## 1NC

### 1

#### Interpretation: 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.

#### Violation: the aff only applies to the tech 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

### 2

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

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Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### The plan requires an unexpected, significant and drawn-out expenditure of finite law enforcement resources

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Resources are finite and are drawn from under-the-radar M and A priorities

McCabe 18, covers technology policy from The Times' Washington bureau, formerly of Axios (David, “Mergers are spiking, but antitrust cop funding isn't,” Axios, https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html)

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers. Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say. What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow. What's happening: More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012. Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017. Funding for the FTC has fallen 5% since 2010 (adjusted for inflation). An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment. Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April. Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three. Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner. Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further. “Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’" "It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### Health consolidation collapses public health---specifically rural care

Numerof 20, PhD @ Bryn Mawr, internationally recognized consultant and author with over 25 years of experience in the field of strategy development and execution, business model design, and market analysis (Rita, “Covid-Induced Hospital Consolidation: What Are The Impacts On Consumers, And Potentially The President,” *Forbes*, <https://www.forbes.com/sites/ritanumerof/2020/11/11/covid-induced-hospital-consolidation-what-are-the-impacts-on-consumers-and-potentially-the-president/?sh=692d6fc94da0>)

Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Rural care is key to US ag exports

Lichtenwald 16, CEO of Medsphere Systems Corporation (Irv, “Is CMS Efforts Enough to Transform Rural Healthcare?,” <http://hitconsultant.net/2016/02/22/32016/>)

The scenario is far from unrealistic. For the most part, non-urban healthcare organizations are not doing well. In fact, almost every rural hospital in the country is operating near the margin or in the red. According to iVantage Health Analytics Senior Vice President Michal Topchik, speaking to Health Data Management, 67 rural hospitals have closed since 2010, and 283 were vulnerable to closure last year. Already in 2016 iVantage has identified 673 vulnerable rural hospitals, with 210 at very high risk. While only about 15 percent of the American population, roughly 46 million people, live in rural areas, they do some of the nation’s most essential work. Mostly, they grow food, produce energy or provide services to the people that grow food and produce energy. Obviously, the rural healthcare situation matters in terms of food and energy security at home, but also in terms of economics—the United States is by far the largest global exporter of food, with roughly $40 billion separating America from number two, and is on the cusp of ending energy imports for the first time since 1950. In reality, rural healthcare is transitioning, not disappearing, mostly because doing nothing is just bad economics. People in rural areas need care. If they can’t get it locally, they have to be flown to the nearest facility, which ends up being more expensive over the long term than funding a local hospital. To their credit, the Centers for Medicare and Medicaid Services (CMS) are already aware of the situation in rural America and have been taking steps toward fixing it. Speaking recently to the National Rural Health Association, CMS Acting Administrator Andy Slavitt explained that the agency is “establishing a CMS Rural Health Council to work across the entire agency to oversee our work in three strategic priority areas– first, improving access to care to all Americans in rural settings; second, supporting the unique economics of providing health care in rural America; and third making sure the health care innovation agenda appropriately fits rural health care markets.” As Slavitt points out, rural Americans tend to be older, earn less money and they generally lack health insurance—more than 60 percent of citizens without health insurance live in rural areas in states that have not expanded Medicaid through the Affordable Care Act. Nearly 75 percent of government health insurance exchange users make less than 250 percent of the federal poverty level—currently a bit less than $12,000 a year for an individual and slightly more than $24,000 for a family of four. So, if the argument could be made that rural America is home to the greatest number of healthcare challenges, then it also represents the greatest opportunity. If we can make affordable healthcare work outside urban areas, we may have a template applicable to other scenarios. On Slavitt’s first two points—access and economics—CMS is working to sign rural Americans up for health insurance and adjusting requirements and payment models for rural care. Which brings us to the “innovation agenda,” Slavitt’s term for the digitization of healthcare and the all-in bet the federal government has made on the benefits of health IT. The goal here is to transform rural hospitals and clinics into efficient, wired, lean operations that can absorb the realities of rural care and still operate in the black. With 35 percent of rural hospitals losing money and almost two-thirds running a negative operating margin, there’s simply no way rural facilities can invest in health IT without help. From CMS, that help takes the form of several planned or in-process programs: – Medicaid State Innovation Model grants for technical support in smaller rural hospitals – Aggregation of services in rural communities creating benefits from population health – The Frontier Community Health Integration Project (summer 2016), developing and testing new models in isolated areas using telemedicine and integration approaches – The ACO investment model for hospitals that can’t invest in ACO infrastructure; the model now serves 350,000 rural beneficiaries through 1,100 rural providers – Incorporating telemedicine where appropriate; CMS is publishing a Medicaid final rule that for the first time allows for face-to-face encounters using telehealth It’s clear that CMS understands we can’t leave rural hospitals to fend for themselves. But it also seems clear that a lot of hospitals invested in electronic health records (EHRs) they could ill afford to qualify for Meaningful Use funds—dollars that seldom covered implementation costs for solutions that didn’t yield significant cost savings and required additional technical personnel. By and large, that MU money has been dispensed. The carrot has been eaten. What Medicare- and Medicaid-heavy hospitals can expect next is two sticks: more stringent reporting requirements necessitating EHR use and direct penalties (for now) related to Meaningful Use non-compliance. “The high capital and operating costs associated with health IT, specifically EHRs, have put some hospitals in a difficult position,” wrote Becker’s Hospital CFO in a prescient January 2014 article. “Do they absorb the financial hit now, even if they know they can’t afford it? Most organizations are doing so …” Yes, CMS is trying to help lessen the impact of that metaphorical beating, but these rural hospitals also have to make decisions to help themselves. Too many are paying for systems they can’t afford to maintain. Moreover, they are unable to invest in necessary security, leaving them increasingly open to data breaches. Many are also still handicapped by the costs of ICD-10 transition, for which there was no federal reimbursement. Rural hospitals need a comprehensive EHR platform that integrates with a revenue cycle system so they can properly capture charges and manage the billing process, and effectively collect on previously lost billing. These systems need to be available as a subscription service so that rural hospitals don’t have to come up with huge money down. And they can’t require the hiring of an additional 50 application specialists to make the new systems work. “The benefits of IT are still to come,” Standard and Poor’s Marin Arrick told Becker’s Hospital CFO more than two years ago. Still the economic crisis in rural care rages on, certainly lessening access to care for millions of Americans and arguably impacting the labor force that produces food, energy, etc.

#### US ag exports prevent hotspot escalation

Castellaw 17

Lieutenant General John Castellaw is the Founder and CEO of Farmspace Systems LLC, a provider of precision agricultural aerial services and equipment. He is a highly decorated 36-year veteran of the United States Marine Corp where he participated in and led several humanitarian operations in Africa, Asia and Europe. He is also the former President of the non-profit Crockett Policy Institute where he created the “SOLDIER 2 CIVILIAN” program to help veterans find jobs in precession agriculture. He graduated from the University of Tennessee, Martin (UTM) with a degree in Agriculture. He currently operates his family farm in Tennessee. “Opinion: Food Security Strategy Is Essential to Our National Security.” Agri-Pulse. May 1st, 2017. https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

### 3

#### The fifty states and relevant subnational entities should enact and limit anticompetitive mergers by adopting a structural presumption for potential competition mergers in the technology sector

#### State antitrust is enforceable and solvent.

Lange et al. 21, \*Perry A., JD, antitrust lawyer, vice-chair of the ABA Antitrust Section’s Joint Conduct Committee. \*Brian K. Mahanna, JD, former chief of staff and deputy attorney general in the Office of the New York State Attorney General, \*Nicole Callan, JD, vice chair of the Civil Practice and Procedure Committee of the American Bar Association (ABA)'s Section of Antitrust Law, \*Álvaro Mateo Alonso, LLM, Law Degree, antitrust lawyer. (3-5-2021, "Developments in Antitrust Law: Keep an Eye on New York", *WilmerHale*, Full report accessible at: https://www.wilmerhale.com/en/insights/client-alerts/20210305-developments-in-antitrust-law-keep-an-eye-on-new-york)

Although much attention recently has been focused upon debates in Congress, potential legislative changes to U.S. antitrust law are not limited to proposals at the federal level. Many states are considering changes to their own antitrust laws, which usually can be enforced by state attorneys general and private plaintiffs. Importantly, New York legislators have introduced two bills that propose sweeping changes to the State’s antitrust law, the Donnelly Act, building on measures introduced in New York’s last legislative session.

These proposals, if enacted, would make New York’s single firm conduct statutory provisions the most aggressive in the United States and would give the New York Attorney General a more prominent role in reviewing transactions—including by creating a first-of-its-kind state merger notification requirement. These changes would allow New York’s antitrust law to reach a range of conduct not actionable under any existing federal or state antitrust law, and would introduce European-style antitrust standards to New York. Accordingly, this reform would create considerable new compliance challenges and risk for companies potentially subject to New York antitrust law, whether or not those companies are located in New York.

Other U.S. states and territories are considering antitrust law changes, but the New York proposals are the most significant. Although much of the conversation concerning developments in antitrust law has focused on “Big Tech” companies, these proposals would affect businesses across all sectors of the economy. This alert discusses these legislative proposals and key implications for businesses.

### 4

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by expanding regulatory constraints on potential competition mergers in the technology sector

#### The United States federal government should

* Promote digital investment and clarify digital regulations to encourage digital innovation;
* Expand small business participation in global e-commerce;
* Increase investment in infrastructure;
* Expand education pathways and apprenticeship programs;
* Make occupational licenses more portable;
* Allocate capital to resource innovation;
* Increase funding for research and development;
* And, increase investment in economic statistical agencies to promote data openness.

#### The CP solves and competes

Shelanski 18 [Howard Shelanski, Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP, “COMMENT: Antitrust and Deregulation,” 127 Yale L.J. 1922, 1926-1960, May, 2018, lexis]

Antitrust is not, however, the only institution through which government addresses competition concerns and market failures. Congress can give regulatory agencies authority to intervene where they see the need to address competition and market structure--and Congress has often done so. With such statutory authority, "[i]n effect, the agency becomes a limited-jurisdiction enforcer of antitrust principles." 16 For example, the Department of Transportation (DOT) has jurisdiction to approve transfers of routes between airlines carriers, giving it a role in reviewing airline mergers. 17 The 1992 Cable Act gave the FCC authority [\*1927] to limit the share of the national cable market that a single operator could serve, thereby giving the agency some control over the industry's market structure. 18 The FCC has long regulated market entry and, through its control over license transfers, reviewed mergers and acquisitions in several sectors of the telecommunications industry. More recently, the FCC issued, 19 and then repealed, 20 "network neutrality" regulations intended to preserve ease of entry and a level playing field for digital services. The Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Department of Energy, and numerous other federal agencies have various powers that directly affect competition. 21 State regulation can be important as well in governing competition, particularly in the insurance and healthcare industries. 22

In contrast to the case-by-case approach of antitrust, regulation typically imposes ex ante prohibitions or requirements on business conduct. The Telecommunications Act of 1996, for example, required incumbent local telephone companies to grant new competitors access to parts of their networks and prohibited incumbents from refusing to interconnect calls from their customers to customers of competing networks. 23 With the rule in place, the FCC bore no burden of proving that a specific instance of network access was necessary for competition, or that a specific denial of interconnection would harm competition. In contrast [\*1928] to antitrust, where the burden of proving liability is on the agency, under a regulatory regime the burden of seeking a waiver from regulation or challenging an agency's enforcement decision is usually on the regulated party.

Antitrust and regulation therefore present alternative approaches to governing competition and addressing market failures. 24 The government can review individual mergers under the antitrust laws, as it does in most markets, or it can set rules that impose clear, ex ante limits on the extent of concentration, as the FCC did for media ownership under the Communications Act. 25 Government can investigate under the antitrust laws whether a firm has monopoly power that it has "willful[ly]" acquired or maintained other than "as a consequence of a superior product, business acumen, or historic accident." 26 Alternatively, with authority from Congress an agency can regulate how much of a market a single firm can serve, as the FCC tried to do with cable companies, 27 or require firms to dispose of key assets in order to promote competition in a relevant market, as the DOT has done with airline slots. 28

#### The planks create 3.5% growth.

Pinkus et al. ’16 [Gary; is chairman of North America. He was previously the managing partner for the firm in North America, and before that led McKinsey’s office for the western United States. Gary is also a former global leader of McKinsey’s Private Equity & Principal Investors Practice, which he helped cofound more than a decade ago. Gary joined McKinsey in Los Angeles in 1987 as a business analyst and came to the firm’s San Francisco office in 1992. Over the course of his career, he has worked for Dole Food Company in Honduras, Bear Stearns’ mergers and acquisitions group in New York, and in McKinsey's Houston, Mexico City, Sydney, and Zurich offices. He also serves on the boards of the California Academy of Sciences, the Menlo School, and the California Business Roundtable. He is a prior member of the boards of the San Francisco Opera, ReSurge International (formerly Interplast), and the Silicon Valley Leadership Group, as well as a prior member of the investment committee for the Woodside School Foundation. He earned a bachelor’s degree in English and quantitative economics from Stanford University and an MBA from Harvard Business School; November; “Can the US economy return to dynamic and inclusive growth?”; <https://www.mckinsey.com/featured-insights/employment-and-growth/can-the-us-economy-return-to-dynamic-and-inclusive-growth>; accessed 10/21/18//MSCOTT]

Five pillars for progress

We see five areas where targeted investment and policy action could create substantial economic impact. We estimate that these five initiatives can collectively raise GDP growth to 3 or even 3.5 percent—levels not seen since the 1990s. This is not an exhaustive list, but these are areas in which the McKinsey Global Institute has already conducted extensive research and where we see room for substantial economic impact within a decade.

Digitization. The US economy is rapidly digitizing, but its progress is highly uneven. Focusing on the gap between lagging sectors and those on the digital frontier is a key part of the productivity puzzle. Government can play a role by promoting digital investment, digitizing public services and procurement, clarifying regulatory standards to encourage digital innovation, and taking a nimble and experimental regulatory approach to keep pace with technological change.

Globalization and trade. The current debate around trade misses the point that globalization is becoming more digital—a shift that plays to US strengths. Today, less than 1 percent of US firms sell abroad. There are ways to expand participation by helping small businesses export on global e-commerce platforms and playing a matchmaking role to connect individual cities and smaller companies with foreign investors. But it is also time to confront the needs of communities that have experienced trade shocks. The workers who are caught up in industry transitions need more than retraining; their communities need reinvestment.

