courts can use consistently to adjudicate antitrust cases. 9

#### Allowing for class action lawsuits is a tool for capitalist expansion

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Recall that under the Guardian Model, as I have described it here, at least as a general matter, class attorneys function as a capitalistically driven guardian on behalf of the interests of the absent class members.107 For the most part, they lack whatever bonds develop between client and attorney based on the traditional one-on-one relationship for the simple reason that the overwhelming portion of the absent class remains faceless to class attorneys.108 While in a few instances, class attorneys in Rule 23(b)(3) damages class actions will be motivated by predominantly ideological considerations, it is safe to say that these instances will be sufficiently small in number that it is impossible, as an ex ante matter, to assume the existence of such a motivation.109 As a practical matter, then, the motivation for the effective performance of the guardian function will be largely capitalistic: if the absent class members benefit economically, the attorneys will also benefit economically.110 Thus, any situation in which the attorneys may benefit economically when their “wards” do not undermines the capitalistic incentives so essential to the Guardian Model of the modern class action.111

#### That culminates in extinction from climate change, nuclear war, extreme inequality, and perpetual exploitation of the Global South

Foster 19, Sociology Professor @ Oregon (John Bellamy, February 1st, “Capitalism Has Failed—What Next?” *The Monthly Review*, Volume 70, Issue 9, https://monthlyreview.org/2019/02/01/capitalism-has-failed-what-next/, Accessed 06-30-2021)

Less than two decades into the twenty-first century, it is evident that capitalism has failed as a social system. The world is mired in economic stagnation, financialization, and the most extreme inequality in human history, accompanied by mass unemployment and underemployment, precariousness, poverty, hunger, wasted output and lives, and what at this point can only be called a planetary ecological “death spiral.”1 The digital revolution, the greatest technological advance of our time, has rapidly mutated from a promise of free communication and liberated production into new means of surveillance, control, and displacement of the working population. The institutions of liberal democracy are at the point of collapse, while fascism, the rear guard of the capitalist system, is again on the march, along with patriarchy, racism, imperialism, and war.

To say that capitalism is a failed system is not, of course, to suggest that its breakdown and disintegration is imminent.2 It does, however, mean that it has passed from being a historically necessary and creative system at its inception to being a historically unnecessary and destructive one in the present century. Today, more than ever, the world is faced with the epochal choice between “the revolutionary reconstitution of society at large and the common ruin of the contending classes.”3

Indications of this failure of capitalism are everywhere. Stagnation of investment punctuated by bubbles of financial expansion, which then inevitably burst, now characterizes the so-called free market.4 Soaring inequality in income and wealth has its counterpart in the declining material circumstances of a majority of the population. Real wages for most workers in the United States have barely budged in forty years despite steadily rising productivity.5 Work intensity has increased, while work and safety protections on the job have been systematically jettisoned. Unemployment data has become more and more meaningless due to a new institutionalized underemployment in the form of contract labor in the gig economy.6 Unions have been reduced to mere shadows of their former glory as capitalism has asserted totalitarian control over workplaces. With the demise of Soviet-type societies, social democracy in Europe has perished in the new atmosphere of “liberated capitalism.”7

The capture of the surplus value produced by overexploited populations in the poorest regions of the world, via the global labor arbitrage instituted by multinational corporations, is leading to an unprecedented amassing of financial wealth at the center of the world economy and relative poverty in the periphery.8 Around $21 trillion of offshore funds are currently lodged in tax havens on islands mostly in the Caribbean, constituting “the fortified refuge of Big Finance.”9 Technologically driven monopolies resulting from the global-communications revolution, together with the rise to dominance of Wall Street-based financial capital geared to speculative asset creation, have further contributed to the riches of today’s “1 percent.” Forty-two billionaires now enjoy as much wealth as half the world’s population, while the three richest men in the United States—Jeff Bezos, Bill Gates, and Warren Buffett—have more wealth than half the U.S. population.10 In every region of the world, inequality has increased sharply in recent decades.11 The gap in per capita income and wealth between the richest and poorest nations, which has been the dominant trend for centuries, is rapidly widening once again.12 More than 60 percent of the world’s employed population, some two billion people, now work in the impoverished informal sector, forming a massive global proletariat. The global reserve army of labor is some 70 percent larger than the active labor army of formally employed workers.13

Adequate health care, housing, education, and clean water and air are increasingly out of reach for large sections of the population, even in wealthy countries in North America and Europe, while transportation is becoming more difficult in the United States and many other countries due to irrationally high levels of dependency on the automobile and disinvestment in public transportation. Urban structures are more and more characterized by gentrification and segregation, with cities becoming the playthings of the well-to-do while marginalized populations are shunted aside. About half a million people, most of them children, are homeless on any given night in the United States.14 New York City is experiencing a major rat infestation, attributed to warming temperatures, mirroring trends around the world.15

In the United States and other high-income countries, life expectancy is in decline, with a remarkable resurgence of Victorian illnesses related to poverty and exploitation. In Britain, gout, scarlet fever, whooping cough, and even scurvy are now resurgent, along with tuberculosis. With inadequate enforcement of work health and safety regulations, black lung disease has returned with a vengeance in U.S. coal country.16 Overuse of antibiotics, particularly by capitalist agribusiness, is leading to an antibiotic-resistance crisis, with the dangerous growth of superbugs generating increasing numbers of deaths, which by mid–century could surpass annual cancer deaths, prompting the World Health Organization to declare a “global health emergency.”17 These dire conditions, arising from the workings of the system, are consistent with what Frederick Engels, in the Condition of the Working Class in England, called “social murder.”18

At the instigation of giant corporations, philanthrocapitalist foundations, and neoliberal governments, public education has been restructured around corporate-designed testing based on the implementation of robotic common-core standards. This is generating massive databases on the student population, much of which are now being surreptitiously marketed and sold.19 The corporatization and privatization of education is feeding the progressive subordination of children’s needs to the cash nexus of the commodity market. We are thus seeing a dramatic return of Thomas Gradgrind’s and Mr. M’Choakumchild’s crass utilitarian philosophy dramatized in Charles Dickens’s Hard Times: “Facts are alone wanted in life” and “You are never to fancy.”20 Having been reduced to intellectual dungeons, many of the poorest, most racially segregated schools in the United States are mere pipelines for prisons or the military.21

More than two million people in the United States are behind bars, a higher rate of incarceration than any other country in the world, constituting a new Jim Crow. The total population in prison is nearly equal to the number of people in Houston, Texas, the fourth largest U.S. city. African Americans and Latinos make up 56 percent of those incarcerated, while constituting only about 32 percent of the U.S. population. Nearly 50 percent of American adults, and a much higher percentage among African Americans and Native Americans, have an immediate family member who has spent or is currently spending time behind bars. Both black men and Native American men in the United States are nearly three times, Hispanic men nearly two times, more likely to die of police shootings than white men.22 Racial divides are now widening across the entire planet.

Violence against women and the expropriation of their unpaid labor, as well as the higher level of exploitation of their paid labor, are integral to the way in which power is organized in capitalist society—and how it seeks to divide rather than unify the population. More than a third of women worldwide have experienced physical/sexual violence. Women’s bodies, in particular, are objectified, reified, and commodified as part of the normal workings of monopoly-capitalist marketing.23

The mass media-propaganda system, part of the larger corporate matrix, is now merging into a social media-based propaganda system that is more porous and seemingly anarchic, but more universal and more than ever favoring money and power. Utilizing modern marketing and surveillance techniques, which now dominate all digital interactions, vested interests are able to tailor their messages, largely unchecked, to individuals and their social networks, creating concerns about “fake news” on all sides.24 Numerous business entities promising technological manipulation of voters in countries across the world have now surfaced, auctioning off their services to the highest bidders.25 The elimination of net neutrality in the United States means further concentration, centralization, and control over the entire Internet by monopolistic service providers.

Elections are increasingly prey to unregulated “dark money” emanating from the coffers of corporations and the billionaire class. Although presenting itself as the world’s leading democracy, the United States, as Paul Baran and Paul Sweezy stated in Monopoly Capital in 1966, “is democratic in form and plutocratic in content.”26 In the Trump administration, following a long-established tradition, 72 percent of those appointed to the cabinet have come from the higher corporate echelons, while others have been drawn from the military.27

War, engineered by the United States and other major powers at the apex of the system, has become perpetual in strategic oil regions such as the Middle East, and threatens to escalate into a global thermonuclear exchange. During the Obama administration, the United States was engaged in wars/bombings in seven different countries—Afghanistan, Iraq, Syria, Libya, Yemen, Somalia, and Pakistan.28 Torture and assassinations have been reinstituted by Washington as acceptable instruments of war against those now innumerable individuals, group networks, and whole societies that are branded as terrorist. A new Cold War and nuclear arms race is in the making between the United States and Russia, while Washington is seeking to place road blocks to the continued rise of China. The Trump administration has created a new space force as a separate branch of the military in an attempt to ensure U.S. dominance in the militarization of space. Sounding the alarm on the increasing dangers of a nuclear war and of climate destabilization, the distinguished Bulletin of Atomic Scientists moved its doomsday clock in 2018 to two minutes to midnight, the closest since 1953, when it marked the advent of thermonuclear weapons.29

Increasingly severe economic sanctions are being imposed by the United States on countries like Venezuela and Nicaragua, despite their democratic elections—or because of them. Trade and currency wars are being actively promoted by core states, while racist barriers against immigration continue to be erected in Europe and the United States as some 60 million refugees and internally displaced peoples flee devastated environments. Migrant populations worldwide have risen to 250 million, with those residing in high-income countries constituting more than 14 percent of the populations of those countries, up from less than 10 percent in 2000. Meanwhile, ruling circles and wealthy countries seek to wall off islands of power and privilege from the mass of humanity, who are to be left to their fate.30

More than three-quarters of a billion people, over 10 percent of the world population, are chronically malnourished.31 Food stress in the United States keeps climbing, leading to the rapid growth of cheap dollar stores selling poor quality and toxic food. Around forty million Americans, representing one out of eight households, including nearly thirteen million children, are food insecure.32 Subsistence farmers are being pushed off their lands by agribusiness, private capital, and sovereign wealth funds in a global depeasantization process that constitutes the greatest movement of people in history.33 Urban overcrowding and poverty across much of the globe is so severe that one can now reasonably refer to a “planet of slums.”34 Meanwhile, the world housing market is estimated to be worth up to $163 trillion (as compared to the value of gold mined over all recorded history, estimated at $7.5 trillion).35

The Anthropocene epoch, first ushered in by the Great Acceleration of the world economy immediately after the Second World War, has generated enormous rifts in planetary boundaries, extending from climate change to ocean acidification, to the sixth extinction, to disruption of the global nitrogen and phosphorus cycles, to the loss of freshwater, to the disappearance of forests, to widespread toxic-chemical and radioactive pollution.36 It is now estimated that 60 percent of the world’s wildlife vertebrate population (including mammals, reptiles, amphibians, birds, and fish) have been wiped out since 1970, while the worldwide abundance of invertebrates has declined by 45 percent in recent decades.37 What climatologist James Hansen calls the “species exterminations” resulting from accelerating climate change and rapidly shifting climate zones are only compounding this general process of biodiversity loss. Biologists expect that half of all species will be facing extinction by the end of the century.38

If present climate-change trends continue, the “global carbon budget” associated with a 2°C increase in average global temperature will be broken in sixteen years (while a 1.5°C increase in global average temperature—staying beneath which is the key to long-term stabilization of the climate—will be reached in a decade). Earth System scientists warn that the world is now perilously close to a Hothouse Earth, in which catastrophic climate change will be locked in and irreversible.39 The ecological, social, and economic costs to humanity of continuing to increase carbon emissions by 2.0 percent a year as in recent decades (rising in 2018 by 2.7 percent—3.4 percent in the United States), and failing to meet the minimal 3.0 percent annual reductions in emissions currently needed to avoid a catastrophic destabilization of the earth’s energy balance, are simply incalculable.40

Nevertheless, major energy corporations continue to lie about climate change, promoting and bankrolling climate denialism—while admitting the truth in their internal documents. These corporations are working to accelerate the extraction and production of fossil fuels, including the dirtiest, most greenhouse gas-generating varieties, reaping enormous profits in the process. The melting of the Arctic ice from global warming is seen by capital as a new El Dorado, opening up massive additional oil and gas reserves to be exploited without regard to the consequences for the earth’s climate. In response to scientific reports on climate change, Exxon Mobil declared that it intends to extract and sell all of the fossil-fuel reserves at its disposal.41 Energy corporations continue to intervene in climate negotiations to ensure that any agreements to limit carbon emissions are defanged. Capitalist countries across the board are putting the accumulation of wealth for a few above combatting climate destabilization, threatening the very future of humanity.