America’s cities. Eighty percent of the US population lives in cities or the surrounding metro areas. But investment in urban transport infrastructure has not kept up with their needs, creating congestion that harms both productivity and the quality of life. A shortage of affordable housing and commercial space has worsened the squeeze on households and small businesses. Addressing urban issues would improve mobility, create new investment opportunities, and benefit companies. The overall economy would stand to gain, since cities are the engines of productivity.

Skills. The United States needs to build a more dynamic and efficient labor market. Colleges and universities have to adapt and address the growing cost burdens. Additionally, we could make occupational licenses more portable, create more short-term training and credential pathways, expand “earn while you learn” apprenticeships, and make better use of online talent platforms to improve matching and design quicker, more effective education pathways.

A resource revolution. Competition among fuel sources and efficiency improvements are combining to produce an unheralded energy revolution. Technology innovations are driving increased efficiency both in demand and supply, and renewables are becoming more price competitive. America’s widely diversified energy portfolio has hugely benefited the economy. The most important thing the ongoing resource revolution needs is room to play out. Technology is moving quickly, and a responsive regulatory approach would speed the allocation of capital to the most promising opportunities. The primary policy agenda here involves reducing friction and market distortions.

#### ONLY the entire CP can resolve dynamism—additionally, federal investment in R&D and data is key.

**Lettieri ‘17** (President of the Economic Innovation Group, John, Joint Economic Committee Hearing on the Decline of Economic Opportunity in the United States: Causes and Consequences, 4/5, <https://medium.com/the-investing-in-opportunity-act/joint-economic-committee-hearing-on-the-decline-of-economic-opportunity-in-the-united-states-fe6d170ea762>) //DH

Guideposts for an Opportunity Agenda

Before discussing potential solutions, let’s play devil’s advocate and ask if declining dynamism is really a problem that can or should be solved. If the decline is inevitable, why bother with useless policy prescriptions? Or, if there are hidden benefits to declining dynamism, why be worried at all?

Dynamism is only worth restoring to the extent that its decline corresponds with downstream negative outcomes. If, for example, we were seeing strong GDP growth, robust labor force participation, increased upward mobility, and strong wage growth, declining dynamism would be a moot point. Unfortunately, we see just the opposite. Furthermore, we can be certain that much of the current dilemma is due to policy choices and thus totally within our control. Nevertheless, our solutions should not fundamentally be aimed at making the economy look more like the past, but rather at ensuring that the benefits of tomorrow’s economy are broadly shared.

Here are five guideposts for a future-oriented opportunity agenda:

1. Focus on new firm creation and competition. Access to opportunity suffers when incumbents are too powerful, markets are too concentrated, and entrepreneurs are an endangered species. Policymakers should rebalance the playing field with lower barriers to entry and greater emphasis on the unique needs of new companies. This includes, among other things, reforming exceedingly complex tax and regulatory regimes, which serve to protect incumbents from competition, and boosting access to capital and talent for new ventures. It also includes accelerating the pipeline of high-skilled workers into the labor market — both through better skills training and by fixing the truly self-defeating U.S. immigration system.

2. Enhance geographic mobility and labor market fluidity. Central to any opportunity agenda should be empowering people to move to places of opportunity and efficiently develop and deploy their skills in the marketplace. Among other things, this means getting rid of onerous occupational licensing requirements, designing a safety net that does not discourage mobility, and revamping local zoning and land use regulations so that high-opportunity areas can accommodate more people.

3. Invest in the future. The United States has benefitted enormously from previous decades of massive public sector investments in infrastructure and basic research, but we often forget why such investments are critical to private sector innovation and dynamism. As we renew our commitment to smart public sector investments, we should also abandon 13 traditional economic development incentives, which too often amount to giveaways that mortgage the future of local communities. New approaches are needed.

4. Growth is still key. The United States is in desperate need of stronger GDP growth, which itself would go a long way to addressing concerns about access to opportunity and upward mobility. A broad pro-growth agenda is necessary, but we should also be bold in incorporating ideas aimed at helping struggling regions regain their footing. Meanwhile, let’s resist the temptation to feel complacent given our relatively strong post-crisis performance in comparison to other developed economies. Their present struggles are a glimpse into our economic future unless we take action soon.

5. We need data. It is hard enough to diagnose complex problems when data are available. Without sound data, we are left with little more than faith-based policymaking. The federal government should protect and expand its investment in the economic statistical agencies and allow for improvements that will make their work even more useful in the years to come. 18 But that is not enough. In light of how little we know about solving long-standing problems (especially related to upward mobility), federal policies should aggressively support novel approaches and reward state and local policy innovation. A more experimental approach to policymaking alongside existing legacy programs could provide a wealth of new data on what works and what should be discarded.

### 5

#### The AFF’s security rhetoric creates a self-fulfilling prophesy that masks violence and risks extinction.

Dillon 15**,** Michael, Emeritus Professor of Politics @ Lancaster University. (4-21-2015, “Biopolitics of Security: A Political Analytic of Finitude”, Published by *Routledge*, pg. 209-212)

The societies of the North Atlantic basin have never been so secure. That security is a function of such a Wide variety of security institutions and practices it seem pointless to name them, for they penetrate into the very weft and warp of everyday life. Pointless to name them, but not pointless to re-describe them by giving them a different name. They are in every respect baroque. Ordinarily addressed as a period and or a style of art, an aesthetic, the bauoque names, instead, a space of problematisation, and a mode of operationalisation. If fac- tical finitude is the condition of possibility for the baroque, as well as for modern politics, the baroque names factical finitude’s condition of operability. No more so, in fact, than in respect of the conditions of operability of modern politics of security. What is being secured, in the securing of Life whose very vital signs are now construed as generically dangerous to itself, or of the sovereign that is fated to fail the standards of sovereign being, is the continuous suspension of any other expression of politics. It is a suppression that works through substitution, the substitution of repeated clichés, marvels and spectacles concerning the 'now', the 'future' , 'potency' , 'radical contingency' and survivability in a world whose very security apparatuses have turned politically motivated killing into an industrial and commercial processes integral to our civilization but capable also of threatening the survivability of planetary life. At the beginning of the twenty-first century, these now seek their expression in tropes that intensify security’s baroque fixation with morbidity, mortality and modernity: complex adaptation and change, competitiveness, emergence, catastrophic emergency, the event that saves, the event that threatens, and, above all, resilience the capacity to endure by becoming something else. To survive is to submit, through holocaust or social therapy, to self-annihilation as governmental necessity. We might therefore envisage the baroque character of our politics of security as the attempt to unify these themes within synthetic narratives of competitiveness, identity, the enemy, or simply terror. The past of security and war is forgotten by continuous repetition in spectacle, simulation and practice. These are now organised through scopic regimes employmg different orders of signification and representation as well as novel technologies. To give our contemporary politics of security another name is, therefore, a deliberate device. It gives them another face. In rhetoric this manoeuvre is called prosopopoeia. Strictly speaking, prosopopoeia gives a face to that which does not have a face. Our security politics are preoccupied, however, with presenting a face that will move the world, a face for the world to accept at face value. Having a face is, therefore, not the issue here. The issue is what face. I have attempted to give our politics of security another face, one capable of refracting its face of baroque display. Prosopopoeia is a difficult art. It does not seek to achieve closure or finality as some forms of narrative, history and positivity do. It does not labour under the rule of verisimilar adequacy, and it does not suborn itself to policy or governmental relevance. It seeks to represent not that which is absent, 'but that whose presence is so intense that we can only feel it and see it from a safe distance' (Godzich and Spadaccini, in Maravall 1986: xiil—xiv). Initially, the political programme of the baroque was the formal answer of the monarchical-seigniorial segments of sixteenth-century Spanish society, to the assaults launched against the traditional étatist structure taking shape in early modern Spain (Godzich and Spadaccini, in Maravall 1986: xvii). One of its most distinguished historians, José Antonio Maravall, defines the baroque, 'as a culture provoked by a cultural crisis of major proportions, one that was felt in all of Europe, and perhaps most intensely in Spain, during the greater part of the seventeenth century' (Godzich and Spadaccini, in Maravall 1986: xviii). Where, once, baroque politics included defence of the monarchy, the safeguard of honour as the raison d'état of individual and social life, and the constant reaffirmation of love as a universal justification (Godzich and Spadaccini, in Maravall 1986: xix), our baroque politics of security is a vast palimpsest of rules of truth and truths of rule, constantly reaffirming peace, rights and justice as universal justifications for security and war. The baroque names its mode of operativity, rather than a period. I have extended this description of it to the generic crisis induced by factical finitude and the changing baroque politics of security that helps distinguish the states and societies of the North Atlantic basin at the beginning of the twenty-first century. As with the early baroque, so also with the twenty-first century we are confronted with a political culture directed towards the multitude of anonymous and, therefore, potentially disruptive individuals — homegrown 'terrorists', for example — no longer simply concentrated in the cities, but capable of circulating globally. Its mode of operativity is distinguished by the effort that is spent on casting the political subject as political spectator, whose voluntary servitude to indefinite governance is secured through the spectacles of security, catastrophic emergency and war, as much as through their everyday governmentalisation. Deleuze noted, acutely, that, ' ltlhe essence of the baroque entails neither falling Into nor emerging from illusion but rather realizing something in illusion itself' (Deleuze 1992: 124). A fuller depiction of the neo-baroque character of contemporary security politics, therefore, requires further studies. Among other things, these would have to revisit the problematization not only of spectacle and the virtual, but all modes of making manifest politically and governmentally in which these are Intimately involved as a matter of priority. But this has to wait, and for the moment I can only add a coda to the present book, by gesturing towards how politics of security in the twenty-first century are distinguished by the ways in which they exceed the katechontic security politics of the baroque sovereign that I introduced, thlough Reinhart Koselleck and Carl Schmitt, in the first chapter of the book. Politics of security remain katechontic, fated to pursue the infinite deferral of the very finitude of which they are comprised, and from which they also take their warrant to conduct the infinite securitisation of finite things and processes of becoming finite. But this katechontic enterprise changes its character as we not only move from addressing modern sovereign geopolitics to biopolitics, but also as we move from the baroque traits of the early modern era to those of the neo— baroque of our own times. What is additionally interesting is that, as the modern geopolitics of the West has become a largely biopolitical enterprise, so also has the katechontic task of restraint become acceleration of the very forces that the katechon was once said to restrain — chaos, lawlessness and anarchy, since order now is commonly said to arise from chaos. Katechontic politics of security at the beginning of the twenty-first century thus aim to become the very anomic chaos originally stigmatised in the anarchy problematic of classical international relations theory, which so extolled the necessity of the sovereign state, and of statecraft, simultaneously also fostering the belief that there was no stagecraft to statecraft, in explicitly katechontic terms. No longer simply committed to restraining the coming of the end, the katechontic enterprise of the biopolitics of security of the twenty-first century is now much less committed to restraint than to acceleration, acceleration of the vital forces of being-information and becoming—dangerous that exceed finitude, thereby offering the prospect of securely commanding it.

#### Vote NEG to reject security logic in the making.

Leese 15, MA, senior researcher at the Center for Security Studies. (Matthias, “On security, once more: Assorted inquiries in aviation”, https://publikationen.uni-tuebingen.de/xmlui/handle/10900/60118)

Thus, how are we to come to terms with an agenda of security as assemblage empirically, if its empirics are defined by radical openness? Connolly (2013: 401) suggests a clear-cut “problem orientation, pursuing the contours of an issue up and down these interacting scales, as the issue requires.” If security politics evolve around specific security problems, in whichever of the manifold ways that we have sketched out so far, then the very evolution of complex, and at times contradictory, assemblages alongside the constitution of security politics provides a valuable starting point. As Adey and Anderson (2012: 106) argue, “in seeking to understand how life is governed in and through contingency, we should take care to remember the contingencies of the apparatus of security – that is, how apparatuses form, endure and change as the elements that compose them are (re)deployed.” Already implied in such a perspective is the notion that each assemblage could be formed differently – and that what we encounter is merely a momentary snap-shot of stabilization that might rather sooner than later fall apart again through the multiple contestations that security is subjected to. As Schouten (2014b: 88) claims, such a perspective could considerably contribute to a general agenda of thinking about security by “by radicalizing the insight in security studies that security is ‘essentially contested’ to study the on-going attempts to stabilize security.” As he adds: “if security practitioners ‘out there’ struggle with the very ontology of (in)security, how could ‘we’ as analysts a priori decide that security is a matter of discourse, practice or materiality?” (Schouten, 2014b: 88) The utility of such an approach becomes rather obvious when we call to mind the preceding narrative of security as economy and the ensuing “close assemblage with international partners and private companies that underpin the EU’s force in the domain of security” (de Goede, 2011: 12). Moreover, it can also contribute to the multiple layers of security as surveillance and technology, as government, and as futurity and securitization. Security as assemblage, however, is not some kind of ‘master narrative’. Neither does it occupy a privileged position among the narratives of security provided here. Rather, thinking about security as assemblage can arguably contribute to a better understanding of how all of those narratives come into being empirically – not necessarily through an underlying political agenda, but through complexity, fragility, and ambiguity. With regard to security, then, as Schouten (2014a: 28) explains, “this process of translation concerns ontological politics, for establishing security as technical rather than social, or private rather than public, subsequently restricts and redefines accountability; distribution of scarce output; and/or the scope of possible action available to different affected actors [emph. in orig.].” After all, as Rose (1999: 22) reminds us, “the space of government is always shaped and intersected by other discourses, notably the veridical discourses of science and changing moral rhetorics and ethical vocabularies, which have their own histories, apparatuses and problem spaces, and whose relation to problematics of government is not expression or causation but translation.” It is this very translation that must be researched empirically if any analysis seeks to unpack specific security assemblages. The processes of translation mark the trajectories along which actor relations form and re-form, and, most importantly, become visible: “when security is in the making – that is, still a controversy to be settled – it is ontologically unstable and indistinguishable from the ‘context’ made up of economic, technological, medical and legal considerations” (Schouten, 2014a: 38). Scholars of governmentality have shown that “an analytics of a particular regime of practices, at a minimum, seeks to identify the emergence of that regime, examine the multiple sources of the elements that constitute it, and follow the diverse processes and relations by which these elements are assembled into relatively stable forms of organization and institutional practice” (Dean, 2006: 21), and thus we can once more identify a strong parallel here. As Rose (1999: 277) quite plainly frames the issue, “our present has arisen as much from the logics of contestation as from any imperatives of control”, and thus security studies must in fact transcend the scope on control that strikes at the heart of many inquiries into surveillance and technology. In the vein of Foucauldian thought, as Schouten (2014a: 38) emphasizes, the “critical purchase thus lies in offering us a way to study security, not in terms of stable arrangements that impress themselves upon us as powerful ‘cold monsters’, but rather as unsettled accounts of fragile security by entering in to the controversies when security is still in the making.” What implications must be derived from such insight? How does this narrative of security as assemblage undermine, underpin, challenge, or reinforce its preceding narratives? It most certainly thwarts any over-simplistic understanding of security that centers merely centers around selected rationalities, thereby neglecting others. It can serve to highlight how economics or technological discourses have prevailed in the arena by tracing how, and through which particular power relations, controversies and ambiguities have become settled and stabilized. And by doing so, it can most notably challenge security politics by exposing reductionist and epistemologically twisted arguments of governing, of securitization, and of futurity. As Connolly (2013: 404) rather ironically puts the added value of assemblage thought: “‘How come we did not anticipate this?’, ask the Intelligence agencies. ‘How come we did not predict this?’, whisper political scientists to each other, before they catch themselves to recall how they only promise to predict hypothetical events under conditions in which the ‘variables’ are closely specified, and not to explain actual events in the messy, ongoing actualities of triggering forces, contagious actions, complex and floating conflicts, creative responses, obscure searches, ambiguous anxieties, and shifting hopes.”

### 6

#### Two-track infrastructure will pass, PC is key, but there’s zero margin for error

Greve 9-7-2021, politics breaking news reporter for Guardian US, based in Washington (Joan, “Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill,” *The Guardian*, <https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill>)

Congress will return from its summer recess later this month, and some Democrats are already gearing up for a political fight – with each other. Democratic lawmakers are looking to pass their $3.5tn spending package, after the House and the Senate approved the blueprint for the budget bill last month. The ambitious legislation encompasses much of Joe Biden’s economic agenda, including proposals to expand access to affordable childcare, invest in climate-related initiatives and broaden Medicare coverage. But to get the bill passed, Democrats will first need to reach an agreement on the cost of the legislation. Centrist Democrats, including Senators Kyrsten Sinema and Joe Manchin, have expressed concern about the bill’s $3.5tn price tag, while progressives have indicated they will fiercely oppose any attempt to cut funding in the proposal. With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error. Despite warning signs of intra-party friction over the cost of the budget bill, congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition, said the House’s focus right now should still be on the content of the legislation. “I think discussion of a number is more distracting when the focus really needs to be on, what is the substance going to be of this legislation?” DelBene told the Guardian. “If we have strong legislation the people support, I think we can find the path forward.” Over in the Senate, majority leader Chuck Schumer is attempting to advance the bill using reconciliation, meaning Democrats do not need any Republican support to pass the legislation. But the 50-50 split in the upper chamber means that every single Democratic senator must be on board to get the bill approved. Schumer has been clear-eyed about the challenges ahead for the legislation. Shortly after the Senate approved the blueprint for the bill in a party-line vote last month, Schumer told reporters, “We’ve labored for months and months to reach this point, and we have no illusions – maybe the hardest work is yet to come.” Manchin proved Schumer’s point last Thursday, when he wrote a Wall Street Journal op-ed calling for a “strategic pause” in advancing the spending package. “While some have suggested this reconciliation legislation must be passed now, I believe that making budgetary decisions under artificial political deadlines never leads to good policy or sound decisions,” Manchin said in the op-ed. “I, for one, won’t support a $3.5tn bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs.” Bernie Sanders, the leftwing chairman of the Senate budget committee, responded to Manchin’s warning in kind, threatening to torpedo the bipartisan infrastructure bill if the spending package is not approved. “Rebuilding our crumbling physical infrastructure – roads, bridges, water systems – is important,” Sanders said on Twitter. “Rebuilding our crumbling human infrastructure – healthcare, education, climate change – is more important. No infrastructure bill without the $3.5tn reconciliation bill.” Progressive groups have echoed Sanders’s argument, insisting that every component of the $3.5tn legislation is vital. Sanders had initially called for spending $6tn on the budget bill, so progressives already view the current price tag as a concession. “We’re in a moment of crisis. Is this really the time for the Senate to press pause?” Ellen Sciales, the communications director of the climate group Sunrise Movement, said in a statement. She added: “If the Senate can’t pass an incredibly popular climate and jobs plan during a summer of unprecedented, fatal climate disasters, and an economy reeling from a global pandemic, we must abolish the Senate. $3.5tn was the compromise.” Natalia Salgado, the director of federal affairs for the Working Families Party, noted that some progressive economists have suggested the US needs to spend $10tn over 10 years to meet its obligations in the Paris Climate Agreement. “We’re going to come nowhere near that,” Salgado said. “So we can’t afford to lose a single cent in this $3.5tn. Every single penny will count.” Despite the war of words between moderates and progressives, the White House has continued to express confidence that Congress will ultimately reach an agreement on the legislation. “The president and his whole team are proud of and fighting for the substance of his Build Back Better agenda,” a White House official said in a statement. “These are complex processes, but as recent weeks have demonstrated, leaders in Congress and the President know how to move them forward.”

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

Carstensen 21, JD and MA @ Yale, Former Chair of U-W Law School, Senior Fellow of the American Antitrust Institute (Peter, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>)

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

#### Reconciliation solves climate change [it passes now, new priorities tradeoff, it’s humanity’s last shot]

Roberts 8-7-2021, energy reporter, formerly of Vox (David, “Crunch time: this is America's last chance at serious climate policy for a decade,” *Vox*, <https://www.canarymedia.com/articles/climate-policy-crunch-time-we-need-congress-to-pass-a-clean-energy-standard-and-tax-credits/>)

Congress is working on what is likely to be its last big shot at climate change policy for a decade or more. If things go well, the legislation will include a clean energy standard (CES) and clean energy tax credits, which together would revolutionize the US electricity system. If things don’t go well, there will be no substantial climate legislation for many years to come. That’s the only question being decided: Will we get a CES and tax credits, or will we get nothing that will tackle fossil fuels this decade? That’s the binary. It’s time to focus. Looking around, it doesn’t seem like clean energy supporters, climate hawks, or the left more broadly really get that. So let’s talk about why this is such an important moment and what’s at stake. The reconciliation bill is likely the last chance for big federal climate legislation The Democratic approach for a while now has been to proceed along dual tracks. On one track, there’s the bipartisan infrastructure bill, hammered out by a group of just over 20 senators from both parties. On the other track, there’s the budget reconciliation bill, which is meant to contain … everything else in Biden’s agenda. The former needs 60 votes; the latter can pass with 50 Democratic votes. This has always been a fraught and delicate strategy. It could crash and burn in any number of ways. But so far, at least, it is hanging together. The bipartisan group unveiled its bill this week; it is slowly inching toward a vote, though Senate Minority Leader Mitch McConnell (R-Ky.) is doing everything he can to slow it down and gum it up. Twitter avatar for @jsfreed Josh Freed @jsfreed Okay, everyone, we’ve been crunching the BID numbers to see what’s in this deal and how it’ll impact clean energy and climate. Warning, this is a long 🧵 … 1/ seinfeld newman GIF July 29th 2021 176 Retweets497 Likes It contains decent chunks of money for things that will indirectly help clean energy — transmission, demonstration projects, R&D — but it lacks anything that will directly confront fossil fuels in the coming decade, the sine qua non of adequate climate policy. As Robinson Meyer argues in The Atlantic, it is not a climate bill, not really. There’s no guarantee the bipartisan bill will pass, and there’s no way to know how the Senate’s bipartisanship fetishists, Sens. Joe Manchin (D-W.V.) and Kyrsten Sinema (D-Ariz.), will react if it doesn’t. But whether it passes or not, when it comes to decent climate policy, it’s all about the reconciliation bill. There won’t be another bill this big while Democrats control Congress, and they won’t control Congress for long. What Democrats are able to get through in the reconciliation bill is likely to be the last big federal climate legislation for a decade at least. This is the key thing to understand, so I’m going to repeat it: What Democrats are able to get through in the reconciliation bill is likely to be the last big federal climate legislation for a decade at least. (You may be thinking: can’t Democrats do another reconciliation bill next year? Yes, they can, but the midterms will be in full swing, moderates will be feeling even more cowardly than usual, political appetite for big spending will have dried up in the face of a recovering economy, and focus will have turned, hopefully, to voting reform. This one is it.) Absent substantial federal voting reform — which is looking less and less likely, certainly nothing anyone should bet on — all signs point toward Republicans taking back the House in 2022. It’s unclear what will happen in the Senate, but regardless, if the GOP controls either house, no climate legislation will pass (and no voting reform). Republican presidential candidates can win despite larger and larger losses in the popular vote. And the chances of Democrats controlling both houses of Congress again are only getting dimmer. The structural advantages that favor the GOP in the US system are only tilting further in its favor, while the party is actively extending those advantages with a wave of voter-suppression laws at the state level and an accompanying wave of gerrymandering, which alone could win the GOP the House in 2022, even absent any Dem seats being lost. The GOP is protected in this endeavor by a hyper-conservative Supreme Court (which, by the way, could get even more conservative if the disastrously vain Stephen Breyer hangs on until there’s a Republican president again). The conservative movement in the US is attempting to engineer one-party control of US government (along the lines of their new hero, Hungarian autocrat Viktor Orban). There’s no way to know how successful the endeavor will ultimately be, but it’s a pretty good bet, given current trends, that Democrats won’t control the presidency and both houses of Congress at the same time again for a long while. Last time they lost full control (just before a wave of gerrymandering in 2010), it was a decade until they got it back. Twitter avatar for @sarahposner Sarah Posner @sarahposner New, from me, @TPM: That all begins in January 2023 — which makes this year’s reconciliation bill the Democrats’ last big shot at climate and clean energy policy. There are two key clean-energy policies on the table Climate folk are prone to endless policy arguments; everyone has their favorites. But most of those arguments are immaterial right now. Democrats have lined up behind a menu of clean energy policies in line with Biden’s climate plan. What’s on that menu is what might get in the bill. Might. If it’s not on that menu, it’s not going to get in. There’s no carbon tax. There’s no cap-and-dividend. There’s no prohibition on new fossil fuel infrastructure. You may support any and all of those policies, but they are not live options in the reconciliation bill. Right now, political pressure is best aligned behind options that actually are on the menu. Two in particular are immensely important — together, they would be transformative. The first is a Clean Energy Standard that would reduce electricity sector greenhouse gas emissions 80 percent by 2030. (Biden’s plan calls for 100 percent by 2035, but a reconciliation bill can only extend 10 years out.) It’s not actually going to be a standard, per se, because you can’t pass regulatory standards through reconciliation. Instead, it’s going to be a system of fines and payments that will incentivize utilities to increase their proportion of renewable energy to meet the targets. It’s called a clean electricity payment program (CEPP). A CEPP actually has some advantages over the traditional CES’s and renewable portfolio standard (RPSs) commonly seen in states. For one thing, it’s more progressive: the money to drive the transition comes from federal coffers (via taxes on corporations and the wealthy) rather than from electricity rates, which are regressive. If you’re interested in the details of how a reconciliation-friendly CEPP will be structured, see this piece from Ben Storrow and Scott Waldman of E&E, or this thread from Princeton professor Jesse Jenkins: Twitter avatar for @JesseJenkins JesseJenkins @JesseJenkins Broad contours of a Reconciliation-friendly Clean Electricity Standard (CES) are now coming into public view, as House & Senate Dems prepare a $3.5T Budget Resolution that will kick off a Reconciliation process, which permits passage of budget-related measures w/50+ Senate votes. July 15th 2021 1 Retweet16 Likes The end result will be the same as a conventional CES: the US electricity grid will reach 80 percent decarbonization by 2030, which is an achievable but still incredibly ambitious target. As I’ve said so many times, nothing is more important to deep decarbonization than cleaning up the electricity grid. It’s the core of the “electrify everything” strategy. The second is boosted and expanded clean energy tax credits. The investment tax credit (ITC) and production tax credit (PTC), for wind and solar respectively, would be renewed, but various forms of tax credits would also be extended to energy storage, hydrogen, carbon capture, and other key clean energy technologies. (The details are in flux; for a blueprint, see the Senate Finance Committee’s Clean Energy for America Act or the House Ways and Means’ GREEN Act.) Tax credits will provide the supply push; the CEPP will provide the demand pull. The result will be an enormous surge of clean energy projects and jobs. This is the core of good climate policy: pushing fossil fuels off the grid over the next decade and replacing them with zero-carbon energy. There are other good climate provisions on the Democrats’ menu for reconciliation as well. I would love to see a Civilian Climate Corps. I’d love to see more money for public transportation and an electrified postal service fleet. Lots of smaller climate provisions might make it through just by virtue of not drawing much notice, which would be great. But the CEPP and the tax credits are the one-two punch needed to make a real short-term difference in the energy system. And they are on the menu. Manchin is likely to be skeptical of the CEPP. Although carbon capture counts as clean energy under the program, every analyst understands that the practical effect is going to be to ramp up renewables and ramp down fossil fuels on the grid. Manchin doesn’t actually want that. I have no idea if public pressure will have any effect at all on Manchin, but it couldn’t hurt. Might as well try it. The perilous path ahead for reconciliation Everyone on the left is aware that the reconciliation bill is the last big legislative train leaving the station, and every interest group wants a seat on it. Climate policy will be competing with other Democratic priorities. Especially as Sinema and Manchin arbitrarily reduce the total size of the bill, as they surely will, the factions of the party will be fighting it out over a shrinking pie. It is far from a sure thing that the CEPP and tax credits will survive negotiations. It’s all being decided right now. Everyone who cares about US climate progress should put aside their personal projects and preferences for a few weeks and speak in a unified voice. Call your representatives. Push the groups you’re involved to make noise about it. It’s going to be the CEPP and tax credits or nothing big for climate. If both those policies are put in place, it could set the US power system on a new course and strengthen American credibility at the upcoming COP26 international climate meeting. If they slip through the cracks, climate will have to settle for scraps and the US will surrender all hope of meeting its climate targets or influencing others to do the same. For the next few months, this is all that matters. If you’ve ever considered getting involved, now is the time.