#### The alternative is a global socialist movement.

Moghadam 20, Professor of Sociology and International Affairs at Northeastern University, and former Director of the International Affairs Program (Valentine, April, Planetize the Movement! *Great Transition Initiative*, https://greattransition.org/images/Planetize-Movement-Moghadam.pdf)

The moment is ripe for an alternative. Labor unrest has grown around the world, encompassing industrial workers, teachers, health workers, janitors, and others across the Middle East and North Africa, in Latin America, and even in the US. Indeed, we may be nearing a classic Leninist “revolutionary situation,” which could be the culmination of “the world revolution of 20xx.”4 If so, the Global Left should be better prepared to meet the challenge.

The good news is that there is a “new Global Left” that enjoys a multitude of emerging movements, including climate justice groups led by young people.5 The rich array of activist groups and the dynamism and passion they display excite a sense of possibility. However, the very diversity of movements and their weak interconnection could constrain the Global Left’s ability to achieve meaningful change.6 Without consensus around a common agenda, how are we to make the great transition from an entrenched global system based on capitalist profit, top-down decisionmaking, war, and environmental degradation to a world where people and the planet take center stage in politics and policy? Surely we need not only resistance on a multiplicity of grounds, but also agreement on a clear, coherent, and feasible alternative to the unjust, undemocratic, and unsustainable status quo.

A Missing Global Actor The socialist and communist movements and parties of the nineteenth and twentieth centuries pinned their hopes on the capacity of a united working class, defined as a largely male industrial laboring class (“the proletariat”), to tame and challenge capitalism. In the latter part of the twentieth century and into the twenty-first, the nature of that class changed, now encompassing a broader spectrum of working people, such as those in public and private services (including care workers) who labor under the supervision of highly paid managers and administrators, along with the precariat and gig economy workers. On the Left, however, many do not regard that more inclusive working class as a central actor, despite its composition spanning race, ethnicity, religion, national origin, and gender.7 Instead, today’s movements—certainly in the US—seem to define actors based on particular identities and interests. Rather than the singular actor of yore (the working class), today there is a multiplicity of actors across numerous movements. The question arises as to whether such a multiplicity of actors can generate the necessary coordination and craft a strategy to challenge the powers-that-be—economic and political elites situated in national governments; in the financial, corporate, and military sectors; and in institutions of global governance. If those elites are so well connected, why is it so difficult for our numerous movements to coalesce around a shared identity and agenda? In my estimation, the Left has lost sight of the proverbial forest for the proverbial trees. It has gotten far too caught up in culture wars and battles over identity, forgetting the centrality of political economy to the hidden injuries not only of class, but also of race and ethnicity, women’s subordination, the destruction of the commons, and inter- and intra-state rivalries, violence, and war. This strategic shift away from political economy has removed the Left’s traditional constituency—the working class in all its breadth and diversity—from a meaningful role. The shift also has confused the Left’s priorities. For instance, we cannot truly address the problems of racism and discrimination without giving urgent attention to the systemic problems of class: low-income communities devastated by precarious employment, the loss of public investment, dirty air and water, poor-quality schooling, and bad health. The politics of class cannot be divorced from those of race and of sex, because class is imbued with race and sex, and race and sex are themselves imbued with class. Under patriarchal and racist capitalism, there is no class exploitation without racial and sexual oppression. The separation of the three intersecting dimensions across unconnected movements—often lacking in understanding of and solidarity with each other—is among the unfortunate outcomes of our times, caused to some degree by partial, segmented internal politics, but largely by the relentless and effective political, cultural, and ideological campaigns of the ruling elites.

Catalytic Action Now

In the wake of the global financial crisis, it became clear that the world needed a new economic system. Change did not come about, however. To offer a viable alternative to financialization and runaway “shareholderism,” movements need to stand for workplace democracy and shared management, and for long-term rational and people-oriented planning over short-term profit. Although breaking up huge corporations should be the goal, taxing them adequately and using the revenue for societal needs and rights, not for continued militarism, can steer society in the right direction in the interim.

At the same time, we also need to think bigger. Contrary to the conventional wisdom that socialist and communist experiments all ended in failure, I believe that there is a lot we can learn from them. Indeed, this “failure literature” lacks balance and historical accuracy. The great socialist, communist, and liberation movements of the past may not have accomplished all that they could have or intended to, but they were very effective providing education and culture for the poor and imparting the legacy of equality, economic justice, and women’s advancement. The Communist movement had its shortcomings, but it promoted women’s equality and racial equality, supported numerous liberation movements, and checked capitalist and imperialist expansion.

In contrast, our recent movements have failed even in the short run. They may have changed the subject—certainly OWS highlighted the problem of income inequalities and helped reintroduce capitalism and its flaws into the national conversation in the US—but they could not compel change of the system itself, much less dislodge its major actors and beneficiaries. Unlike the progressive movements of the late nineteenth century and much of the twentieth century that gave us socialism and social democracy, an end to British colonialism, Third World development, and the demise of authoritarianism in southern Europe, the movements of the twenty-first century have not been able to make headway in structural or systemic terms. Instead, the collapse of world communism—celebrated across the globe—actually generated new crises and chaos.

One response to the crisis has been the new municipalism, which aims to implement localized democratic practices and people-oriented resource allocation. In one promising example, the administration of the Communist mayor of Santiago, Chile, has created a “people’s pharmacy,” offered cheap eye-care and glasses, increased public housing, and embraced leftist approaches to community safety, among other progressive people-oriented initiatives.8 But localism is not enough, as many of our problems are global in nature. The recklessness of the financial sector has had ripple effects across borders; the obsession with economic growth and capital accumulation has generated a massive, global environmental crisis. That brilliant experiment in radical democratic feminist municipalism—Rojava in northern Syria—was overturned in October 2019 by a brutal Turkish invasion facilitated by the Trump administration. Thus, we must heed Dr. King’s message to “take the nonviolent movement international” and to planetize it.

The Global Left and its infrastructure remain fragmented and disconnected, except for periodic mass rallies against the most egregious actions of global capitalism and imperial states. But it wasn’t always so. Once, vibrant Internationals were organized to guide and promote a worldwide movement. The influential First International, initially called the International Workingmen’s Association, was formed in 1864, but contention between the anarchist and socialist wings led to its demise in the late 1870s. Its successor, the Second International, had great success, but fractured in the run-up to World War I. The Third International formed after the Russian revolution to unite socialist and communist groups from across Europe and Asia, but later, under Stalin, became corrupted into the highly centralized Comintern.9

Both the successes and the failures of these Internationals offer vital lessons: a powerful worldwide movement could be premised on both a global political organization with a strategy for change and the strength of plural and diverse movements that call the status quo into question. To move forward, we need to look back at the old Internationals and, at the same time, not give up on the World Social Forum. The crises and injustices of our times call for both a coordinated “united front” and a loosely aligned “popular front.”

Some say the language of the past—socialism, communism, planning—is outmoded and unlikely to resonate. And yet, many young people embrace the term socialism; in the US, they rallied around Bernie Sanders’s call for “democratic socialism,” and in the UK, they coalesced around the Labour Party’s left-wing faction, Momentum, and its leader, Jeremy Corbyn. In Tunisia, where young people are losing hope in capitalist democracy because of high unemployment and other economic difficulties, the left-wing student union UGET and the many young supporters of the Front Populaire call for planning and a strong welfare state. Around the world, women have come together around a more inclusive, transformative vision of feminism, which some call “feminism for the 99%.”10 The “left nationalism” of Scotland, Northern Ireland, and the Kurds is also part of the new Global Left and could help constitute a global movement against capitalism, militarism, and oligarchic states.

The world’s injustices as well as new possibilities for alliance have inspired calls for coordinated forms of organizing. The late Egyptian Marxist economist Samir Amin, for instance, called for a Fifth International.11 But to balance the complementary needs of global coordination and plural autonomy, two Internationals may be needed, one that remains horizontally based—the movement of movements—and the other vertically organized, drawing inspiration and lessons from the old Internationals.

What might this mean in practical, strategic terms? To start, we should revitalize the World Social Forum.12 It encompasses diverse grievances, identities, and interests; it remains the site for dialogic discussion and the cultivation of solidarity across movements; and it has resisted the authoritarian impulses and practices of capital and the state. It can remain an open space for dialogue among place-based and identity-expressive movements. Building up the Global Left and helping advance a Great Transition, however, requires a global political organization to do the necessary crossmovement “translation” work and deliver a plan for structural change at national, regional, and global levels. Accomplishing this will be an arduous task, but we can’t afford to wait.

Whether it is called the Fifth International, the United Front, the Progressive International, or the World Party, such an organization would be vertically organized, along the lines of the earlier Internationals but with the involvement of anti-imperialist feminist groups such as Code Pink, the Women’s International League for Peace and Freedom, Marche Mondiale des Femmes, and the new Feminist Foreign Policy Project. This planetized formation would encompass progressive parties, anti-neoliberal unions, and anti-war movements across the globe. It would practice democratic decision-making and offer a clear vision and mission of an alternative system of production, social reproduction, trade, and international relations. It would revive the 2011 Arab Spring call, “The people want the fall of the regime,” and create a powerful message demanding a re-enactment of what occurred in 1989/1990, but in reverse: “The people want the fall of the ruling capitalist elites.”

Such a plan calls for a renewed emphasis on the working class, expansively defined and represented. Unions could organize the unorganized, carry out the necessary political education work among their members, and create broad coalitions with progressive political parties and unions across borders.13 It is worth noting that unions of teachers and nurses have been taking to the streets and making demands in Morocco, Iran, Iraq, Tunisia, Chile, and France, as well as in the US. Such parallel developments are ripe for cross-fertilization and coordination.

We should take the best from the past—planning, coordinating, internationalism, and action— and move forward with a common agenda for systemic transformation. To move forward with an International, veterans of past, more centralized movements and organizations might take the lead in organizing an initial meeting, to convene in a country that has felt the devastating effects of neoliberalism, such as Argentina or Greece. Another venue could be Tunisia—now the only genuinely democratic country in the Middle East/North Africa region. Our movements need to coalesce to make the present moment of populism and hegemonic decline an advantageous one for a Great Transition—this time toward a global socialist-feminist democracy built through the synergy of a new International and a revitalized WSF.

### 1NC — T

#### “The” refers to a group as a whole

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### Private sector means all non-governmental persons or entities, including non-profits

Senate Report 95 (Senate Report. 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” https://www.congress.gov/congressional-report/104th-congress/senate-report/1 , date accessed 9/10/21)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### Topical affs must change a universally-applied standard, like the CWS [Consumer Welfare Standard]

Phillips 18, commissioner on the Federal Trade Commission. (Noah J. November 1, 2018, Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### Violation: the aff applies exclusively to conduct in a specific segment of the private sector.

#### Vote neg:

#### FIRST---limits and ground---the number of potential subsets is infinite---any industry, product, single companies, individuals---undermines clash. Only big affs have link uniqueness.

#### SECOND----precision---our interp has intent to define, exclude and is in legislative context.

### 1NC — PIC

#### The United States Federal Government should prohibit the sale of patents by private corporations to indigenous nations as a violation of the Sherman Act.

#### The aff’s use of ‘tribe’ is racist

Newcomb 4 - Shawnee, Lenape scholar and author. He is co-founder and co-director of the Indigenous Law Institute. He has been studying and writing about U.S. federal Indian law and policy since the early 1980s, particularly the application of international law to indigenous nations and peoples. He has been a columnist for Indian Country Media Network (previously Indian Country Today) since 2002. Newcomb majored in Rhetoric and Communication at the University of Oregon, and he uses his expertise in persuasion and rhetorical analysis on behalf of Original Nations. He and Birgil Kills Straight (Oglala Lakota) founded the Indigenous Law Institute in 1992. Newcomb has worked on Indigenous Peoples issues in the international arena and at the United Nations for 20 years, and has worked with numerous Native Nations and Peoples. (Steven, “On the Words ‘Tribe’ and ‘Nation’,” *Indian County Network*, https://indiancountrymedianetwork.com/news/on-the-words-tribe-and-nation/)

The word “tribe” is derived from the Latin language, and refers to the three (from the prefix tri, meaning “three”) main divisions of the Roman people representing the Latin, Sabine and Etruscan settlements. Tribe refers to, “any group of people united by ties of common descent from a common ancestor, community of customs and traditions, adherence to the same leaders.” Another meaning is, “a local division of an Aboriginal people.” A tribe is also defined as, “a class or type of animals, plants, articles or the like.” Tribe is also a term of stockbreeding, “a group of animals, esp. cattle, descended through the female line from a common female ancestor.” The word “nation” refers to “a body of people, associated with a particular territory, that is sufficiently conscious of its unity to seek or to possess a government peculiarly its own.” Also, “the territory or country itself.” Synonyms include: “State, commonwealth, kingdom, realm.” Another meaning is, “a member tribe of a confederation,” which is a kind of state. The word national means, “or, pertaining to, or maintained by a nation as an organized whole or independent political unit,” and, “peculiar or common to the whole people of a country.” The contrast between the two terms is striking. The concept of nation is inclusive of such terms as, “government, territory, realm, confederacy, independent political unit,” etc., which are not necessarily or generally associated with the term “tribe.” The title of the book, “Indian Tribes as Sovereign Governments”, put out by Charles Wilkinson, and the American Indian Resources Institute (2004) is an interesting example of the effort that must be made to link “sovereignty” and “tribes.” Because “sovereignty” is not found in the etymological history of the word “tribe,” federal Indian law commentators have to make a special effort to link the two concepts together. By contrast, the concept of “sovereignty” is naturally embedded in the word “nation.” A book title “Indian Nations as Sovereign Governments” would be considered redundant because it would state the obvious: Nations are sovereign. It would be sort of like a title: “Roses as flowers.” Based on the word’s etymology, “tribe” does not obviously mean “sovereign,” or self-governing, thus the need to specify the idea of “Indian Tribes as Sovereign Governments”, with the added caveat of the subjugating federal Indian law paradigm: “subject to federal supervision,” or “subject to the plenary power of Congress.” If you were in a conversation with a representative of a member state of the United Nations, and referred to that country, nation or state as a “tribe” (for example, the “tribe” of Canada), your remark would spark an immediate and sharp response. No nation-state representative would allow his or her country to be referred to as a “tribe.” In fact, that representative would feel highly insulted because the Western mind immediately associates the word “tribe” with “primitive,” “uncivilized,” “backward” and “inferior.” Our indigenous sisters and brothers to the North saw through this semantic dilemma at least a decade ago, and began to politically demand that the dominant Canadian society refer to them as “First Nations.” The word “treaty” refers to “a formal agreement between two or more states in reference to peace, alliance, commerce or other international relations.” Not one mention of “tribe” or “tribes” is found in this definition because such demeaning terminology is outside of formal international diplomatic relations. We talk about the treaties that so many of our respective nations have made with the United States, but we allow ourselves to be demeaned with the words “tribe” and “tribal.” Mental habits are extremely difficult to break because we become emotionally committed to them whether those habits promote our interests or not. A mental habit occurs unconsciously, without thinking. When we call attention to something so customary, so taken for granted as the use of the words “tribe” and “tribal,” we bring these concepts up to the level of conscious awareness and begin to ask specific questions about them. Once we have taken the time to engage in conscious and critical assessment of these terms, we can make a conscious decision to shift our language usage and our ideas towards more politically powerful terms. As far as I’m concerned, it’s time to stop denigrating ourselves with the terms “tribe” and “tribal.” We downgrade ourselves, and our status, as nations and peoples when we fail to choose the most powerful terms in English to express our political identity.

### 1NC — DA

#### Both bills pass soon---Biden’s threading the needle holding together moderates and progressives

Patteson 10-19-2021 (Callie, “Jayapal vows infrastructure, reconciliation bills will pass following talks,” *New York Post*, <https://nypost.com/2021/10/19/jayapal-vows-passage-of-infrastructure-reconciliation-bills/>)

Leader of the House Progressive Caucus Pramila Jayapal vowed this week that both the bipartisan infrastructure package and the massive, hotly debated reconciliation bill, otherwise known as the “human infrastructure” package, will pass in Congress — but stopped short of providing a timeline. During MSNBC’s “The Rachel Maddow Show” on Monday, Jayapal (D-Wash.) revealed it was “great to spend time” with Sen. Joe Manchin (D-WV) to discuss the bill, after the two — and several others — have gone back and forth over the price tag of the reconciliation package for weeks. The ongoing negotiations have delayed the passage of the infrastructure bill, causing frustration on both sides of the aisle. However, Jayapal, who has been leading the charge for the progressives, promised both pieces of legislation will pass. “We’re going to get them both done. We are going to get them done. It is a messy process. Democracy is not always easy. Negotiation is not always easy,” she said. “There are differences. Everybody knows there are differences. We have to bridge them, and we got to come together because, at the end of the day, we have to deliver both these bills, the infrastructure bill and Build Back Better Act, to the president’s desk.” “I have always been happy to talk to anybody. It was great to spend time with Senator Manchin today. I’m not going to get into the details of what we talked about. I think it is important for us to be talking to each other,” she added. Rep. Pramila Jayapal. Rep. Pramila Jayapal added that it is “important for us to be talking to each other” regarding infrastructure negotiations. CNN Jayapal’s comments came hours after Manchin and Sen. Bernie Sanders (I-Vt.) stood shoulder to shoulder and smiling outside the Capitol. “We’re talking,” Manchin said, a statement Sanders repeated. When asked if they would reach agreement on the final form of the bill by this weekend, Sanders again stated: “We’re talking.” Moments earlier, Sanders told reporters: “I think there is a general feeling that negotiations have been going on for month after month after month, and that it is time that we had — we brought this thing to a head as soon as we possibly can. And I would hope that we’re gonna see some real action in the next — within the next week or so.” Progressives, backed by House Speaker Nancy Pelosi (D-Calif.) and President Biden, have long pushed for the reconciliation package to cost $3.5 trillion, a number they have suggested is already a compromise. Moderates like Manchin and Sen. Kyrsten Sinema (D-Ariz.) have vowed to vote against a number that high, putting Democrats in a bind, as they need all 50 Senate votes to pass the budget without any Republican support through a parliamentary procedure called reconciliation. Progressive in turn have used the infrastructure package as leverage to pass the massive spending bill first. Biden made clear earlier this month that the infrastructure bill will not move without the larger measure. While Manchin has revealed he would support a top number of $1.5 trillion, Sinema has not publicly stated what her budget would be. She has, however, reportedly said she would not support the multitrillion-dollar social spending bill until the bipartisan infrastructure measure passes in Congress. “We’re going to keep having these conversations,” Jayapal added Monday. “I’m back at the White House tomorrow with some of my progressive colleagues. I know the president is also doing another meeting with some of the other centrist Democrats, but this is important. I do think it’s important that the president himself has been really engaged.”

#### Antitrust reform trades off with other legislative priorities

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

#### Biden’s PC is necessary and sufficient for passage

Sargent 9-23-2021, staff @ WaPo (Greg, “Pelosi needs to pull off another miracle. Here’s what that might look like,” *Washington Post*, <https://www.washingtonpost.com/opinions/2021/09/23/pelosi-biden-miracle-reconciliation/>)

Viewed from certain angles, the standoff between progressives and centrists over the multi-trillion-dollar reconciliation bill certainly appears intractable. With the fate of the Biden presidency on the line, a total implosion of the Democratic agenda is at least a possibility. Centrists insist the House must pass the bipartisan “hard” infrastructure bill next week. Progressives are threatening to vote it down and will only support it once the Senate sends over its own version of the reconciliation bill, which could take weeks. That appears to mean the infrastructure bill will fail in the House, potentially driving centrists further away from supporting a robust reconciliation package, at a time when they already object to its top lines. But new reporting on House Speaker Nancy Pelosi’s (D-Calif.) strategy for the way forward, and fresh comments from the leader of House progressives, suggest a way this mess might — might — get resolved. Brutal slogging lies ahead, but pathways are there. Punchbowl News reports that Pelosi has a strategy: The speaker, along with the White House and the Senate Democratic leadership, are planning to work frantically over the next few days to craft a framework for the reconciliation package that all sides can agree on. Pelosi’s goal, as described by multiple sources involved in the negotiations, is to get moderates and progressives in both the House and Senate to publicly agree on the outlines of that framework by Monday. That way, the House can try to move toward a vote on the bipartisan infrastructure bill with unified Democratic support next week. The key there is getting more precise in the ultimate size and details of the reconciliation bill. Centrist Sens. Joe Manchin III (D-W.Va.) and Kyrsten Sinema (D-Ariz.) have said its $3.5 trillion target is too high, but won’t say what spending level they favor. Similarly, some House centrists want various concessions, like reinstituted state and local tax deductions and watering down the provision allowing Medicare to negotiate prescription drug prices. So Pelosi wants the centrists to publicly commit to a loose framework on overall spending levels, the taxes on corporations and the rich (another point of contention), and these other matters, to get progressives to back the infrastructure bill next week. Whether progressives will do this is unclear. They might decide it’s still too risky — once that passes, couldn’t centrists renege on their reconciliation commitment? But still, centrists could dramatically help matters by clarifying what they can support on reconciliation. Progressives crack open the door Which brings us to new comments from Rep. Pramila Jayapal (D-Was.), the chair of the Congressional Progressive Caucus. On NPR, Jayapal also asked centrists for specifics. “If there’s something that somebody wants to cut out from those priorities, then they need to let us know,” Jayapal said. But, importantly, Jayapal also put a timeline on how long progressives would like the infrastructure bill delayed, by saying they expect reconciliation to be finished very soon. “We’re saying, let’s get this done,” Jayapal said. “We need a little bit more time, just maybe two weeks, three weeks, but we can do this.” When antagonists in a negotiation are dug in and mistrust is soaring, sometimes the slightest rhetorical hints open the door a crack to ways forward. Here Jayapal seems to suggest progressives want to find a way to make concessions of their own. If you squint, you can see a path that looks like this. Perhaps Pelosi tells the centrists that she just doesn’t have the votes to pass the infrastructure bill next week, and postpones the vote, but on a tight time frame (centrists can blame the left for this). In exchange, if Pelosi can broker general agreement on the outlines of the reconciliation bill, centrists get rhetorical assurances from progressives that they can accept specific lower spending levels and versions of other changes centrists want. This could carry real force if Manchin and Sinema are more specific and it turns out to be something progressives grudgingly accept. That gives centrists cover to accept a small delay, with additional cover coming from an understanding that the infrastructure vote happens very soon, perhaps even with a new hard deadline (as Jayapal seemed to signal a rough concession toward). Biden’s role I have no idea if this will happen. Pelosi may well put the infrastructure bill on the floor next week, and it will fail, showing centrists that progressives won’t support it until the Senate sends over the reconciliation bill. Alternatively, it’s possible the infrastructure bill passes, with progressives agreeing to support it if they accept that centrists’ commitments to a broad reconciliation framework are convincing. That seems unlikely. But if not, the choreography offered above is another possible way. One route out of this impasse might be for all the parties to back down a bit from their demands, as Josh Marshall says. In this choreography, each side giving a bit would give cover to their antagonists to do the same. Ed Kilgore argues that it’s now all on Biden to insist on a general unifying way forward. In this scenario, both factions stop threatening to exercise their leverage over one another, and Biden persuasively promises to use his own leverage to make sure no one is badly let down in the end. If so, the above road map might be one way to make that happen. If anyone has any better ideas, please make them known.