## Innovation

#### Antitrust doesn’t solve---EU and other jurisdictions prove.

Ryan Bourne 20, R. Evan Scharf Chair for the Public Understanding of Economics, Cato Institute, “Does Rising Industry Concentration Signify Monopoly Power?,” Cato Institute, 2/13/20, <https://www.cato.org/economic-policy-brief/does-rising-industry-concentration-signify-monopoly-power>

An Antitrust Explanation

In theory, then, the higher national concentration we see alongside rising markups in many U.S. industries over the past two to three decades could be evidence of worrying anti‐​competitive consolidation, or it could be a consequence of competition in a world of globalization and technological change. But the evidence—particularly that industries with higher concentration tend to see robust productivity growth—increasingly points to the latter.

There are other reasons to doubt the commonly held view that weak U.S. antitrust legislation or enforcement is to blame for rising concentration. Autor and others show that the broad patterns of rising national industry concentration and the phenomenon of superstar firms are common among members of the Organisation for Economic Co‐​operation and Development, including those in the European Union, despite big differences in the application of antitrust and competition law.

#### Kronos effect internal link:

#### No UQ---Startup decline has not resulted from concentration

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Myth 4: Market Concentration Has Caused the Number of Start-Ups to Fall20

Neo-Brandeisians have argued that market concentration has grown, and that this has caused a precipitous decline in the number of business start-ups. In this narrative, “monopoly” is a sclerotic scourge, robbing the economy of its traditional dynamism—which is largely wrong.

This claim is based on correlation. Concentration has increased while the number of start-ups has fallen; therefore, they argue, concentration caused the decline. In fact, there is no statistical relationship between changes in concentration and changes in new firm formation. Moreover, all the net decline in new firm formation is in one major sector—retail—wherein the results of increasing retail firm size have been superior productivity growth, higher wages for workers in larger stores, and significant consumer benefit in the form of lower prices and broader selection. (See figure 3.)

#### The startups that matter are up

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And when it comes to the most important kind of start-ups—potentially high-growth start-ups, especially in technology sectors—there has been no decline. When MIT professors Jorge Guzman and Scott Stern looked at trends in high-growth entrepreneurship for 15 large states from 1988 to 2014, they found that even after controlling for the size of the U.S. economy, the second-highest rate of high-growth entrepreneurship occurred in 2014.21

#### Antitrust isn’t key---alt causes overwhelm regional inequality

Robert Manduca 19, PhD candidate in Sociology and Social Policy and a doctoral fellow in the Multidisciplinary Program in Inequality and Social Policy at Harvard University, “Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities,” The ANNALS of the American Academy of Political and Social Science, vol. 685, no. 1, SAGE Publications Inc, 09/01/2019, pp. 156–171

Conclusion: National Action for a National Problem

This article has considered the problem of economic divergence between regions of the United States. Over the past four decades, the United States has bifurcated economically, with increasing fractions of the population living in both exceptionally poor and exceptionally rich places. Many of the biggest challenges facing the country are intricately tied to this bifurcation, including the basic question of whether national political cohesion can be maintained. Here I have argued that the growing economic disparities among regions of the United States should be treated first and foremost as a national policy issue. This view is accurate because it takes into account the changes that have pulled regions apart, and it is valuable because it offers pathways to political action that might address the problem.

As an example of a national policy with important effects on regional economies, I have considered antitrust enforcement. Though difficult to quantify directly, the lax antitrust enforcement of the past few decades has likely contributed to the economic struggles of many cities and towns nationwide. A reinvigorated antitrust movement would thus likely disproportionately benefit those parts of the country that have been left behind. In addition to having unique characteristics that make its establishment more likely in this era of polarization and negative partisanship, antitrust offers the possibility of beneficial feedback effects that may make it easier to entrench and expand.

Antitrust is just one of many areas in which national policy shifts starting in the 1970s and 1980s exacerbated economic gaps among regions. Other policy areas include the devolution of welfare program administration from the federal government to the states (Rodríguez-Pose and Gill 2004); the relaxing of financial and telecommunications regulations; and the end of federal revenue sharing with state and local governments, which led to a dramatic increase in the fiscal stakes of regional economic competition (Pacewicz 2016). Policy-makers seeking to address regional disparities today would do well to remember the role federal action had in creating those disparities and to recognize its potential for reducing them.

#### AND it doesn’t slow growth.

Chris Giles 15, Economics Editor for FT, “Inequality is unjust, not bad for growth,” Financial Times, 8/18/15, <https://www.ft.com/content/94a7b252-45a1-11e5-b3b2-1672f710807b>

Disparity of income is both a virtue and a vice. The virtue of providing rewards for effort and generating economic growth must be balanced against the vice of inequality’s manifest injustice. Riches derived through good fortune, good parents or being born at a good time are far from easy to defend. The problem for society and governments is to determine an acceptable degree of redistribution, balancing the remaining inequality with the blunted incentives from higher taxes and benefits. Or so we thought.

The past two years have witnessed huge growth in the industry of academic research rejecting this trade-off. Lower inequality boosts growth, its advocates claim, so countries really can have more redistribution, a narrower gap between rich and poor, alongside more sustained economic expansion.

Leading the charge towards the new consensus are two somewhat surprising institutions — the International Monetary Fund and the Organisation for Economic Cooperation and Development. Are these traditional bastions of orthodoxy infusing their policy prescriptions with the most up-to-date empirical evidence or merely following fashion?

There is no doubt that the new ideas are strongly held. Angel Gurría, head of the OECD, is convinced of the new reality. “Addressing high and growing inequality is critical to promote strong and sustained growth,” he says only to be outbid in rhetorical certainty by Christine Lagarde, the fund’s managing director. She reckons the rich should thank the poor. “Contrary to conventional wisdom, the benefits of higher income are trickling up, not down,” she says.

For all the excitement among this rarefied global elite, the research results are mundane. Economic performance varies wildly over time and across countries, yet the evidence suggests inequality explains only a tiny fraction of these differences. Whatever effect the gap between rich and poor might have on growth, other forces dominate, so we should not look to redistribution as the new engine of growth.

With the results almost entirely based on cross-country correlations, they also have troubling inconsistencies. Ms Lagarde and the IMF research think that a higher income share for the rich harms economic performance while the OECD says only inequality between the poorest and the middle matters. The Paris-based international organisation concludes that a lack of access to skills among the poor is the mechanism by which higher inequality hits growth at the same time as finding no role for skills in its equations on growth.

If the global results are weak, they also have close to zero policy prescriptions for rich countries where the results have caused most excitement — the US and the UK in particular. Far from being examples of the worst excesses of capitalism, these Anglo-Saxon nations emerge from the IMF data set as countries with relatively strong growth, low inequality and high redistribution.

#### No slow growth impact

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### Cyber attacks in other countries thump grid collapse. Their impact isn’t about the U.S. and says any snowballs globally.

#### No extinction: we’d rebuild and it only targets the U.S.---Europe and Asia won’t be affected

#### Grid resilient.

Niiler 19, citing a study by the Electric Power Research Institute. (Eric, 4-30-2019, "The Grid Might Survive an Electromagnetic Pulse Just Fine", *Wired*, https://www.wired.com/story/the-grid-might-survive-an-electromagnetic-pulse-just-fine/)

The study, by the Electric Power Research Institute, a utility-funded research organization, finds that existing technology can protect various components of the electric grid to buffer it from the effects of solar flares, lightning strikes, and an EMP from a nuclear blast all at the same time: a three-for-one surge protector. “We have a strong technical basis for what the impacts [of an EMP] might be,” says Randy Horton, EPRI project manager and author of the report being released today. “That is one thing that didn’t exist before.”

Horton says that EPRI technicians worked with experts at the Department of Energy labs at Los Alamos and Sandia to simulate some effects of an EMP on substations and distribution systems. They also did real-world testing of electrical equipment at an EPRI laboratory in Charlotte, North Carolina. The study, which took three years to complete, looks at the effects of three kinds of energy spawned by a nuclear detonation.

The first high-energy wave occurs in just a few nanoseconds and is called an E1. The second wave, called an E2, lasts up to a second and can fry electric systems the way a lightning strike does, unless they are properly grounded. Effects of an E2 wave on the grid are expected to be minimal. The third kind of wave can last for tens of seconds and is similar to what utility operators might expect from a low-frequency, long-duration solar flare or geomagnetic storm. The report says that the combination of an E1 and E3 would cause the most damage over the widest area.

Horton says simulations and testing by EPRI contradicts earlier findings that an EMP would wipe out the US grid. “You could have a regional voltage collapse, but you wouldn’t damage a large number of bulk power transformers immediately,” Horton says. “That was the difference in our finding. There were some studies that said you could damage hundreds of transformers. We just didn’t find it.”

#### No terrorist resurgence — COVID checks.

Davis 20, president of Insight Threat Intelligence, an international consultant on counterterrorism and intelligence, a former senior strategic analyst with the Canadian Security Intelligence Service. (Jessica, 4/28/20, "Terrorism During a Pandemic: Assessing the Threat and Balancing the Hype", *Just Security*, https://www.justsecurity.org/69895/terrorism-during-a-pandemic-assessing-the-threat-and-balancing-the-hype/)

The COVID-19 pandemic also creates mitigating conditions for the terrorist threat in much of the world. Around the globe, people are implementing physical distancing measures and, therefore, removing a significant terrorist target: crowds. Physical distancing measures make tactics such as vehicle rammings, stabbings, and bombings far less effective. Without the crowds that usually allow these relatively simple attacks to generate casualties, terrorists may determine that their plans are best perpetrated once physical distancing measures are no longer in place.

While it may be convenient to think of terrorists as relatively omnipotent, my work in counter-terrorism has demonstrated that this is far from the case. Terrorists, like everybody else, can and do get sick, as do their family and friends, creating a burden on care. At the same time, the economic devastation caused by the virus has likely left many would-be terrorists without a source of income. They may be struggling with daily subsistence, meaning devoting additional resources (both in time and money) to attack planning and weapons/component procurements may take a back seat to more immediate needs.

The intense media focus on COVID-19 may also dissuade some would-be terrorists from engaging in attacks during the pandemic. Most terrorists seek recognition for their attacks, with the ultimate goal of sowing fear in a population. This is difficult to do if no one is paying attention to you. A recent attack in France demonstrates how little media attention some attacks are generating. Even for a COVID-19 attack (involving an infected individual), this tactic also does not guarantee media attention. The reality is that anyone we come into contact with could be a virus carrier – determining responsibility would be difficult and far from instantaneous, minimizing one of terrorism’s objectives: instilling fear. This fear would also likely be mitigated by the current environment, which is one where fear is already pervasive due to the global pandemic.

## Democracy

#### The plan only passes after it’s horse-traded with Republicans for censorship prohibitions

Perera 3-12-2021, veteran cybersecurity reporter, Data security & privacy reporter for MLex (Dave, “US antitrust legislation faces uphill battle despite unified Democratic government,” <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/us-antitrust-legislation-faces-uphill-battle-despite-unified-democratic-government>)

Renewed interest among US lawmakers in antitrust legislation is unlikely to produce radical policy shifts, notwithstanding the Democratic Party’s unified control of the federal government. Democrats promised a “big, bold agenda” after they captured the Senate by a hairsbreadth in January. Democratic lawmakers may very well stick to those ambitions and announce audacious legislative proposals. But the fate of those bills is at the mercy of a political dynamic ensuring that the more liberal the policy prescriptions, the less likely they are to become law. The most likely outcome over the next two years is more funding for enforcers at the Department of Justice and Federal Trade Commission, whether directly through appropriated funds, steeper merger notification filing fees, or both. It’s also possible Congress could incrementally tinker along the edges of antitrust. It might lower the threshold for challenging mergers, or mandate data portability requirements for social media companies. Those expecting — or fearing — more ambitious outcomes likely won’t see them enacted. So until America’s November 2022 election, scratch from the list of high probabilities reforms such as requiring dominant firms to separate lines of business, or shifting the burden of proof onto an acquiring company. Put another way, unless a bill can attract significant Republican support, not even two years of unified Democratic government can guarantee reforms. — American exceptionalism — Single party control of both congressional chambers and the presidency is relatively rare in American politics. It has occurred in fewer than a third of legislative sessions since 1980. When it strikes, it doesn’t last long — typically just the two years between one congressional election and another. Historically, unified control is a fertile period for new regulations. President George W. Bush overhauled Medicare. President Barack Obama ushered in financial sector reforms and the Affordable Care Act. Indications are that President Joe Biden is emboldened by his party’s last-minute capture of the Senate. History, of course, isn’t a blueprint. Even a brief look at past episodes of unified control reveals that not even single-party capture of the executive and legislative branches of the US government can assure the enactment of a partisan agenda. For one thing, neither political party is a monolith. Although far more politically aligned than when Democratic conservatives found common cause in the 20th century with Republicans, the major American parties nonetheless are coalitions of centrist and activist wings. For Democrats, the tensions inherent in appeasing all sides became apparent earlier this month when centrists trimmed benefits in the $1.9 trillion coronavirus stimulus package. Neither is single party grip on power secure unless it commands an overwhelming majority in the Senate, thanks to a uniquely American institution: the filibuster. In the Senate, the rules mandate a three-fifths vote before debate over a bill is cut off. In recent decades, it’s become a weapon routinely wielded by the minority party to kill legislation. The upshot is that policy legislation needs supermajority support before it can proceed, meaning the 50 Democrats of today’s Senate have little choice but to resign themselves to the grind of finding Republican supporters. There are limited exceptions. Assuming Democrats stay in unison, they don’t need Republican votes to appoint judges, approve executive branch nominations or pass fiscal legislation such as the coronavirus stimulus that just became law. It’s within Democrats’ power to abolish the filibuster, but for now, the maneuver appears safe. Asked just days ago about the matter, White House spokeswoman Jen Psaki told reporters that the president’s preference is for it to stay in place. “The president is an optimist by nature,” Psaki added. — Hunting for bipartisan consensus — Not every bill introduced in Congress, nor even every bill approved by a committee or even an entire single chamber, makes it through the process because its sponsors believe it’ll become law. There are a host of bills drafted with the intent of sending a message to industry, to independent regulators, to donors, to constituents. There are bills that lawmakers view as setting out a position to influence an ongoing policy debate. Even if it won’t become law this year, it might the next year, or the next, reintroduced and refined along the way. Telltale signs of whether a bill is a serious attempt at law are the number of cosponsors, and whether that list of names includes members of both parties in good stead with their party’s leadership. Bipartisan support is important even in the House, where Democrats have the votes to completely bypass Republicans. Because the House doesn’t have the filibuster to contend with, those with the majority of seats control the chamber. House Democrats can and do pass bills in the face of absolute House Republican opposition, but — special exceptions for fiscal bills aside — those bills are dead on arrival in the Senate. As long as the filibuster exists or Democrats lack a Senate supermajority, the House Judiciary antitrust subcommittee must court Republican support if its intention is to make new law. Finding clues of what House Democrats might seriously achieve, then, may be little more difficult than looking up the policy prescriptions House Republicans favor: giving regulators more resources, shifting the burden of proof in merger cases and boosting data portability and interoperability. A report issued by now-ranking Republican Ken Buck as a rejoinder to last year’s Democratic House Judiciary antitrust subcommittee staff report on competition in digital markets allowed that the GOP shares other Democratic concerns, including predatory pricing, monopoly leveraging and control over marketplace platforms. That conciliatory signal also came weighted, with warnings that Congress should be wary of “handing additional regulatory to agencies in an attempt to micromanage.” Instead, try instead telling enforcers they should return to first principles, the Colorado lawmaker advised. Whether Republicans and Democrats in the Senate can find common cause is an even more fraught question. Unlike its House counterpart, the Senate Judiciary subcommittee on antitrust hasn't conducted a 16-month investigation into digital monopolization. The subcommittee’s senior Republican, Utah’s Mike Lee, is prone to touting the importance of the consumer welfare standard and rails against online platforms “eager to impose the ideological censorship called for by their political benefactors.” Lee also says he’s open to working with subcommittee Chairwoman Amy Klobuchar on strengthening enforcement, adding the caveat that current antitrust laws are sufficient. Klobuchar, a Minnesota Democrat, doesn’t need Lee to get a bill through her subcommittee, but failing to find consensus with Republicans imperils her chances of making law. The prospects for her Competition and Antitrust Law Enforcement Reform Act becoming law as current written aren't good. — 'Big tech is out to get conservatives' — A looming question hanging over any bill, even one tailored to win bipartisan support, is whether it could be derailed by Republican anger at online platforms for alleged anti-conservative bias. A right-wing trope especially spread by President Donald Trump during his last year in office — the belief that platforms use their content moderation powers to silence conservatives — has mainstream acceptance in Republican circles. It’s a refrain almost obligatory for Republican lawmakers to repeat when discussing any issue related to online platforms. “Big tech is out to get conservatives,” House Judiciary Committee ranking member Jim Jordan of Ohio has said more than once. Democrats have their own share of anger at online platforms’ content-moderation practices, to be sure. They accuse online platforms of circumventing consumer protections, undermining civil rights laws and not doing enough to stymie disinformation. It’s Republicans, though, who appear the angriest, and are the more likely to insist that any legislative reform touching online platforms address content moderation, with the intention of making it harder, not easier, for online platforms to remove users, potentially imperiling a compromise measure.