#### Solves grid collapse – immediate action is key to mitigate growing risks

Pittsburgh Post-Gazette 3-4-2021 (“Invest in Infrastructure,” <https://www.post-gazette.com/opinion/editorials/2021/03/05/Invest-in-infrastructure/stories/202102270028>)

Now is the time for a reckoning, a realization: While it’s important to study the past to avoid repeating the same mistakes, the country must also look to its future and see the obvious — that America’s infrastructure as a whole needs some serious upkeep. Democrats and Republicans alike have flirted with the idea of a sweeping infrastructure bill in recent years, and President Joe Biden’s team is working to outline such legislation. These efforts should proceed swiftly — now is the time for Congress to invest in infrastructure, not only to help prevent crises, but also to jump-start an economy mired in the coronavirus pandemic. Despite being one of the richest countries in the world, the U.S. seems constantly to hover on the edge of disaster, with news of natural forces smashing through power grids and levies and fire prevention strategies on a yearly or monthly basis. Texas is only the most recent state to have been pushed over the edge. The American Society of Civil Engineers just this week gave America’s infrastructure an overall grade of C-minus in its quadrennial report card. The last grade was D-plus and that report cited decades of underfunding and unheeded recommendations. C-minus is an improvement but deserves not just federal attention but actual intervention. The report notes “we are heading in the right direction, but a lot of work remains.” There is opportunity in the recent economic and environmental devastation that grabs headlines and breaks hearts. In the aftermath of the Great Depression, the government put millions to work improving parks and building roads and bridges and airports. President Dwight Eisenhower’s interstate highway system remains the life veins of interstate travel. A new and vigorous infrastructure package for America would fix what needs to be fixed and offer the promise of an economic boon. The purpose of the federal government is to address the needs of American society in a way that can’t be tackled by states in a piecemeal fashion. What has happened in recent days within The Lone Star State demonstrates keenly that this is the time — actually past the time — that our federal leaders must shore up the foundations of our federation. Congress should act swiftly to lead states in reversing the entropy chewing away at America’s foundations. Until this happens, society stands on shifting sands.

**Those attacks cause accidental nuclear escalation.**

**Klare 19**, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation)

Yet another pathway to escalation could arise from a cascading series of **cyberstrikes** and **counterstrikes** against **vital national infrastructure** rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key **economic systems**, such as **power grids**, **financial systems**, and **transportation networks**. As noted, Russia has **infiltrated** the U.S. **electrical grid**, and it is widely believed that the United States has done the same in Russia.[12](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.[13](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12)

The danger here is that **economic attacks** of this sort, if undertaken during a period of tension and crisis, could lead to an **escalating series** of **tit-for-tat attacks** against ever more **vital elements** of an adversary’s critical infrastructure, producing **widespread chaos** and **harm** and eventually leading one side to initiate **kinetic attacks** on **critical** military **targets**, risking the **slippery slope** to **nuclear conflict**. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”[14](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote14)

These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by **third parties**, such as **proxy states** or **terrorist organizations**, to provoke a global nuclear crisis by causing **early-warning systems** to generate **false readings** (“spoofing”) of missile launches. Yet, they do provide a **clear indication** of the **severity** of the **threat**. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the **dangers** of **unintended** or **accidental escalation** can only grow more **severe**.

### 1NC — CP

#### Text:

#### The United States should, through at least thirty-four of the States, call a constitutional convention strictly limited to proposing the ratification of amendments to the constitution that prohibits the sale of patents by private corporations to indigenous nations.

#### At least thirty-eight of the States should ratify the amendments.

#### Solves and avoids politics.

Elving ’18 [Ron; March 1; Senior Editor and Correspondent on the Washington Desk for NPR; NRP, “Repeal the Second Amendment? That’s Not So Simple. Here’s What It Would Take,” https://www.npr.org/2018/03/01/589397317/repeal-the-second-amendment-thats-not-so-simple-here-s-what-it-would-take]

A new Constitutional Convention?

If all this seems daunting, as it should, there is one alternative for changing the Constitution. That is the calling of a Constitutional Convention. This, too, is found in Article V of the Constitution and allows for a new convention to bypass Congress and address issues of amendment on its own.

To exist with this authority, the new convention would need to be called for by two-thirds of the state legislatures.

So if 34 states saw fit, they could convene their delegations and start writing amendments. Some believe such a convention would have the power to rewrite the entire 1787 Constitution, if it saw fit. Others say it would and should be limited to specific issues or targets, such as term limits or balancing the budget — or changing the campaign-finance system or restricting the individual rights of gun owners.

There have been calls for an "Article V convention" from prominent figures on the left as well as the right. But there are those on both sides of the partisan divide who regard the entire proposition as suspect, if not frightening.

One way or another, any changes made by such a powerful convention would need to be ratified by three-fourths of the states — just like amendments that might come from Congress.

### 1NC — CP

#### The United States federal government should prohibit the sale of patents by private corporations to indigenous nations on the grounds that doing so is required to promote the general welfare and secure the blessings of liberty to our posterity. The penalties attached to these prohibitions ought to be identical to those of core antitrust statutes.

#### Solves the case---AND CP alone sets a legal precedent requiring the protection of future generations

L. Orgad 10. Radzyner School of Law, The Interdisciplinary Center Herzliya. 10/01/2010. “The Preamble in Constitutional Interpretation.” International Journal of Constitutional Law, vol. 8, no. 4, pp. 714–738.

The preamble refers to the people as the source of authority23 and outlines six lofty goals: “To form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare; and secure the Blessings of Liberty.” Despite its central role in education and in the public debate, courts have rarely been inclined to rely upon the preamble only rarely. Empirical studies show that from 1825 to 1990, the sections of the preamble that refer to justice, general welfare, and liberty were independently mentioned by Supreme Court justices only twentyfour times, mostly in dissenting opinions (83.3 percent of all references), while only four justices (Black, Douglas, Burton, and Field) were collectively responsible for half of those references.24 Courts have rejected, repeatedly, the argument that constitutional rights or limitations can be inferred directly from the preamble. The classic case establishing its nonbinding nature was decided in 1905. In this case, a convicted defendant challenged the constitutionality of a statute adopted by the state of Massachusetts that, in his view, contradicted rights protected by the preamble. Rejecting this argument, Justice Harlan noted: Although that Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States, or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution, and as such as may be implied from those so granted.25 Justice Harlan stripped the preamble of any legal force without providing any historical evidence or textual explanations. While he noted that individuals have no constitutional rights derived directly from the preamble, he neither stated, expressly, that the preamble has less significance than other constitutional provisions nor did he assert that it does not form a binding part of the Constitution. Yet, evidence suggests that the framers anticipated the role the preamble would play in constitutional interpretation.26 Alexander Hamilton even stated that the Bill of Rights was not necessary since the preamble was able to function as one.27 Joseph Story argued that the preamble “is a key to open[ing] the mind of the makers, as to the mischiefs, which are to be remedied, and the objects, which are to be accomplished.”28 James Monroe , similarly, stated that the preamble is “the Key of the Constitution. Whenever federal power is exercised, contrary to the spirit breathed by this introduction, it will be unconstitutionally exercised and ought to be resisted.”29 These views, however, were not shared by everyone, and a dispute arose over the preamble’s role. James Madison, for one, expressed his reservations about the preamble’s power. “The general terms or phrases used in the introductory propositions,” he said, “were never meant to be inserted in their loose form in the text of the Constitution.”30 A debate started over whether and in what manner the Constitution’s preamble should be used by the Court.31 Nevertheless, U.S. courts have invoked the preamble in constitutional interpretation. Although the references are inconsistent, rhetorical, and far from conferring independent constitutional rights, they still provide the preamble with some constitutional weight. Courts have used the term “We the people” to define the boundaries of the Constitution’s applicability,32 hold the powers of the federal government,33 indicate that the people—and not the states—are the source of the federal government’s power,34 challenge sovereign immunity,35 and define who is a citizen.36 Similarly, the phrase to “establish Justice” has been invoked to expand federal jurisdiction37 and to support invalidation of legal tender legislation.38 The phrase to “provide for the common defense” has likewise been used to broaden congressional power39 and uphold exclusion from citizenship.40 In addition to its interpretive role, the preamble exerts a meaningful, although indirect, influence of congressional decision making.41 In spite of these references, the U.S. preamble is not, by and large, a decisive factor in constitutional interpretation. Its relatively meager use in constitutional adjudication has been criticized. “It is regrettable that law professors rarely teach and that courts rarely cite the Preamble,” Sanford Levinson notes, as it is “the single most important part of the Constitution.”42 For Levinson, the preamble is “the equivalent of our creedal summary of America’s civil religion.”43 For Mark Tushnet, the “thin” Constitution of the United States is anchored in the principles of the Declaration of Independence and the preamble.44 Milton Handler, Brian Leiter, and Carole Handler charge the courts with ignoring the preamble: “we can discern no reason why [its] rules of construction should not obtain in the constitutional context.”45 They mention that disregard of the preamble conflicts with the status of recital clauses of contracts, legislative declarations of purpose in statutes, and preambles to international treaties46—all of which do guide the court in judicial decision making.47 For them, the preamble ought to play a more significant role in constitutional decisions.48 Other scholars have argued that courts should accord the preamble legal force for the sake of future generations. In referring to Roe v. Wade, Raymond Marcin has claimed that the question of yet-to-be-born descendants requires a solution that finds its foundation in the preamble—the blessings of liberty for the people but also for posterity—which includes fetuses, as well.49 While the preamble is written in a manner that appeals to many, it remains difficult to persuade jurists of its superior legal status.50 Although Justice Harlan stripped the preamble of its legal force, its occasional use in constitutional adjudication indicates that while it is not an independent source of rights neither is it constitutionally irrelevant.51

#### Binding general welfare clause solves extinction: environment and poverty

Arthur Lieber 15, teaching and working in non-profit educational organizations, his focus has been on promoting critical, creative, and enjoyable learning for students in informal settings, 3-22-2015, "Should the common good trump the Constitution?," Occasional Planet, http://occasionalplanet.org/2015/03/22/common-good-trump-constitution/