#### That allows the GOP to successfully weaponize misinformation---triggers epistemic decay and cements a perma-GOP government

Carpenter 21, contributing writer for The Nation. She received the James Aronson Award for Social Justice Journalism in 2018, and has been a finalist for the Livingston Awards and the National Awards for Education Reporting. Her writing has also appeared in Rolling Stone, Guernica, and various other publications (Zoe, “Misinformation Is Destroying Our Country. Can Anything Rein It In?,” *The Nation*, <https://www.thenation.com/article/society/right-wing-media-misinformation/>)

Natali Fierros Bock says she could feel this mass delusion calcifying in the wake of the election in Pinal County, a rural area between Phoenix and Tucson where she serves as co–executive director of the group Rural Arizona Engagement. “It feels like an existential crisis,” Bock adds. Many of the Sharpiegate claims online referred to Pinal County, and Gosar, whose district includes a portion of the area, was reportedly responsible for helping organize the January 6 “Stop the Steal” rally in Washington that resulted in the deaths of five people. Mark Finchem, a Republican who represents part of Pinal County in the statehouse, was also in Washington on January 6. The Capitol insurrection threw into relief the real-world consequences of America’s increasingly siloed media ecosystem, which is characterized on the right by an expanding web of outlets and platforms willing to entertain an alternative version of reality. Social media companies, confronted with their role in spreading misinformation, scrambled to implement reforms. But right-wing misinformation is not just a technological problem, and it is far from being fixed. Any hope that the events of January 6 might provoke a reckoning within conservative media and the Republican Party has by now evaporated. The GOP remains eager to weaponize misinformation, not only to win elections but also to advance its policy agenda. A prime example is the aggressive effort under way in a number of states to restrict access to the ballot. In Arizona, Republicans have introduced nearly two dozen bills that would make it more difficult to vote, with the big lie about election fraud as a pretext. “When you can sell somebody the idea that their elections were stolen, they’ve been violated, right? So then you need protection,” Bock says, explaining the conservative justification for the suite of new restrictions in her state. Voting rights is her organization’s “number one concern” at the moment. But Bock’s fears about political misinformation are more sweeping. Community organizing is difficult in the best of times. “But when you can’t agree on what is true and not true, when my reality doesn’t match the reality of the person I’m speaking to, it makes it more difficult to find common ground,” she says. “If we can’t agree on a common truth, if we can’t find a starting place, then how does it end?” Around the time of the 2016 election, Kate Starbird, a professor at the University of Washington who studies misinformation during crises, noticed that more and more social media users were incorporating markers of political identity into their online personas—hashtags and memes and other signifiers of their ideological alignment. In the footage from the Capitol she saw the same symbols, outfits, and flags as those she’d been watching spread in far-right communities online. “To see those caricatures come alive in this violent riot or insurrection, whatever you want to call it, was horrifying, but it was all very recognizable for me,” Starbird says. “There was a time in which we were like, ‘Oh, those are bots, those aren’t real people,’ or ‘That’s someone play-acting,’ or ‘We’re putting on our online persona and that doesn’t really reflect who we are in an offline sense.’ January 6 pretty much disabused us of that notion.” It was a particularly rude awakening for social media companies, which had long been reluctant to respond to the misinformation that flourished on their platforms, treating it as an issue of speech that could be divorced from real-world consequences. Facebook, Twitter, and other platforms had made some changes in anticipation of a contested election, announcing plans to label or remove content delegitimizing election results, for instance. Facebook blocked new campaign ads for the week leading up to the election; Twitter labeled hundreds of thousands of misleading tweets with fact-checking notes. Yet wild claims about election fraud spread virally anyway, ping-ponging from individual social media users to right-wing influencers and media. During the 2016 campaign, most public concern about misinformation centered on shadowy foreign actors posing as news sources or US citizens. This turned out to be an oversimplification, though many on the center and left offered it as an explanation for Hillary Clinton’s defeat in 2016; blaming Russian state actors alone ignored factors like sexism, missteps made by the Clinton campaign itself, and the home-grown feedback loop of right-wing media. In 2020, according to research done by Starbird and other contributors to the Election Integrity Project, those most influential in disseminating misinformation were largely verified, “blue check” social media users who were authentic, in the sense that they were who they said they were—Donald Trump, for example, and his adult sons. DONATE NOW TO POWER THE NATION. Readers like you make our independent journalism possible. Another key aspect in the creation of the big lie was what Starbird calls “participatory disinformation.” Trump was tweeting about the election being stolen from him months beforehand, but once voting got under way, “what we see is that he kind of relies on the crowd, the audiences, to create the evidence to fit the frame,” Starbird explains. Individuals posted their personal experiences online, which were shared by more influential accounts and eventually featured in media stories that placed the anecdotes within the broader narrative of a stolen election. Some of the anecdotes that fueled Sharpiegate came from people who used a felt-tip pen to vote in person, then saw online that their vote had been canceled—though the “canceled” vote actually referred to mail-in ballots that voters had requested before deciding to vote in person. “It’s a really powerful kind of propaganda, because the people that were helping to create these narratives really did think they were experiencing fraud,” Starbird says. Action by content moderators usually came too late and was complicated by the fact that many claims of disenfranchisement by individual users were difficult to verify or disprove. The Capitol riot led the tech giants to take more aggressive action against Trump and other peddlers of misinformation. Twitter and Facebook kicked Trump off their platforms and shut down tens of thousands of accounts and pages. Facebook clamped down on some of its groups, which the company’s own data scientists had previously warned were incubating misinformation and “enthusiastic calls for violence,” according to an internal presentation. Google and Apple booted Parler, a social media site used primarily by the far right, from their app stores, and Amazon stopped hosting Parler’s data on its cloud infrastructure system, forcing it temporarily offline. But these measures were largely reactions to harm already done. “Moderation doesn’t reduce the demand for [misleading] content, and demand for that content has grown during some periods of time when the platforms weren’t moderating or weren’t addressing some of the more egregious ways their tools were abused,” says Renée DiResta, technical research manager at the Stanford Internet Observatory. Deplatforming individuals or denying service to companies that tolerate violent rhetoric, as Amazon did with Parler, can have an impact, particularly in the short term and when done at scale. It reduces the reach of influential liars and can make it more difficult for “alt-tech” apps to operate. A notorious example of deplatforming involved Alex Jones, the conspiracy theorist behind the site Infowars. Jones was kicked off Apple, Facebook, YouTube, and Spotify in 2018 for his repeated endorsement of violence. He lost nearly 2.5 million subscribers on YouTube alone, and in the three weeks after his accounts were cut off, Infowars’ daily average visits dropped from close to 1.4 million to 715,000. But Jones didn’t disappear—he migrated to Parler, Gab, and other alt-tech platforms, and he spoke at a rally in Washington the night before the Capitol attack. One outcome of unplugging Trump and other right-wing influencers has been a surge of interest in those alternative social media platforms, where more dangerous echo chambers can form and, in encrypted spaces, be more difficult to monitor. “Isn’t this just going to make the extreme communities worse? Yes,” says Ethan Zuckerman, founder of the Institute for Digital Public Infrastructure at the University of Massachusetts at Amherst. “But we’re already headed there, and at least the good news is that [extremists] aren’t going to be recruiting in these mainstream spaces.” The bad news, in Zuckerman’s view, is that the far right is now leading the effort to create new forms of online community. “The Nazis right now have an incentive to build alternative distributed media, and the rest of us are behind, because we don’t have the incentive to do it,” Zuckerman explains. He argues that a digital infrastructure that is smaller, distributed, and not-for-profit is the path to a better Internet. “And my real deep fear is that we end up ceding the design of this way of building social networks to far-right extremists, because they are the ones who need these new spaces to discuss and organize.” In March, Trump spokesman Jason Miller said on Fox that the former president was likely to return to social media this spring “with his own platform.” A more fundamental problem than Trump’s presence or absence on Twitter is the power that a single executive—Jack Dorsey, in the case of Twitter—has in making that decision. Social media companies have become so big that they have little fear of accountability in the form of competition. “To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” concluded a recent report by the staff of the Democratic members of the House Judiciary Subcommittee on Antitrust. For now, the reforms at Facebook and other companies remain largely superficial. The platforms are still based on algorithms that reward outrageous content and are still financed via the collection and sale of user data. Karen Hao of MIT Technology Review recently reported that a former Facebook AI researcher told her “his team conducted ‘study after study’ confirming the same basic idea: models that maximize engagement increase polarization.” Hao’s investigation concluded that Facebook leadership’s relentless pursuit of growth “repeatedly weakened or halted many initiatives meant to clean up misinformation on the platform.” The modest “break glass” measures Facebook took during the election in response to the swell of misinformation, which included tweaks to its ranking algorithm to emphasize news sources it considered “authoritative,” have already been reversed. Tech companies could do more, as the election-time tweaks revealed. But they still “refuse to see misinformation as a core feature of their product,” says Joan Donovan, research director for the Shorenstein Center on Media, Politics and Public Policy at Harvard University. The problem of misinformation appears so vast “because that’s exactly what the technology allows.” There are some signs of a growing appetite for regulation on Capitol Hill. Democrats have proposed reforms to Section 230 of the Communications Decency Act, which insulates tech companies from legal liability for content posted to their platforms, such as requiring more transparency about content moderation and opening platforms to lawsuits in limited circumstances when content causes real-world harm. (GOP critiques of Section 230, on the other hand, make the false argument that it allows platforms to discriminate against conservatives.) Another legislative tactic would focus on the algorithms that platforms use to amplify content, rather than on the content itself. A bill introduced by two House Democrats would make companies liable if their algorithms promote content linked to acts of violence. Democratic lawmakers are also eyeing changes to antitrust law, while several antitrust lawsuits have been filed against Facebook and Google. But litigation could take years. Even breaking up Big Tech would leave intact its predatory business model. To address this, Zuckerman and other experts have called for a tax on targeted digital advertising. Such a tax would discourage targeted advertising, and the revenue could be used to fund public-service media. Held to account? Twitter CEO Jack Dorsey testified remotely before the Senate Judiciary Committee in November 2020. (Matt York / AP) Social media plays a key role in amplifying conspiracy theories and political misinformation, but it didn’t create them. “When we think of disinformation as something that appeared [only in the Trump era], and that we used to have this agreed-upon narrative of what was true and then social platforms came into the picture and now that’s all fragmented… that makes a lot of assumptions about the idea that everyone used to agree on what was true and what was false,” says Alice E. Marwick, an assistant professor at the University of North Carolina who studies social media and society. Politicians have long leveraged misinformation, particularly racist tropes. But it’s been made particularly potent not just by social media, Marwick argues, but by the right-wing media industry that profits from lies. “The American online public sphere is a shambles because it was grafted onto a television and radio public sphere that was already deeply broken,” argue Yochai Benkler, Robert Faris, and Hal Roberts of Harvard’s Berkman Klein Center for Internet and Society in their book Network Propaganda. The collapse of local news left a vacuum that for many Americans has been filled by partisan outlets that, on the right, are characterized by blatant disregard for journalistic standards of sourcing and verification. This insulated world of right-wing outlets, which stretches from those that bill themselves as objective sources, Fox News chief among them, to talk radio and extreme sites like Infowars and The Gateway Pundit, “represents a radicalization of roughly a third of the American media system,” the authors write. The conservative movement spent decades building this apparatus to peddle lies and fear along with miracle cures and pyramid schemes, and was so successful that Fox and other far-right outlets ended up in a tight two-step with the White House. Fox chairman Rupert Murdoch maintained a close relationship with Trump, as did Sean Hannity and former Fox News copresident Bill Shine, who became White House communications director in 2018. The backlash against Fox in the wake of the election hinted at a possible dethroning of the ruler of the right’s media machine. Its farther-right rival Newsmax TV posted a higher rating than Fox for the first time ever in the month after the election, following supportive tweets from Trump, and during the week of November 9 it passed Breitbart as the most-visited conservative website. But Fox quickly regained its perch. The network backpedaled rapidly during its post-election ratings slump, firing an editor who’d defended the projection of a Biden win in Arizona and replacing news programming with opinion content. According to Media Matters, Fox News pushed the idea of a stolen election nearly 800 times in the two weeks after declaring Biden the winner. The network’s ad revenue increased 31 percent during the final quarter of 2020, while its parent company, Fox Corporation, saw a 17 percent jump in pretax profit. The far-right media ecosystem has become so powerful in part because there’s been no downside to lying. Instead, the Trump administration demonstrated that there was a market opportunity in serving up misinformation that purports to back up what people want to believe. “In this day and age, people want something that tends to affirm their views and opinions,” Newsmax CEO Chris Ruddy told The New York Times’ Ben Smith in an interview published shortly after the election. Claims of a rigged election were “great for news,” he said in another interview. Trump’s departure from the White House won’t necessarily reduce the demand for this kind of content. Since the Capitol riot, two voting-systems companies have launched an unusual effort to hold right-wing outlets and influencers accountable for some of the lies they’ve spread. Dominion Voting Systems, a major provider of voting technology, and another company called Smartmatic were the subjects of myriad outlandish claims related to election fraud, many of which were used in lawsuits filed by Trump’s campaign and were repeatedly broadcast on Fox, Newsmax TV, and OAN. Since January the companies have filed several defamation suits against Trump campaign lawyers Sidney Powell and Rudy Giuliani, MyPillow CEO Mike Lindell, and Fox News and three of its hosts. Dominion alleges that as a result of false accusations, its “founder and employees have been harassed and have received death threats, and Dominion has suffered unprecedented and irreparable harm.” The threat of legal action forced a number of media companies to issue corrections for stories about supposed election meddling that mentioned Dominion. The conservative website American Thinker published a statement admitting its stories about Dominion were “completely false and have no basis in fact” and “rel[ied] on discredited sources who have peddled debunked theories.” OAN simply deleted all of the stories about Dominion from its website without comment. These lawsuits will not dismantle the world of right-wing media, but they have prompted a more robust debate about how media and social media companies could be held liable for lies that turn lethal—and whether this type of legal action should be pursued, given the protections afforded by the First Amendment and the fact that the powerful often use libel law to bully journalists. Alternative reality: Trump supporters in Maricopa County derided Fox for reporting on election night that Biden had won the state. (Hannah McKay / Pool / Getty Images) Ethan Zuckerman has been thinking about how to build a better Internet for years, a preoccupation not unrelated to the fact that, in the 1990s, he wrote the code that created pop-up ads. (“I’m sorry. Our intentions were good,” he wrote in 2014.) Still, he believes that framing misinformation as a problem of media and technology is myopic. “It’s very hard to conclude that this is purely an informational problem,” Zuckerman says. “It’s a power problem.” The GOP is increasingly tolerant of, and even reliant on, weaponized misinformation. “We’re in a place where the Republican Party realizes that as much as 70 percent of their voters don’t believe that Biden was legitimately elected, and they are now deeply reluctant to contradict what their voters believe,” Zuckerman says. Republicans are reluctant, at least in part, because of a legitimate fear of primary challenges from the right, but also because they learned from Trump the power of using conspiracy theories to mobilize alienated voters by preying on their deep mistrust of public institutions. It’s one thing for an ordinary citizen to retweet a false claim; it’s another for elected officials to legitimize conspiracy theories. But holding the GOP to account may prove to be even harder than reforming Big Tech. The radical grass roots have been empowered by small-dollar fundraising and gerrymandering, while more moderate Republicans are retiring or leaving the party. Writer Erick Trickey argued recently in The Washington Post that what undercut a similar wave of conservative crackpot paranoia driven by the John Birch Society in the 1960s was explicit denunciation by prominent conservatives like William Buckley and Ronald Reagan as well as Republican congressional leaders. But today’s party leaders have been unwilling to excommunicate conspiracy-mongers. In the aftermath of the Capitol riot, elected officials who spread rumors that the violence was actually the result of antifascists—including Arizona’s Paul Gosar and Andy Biggs—gained notoriety, while those critical of Trump were publicly humiliated. The embrace of conspiratorial narratives has been particularly pronounced in state GOP organizations. The Texas GOP recently incorporated the QAnon slogan “We are the storm” into official publicity media, and the Oregon GOP’s executive committee endorsed the theory that the riot had been a “false flag” operation. In March, members of the Oregon GOP voted to replace its Trump-supporting chairman with a candidate even farther out on the extremist fringe. Weaponized misinformation could have a lasting impact not only on the shape of the GOP but also on public policy. Republicans are now using the big lie to try to restrict voting rights in Arizona, Georgia, and dozens of other states. As of February 19, according to the Brennan Center for Justice, lawmakers in 43 states had introduced more than 250 bills restricting access to voting, “over seven times the number of restrictive bills as compared to roughly this time last year.” In late March, Georgia Governor Brian Kemp signed a 95-page bill making it harder to vote in that state in a number of ways. Many of the far-right extremists, politicians, and media influencers who spread misinformation about the presidential election are now pushing falsehoods about Covid-19 vaccines. The rumors, which have spread on social media apps like Telegram that are frequented by QAnon adherents and militia groups, among others, range from standard anti-vax talking points to absurd claims that the vaccines are part of a secret plan hatched by Bill Gates to implant trackable microchips, or that they cause infertility or alter human DNA. Sidestepping the craziest conspiracies, prominent conservatives like Tucker Carlson and Wisconsin Senator Ron Johnson, who has become one of the GOP’s leading purveyors of misinformation, are casting doubt about vaccine safety under the pretense of “just asking questions.” Vaccine misinformation plays into the longstanding conservative effort to sow mistrust in government, and it appears to be having an effect: A third of Republicans now say they don’t want to get vaccinated. These are the true costs of misinformation: deadly riots, policy changes that could disenfranchise legitimate voters, scores of preventable deaths. These translate into financial externalities: the additional expense of securing the Capitol, additional dollars devoted to the pandemic response. More abstract but no less real are the social costs: the parents lost down QAnon rabbit holes, the erosion of factual foundations that permit productive argument. The problem with the far right’s universe of “alternative facts” is not that it’s hermetically sealed from the universe the rest of us live in. Rather, it’s that these universes cannot truly be separated. If we’ve learned anything in the past six months, it’s that epistemological distance doesn’t prevent collisions in the real world that can be lethal to individuals—and potentially ruinous for democratic systems.

#### No emerging tech impact.

Sechser et al. 19, \*Todd S., Pamela Feinour Edmonds and Franklin S. Edmonds, Jr. Discovery Professor of Politics and Public Policy at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs, \*\*Neil Narang, Associate Professor of Political Science at the University of California, Santa Barbara, \*\*\*Caitlin Talmadge, Associate Professor of Security Studies in the School of Foreign at Georgetown University. (“Emerging technologies and strategic stability in peacetime, crisis, and war”, *Journal of Strategic Studies*, 42:6, pg. 728-729)

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

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

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

#### Either/or — American democracy is resilient — institutional buffers ensure continuity.

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, pg. 198-199, Oxford University Press)

American Democracy

The United States is the world’s oldest constitutional democracy. Fleeing persecution by European monarchs, the American founding fathers set up a system to check and balance the chief executive. The authors of the U.S. constitution were also very much inspired by the mixed system of government that proved so successful for the ancient Roman Republic. Individuals are selected for political positions through competitive elections. Freedom of the press, assembly, and many other liberties help to ensure that citizens have the opportunity for meaningful political participation. According to Polity, the United States has been rated as a democracy for over two centuries.3

Contemporary warnings of a possible decline in American democracy should be taken seriously, but, on inspection, they are often overblown. To be sure, American democracy is imperfect, but democracy does not require perfection. It requires free and fair elections and the broad range of civil and political rights that allow for meaningful political participation. There is no doubt that the United States meets this standard.

Worries about a U.S. president’s putative autocratic tendencies are not new; they are baked into the system. America’s founders were revolting against overbearing British monarchs and they wanted to be sure to prevent an overwhelming concentration of power in the executive branch. George Washington was criticized for his presumed monarchic ambitions. More recently, commentators criticized George W. Bush for supposedly consolidating power and creating an “imperial presidency.”4 What is truly most notable about the U.S. system, however, is not executive overreach, but the degree to which Congress and the courts, and the executive branch itself, continually step in to check the chief executive.5 This continues to remain true, even in the current era.

In sharp contrast to Russia, journalists do not have to worry that they will be shot in the back for criticizing the president. And, in distinction to China, the United States does not keep millions of Muslims locked up in re-education camps. It is perverse to draw a moral equivalence between democratic politicking in the United States and the gross evils perpetrated in Russia and China.

American democracy is strong enough to survive contemporary controversies and political scandals. There is little reason to believe that today’s headlines will be more damaging than the Teapot Dome Scandal, Watergate, Iran-Contra, or the Monica Lewinsky affair.

Indeed, contrary to the prevailing narrative, intense domestic political fights and polarization are not evidence that American democracy has failed; rather, they are proof that the system is working. Yes, democracy can be messy, but that is what makes the system great. These disagreements are not even permitted in autocratic states. Serious political conflicts of interest in autocracies often result in dead bodies. Our democratic political system gives us the ability to work out our differences through a mutually accepted and peaceful, institutionalized process. Legislative gridlock is not necessarily a problem. If half of the country strongly disagrees with a proposal, then it is not obviously a good idea, and probably should not become national law. The purpose of the U.S. government is not to enact legislation for its own sake but to ensure “life, liberty, and the pursuit of happiness.” By those measures the country is doing pretty well.

As Machiavelli argued five hundred years ago, discord within a republican system of government is not always pretty, but the results are more than worth it. Nations that desire expanded freedom at home and influence abroad should not rebuke domestic political struggles within a democracy, but celebrate them.

Indeed, the institutionalized tumult and discord in the United States will likely continue to be the primary engine for its continued international power and influence abroad.

Emissions from India, China, and Africa thump BUT infrastructure solves it

#### Populism’s inevitable — aging and automation lock it in.

Beckley 20, Associate Professor of Political Science at Tufts University, Jeane Kirkpatrick Visiting Scholar at the American Enterprise Institute. (Michael, 10/06/20, "Rogue Superpower: Why This Could Be an Illiberal American Century", *Foreign Affairs*, <https://www.foreignaffairs.com/articles/united-states/2020-10-06/illiberal-american-century-rogue-superpower>)

Don’t count on it. The era of liberal U.S. hegemony is an artifact of the Cold War’s immediate afterglow. Trump’s transactional approach to foreign policy, by contrast, has been the norm for most of U.S. history. As a result, Trump’s imprint could endure long after Trump himself is gone.

Trump’s approach already appeals to many Americans today. That appeal will grow even stronger in the years ahead as two global trends—rapid population aging and the rise of automation—accelerate, remaking international power dynamics in ways that favor the United States. By 2040, the United States will be the only country with a large, growing market and the fiscal capacity to sustain a global military presence. Meanwhile, new technologies will reduce U.S. dependence on foreign labor and resources and will equip the U.S. military with new tools to contain the territorial expansion of the country’s great-power rivals. As long as the United States does not squander those advantages, it will remain the world’s dominant economic and military power.

Remaining the most powerful country, however, is not the same thing as remaining the guarantor of a liberal international order. Somewhat paradoxically, the same trends that will reinforce U.S. economic and military might will also make it harder to play that role—and make Trump’s approach more attractive. Since the end of World War II, the United States has seen itself as the chief defender of a democratic capitalist way of life and the champion of a rules-based international system built on liberal values. Washington has provided dozens of countries with military protection, secure shipping routes, and easy access to U.S. dollars and markets. In exchange, those countries have offered their loyalty and, in many cases, have liberalized their own economies and governments.

In the coming decades, however, rapid population aging and the rise of automation will dampen faith in democratic capitalism and fracture the so-called free world at its core. The burdens of caring for older populations and the job losses resulting from new technologies will spur competition for resources and markets. Aging and automation will also lay bare the flaws of the international institutions that governments rely on to tackle common problems, and Americans will feel less dependent on foreign partners than they have in generations. In response, the United States might become a rogue superpower. Like the twentieth century, the twenty-first century will be dominated by the United States. But whereas the previous “American century” was built on a liberal vision of the U.S. role in the world, what we might be witnessing today is the dawn of an illiberal American century.

## 2NC

### T

#### A ⁠— single industries, which are each a separate topic ⁠— here’s a short list

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

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 ⁠— 32 million companies

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

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.