In June 1963, President John F. Kennedy addressed the nation, urging Congress to pass a comprehensive civil rights act. Setting the stage for the action that he wanted to take, he said, “We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.” This is the type of rhythmic prose that Kennedy and chief speech-writer Theodore Sorensen wrote. But a basic premise has to be questioned. How clear is the Constitution? If it was really clear, would we even need a Supreme Court to interpret it? Part of the answer is that Kennedy chose to wax poetic rather than to be precise in his language. The Constitution is not clear, and the confusion within it has contributed to everything from the American Civil War to the nearly 100 cases that the Supreme Court must adjudicate each year. Instead of looking at the Constitution as engraved in stone, we may more accurately view it as an organism that is constantly morphing. Everything is subject to review, and the motivations behind requests for change can be both noble and ignoble. The preamble to the Constitution: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. The catch-all phrase in the preamble is “promote the general Welfare.” A fair question to ask now is how helpful is our Constitution at promoting the general welfare. Since the Constitution enumerates the powers of the judicial branch (federal courts), legislative branch (Congress) and the executive branch (Presidency), there are numerous ways in which the general welfare can either be promoted, or in what seems to be more frequently the case, not promoted. If we are to analyze how the three branches of government are not succeeding in promoting the general welfare, we must establish what is the meaning of the largely interchangeable terms, general welfare and common good? A flip, but perhaps, reasonably accurate answer to the question is an adaptation of Supreme Court Justice Potter Stewart’s response to a question about pornography, “I know it when I see it.” And with the “common good,” we know it when we see it. This still leaves considerable uncertainty and confusion, but two recent Supreme Court cases have been decided ways that, to a reasonable, person are clearly deleterious to the common good. Whatever their “constitutionality” might have been is clearly superfluous to the “common good” needs that had to be met. The first case is the infamous Citizens United v Federal Election Commission ruling of 2010. In this instance, the Court was asked if there could be limitations on political spending, particularly by corporations, labor unions, and Political Action Committees (PACs). The Roberts Court essentially ruled that corporations are people and are free to donate as much as they want. Perhaps in an absolutist interpretation of the First Amendment, this was true. But we have always placed reasonable limits on the First Amendment, such as the prohibition from yelling “fire” in a crowded theater. The reason we do this is to protect the common good. It is quite clear that unlimited money in politics does four things that are detrimental to the common good: It distorts exposure of the candidates to the public, with priority going to those who have the most money. It favors candidates who are close to the moneyed interest It reinforces a system of individuals and corporations “buying” political favors from elected officials. Perhaps most insidiously, it favors candidates who are comfortable asking others for money. When people ask why we have such poor elected officials, the answer often is that we have “the best that money can buy,” but not the best that a real democracy can elect. The Citizens United ruling is clearly detrimental to the common good. The second Court case is Shelby County (AL) v. Holder. In this 2013 case, the Roberts court ruled that a key part of the Voting Rights Act of 1965 is “unconstitutional because the coverage formula is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.” In plain English, what this means is that there is no longer sufficient data to demonstrate that African-Americans face discrimination, particularly with regard to voter access. Since that ruling, many states have instituted modern day poll taxes against African-Americans, other minorities, and the elderly. If the absurdity of that notion wasn’t clear in 2013, it certainly is in 2015. The data that the Court used is clearly negated. Occurrences in Ferguson, MO and numerous other municipalities in the United States have shown that equal rights are hardly here. The Court’s decision clearly aided Republicans (whose constituency is largely made up of people who have few hurdles to clear to vote), rather than Democrats, who typically represent minorities, the poor, and the elderly. Virtually any case that goes before the Supreme Court involves difficult constitutional questions. There are plausible interpretations for either side. What we have seen most recently is a turn by the Court toward making decisions that are consistent with their individual political preferences. That is essentially what happened in Bush v. Gore in 2000, and Supreme Court Justice Sandra Day O’Connor as much as said so. The problem with that decision and many since is that the justices had a very conservative view of the common good, one that favored the wealthy over most of the rest of America. If the battles before the Court are going to be about what is the “common good,” then it is all the more important that the American people elect progressive presidents and members of the Senate so that the Court can work for America. The issues of poverty, inequity, environmental protection, health care, and many more are far too important to be left to the parsing of Supreme Court justices over a document that easily lends itself to contrary interpretations. The common good that progressives see is one that will be beneficial to all Americans, including the wealthy. The Supreme Court, as with the legislative and executive branches of our government, must change to view its work as promoting the common good. If that does not happen, we cannot expect the change that America needs.

## 1NC — Advantage

### 1NC — Framing

#### Existential risks outweigh

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UNDERSTANDING EXISTENTIAL RISK

Humanity’s future is ripe with possibility. We have achieved a rich understanding of the world we inhabit and a level of health and prosperity of which our ancestors could only dream. We have begun to explore the other worlds in the heavens above us, and to create virtual worlds completely beyond our ancestors’ comprehension. We know of almost no limits to what we might ultimately achieve. Human extinction would foreclose our future. It would destroy our potential. It would eliminate all possibilities but one: a world ~~bereft~~ [lacking] of human flourishing. Extinction would bring about this failed world and lock it in forever — there would be no coming back. The philosopher Nick Bostrom showed that extinction is not the only way this could happen: there are other catastrophic outcomes in which we lose not just the present, but all our potential for the future. Consider a world in ruins: an immense catastrophe has triggered a global collapse of civilization, reducing humanity to a pre-agricultural state. During this catastrophe, the Earth’s environment was damaged so severely that it has become impossible for the survivors to ever reestablish civilization. Even if such a catastrophe did not cause our extinction, it would have a similar effect on our future. The vast realm of futures currently open to us would have collapsed to a narrow range of meager options. We would have a failed world with no way back. Or consider a world in chains: in a future reminiscent of George Orwell’s Nineteen Eighty-Four, the entire world has become locked under the rule of an oppressive totalitarian regime, determined to perpetuate itself. Through powerful, technologically enabled indoctrination, surveillance and enforcement, it has become impossible for even a handful of dissidents to find each other, let alone stage an uprising. With everyone on Earth living under such rule, the regime is stable from threats, internal and external. If such a regime could be maintained indefinitely, then descent into this totalitarian future would also have much in common with extinction: just a narrow range of terrible futures remaining, and no way out. [FIGURE 2.1 Omitted] Following Bostrom, I shall call these “existential catastrophes,” defining them as follows: 3 An existential catastrophe is the destruction of humanity’s longterm potential. An existential risk is a risk that threatens the destruction of humanity’s longterm potential. These definitions capture the idea that the outcome of an existential catastrophe is both dismal and irrevocable. We will not just fail to fulfill our potential, but this very potential itself will be permanently lost. While I want to keep the official definitions succinct, there are several areas that warrant clarification. First, I am understanding humanity’s longterm potential in terms of the set of all possible futures that remain open to us. 4 This is an expansive idea of possibility, including everything that humanity could eventually achieve, even if we have yet to invent the means of achieving it. 5 But it follows that while our choices can lock things in, closing off possibilities, they can’t open up new ones. So any reduction in humanity’s potential should be understood as permanent. The challenge of our time is to preserve our vast potential, and to protect it against the risk of future destruction. The ultimate purpose is to allow our descendants to fulfill our potential, realizing one of the best possible futures open to us. While it may seem abstract at this scale, this is really a familiar idea that we encounter every day. Consider a child with high longterm potential: with futures open to her in which she leads a great life. It is important that her potential is preserved: that her best futures aren’t cut off due to accident, trauma or lack of education. It is important that her potential is protected: that we build in safeguards to make such a loss of potential extremely unlikely. And it is important that she ultimately fulfills her potential: that she ends up taking one of the best paths open to her. So too for humanity. Existential risks threaten the destruction of humanity’s potential. This includes cases where this destruction is complete (such as extinction) and where it is nearly complete, such as a permanent collapse of civilization in which the possibility for some very minor types of flourishing remain, or where there remains some remote chance of recovery. 6 I leave the thresholds vague, but it should be understood that in any existential catastrophe the greater part of our potential is gone and very little remains. Second, my focus on humanity in the definitions is not supposed to exclude considerations of the value of the environment, other animals, successors to Homo sapiens, or creatures elsewhere in the cosmos. It is not that I think only humans count. Instead, it is that humans are the only beings we know of that are responsive to moral reasons and moral argument — the beings who can examine the world and decide to do what is best. If we fail, that upward force, that capacity to push toward what is best or what is just, will vanish from the world. Our potential is a matter of what humanity can achieve through the combined actions of each and every human. The value of our actions will stem in part from what we do to and for humans, but it will depend on the effects of our actions on non-humans too. If we somehow give rise to new kinds of moral agents in the future, the term “humanity” in my definition should be taken to include them. My focus on humanity prevents threats to a single country or culture from counting as existential risks. There is a similar term that gets used this way — when people say that something is “an existential threat to this country.” Setting aside the fact that these claims are usually hyperbole, they are expressing a similar idea: that something threatens to permanently destroy the longterm potential of a country or culture. Third, any notion of risk must involve some kind of probability. What kind is involved in existential risk? Understanding the probability in terms of objective long-run frequencies won’t work, as the existential catastrophes we are concerned with can only ever happen once, and will always be unprecedented until the moment it is too late. We can’t say the probability of an existential catastrophe is precisely zero just because it hasn’t happened yet. Situations like these require an evidential sense of probability, which describes the appropriate degree of belief we should have on the basis of the available information. This is the familiar type of probability used in courtrooms, banks and betting shops. When I speak of the probability of an existential catastrophe, I will mean the credence humanity should have that it will occur, in light of our best evidence.9 There are many utterly terrible outcomes that do not count as existential catastrophes. One way this could happen is if there were no single precipitous event, but a multitude of smaller failures. This is because I take on the usual sense of catastrophe as a single, decisive event, rather than any combination of events that is bad in sum. If we were to squander our future simply by continually treating each other badly, or by never getting around to doing anything great, this could be just as bad an outcome but wouldn’t have come about via a catastrophe. Alternatively, there might be a single catastrophe, but one that leaves open some way for humanity to eventually recover. From our own vantage, looking out to the next few generations, this may appear equally bleak. But a thousand years hence it may be considered just one of several dark episodes in the human story. A true existential catastrophe must by its very nature be the decisive moment of human history — the point where we failed. Even catastrophes large enough to bring about the global collapse of civilization may fall short of being existential catastrophes. While colloquially referred to as “the end of the world,” a global collapse of civilization need not be the end of the human story. It has the required severity, but may not be permanent or irrevocable. In this book, I shall use the term civilization collapse quite literally, to refer to an outcome where humanity across the globe loses civilization (at least temporarily), being reduced to a pre-agricultural way of life. The term is often used loosely to refer merely to a massive breakdown of order, the loss of modern technology, or an end to our culture. But I am talking about a world without writing, cities, law, or any of the other trappings of civilization. This would be a very severe disaster and extremely hard to trigger. For all the historical pressures on civilizations, never once has this happened — not even on the scale of a continent.10 The fact that Europe survived losing 25 to 50 percent of its population in the Black Death, while keeping civilization firmly intact, suggests that triggering the collapse of civilization would require more than 50 percent fatality in every region of the world.11 Even if civilization did collapse, it is likely that it could be reestablished. As we have seen, civilization has already been independently established at least seven times by isolated peoples.12 While one might think resource depletion could make this harder, it is more likely that it has become substantially easier. Most disasters short of human extinction would leave our domesticated animals and plants, as well as copious material resources in the ruins of our cities — it is much easier to re-forge iron from old railings than to smelt it from ore. Even expendable resources such as coal would be much easier to access, via abandoned reserves and mines, than they ever were in the eighteenth century. 13 Moreover, evidence that civilization is possible, and the tools and knowledge to help rebuild, would be scattered across the world. There are, however, two close connections between the collapse of civilization and existential risk. First, a collapse would count as an existential catastrophe if it were unrecoverable. For example, it is conceivable that some form of extreme climate change or engineered plague might make the planet so inhospitable that humanity would be irrevocably reduced to scattered foragers.14 And second, a global collapse of civilization could increase the chance of extinction, by leaving us more vulnerable to subsequent catastrophe. One way a collapse could lead to extinction is if the population of the largest remaining group fell below the minimum viable population — the level needed for a population to survive. There is no precise figure for this, as it is usually defined probabilistically and depends on many details of the situation: where the population is, what technology they have access to, the sort of catastrophe they have suffered. Estimates range from hundreds of people up to tens of thousands.15 If a catastrophe directly reduces human population to below these levels, it will be more useful to classify it as a direct extinction event, rather than an unrecoverable collapse. And I expect that this will be one of the more common pathways to extinction. We rarely think seriously about risks to humanity’s entire potential. We encounter them mostly in action films, where our emotional reactions are dulled by their overuse as an easy way to heighten the drama.16 Or we see them in online lists of “ten ways the world could end,” aimed primarily to thrill and entertain. Since the end of the Cold War, we rarely encounter sober discussions by our leading thinkers on what extinction would mean for us, our cultures or humanity. 17 And so in casual contexts people are sometimes flippant about the prospect of human extinction. But when a risk is made vivid and credible — when it is clear that billions of lives and all future generations are actually on the line — the importance of protecting humanity’s longterm potential is not, for most people, controversial. If we learned that a large asteroid was heading toward Earth, posing a greater than 10 percent chance of human extinction later this century, there would be little debate about whether to make serious efforts to build a deflection system, or to ignore the issue and run the risk. To the contrary, responding to the threat would immediately become one of the world’s top priorities. Thus our lack of concern about these threats is much more to do with not yet believing that there are such threats, than it is about seriously doubting the immensity of the stakes. Yet it is important to spend a little while trying to understand more clearly the different sources of this importance. Such an understanding can buttress feeling and inspire action; it can bring to light new considerations; and it can aid in decisions about how to set our priorities.