#### C ⁠— aff could further disaggregate:

#### Antitrust prohibitions can be global

Hamer et al. 16, 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 (Mark H. Hamer, 11-15-2016, “US Federal Agencies Issue Joint Guidance for HR Professionals Warning of Criminal Liability for Wage-Fixing and No-Poaching Agreements,” Global Compliance News, <https://www.globalcompliancenews.com/2016/11/15/us-issues-guidance-for-hr-professionals-wage-fixing-20161110/>)

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 specific products

Markham 11, Marshall P. Madison Professor of Law, The University of San Francisco School of Law (Jesse W. Markham Jr., 2011, “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>)

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]

#### That’s the core of the topic AND worth a whole season

Dorsey 20, Counsel to the Assistant Attorney General, Antitrust Division @ U.S. Department of Justice, Adjunct Professor at George Mason University - Antonin Scalia Law School (Elyse Dorsey, 2020, “Antitrust in Retrograde: The Consumer Welfare Standard, Socio-Political Goals, and the Future of Enforcement,” The Global Antitrust Institute Report *on the Digital Economy 4*, <https://gaidigitalreport.com/wp-content/uploads/2020/11/Dorsey-Antitrust-in-Retrograde.pdf>)

Judge Richard A. Posner famously described the consumer welfare standard as the “lodestar that shall guide the contemporary application of the antitrust laws” in 1986.1 In the decades since, the antitrust community readily embraced the “lodestar” denomination.2 The consumer welfare standard is indeed the focal point of modern antitrust analysis, guiding decisions and informing the rules and standards antitrust law imposes. But this is not the consumer welfare standard’s only function as lodestar. It is both guide and tether. It serves as the linchpin tying antitrust law to economic concepts and reasoning. Its guidance illuminates both what antitrust law is and—just as important, what it is not. The consumer welfare standard provides the basis for distinguishing between those concerns that antitrust law appropriately considers and those that it rightly omits. In doing so, the consumer welfare standard ensures a common language is spoken across antitrust matters today. Antitrust law did not always operate with a common language. For many decades following the passage of the Sherman Act in 1890, antitrust lacked a unifying, consistent language. It was a cacophonous area of law, where decisions could be—and often were— premised upon vastly different reasoning from one to another, leading to numerous inconsistencies and internal tensions. This resulted in a general confusion as to how any given case would be decided. But more fundamentally, to questions regarding the very goals of antitrust law. The consumer welfare standard, with its economic underpinning, has come to represent a robust language defining antitrust discourse today. For the last several decades, courts and enforcers, economists and practitioners, and other experts have developed this language. The analysis today is far more comprehensive than it was when the courts first embraced the consumer welfare standard 40 years ago. Experts have continued to investigate and seek out theories of harm; to develop economic tools for empirically investigating conduct; and to analyze numerous other components factoring into antitrust analysis, such as potential efficiencies. Of late, the consumer welfare standard—and antitrust law more broadly—has come under renewed criticism. Criticisms come in various forms, but largely follow a similar thread, cataloguing its purported limitations: That it myopically focuses upon the short term and only upon price effects; that it omits consideration of important sociopolitical goals; that it is incapable of identifying and condemning problems endemic in the modern economy. While some of the criticisms ring true (the consumer welfare standard does not permit consideration of socio-political factors), others do not (the consumer welfare standard addresses far more than short term price effects). And many miss the mark because they overlook the history of how and why we arrived at the current understanding. Indeed, a common characteristic of the current criticism, often referred to as the Neo-Brandeisian movement, is that it bears remarkable resemblance to those populist movements that came before it. Today, antitrust critics make nearly the exact same arguments regarding the proper goals of antitrust law—any number of socio-political ends such as protecting small businesses and preventing “bigness”—that similar movements throughout the 20th century (and the late 19th century) espoused.3 Antitrust law did, in fact, embrace a more socio-political approach, which explicitly purported to serve just such values, for much of the 20th century.

#### B ⁠— changing the burden of proof, the rule of reason, which applies across the economy — per se changes that

Kimmel & Fanchiang 20 (inserted), \*Senior Counsel at Crowell & Moring, LLP in Washington, D.C., twenty years of experience as an antitrust lawyer and holds a Ph.D. in economics from the University of California at Berkeley \*\*associate in Crowell & Moring’s Irvine, CA office and a member of the firm’s antitrust and commercial litigation group (\*Lisa Kimmel \*\*Eric Fanchiang, 2020, “Antitrust and Intellectual Property Licensing,” in *2020 Licensing Update*, Wolters Kluwer Legal & Regulatory U.S., 2020, <https://www.crowell.com/files/20200401-Licensing-Update-Chapter-13.pdf>)

The key substantive provisions of the Sherman Act are Sections 1 and 2. Section 1 prohibits agreements that unreasonably restrain trade. An agreement can be any “meeting of the minds” between separate entities. An agreement can be express or in the form of a tacit unwritten understanding.5 Most agreements are evaluated under the “rule of reason” standard. The rule of reason is a fact-based test that requires a plaintiff to prove that an agreement has harmed competition. To prove that an agreement has harmed competition, courts typically apply a three-step burden shifting framework. The plaintiff has the initial burden to show that the agreement imposed a meaningful restriction on competition in a relevant market. Agreements among parties that do not possess some degree of market power are unlikely to generate competitive harm, so market power plays an important role in step one of the test, either directly or indirectly. If the plaintiff shows competitive harm, the defendant must show a procompetitive rationale for the agreement. If the defendant succeeds, the burden shifts back to the plaintiff to show that the same benefits could reasonably be achieved in a less restrictive manner.6 Where courts have determined that a particular type of agreement is unlikely to ever generate procompetitive benefits, that agreement is subject to the per se rather than rule of reason standard.7 If an agreement is per se unlawful, competitive harm is presumed and irrebuttable. Even parties that do not possess market power can violate Section 1 under the per se standard.8 Agreements in the per se category are primarily limited to agreements among competitors to fix prices, allocate territories, or engage in bid rigging. The DOJ has the discretion to prosecute these kinds of “hard core” violations criminally.9

#### It’s the most common usage

Your Dictionary No Date, (YourDictionary, No Date, “Private-sector,” YourDictionary, <https://www.yourdictionary.com/private-sector>)

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

#### Cites Senate Report ⁠— it’s publicly available, shapes antitrust research, and policy

#### US Code too!

US Code 96, (United States Code, 1-1-1996, “2 U.S. Code § 658 – Definitions, <https://www.law.cornell.edu/uscode/text/2/658#9>)

(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.

### Democracy

#### Deplatforming solves misinformation

Atkins 21 (David, “It Turns Out That Deplatforming Works,” *Washington Monthly*, <https://washingtonmonthly.com/2021/01/17/deplatforming-works-but-the-public-should-have-more-power-over-social-media/>)

After Twitter and Facebook banned Donald Trump and over 70,000 QAnon-related accounts, two things quickly became apparent: 1) it was the right thing to do and had a salutary effect on public discourse, and 2) tech moguls have a frightening amount of control over democracy and public discourse. Of course, most of the Right and parts of the libertarian left have strongly objected to the decision to deplatform Trump and right-wing conspiracists. But democracy depends largely on agreement on a basic set of facts, and widely shared conspiracy theories about stolen elections or cannibal pedophilia can lead to violence and authoritarianism. Social media has been primarily responsible for allowing those conspiracy theories to flourish, and social media has an obligation to fix the problem. And indeed, deplatforming conspiracy promoters has been proven to work, both now and in the past. In the wake of the recent bans of Trump and QAnon mavens, election misinformation online has dropped by over 70%: Online misinformation about election fraud plunged 73 percent after several social media sites suspended President Trump and key allies last week, research firm Zignal Labs has found, underscoring the power of tech companies to limit the falsehoods poisoning public debate when they act aggressively. The new research by the San Francisco-based analytics firm reported that conversations about election fraud dropped from 2.5 million mentions to 688,000 mentions across several social media sites in the week after Trump was banned from Twitter. Election disinformation had for months been a major subject of online misinformation, beginning even before the Nov. 3 election and pushed heavily by Trump and his allies. Zignal found it dropped swiftly and steeply on Twitter and other platforms in the days after the Twitter ban took hold on Jan. 8.

#### The notion of tech authoritarianism is Trumpian propaganda

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Second, the Trump administration tries to stand on the moral high ground in strategic competition with China, thus it has labeled China as being “unfair” and “government-led” in industrial planning and “engaging in forced technology transfer,” while advocating such notions as “technology supporting China’s authoritarian regime” and that China’s developing science and technology “would harm the U.S. national interests and regional order.” As a matter of fact, there is no proof that the Chinese government has formulated or implemented any policy on forced technology transfer; and the notion of “technology supporting China’s authoritarian regime” is nothing but a new form of politicization of economic and technological issues. By exaggerating the security risks or even making up the “government backgrounds” of Chinese enterprises like Huawei, the Trump administration attempts to negate the legitimate rights and interests of Chinese enterprises to expand overseas markets. Yet, despite the hidden intention behind President Trump’s emphasis on China’s “unfairness,” in the short run, Chinese enterprises will not be able to negotiate with Western multinationals on an equal footing. If China plays by the U.S. rules of “fairness,” it is likely to be locked in the low end of the global industrial chains indefinitely.

#### GOP will explicitly tie their support for antitrust reform to fighting “political bias” on social media

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Hawley's lament is indicative of the larger movement: Republican lawmakers have proposed using antitrust action as an all-purpose cure for all manner of alleged tech industry sins. But under Trump, their complaints coalesced most around these companies' supposed suppression of conservative speech. The Trump administration broke from Obama administration policy to embrace a vision of expanded antitrust enforcement. "Every week you see [European regulators] going after Facebook and Apple and all of these companies," Trump said in 2019. "Well, we should be doing this. They're our companies." In October 2020, the Department of Justice (DOJ) brought a lawsuit accusing Google of anti-competitive behavior; 10 states with Republican attorneys general (Arkansas, Florida, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, South Carolina, and Texas) joined immediately. The DOJ and state prosecutors say Google is guilty of violating the Sherman Act, which bans unreasonable "restraint of trade" and "monopolization, attempted monopolization, or conspiracy" to monopolize. Companies found guilty can be fined up to $100 million. That same month, Trump signed a continuing resolution that not only reauthorized the Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act but repealed its sunset provision. "Since the fall of 2019 alone," the DOJ bragged in a press release, "the division obtained four criminal fines and penalties at or above the Sherman Act's $100 million statutory maximum." And in December 2020, the Federal Trade Commission (FTC) sued Facebook, seeking (among other things) to require the divestiture of Instagram and WhatsApp. Democrats' Big Tech Wish List The Trump-era GOP paved the way for Biden-era Democrats to take the anti-tech antitrust crusade even further. Republicans and Democrats might not agree on much right now. But they have both been upset by decisions from Amazon, Apple, Facebook, Google, and Twitter, and they would both like to pry more control over online content from private actors—or at least knock these companies down a peg. In March, Sen. Elizabeth Warren (D–Mass.) responded to an Amazon tweet about her tax plans by saying she would "fight to break up Big Tech so [Amazon is] not powerful enough to heckle senators with snotty tweets." Warren has been looking for an excuse to go after tech companies for years. During her 2020 presidential primary campaign, she pledged to "unwind" existing mergers—including Amazon's with Whole Foods, Facebook's with WhatsApp and Instagram, and Google's with Nest and Waze—despite the fact that the FTC previously had sanctioned these unions. She also wants to ban Amazon (and every other "platform utility") from selling its own goods on its own site: No more Amazon brand batteries, toilet paper, T-shirts, vitamins, or disinfectant wipes. Warren is joined in these desires by both leftist and centrist Democrats. Breaking up tech companies is not "a radical idea" but a "part of competition," said Sen. Amy Klobuchar (D–Minn.) in March. "Facebook is absolutely an out-of-control monopoly," Rep. Alexandria Ocasio-Cortez (D–N.Y.) posted on Facebook rival Twitter last December. "The only thing that will stop Facebook is to…break it up," Sen. Bernie Sanders (I–Vt.) has opined. Given all this, it's hardly surprising that Republicans' antitrust suit against Google was later joined by the Democratic attorneys general of California, Michigan, and Wisconsin, with many national Democrats cheering them on. Or that the FTC suit against Facebook was joined by 46 states, the District of Columbia, and Guam. Members of both parties have grown adept at slotting their desire for censorship and economic control into an antitrust framework, no matter how ill-fitting that framework might be. But while Republicans at least tend to tie their antitrust designs to the consumer-friendly (if not actually antitrust actionable) cause of fighting political "bias," Democrats seldom bother to connect the dots between breaking up popular tech companies and making consumers better off. Instead, they offer standard lefty agitprop: Big is bad. The solution to big? Antitrust action to chop up large companies into smaller ones.

#### Republicans will require censorship prohibitions as a pre-requisite for antitrust reform

Newton 6-24-2021, Verge contributing editor. He is the founder and editor of Platformer, a daily newsletter about Big Tech and democracy (Casey, “WHY THE TECH ANTITRUST REFORM BILLS ARE STRUGGLING TO MOVE FORWARD,” *The Verge*, <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial>)

Watching Congress debate a package of tech reform bills this week has been sort of like watching a group of people ordered to eat a giant submarine sandwich all at the same time. Everyone has started in a different place, no one agrees on a path forward, and people almost can’t help butting heads. This should be a moment of huge importance in the history of tech and democracy in the United States. The House Judiciary Committee investigated competition in the tech industry for a year. During that time, Congress held 10 hearings. In the end, a 449-page report on the subject was produced. And from that report came a package of bills that, if passed, would reshape the tech industry and probably some other large corporations as well. The bills are rooted in concerns that I have long shared and written about. A small number of companies now controls vast sectors of the economy with little oversight or accountability. How their platforms are used and abused is of huge consequence globally. And in many cases these companies have acted to stifle competition — lowering prices to drive their rivals under; privileging their own products over competitors; preventing competitors from using their services entirely; using near-monopoly profits to maintain their positions; and acquiring potential threats before they can disrupt the incumbent. At the same time, despite Congress taking so long to intervene, market competition has continued anyway. Google may spend billions to ensure it is the default search engine on the iPhone; but its rival DuckDuckGo just raised $100 million amid record growth, and the Brave browser just introduced a search engine of its own. Facebook had social networking mostly to itself in the mid-2010s, and is currently working to own the future of virtual reality. But TikTok and Snapchat now dominate the attention of younger users, and the company is gradually remaking all of its apps in an anxious effort to respond. Of course, the mere existence of rivals doesn’t necessarily mean that the current market is perfectly fair or functional. But it does increase the challenge for writing legislation that addresses our underlying concerns about the platforms. Members of Congress talked at great length on Wednesday about wanting to make markets more competitive, but what is really at stake is the state-like power a handful of apps have to control aspects of our daily lives. It isn’t that no one can conceivably compete with them in the future; it’s that they have too much power now. That’s why I like this bill, which would increase funding for antitrust enforcement by 30 percent. Rather than simply ban most mergers and acquisitions by default, as another bill in the package would do, this one empowers the Federal Trade Commission and the antitrust division of the Department of Justice to scrutinize M&A more carefully. The downside of such an approach is that absent other legislation, courts could strike down the agencies’ enforcement actions; the benefit is that agencies can make more informed, case-by-case decisions. I also like a bill designed to make it easier for consumers to switch between platforms, even if it raises real privacy concerns. (Are the phone numbers in my contacts app really mine to share, even if it makes consumer apps much more competitive?) I also like aspects of Rep. David Cicilline’s bill American Choice and Innovation Online Act, which would restrict platforms from indulging in some of their worst impulses: Amazon using third-party seller data to inform its own product development, for example, or Apple advertising its many subscriptions throughout the operating system. But at the risk of sounding incredibly naive about the political process, this is not really the debate we just had during a marathon bill markup session in the judiciary committee. II. The House bills all have Republican co-sponsors, and appear to enjoy some support in that delegation. But key Republicans have so far refused to engage with any of these bills on a policy level, insisting instead that tech reform begin (and possibly end?) with prohibitions on “censorship.” Galled by the removal of former President Trump from Facebook, Twitter, and other platforms, and perhaps energized by Florida’s recent passage of a (likely unconstitutional) bill that would make such content moderation illegal, some Republicans want to throw out the entire process. Members of Congress in this camp include the House minority leader, Kevin McCarthy, and Rep. Jim Jordan, the ranking Republican on the Judiciary Committee. This piece from Politico this week gives you some flavor of the discussion: Jordan has been publicly pushing against the bills, while McCarthy has said he’s planning to unveil his own tech reform agenda. “We’ve got a beef with all Big Tech in the sense of the censorship they have of conservatives now,” Jordan told Fox Business on Tuesday. Jordan added, however, that the antitrust bills coming to a vote are sponsored by “four impeachment managers” — questioning top Democrats’ ability to write legislation that conservatives can favor. Set aside for a moment the fact that Trump was removed from these platforms because he was using them in an effort to overturn the results of a fair election, the thing to highlight here is that Republican leadership’s concerns have nothing to do with “competition” per se. Instead, their outrage is rooted in the idea that anyone else might have power over their speech. We know what happens when elected officials are allowed to post whatever they want online — they attack minorities, they manufacture influence operations against their own citizens, they chip away at the foundations of democracy. (This has been the story in India for the past year, and if you assume it is a preview of the next Republican administration here in the United States, as I do, it’s quite chilling.) For these Republicans, then, the goal is not actually to make platforms like Facebook and Twitter less powerful — it’s to ensure that they can use those platforms’ power to achieve their own ends, and to make it illegal for anyone to stop them. When Trump shut down his blog 29 days after starting it, it wasn’t in protest of platforms’ power — it was out of the frustration that he no longer had access to it. The Politico story and other reporting on the subject suggests that Democrats will struggle to find 10 Republicans in the Senate to sign on to most of these bills, and perhaps to any but the one providing extra funding for antitrust enforcement. For as long as the parties have spent agreeing that somebody ought to do something about Big Tech, in important ways they are still talking past one another.