#### Disads are systematically underestimated

Wiener 16 – Jonathan B. Wiener, Law and Public Policy Professor at Duke University, University Fellow at the Resources for the Future, Past President of the Society for Risk Analysis, the scientific committee member at the International Risk Governance Council. [The Tragedy of the Uncommons: On the Politics of Apocalypse, Global Policy, 7(S1): Too Big to Handle: Interdisciplinary Perspectives on the Question of Why Societies Ignore Looming Disasters, 6-6-16, [https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12319]//BPS](https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12319%5d//BPS) \*edited for ableist language, brackets denote change

My point is not that rare global catastrophic ‘uncommons’ risks outweigh other risks. That depends on their probability and consequence compared to other risks, and the appropriate response to each will depend on the merits of the policy options. And I do not mean to say that uncommons risks are now (or should be) replacing or superseding commons risks, or that the two types necessarily proceed in sequence through time. Both types of tragedies may be occurring at the same time in different settings, or combined in the same setting. For example, extreme climate change may exhibit both a tragedy of the commons (free‐riding by multiple actors who would share the benefits of abatement, hence a need for collective action) and a tragedy of the uncommons (rare extreme risk of global catastrophe that remains underappreciated, regardless of the number of actors). Nor are uncommons risks an inevitable result of new technology. The main point here is that tragedies of the uncommons are a distinct problem from tragedies of the commons, with distinct causes and potential solutions. 2 The tragedy of neglect Tragedies of the commons arise when multiple rational actors, perceiving their options and individual payoffs, choose actions that are collectively undesirable (Hardin, 1968, p. 1244; Barrett, 2007). Tragedies of the uncommons, by contrast, can arise when even one actor neglects to appreciate a looming risk or mass damage, and mismanages the risk. Research in psychology and political economy indicates several reasons why extreme mega‐catastrophic risks are systematically neglected. Here I seek to bring greater clarity to the causes of rare catastrophic uncommons risks by identifying three main sources. Unavailability One important source of the neglect of uncommons risks is their very rare or ultra‐low‐frequency character. Extensive research shows that people exhibit heightened concern about risks that are ‘available’ to the mind, both in the sense of awareness and affect – the ability to envision and feel the importance of the event. These are often recent, visible, salient events that trigger strong visual images (Kahneman, Slovic and Tversky, 1982; Kuran and Sunstein, 1999; Weber, 2006; Pinker, 2011, p. 220). Such ‘available’ risks are then seen as more worrisome for the future. The ‘availability heuristic’ helps explain why so much regulation is crisis‐driven, adopted only after a crisis event spurs public outcry and mobilizes collective political action to overcome interest group opposition (Percival, 1998; Kuran and Sunstein, 1999; Birkland, 2006; Repetto, 2006; Wiener and Richman, 2010; Wuthnow, 2010; Barrett, 2016; Balleisen et al., 2016). A standard depiction of this phenomenon is that the public is more concerned about unusual dramatic risks, and less concerned about familiar routine risks, than are experts who take a quantitative approach combining likelihood and consequence (Breyer, 1993; Sunstein, 2005). This relationship is illustrated conceptually in Figure 1. The ‘availability heuristic’ helps explain why people appear to express greater concern about airplane accidents than automobile accidents, even though the statistical risk of airplane accidents (per km traveled, and possibly per trip) is lower: airplane accidents are shocking and dramatic and make news headlines, while automobile accidents are routine and familiar and become ordinary.2 Similarly, public concern may be greater regarding coal mining accidents than the (larger) public health risks from coal combustion air pollution, and regarding ebola than the (larger) toll from malaria. Figure 1, ‘Availability’ in expert vs public perceptions of risk, omitted. This difference in perspectives, depicted in Figure 1, also corresponds to many debates over the proper role of expert vs public appraisal of risk. Early studies showed significant differences between public vs expert appraisals of risk (Slovic, 1987; EPA, 1987; EPA, 1990). Some argued that these differences occur because the public makes errors about risks, such as exaggerating concern over unusual risks, while experts are more accurate, and that therefore policy should be based more on experts’ views in order to avoid overregulating small (but unusual) risks while underregulating large (but routine) risks (Breyer, 1993). Others argued that public appraisals were based not on factual errors but on value choices, such as preferring to avoid involuntary risks, which should govern public policy (Shrader‐Frechette, 1991). Still others argued that public values about risk might reflect prejudice and bias and should not necessarily be the direct basis for public policy (Cross, 1997). A typical assumption in these debates was that the public favored more regulation (at least of unusual risks) and the experts favored less. Thus this relationship might suggest that the public would also be more worried than experts about rare ‘uncommons’ risks. Indeed, some commenters have suggested that the public exhibits exaggerated paranoia about remote risks, overstating the likelihood and calling for precautionary policies that would be (in experts’ views) an overreaction (Efron, 1984; Wildavsky, 1997; Mazur, 2004). This may be the case for unusual but experienced events that are ‘available’ in the public mind and induce strong feelings such as dread; in response to experienced calamities, people are often highly motivated to take action, even if that action is ineffective or excessively costly (Wuthnow, 2010). For example, public reactions to the tragic 9/11 terrorist attacks included shifting from flying to driving with potentially greater injury risk (Deonandan and Backwell, 2011; Gaissmaier and Gigerenzer, 2012), and supporting two wars that were costly in money and lives (Stern and Wiener, 2008; Wuthnow, 2010). But with regard to ultra‐low‐frequency catastrophic risks, events that perhaps only occur once in eons, and hence are not experienced, it is not the case that the public is calling for overreaction while experts urge calm (Weber, 2006). Rather, it is experts, applying their quantitative methods, who are warning about future rare extreme risks such as abrupt climate change, artificial intelligence and large asteroid collisions (Posner, 2004; Bostrom and Cirkovic, 2008; Weitzman, 2009), while the public seems less interested if it takes these extreme risks seriously at all. My conjecture, supported by the evidence cited above (but worth further study and refinement), is that ‘tragedies of the uncommons’ add a twist to the typical debate about public vs expert risk appraisal. Adding ultra‐low‐frequency (not experienced) risks to the picture shows that it is not the case that the public always favors more regulation and experts less. For both routine risks and ultra‐rare risks, it is often experts who favor more regulation than the public. My conjecture of this twist in relative concern is depicted conceptually in Figure 2. Here, public concern is higher than experts’ concern for unusual and experienced (hence available) risks, in the middle region of the frequency dimension; but public concern is lower than experts’ concern both for routine familiar risks, and for ultra‐low‐frequency rare extreme risks. Figure 2, ‘Unavailability’ of extreme risks in expert vs public perceptions of risk, omitted. The reason for this reversal in relative appraisal at the very low end of the frequency spectrum is again related to the ‘availability’ heuristic. It predicts that people become concerned about recent, visible, salient events that trigger strong feelings. But the rare mega‐catastrophic risks are not recent, visible or salient. They have not been experienced, so the trigger for mental availability is lacking (Weber, 2006). Describing such rare risks, such as in a speech or in an opinion survey, is less effective in stimulating public reaction than an experienced risk (Weber, 2006). Relatedly, a longer time interval without experiencing a recurrence of a damaging event can lead to complacency (neglect due to unavailability) and increased vulnerability to a recurrence (which can then trigger new availability and alarm) (Turner, 1976). Although people may envision humans going extinct at some point centuries in the future (Tonn, 2009), and express pessimism about the future direction of humanity (Randle and Eckersley, 2015), that viewpoint may not translate into concern about specific risks warranting policy responses in the present (nor did these studies compare public with expert perceptions). Movies depicting rare unexperienced risks (e.g. the large asteroid collision in Deep Impact or Armageddon ; alien pathogens in The Andromeda Strain ; the rise of the machines in The Matrix ) may be viewed as humorous entertainment and even elicit laughter – though perhaps that is nervous laughter rather than neglect. There is some evidence that those who watched the film The Day After Tomorrow were more concerned about climate change afterward (Leiserowitz, 2004), though the audience was not randomly selected and may have been more concerned going in. It is unclear whether films can effectively ‘synthesize availability’; perhaps new techniques of virtual reality can do better, but they still may not call public attention to the most important uncommons risks, nor to the best policy responses. The role of experience in triggering the availability heuristic, and raising concern about available events in public appraisals of future risks, may be rooted in the ways the brain processes information. Humans process immediate risk stimuli in part through the amygdala, which manages fear and the instant choice to flee or fight (Ledoux, 2007). At the same time, using the prefrontal cortex, humans are able to envision hypothetical future scenarios and analyze choices among them (Gilbert and Wilson, 2007). These two neural pathways are sometimes dubbed ‘system 1’ and ‘system 2’ (Kahneman, 2011). One possibility is that the faster processing of system 1 is generating fear before the slower processing of system 2 can develop a more analytic appraisal; but the two systems may also be interacting, and system 2 can also generate fear after its analysis. Even if system 2 analysis is applied, the prefrontal cortex, when it envisions hypothetical scenarios of the future, appears to draw on experienced events (from the brain's memory centers) in order to construct a collage or pastiche of the future – a ‘prospection’ (Gilbert and Wilson, 2007; Schachter et al., 2008). Thus the human brain typically relies on ‘available’ experienced events even for its analytic prospection about future scenarios.3 If so, the ‘unavailability’ of rare extreme risks contributes importantly to their being neglected in public concern. A mid‐level example is the increase in parents seeking exemptions from vaccines for their children: past success in controlling a disease may create unavailability and neglect (though subsequent disease outbreaks may revive concern). A more extreme example is that a very large asteroid (> 10 km diameter) has not hit the earth for about 65 million years (Reinhardt et al., 2016), evidently causing the demise of the dinosaurs and about 75 per cent of all life on earth (a 15 km asteroid hit Chicxulub, off the Yucatan peninsula of Mexico, and another dubbed Shiva may have hit near the Indian land mass about 40,000 years later (Lerbekmo, 2014)). Smaller objects hit the earth frequently, and regional damage was caused by the impacts at Tunguska (1908) and Chelyabinsk (2013) (about 19 m in diameter, see Borovicka et al., 2013). The Chelyabinsk impact prompted calls for increased detection efforts. Early detection enables a longer lead time to devise new deflection methods. Improved probabilistic analysis indicates that rare asteroid impacts, even < 1000 m diameter, may be more risky than commonly thought (Reinhardt et al., 2016). The neglect of rare uncommons risks in public psychology may in turn yield neglect in politics. This is a distinct additional factor on top of others that may also contribute to such neglect, such as free‐riding (if the problem is also a ‘commons’ problem requiring collective action by multiple actors); short‐term costs vs long‐term benefits (if the risk would occur in the long‐term future) mismatched with the short‐term election cycles; inattention to the plight of people far away in other countries and cultures; and others. Individual neglect of rare global catastrophic risk may be compounded by societal disdain for such warnings; despite the prevalence of apocalyptic scenarios in religion and literature (Lisboa, 2011), the person warning that ‘the end is near’ is often viewed as [absurd] ~~insane~~ (and might be). That most doomsday stories are unfounded, though, does not mean that all rare catastrophic risks are illusory. Mass numbing A second source of the neglect of uncommons risks is their large magnitude of impact. It might seem that larger impacts should prompt more, not less, concern. For experts applying quantitative analytic methods, this appears to be the case. But for the general public, a surprising finding of recent psychology research is that a large or ‘mass’ impact yields ‘numbing’ (Slovic, 2007; Slovic et al., 2013). In these studies, people are asked in opinion polls (stated preference surveys) their willingness to pay (WTP) to save different numbers of other people from some risk. One might expect people to offer more money to save more people (a linear relationship, with each life valued the same), or even an increasing amount to reflect the greater value of averting a catastrophe (supra‐linear). Or, one might expect people to offer amounts that rise but at a declining rate, such as if willingness to pay (WTP) reaches some plateau when the risk becomes large (diminishing marginal value of life saving). (In stated preference surveys, ability to pay may not be a strong constraint on responses.) These relationships are illustrated in Figure 3. Figure 3, ‘Mass numbing’ in valuation of risk, omitted. Surprisingly, Slovic recounts several studies finding that none of these depicts public attitudes; rather, in these studies, willingness to pay rises at first, but then as the number of people at risk grows, willingness to pay declines – not just marginally (as in the plateau relationship) but absolutely, to levels below the amount people were willing to pay to save one or two individuals. And the number of people at which the stated willingness to pay peaks and begins to decline is not very high – sometimes fewer than ten people at risk. Slovic (2007) terms this ‘psychic numbing’ or ‘mass numbing’, and argues that it helps explain public neglect of genocide and other mass calamities (for further evidence, see Rheinberger and Treich, 2015). There is also evidence that it occurs for valuing nonhuman life (environmental conservation) (Markowitz et al., 2013). Hence the mass catastrophic impacts of uncommons risks may face undervaluation. One reason for this response may be feelings of personal inefficacy (Vastfjall et al., 2015): as the number of lives rises, respondents may feel overwhelmed and doubt that their contribution can really make a difference to such a large problem. The ‘end of the world’ may be too much for people to act on; it may feel disabling rather than mobilizing. Relatedly, people may have a limited capacity to worry (Weber, 2006), and thus may deflect problems so large that they would consume all of that capacity. A second reason for mass numbing may be the stronger public response to an identified individual – such as an identified victim or an identified villain. The public may be eager to save the baby who fell down the well, or the refugee child drowned on the beach, or the three whales stuck in the ice, but less willing to save a large and unidentified population of victims (Kogut and Ritov, 2005; Small and Loewenstein, 2005; Small, Loewenstein and Slovic, 2007). Kogut and Ritov (2005) and Slovic (2007) report that WTP to save a single victim also increases if the victim is described in more detail, and even more if the victim is given a face. Vastfjall et al. (2014) find that compassion is highest for a single child, and may decline after just one. Slovic (2007, p.79) quotes Mother Teresa: ‘If I look at the mass I will never act. If I look at the one, I will.’ These studies explain why charitable organizations try to feature a ‘poster child’ for a broader cause. But extreme mega‐catastrophic risks typically lack a single identified individual, unless rendered in fiction (e.g. a movie). The public may also be more eager to combat an identified villain than a faceless natural disaster or a ubiquitous social problem (Sunstein, 2007, p. 63, on the ‘Goldstein effect’). This may help explain public outcry at villains highlighted in the news media, such as Osama Bin Laden and Saddam Hussein, compared with the apparently lesser public outcry regarding tsunamis (Indian Ocean 2006, killing 200,000 people; Japan 2011, killing 20,000 people), global climate change harming large populations, or large asteroids hitting the earth.

#### Turns case and counterplans obviate their framing and mean we are focusing on resolving structural violence as well

### 1NC — SD

#### “leasing” is inevitable after the aff in non-antitrust contexts

Cecilia 1AC Cheng & Theodore T. Lee ‘18, When Patents Are Sovereigns: The Competitive Harms of Leasing Tribal Immunity, 127 YALE L.J. F. 848 (2017-2018).

Although we are optimistic that antitrust law affords an opening to address Allergan’s conduct, we recognize that antitrust liability will not be able to bypass all company “leases” of tribal sovereign immunity. Although potential litigants may be able to hold Allergan accountable under the IP-antitrust intersection recognized in Actavis, this intervention is context-dependent and may not be available where Congress has not articulated a statutory theory of competition. Therefore, while our proposed theory of antitrust liability provides a shield for competition in areas with IP or quasi-IP protection like the pharmaceutical industry, competition in other industries is more vulnerable. For example, many payday lenders have used tribal sovereign immunity to avoid liability under state laws and regulations.110 Although there is some regulation of payday lending, Congress has not heavily regulated competition in this industry, and there is no obvious statutory scheme to support an antitrust claim.

#### Courts circumvent.

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC — Turn

#### The aff decides FOR indigenous people what the response to dispossession should be.

#### 1AC Geddes says renting immunity REFLECTS colonial dispossession and oppression — the aff does nothing to solve that dispossession.

#### Their explicit endorsement of the authority of the federal gov’t to recognize indigenous governments endorses genocide

Steinman 16 Erich W. Steinman, Pitzer College, Department of Sociology, Decolonization Not Inclusion: Indigenous Resistance to American Settler Colonialism, Sociology of Race and Ethnicity 2016, Vol. 2(2) 219–236, http://convention.myacpa.org/houston2018/wp-content/uploads/2017/11/Decolonization-not-inclusion.pdf

The simple fact of the settler state having the power to define Indian status at the individual and collective levels (through federal acknowledgment of a tribe) is widely decried even as its practical implications are powerful. Formal classifications of Indian status reflect and channel a mix of settler understandings that narrow and restrict indigeneity, such as the logic that one leaves but does not reenter indigeneity, which is only lost and gradually degraded over time rather than being capable of being revitalized with cultural and biological mixing. Although more than 300 tribes in the United States are awaiting determination of their requests for federal recognition, it is virtually impossible for many tribes to achieve this status because of fairly rigid and questionable criteria and the effectiveness of colonial destruction in limiting tribes’ likelihood of satisfying the criteria. Many individuals have sought to have their indigenous status or tribal membership reinstalled or reaffirmed, after it had been lost through “accidents of history” (i.e., missing records). Indian activists and allies have vehemently criticized the widespread use of blood quantum—the percentage of Indian blood—as defining Indian identity at the individual and tribal levels (Churchill 1999). More explicitly than other mechanisms, this manifests the notion of Indianness as inherently degrading rather than regenerating and is critiqued as a form of demographic genocide. Against this and other colonial legacies, individuals, intertribal communities, tribal members, and tribal governments have been engaged in widespread grappling with the complex issues of Indian identity. The publication of two books titled Real Indians in the first decade of the twenty-first century reveals long-standing and ongoing grassroots reflections on the question of who is Indian (Garroutte 2003; Lawrence 2004).

#### The aff is an enactment of colonialist paternalism—The explicit rhetoric of the 1AC says “We Protect” the Indigenous peoples—The aff is an effort to protect them from themselves—They have the ability to choose whether or not they cut deals with companies --- The aff says they can’t be trusted and have to be protected and prevented from having companies pay them to have patent rights. Paternalism and the need “to protect” is racist paternalism

Niman 7 – assistant professor of communications @ Buffalo State College

Michael, 2007, “The Enlightened Racist and the Anti-Gaming Movement” Shoot the Indian: Media, Misperception and Native Truth <http://mediastudy.com/articles/shoot.pdf>

This is what enrages Native peoples as racist-the unquestioned¶ notion that sovereign Indian nations are not competent to manage¶ their own affairs.This idea of Native peoples needing paternal oversight¶ was the justification used by U.S. administrations for imposing Bureau¶ of Indian Affairs control over Native resources, primarily in Western¶ North America. These officials often then looted Native resources,¶ giving sweetheart deals to white-owned mineral and energy extraction¶ companies. As a result, since the inception of the Bureau of Indian¶ Affairs (BIA), Native nations have lost over L37 billion dollars in assets¶ and potential revenues due to BIA corruption and mismanagement.¶ Yes, potential victims may not be able to sue the Seneca Nation¶ under U.S. federal labor laws, as Siegel argues. But what Siegel doesn't¶ mention, is that they can sue in Seneca Peacemakers Court-in¶ the Nation where the infraction occurred. Siegel apparently doesn't¶ understand or respect the long-standing traditions of sovereignty and¶ justice in Native America.This argument that Native tribes and nations¶ cant govern themselves is part and parcel of the colonizer's fabrication,¶ a fabrication that the great white fathers of the U.S. and Canada¶ used to bring Native nations to the brink of annihilation through the¶ methodology of ethnic cleansing. Here the enlightened racist, the one¶ who twists the language and the law to outlaw indigenous America,¶ shows his face.¶

# 2NC

## K — Cap

## PIC — Preamble

#### Severs, a VI for NEG ground: the “core antitrust laws” means Sherman, Clayton, and FTC acts. The preamble is not one of those.

**FTC ND**. “The Antitrust Laws.” 2013. Federal Trade Commission. June 11, 2013. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

## Adv

# 1NR

## PIC — “Tribe”

#### The use of “tribe” is part of a legacy of colonialism

Churchill 94 (Ward, Prof. American Indian Studies, Indians Are Us?, p. 326-332)

Predictability, even with all this explained, there will be those who will still seek to argue that the points raised, though “Interesting” in some respects, are merely an academic and perhaps arcane preoccupation, but certainly not adding up to the sort of issue with displays abiding significance to the real life struggles of American Indians today. Some will obfuscate, insisting that at base questions of terminology reduce to no more than matters of opinion, that things may never really meant what they seem to mean, and that there is therefore no cause for serious concern. Others will respond that while what is said above may be objectively true, they have taken as their mission the “redemption” of terms like “tribe” and “tribalism,” devoting themselves to “restoring” meanings to the words which were never there in the first place. Still others will stipulate that, true or not, they couldn’t care less: the dominant society is at liberty to call them most anything it likes, so long as it provides them “something tangible” in exchange (usually meaning a minor share of the loot deriving from the existing order), thereby “proving” that no harm is intended. Those inclined to such positions would do well to wonder why, if the vernacular by which indigenous societies are described is essentially inconsequential or irrelevant, representatives of the United States and Canada have spent the past decade adamantly opposing Indians being addressed as “peoples”—they have insisted, emphatically, that we be defined instead only as “populations” and/or “tribal” or “ethnic” groups—in the draft of an international legal instrument designed to extend specific United Nations human rights protection over us for the first time. 104 The answer is that the government of these countries understand quite well, though some of us may not (or do not wish to admit), that there is an umbilical connection between the description imposed upon any group and how it is treated, between the label a group can be convinced to accept as appropriate to itself and the treatment is ultimately entitled to demand. 105 This is neither an “abstraction” nor “past history.” In contemporary international law, custom, and convention, ethnic population groups—often referred to as “ethnicities” or “racial minorities” (of which “tribes” are but a specifically inferior classification)—have been formally construed as subparts of nations, an internal or “domestic” concern of those countries in which they happen to be situated. 106 Within a fairly well articulated set of parameters, their needs and interests can be, and usually are, legally (“legitimately”) subordinated to the “greater good” or “wider interests” of the national entitles into which they are incorporated. 107 The menu of their rights is thus very much constricted to falling within whatever they can persuade those who most directly dominate them to acknowledge as appropriate to their structurally subordinated circumstances. Beyond this they have little legal or political recourse in attempting to improve the conditions under which they live. Peoples, on the other hand, are recognized in international law as possessing inherent rights of “self-determination.” 108 The supplanting of one word, or set of words, with another may seem too small a matter to lead to such results. In and of itself this is no doubt true. But, in and of itself it is a point of departure which is indispensable, a vital break in the carefully constructed web of “false consciousness” within which we have become trapped, a web of illusion which has increasingly prevented our knowledge of ourselves, which has led us inexorably from where we once were to where it is we now find ourselves, which denies us even the possibility of regaining the dignity we formerly enjoyed. As it has been put elsewhere, “the breaching of false consciousness can provide the Archimedien point for a more comprehensive emancipation—on an infinitely small space to be sure, but the chance for change depends upon the widening of such small spaces. 116

## T — Wholesale

#### Here’s just a short-list of the most notable industries (that certainly have advocates)

Select USA No Date (“INDUSTRIES”, <https://www.selectusa.gov/industries> , date accessed 9/11/21)

The United States is home to the most innovative and productive companies in the world, forming a diverse and competitive group of industry sectors. The U.S. industries highlighted here are exceptionally dynamic and represent key opportunities for global growth and success.

Aerospace

Agribusiness

Automotive

Biopharmaceuticals

Chemicals

Consumer Goods

Energy

Environmental Technology

Financial Services

Logistics and Transportation

Machinery and Equipment

Media and Entertainment

Medical Technology

Professional Services

Retail Trade

Software and IT Services

Textiles

Travel, Tourism, and Hospitality

#### B.---single companies---any company in any of those above industries, AND any non-profit entity

#### There are 32 million businesses in the US

FedCommunities 9/9 (“Small-business owners: Share your experiences with credit access this past year” , <https://fedcommunities.org/data/2021-take-federal-reserve-small-businesses-credit-survey/> , September 9, 2021, date accessed 9/11/21)

There are 32.5 million small businesses in the United States. That’s 32.5 million stories of small-business ownership. Representative data drawn from these stories can shed light on more universal experiences.

#### 1.5 million non-profits

Candid Learning No Date (“How many nonprofit organizations are there in the U.S.?” , <https://learning.candid.org/resources/knowledge-base/number-of-nonprofits-in-the-u-s/> , date accessed 9/11/21)

According to the National Center for Charitable Statistics (NCCS), more than 1.5 million nonprofit organizations are registered in the U.S. This number includes public charities, private foundations, and other types of nonprofit organizations, including chambers of commerce, fraternal organizations and civic leagues.

#### C.---affs could further disaggregate by country, or product

#### Antitrust prohibitions can be global

Hamer et al 16 (Mark H. Hamer is a partner in Baker & McKenzie's Washington, DC office and Chair of the Firm’s North American Antitrust and Competition Practice Group. Celina Joachim is a partner in Baker McKenzie's Houston office and certified in labor and employment law by the Texas Board of Legal Specialization. She represents management in all aspects of labor and employment law, including employment arbitration, litigation, counseling, and traditional labor law. Cynthia Jackson is a partner in the Compliance Group in Baker & McKenzie's Palo Alto office. “US Federal Agencies Issue Joint Guidance for HR Professionals Warning of Criminal Liability for Wage-Fixing and No-Poaching Agreements” , <https://www.globalcompliancenews.com/2016/11/15/us-issues-guidance-for-hr-professionals-wage-fixing-20161110/> , NOVEMBER 15, 2016, date accessed 9/5/21)

US antitrust prohibitions can apply to global conduct when there is a negative effect on competition in the United States. For instance, agreements between non-US companies, or transactions driven outside of the US, that include US compensation data, wage or benefit sharing, and/or no-hire / no poach or wage fixing agreements which impact US workforces will be in violation of this new guidance and constitute unlawful antitrust agreements. Multinational employers should therefore be mindful of sharing data or entering into such restrictive agreements where they involve US workforces.

#### And cover specific products

Markham 11 (Jesse W. Markham, Jr-\* Marshall P. Madison Professor of Law, The University of San Francisco School of Law. “LESSONS FOR COMPETITION LAW FROM THE ECONOMIC CRISIS: THE PROSPECT FOR ANTITRUST RESPONSES TO THE “TOO-BIG-TO-FAIL” PHENOMENON” , FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW, Vol. 16, Issue 2, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1281&context=jcfl> , 2011, date accessed 9/11/21)

A merger is not the only setting in which antitrust champions scale efficiencies. At the retail level, economies of scale constitute a legitimate reason for a manufacturer to limit intrabrand competition by imposing vertical restraints.92 Antitrust law also generally tolerates combinations of competitors into joint ventures to achieve economies of scale, with the presence of such efficiencies removing a challenge from the application of per se condemnation and establishing a facially plausible justification for the concerted activity.93 Removing conduct from per se illegality comes close to legalizing it, given the rarity of plaintiff successes in challenging the conduct under the rule of reason.94

[[BEGIN FOOTNOTE 94]]

94. One rare successful challenge under the rule of reason is found in Polygram Holding, Inc. v. FTC, 416 F.3d 29 (D.C. Cir. 2005), a case that is indicative of the difficulties plaintiffs face under Post-Chicago School antitrust rules. In that case the FTC challenged an agreement between competing record companies to suspend advertising and discounting of two record albums temporarily during the launch period for a jointly-produced recording. The court affirmed the FTC’s application of the rule of reason to the challenged agreement, even though it involved competitors agreeing not to put specific products on sale for a period of time – a collusive restriction on price and advertising that in an earlier era probably would have met with per se condemnation.

[[END FOOTNOTE 94]]

#### SECOND----precision---has intent to define and is in legislative context

#### Other parts of the US code concur

US Code 96 (United States Code, 2 U.S. Code § 658 – Definitions, <https://www.law.cornell.edu/uscode/text/2/658#9> , Section effective Jan. 1, 1996, date accessed 9/10/21)

(9) Private sector

The term ``private sector'' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

#### AND, policy analysts

Adler 99 – Senior Director of Environmental Policy, Competitive Enterprise Institute, Washington, D.C. (Jonathan, “WETLANDS, WATERFOWL, AND THE MENACE OF MR. WILSON: COMMERCECLAUSE JURISPRUDENCE AND THE LIMITS OF FEDERAL WETLAND REGULATION,” 29 Envtl. L. 1)

In discussions of environmental policy, it is traditional to equate environmental protection with environmental regulation. This connection is unfounded, however. Direct government regulation is only one means of addressing environmental problems. Other approaches include the use of fiscal instruments (for example, subsidies and taxes), direct government provision or purchase of public goods, and the creation or recognition of property rights in environmental resources. 404Link to the text of the note Fiscal instruments are typically used to modify behavior in the marketplace by changing the incentives faced by individuals and corporations. For example, providing a financial incentive to maintain habitat for endangered species will induce more landowners to protect species habitat than if the government had not provided an added incentive. Similarly, taxing certain activities, such as the emission or particular substances, will reduce those activities on the margin. 405Link to the text of the note In circumstances in which federal policymakers believe that the private sector will underprovide a public good, the federal government can provide the good directly. 406Link to the text of the note Federal agencies can, and do, purchase ecologically sensitive lands from private landowners and groups to ensure [55] their protection. 407Link to the text of the note In those cases where landowners are unwilling to sell, the Fifth Amendment to the Constitution allows the federal government to take land for public use so long as compensation is provided. 408Link to the text of the note Thus, the federal government can use the spending power to advance environmental goals where its regulatory powers are limited. Governments need not take direct action to facilitate conservation efforts. The creation of property interests empowers owners to act as stewards of environmental resources and facilitates conservation efforts in the private sector.

\*\*\*start 409\*\*\*

It should be noted that here the phrase "private sector" is used to encompass all nongovernmental institutions and undertakings, and not just for-profit corporations and profit- seeking individuals.

\*\*\*end 409\*\*\*

Thus, the recognition of conservation easements empowers conservation groups to purchase development rights from a given parcel of land and protect the present ecological values. 410Link to the text of the note Similarly, when states recognize property interests in instream water flows, a local environmental group can purchase instream flows to improve salmon habitat. 411Link to the text of the note Internationally, allowing the commercial utilization and quasi- ownership of elephants in Zimbabwe has led to larger herds and the devotion of greater acreage for wildlife habitat. 412Link to the text of the note In New Zealand the creation of fishing rights known as "individual transferable quotas" (ITQs) reduced overfishing and encouraged fishermen to support sustainable harvesting. 413Link to the text of the note The expansion of property rights in these areas further enhances the already substantial private conservation efforts going on today. 414Link to the text of the note

#### AND, international law

Avis 16 (Dr William Robert Avis-International Development Department Research Fellow @ University of Birmingham. “Private sector engagement in fragile and conflict-affected settings”, GSDRC Applied Knowledge Services Helpdesk Research Report , 13.01.2016 <http://unprmeb4p.org/wp-content/uploads/2018/10/Private-sector-engagement-in-fragile-and-conflict-affected-settings.pdf> , date accessed 7/19/21).

NOTE: \*DFAT is short for Department of Foreign Affairs and Trade, the department of the Australian federal government responsible for foreign policy and relations, international aid, consular services and trade and investment.

Whilst PSD is considered to have an important role to play in the field of economic development, there is much debate over what constitutes ‘best practice’ in PSD and what the term private sector encompasses. The private sector1 [[BEGIN FOOTNOTE 1]] DFAT use the term ‘private sector’ to refer to all commercial enterprises (businesses) and includes individual farmers and street traders, small and medium enterprises, large locally-owned firms and multinational corporations.[[END FOOTNOTE 1]] can include local formal, informal and illegal actors, diaspora communities and regional and multinational players (Peschka, 2010). This review adopts DFATs definition of private sector engagement which is characterised as a tool to achieve better development outcomes in private sector development and human development.

#### This is the most common usage

Your Dictionary No Date(“Private-sector” , <https://www.yourdictionary.com/private-sector> , date accessed 9/10/21)

Private-sector meaning

The part of the economy that is controlled by individuals or private organizations and is not funded by the government.

noun

(business) All organizations in an economy or jurisdiction that are not controlled by government, including privately owned businesses and not-for-profit organizations.

*After spending two decades at various government agencies, he returned to the private sector and took a job as a business consultant.*

Of or pertaining to the private sector.

Adjective

#### Substantially doesn’t allow exceptions

Black’s Law 91

[p. 1024]

Substantially - means essentially; without material qualification.

#### ‘Antitrust’ applies to the entire economy

Boliek 11 (Dr. Babette Boliek- Associate Professor of Law at Pepperdine University School of Law, J.D. from the Columbia University School of Law, and Ph.D. in Economics from the University of California, Davis, “FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries”, Boston College Law Review, 52 B.C. L. Rev. 1627, November 2011, Lexis)

Although the two regimes share a commonality of purpose--to protect consumers and to promote allocative efficiencies in production--the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving [\*1629] as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws "typically aim at similar goals--i.e., low and economically efficient prices, innovation, and efficient production methods"--regulation looks to achieve these goals directly "through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about." The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets--regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures. Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly. In the vast majority [\*1630] of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

#### Allowing disaggregation of the private sector is a limits nightmare

Crick et al 16 (Florence Crick-Grantham Research Institute on Climate Change and the Environment, The London School of Economics and Political Science, London. Mamadou Diop-Innovation Environnement Développement (IED) Afrique, Dakar, Senegal. Momadou Sow-Innovation Environnement Développement (IED) Afrique, Dakar, Senegal. Birame Diouf-Independent consultant, Senegal. Babacar Diouf-Independent consultant, Senegal. Joseph Muhwanga-Kenya Markets Trust (KMT), Nairobi, Kenya. and Muna Dajani- Department of Geography, The London School of Economics and Political Science, London. “Enabling private sector adaptation in developing countries and their semi-arid regions – case studies of Senegal and Kenya” Centre for Climate Change Economics and Policy Working Paper No. 291 Grantham Research Institute on Climate Change and the Environment Working Paper No. 258, <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/57692/IDL-57692.pdf> , December 2016, date accessed 7/19/21).

In addition, it is important to disaggregate the term private sector and not treat it as a homogenous entity. It covers all types of businesses that can be formal or informal and range from micro enterprises, such as local entrepreneurs and smallholder farmers, through to multinational companies operating in a multitude of countries across the world. Not all businesses possess the same capacity to consider climate change within their operations and not all businesses will require the same type of support or facilitating environment to adapt to climate change (Lonsdale et al, 2010; Pulver and Benney, 2013). In particular, small and medium enterprises (SMEs), which form a critical part of the economy in developed and developing countries, are considered highly vulnerable to climate change. They are considered to be amongst the most affected by extreme weather events and with a low ability to deal with and respond to such events (Yoshida and Deyle, 2005; Runyan, 2006; Wedawatta et al, 2010; AXA and UNEP, 2015). The impact of climate change on SMEs will have wide-ranging social and economic consequences in developing countries, as SMEs provide most employment opportunities, contribute to economic growth and are also local players strongly integrated into their communities. SMEs have the potential to integrate women and other marginalised groups into society (AfDB, 2013b). With their role in driving local development, as well as their ability to innovate and to build community resilience, SMEs are seen as important drivers for societal adaptation (Dougherty-Choux et al, 2015). Therefore, it is critical to better understand how to provide an enabling environment to support their adaptation to climate change. Yet, to date much of the literature on private sector adaptation has tended to focus on the larger companies and those based in developed countries.