#### Size isn’t key---big companies aren’t that good at lobbying AND small companies would if broken up.

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The Market Fundamentalist Tradition

While producer republicans fear that big business will turn formerly self-reliant republican citizens into wage slaves at the mercy of employers, market fundamentalists are more concerned that big businesses will enter into an unholy alliance with big government and in the process succeed in enriching themselves at the cost of the freedom of citizens and the pocketbooks of taxpayers.

The claim that “the corporations” control government at all levels is commonly made in the United States. The case would seem to be undeniable, if corporate spending on lobbying and campaign donations is considered in isolation from other political spending and if it is assumed that lobbyists and donors usually get their way. But these assumptions are unrealistic. When all sources of financial influence on politics are considered, it is clear that big business competes for influence with individual wealthy donors, nonprofit organizations, and trade associations representing small business. Nor is it the case that big business always gets its way. Indeed, on many issues, from corporate tax reform to infrastructure investment and immigration reform, the corporate sector has experienced repeated defeat in American politics.

Let us begin with campaign finance and lobbying. In 1907 Congress banned corporations from donating to federal political campaigns. In 1947 Congress then prohibited both unions and corporations from making independent political expenditures to help federal political candidates indirectly. But in 2010, in Citizens United v. Federal Election Commission, the Supreme Court ruled that both unions and corporations could spend unlimited amounts to help candidates as long as their expenditures were “independent” of parties and candidates.

The biggest winners of the campaign spending arms race begun by Citizens United have been not corporations but rich individuals. By February 2016, nearly half of the money that went into Super PACs—41 percent—came from only fifty “megadonors” and their relatives, led by Tom Steyer, a former hedge fund manager who contributes to environmentalist organizations and Democrats.20

Megadonors are an elite within an elite. According to Open Secrets, in the 2016 election only 0.52 percent of the US population made political contributions large enough to be itemized—$200 or over. This one-half of 1 percent of the population was responsible for 70.4 percent of all individual contributions to federal candidates, parties, and PACs.21 Some of these megadonors made their money in the corporate sector, as founders of startups or in some cases as CEOs; others come from finance or real estate; a substantial number inherited their money. It is hard to make a case that their motive for massive political spending is to win benefits for particular industries, much less particular companies or banks. On the contrary, studies show that many of them are motivated by ideology and partisanship, and in most cases they are motived by a desire to improve society.

The partisan preferences of individual megadonors are not typical of the US population. The politics of the American donor class skews in a libertarian direction—liberal on social issues, libertarian in economics. The average megadonor is far more likely than the average American voter to oppose higher taxes on the rich, support high levels of immigration, and favor cutting middle- class entitlements including Social Security and Medicare.22 But the self-interest of the rich, as a class, in policies like abolishing estate taxes and lowering capital gains and income tax rates is different from the particular objectives of particular corporations and particular industries, which typically involve matters of industry-specific regulation and business-related tax breaks.

What about lobbying by corporations and other economic interest groups, rather than individuals? According to Maplight, most of the top ten spenders on lobbying from 2008 to 2016 were not individual corporations at all but trade associations, with the US Chamber of Commerce at the top, followed by the National Association of Realtors, the US Chamber of Commerce Institute for Legal Reform, and Apparel for All. Two corporations—General Electric and Boeing—came in fourth and ninth place, respectively. But the rest are trade or professional associations, including the Pharmaceutical Research & Manufacturers of America, the American Medical Association, the American Hospitals Association, and the National Cable & Telecommunications Association.23 Of the top sixteen business PACs, five represent small business (National Association of Realtors, National Beer Wholesalers, National Auto Dealers Association, National Association of Insurance and Financial Advisors, and Credit Union National Association).24

Some of the industries represented by trade associations with deep pockets are dominated by large firms because they are increasing-returns industries, like pharmaceuticals and cable and broadband. But the top spender, the US Chamber of Commerce, represents many small firms, and the number two lobbying of Commerce, represents many small firms, and the number two lobbying spender, the National Association of Realtors, represents a highly fragmented industry in which the typical realtor’s office is local and employs only a few people. For its part, the American Medical Association has long represented the interests of physicians working alone or in small partnerships, who until recently accounted for most doctors.

Lobbying expenditures, like campaign donations, probably exaggerate the influence of large companies and minimize the actual influence of small businesses. Much of the influence of small business arises from geography. In every congressional district and every state there are family farmers, franchise owners, automobile dealers, realtors, and others whose support politicians cannot ignore. In contrast, the headquarters and production facilities of major national and global corporations are found in a relatively small number of places. Every American state has family farmers and realtors; far fewer have automobile or aerospace manufacturers. Local businesses and their employees and suppliers provide the small business lobby with an unpaid auxiliary army whose influence is exercised through the ballot box rather than by means of campaign contributions. As Charles Brown, James Hamilton, and James Medoff write, “As a lobbyist for the National Federation of Independent Business (NFIB) put it in assessing the impact of these political resources: ‘Small business is a terrifically effective lobbying force. There are more of us. Our members are personally involved in their businesses; they aren’t managers. Our people make up the vast majority of the moderate-to-conservative, politically active people back home.’”25

Moreover, while large firms sometimes lobby for what economists call rent- seeking activities, which divide the economic pie rather than grow it, so too do small firms. For example, the National Federation of Independent Business’s lobbying agenda features three main rent-seeking issues: cutting the tax rates of the wealthy (e.g., cutting the top marginal tax rate and repealing the estate tax), repealing the Affordable Care Act, and eliminating regulations.26

To imagine that if the economy was made up just of small “yeoman” businesses, they would not lobby for programs to protect their economic interests, is to ignore political realty. Small car dealers would still lobby to prohibit large car manufacturers from selling directly to consumers. Small dairy farmers would still lobby for subsidies and trade protection. Organic food growers would still lobby to raise food prices by limiting the use of biotechnology-based crops.

#### Institutions and countervailing forces solve.

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Then the 2020 election actually happened.

And in an instant, it became clear (to paraphrase Mark Twain) that reports of the death of American Democracy had been greatly exaggerated.

Indeed, the results of the 2020 election, and the 2018 midterms that came before it, offer textbook validation of the unique democratic republic that America’s founders invented back in the 18th century. The durability of the system was once again shown in the way it naturally pushed back against the worst instincts of Trumpism, while also checking the potential for a massive Democratic overreach in response.

In the case of President Trump, his tendency was to govern with the reckless rhetoric of a strong-arm dictator. But the political institutions and natural democratic checks — cornerstones of the American political system — created roadblocks every step of the way.

So, while President Trump may have wanted to create a “total Muslim ban” for immigrants coming to the United States, that initiative was blocked by multiple courts, significantly watered down, and targeted for annulment by the new Democratic majority in the House of Representatives in 2019. And though he may have used inexcusable language regarding America’s free press (“enemy of the people”), tanks were never actually dispatched to surround the New York Times building in Manhattan — if anything, the press in this county has perhaps never been freer and more rambunctious than during the Trump presidency.

None of this is by mistake.

To America’s founders, like James Madison and Alexander Hamilton, one of the gravest potential threats to the republic was the rise of a corrupt demagogue-president who would use his “factious temper … local prejudices, or sinister designs” to cajole the American people toward tyranny. So, they put in place checks and balances between three co-equal branches of government (legislative, executive, and judicial); ensured that national elections were never more than two years away; and handed Congress the most important power in all of government: the power of the purse.

And now, this supposed “American Hitler,” will simply return to real estate and reality TV.

And American Democracy will simply return to what it has been doing for the past 230 years (including during the Trump years): holding elections, fighting over politics, and debating what’s best for the future of the country.

But the 2020 election is instructive for another critical reason. Many in this country, mostly on the coasts, viewed the rise of Donald Trump as the cause of America’s political consternation in recent years, rather than as a symptom of deep underlying disaffection with the direction of the country, in both domestic and foreign policy. They also came to view strong opposition to Mr. Trump from within traditional Republican and conservative strongholds (like the white suburbs) as a green light to begin planning for a permanent Democratic-progressive majority.

This misreading, and the shift of the Democratic Party decisively to the left in response, accounts for the starkly mixed results of the 2020 election: Yes, Democrats took back the White House, but the election was otherwise a near-disaster for the Democratic Party. Not only will Republicans most likely retain the Senate majority by two seats (stopping any progressive agenda dead in its tracks), they also picked up roughly 10 seats in the House — and gained strength at the local level in nearly every state.

Again, none of this is by mistake. This is the very “gridlock” system championed by James Madison, the most important architect of the U.S. Constitution. When one power center seems to be gaining too much strength, the natural tendency is for countervailing forces to jump in the way. As famously remarked by Virginia Congressman Tom Davis, who was swept to power in the 1994 Republican midterm landslide, “My constituents… elected me [in 1994] to protect them from Bill Clinton. And two years later they reelected Bill Clinton to protect them from me.” If the Democratic Party does not moderate its promises and expectations, they stand to lose much more in the 2022 midterms, and beyond.

Nearly two centuries ago, the French observer Alexis de Tocqueville stood in awe of what he called America’s great “experiment in democratic liberty.” He understood that what made American Democracy so “exceptional” in the world was not just that it was dominated by a mix of rowdy democratic passions and prudent middle-class values. It was that these forces operated within stable republican political institutions, which perennially check themselves.

Even in the chaotic “Age of Trump,” the wisdom of the American voter — and the genius of the American system — managed to fashion the most prudent of outcomes. The ongoing quest to create a “more perfect union” continues.

#### European populism is dead

Statista 20 – Statista Research Department, “Populism in Europe - Statistics & Facts”, https://www.statista.com/topics/3291/right-wing-populism-in-the-european-union/

It is unclear how big the impact of the current populist surge will be for the future of Europe. As of March 2018, [populist parties](https://www.statista.com/statistics/883893/populism-in-europe/) have secured more than half the vote in only four countries in the European Union. The parties themselves are [perceived negatively](https://www.statista.com/statistics/895730/perception-of-populist-parties-in-europe/) by large portions of the population along with many populist figures, such as [Nigel Farage](https://www.statista.com/statistics/895942/nigel-farage-popularity/), [Marine le Pen](https://www.statista.com/statistics/667747/french-opinion-marine-le-pen/) and [Geert Wilders](https://www.statista.com/statistics/667889/opinions-on-geert-wilders-in-the-netherlands/). There is also evidence of a generational divide, with younger voters more likely to have voted “remain” in the [Brexit referendum](https://www.statista.com/statistics/567922/distribution-of-eu-referendum-votes-by-age-and-gender-uk/), or to find figures such as [Boris Johnson](https://www.statista.com/statistics/895910/boris-johnson-popularity-by-age/) unpopular. The [youth of Europe](https://www.statista.com/statistics/895760/share-of-populist-youth-in-europe/) that are drawn to populist ideologies are more likely to be left-wing than right.

#### The EU won’t collapse

Jeremy Cliffe 20, International Editor of the New Statesman, Former Brussels Bureau Chief for the Economist, BA from Oxford University, von Clemm Fellowship at Harvard University, “The Euro-Gloomsters Are Wrong To Use Every Crisis To Predict The Imminent Collapse Of The EU”, The New Statesman, 4/29/2020, https://www.newstatesman.com/international/2020/04/euro-gloomsters-are-wrong-use-every-crisis-predict-imminent-collapse-eu

Another crisis, another round of headlines suggesting the European Union is about to disintegrate. Politico says that coronavirus “could break the EU”. Reaction, a news website, predicts “the looming collapse of the eurozone”. New York Magazine asks whether the pandemic will “tear the EU apart”. The only thing as durable as the EU itself is the belief in its imminent demise.

As early as 1953 the diplomat Robert Boothby told Tory backbenchers that the European Coal and Steel Community would fail. His view was echoed not just by Harold Macmillan in 1955 (who told MPs that the “Monnet concept” was “doomed to failure”), but also by Boothby himself three decades later in 1981, when, as a peer, he warned the House of Lords that “the EEC will collapse. It will break up of its own accord.” More predictions of doom followed with Danish and French “no” votes to further EU integration in 1992 and 2005 respectively – and then with the eurozonene crisis. In 2012 the respected CEBR think tank put the chance of the eurozone’s collapse at 99 per cent and declared its survival “a political impossibility”. Then came the migrant crisis of 2015 (Europe’s “breaking point”, according to the New York Times) and the Brexit vote in 2016, which Nigel Farage predicted would “trigger a domino effect” leading to the EU’s collapse.

Coronavirus has unleashed the latest round of doom-mongering. Borders have gone up within the Schengen zone. The EU has not coordinated health policies in its member states. The economically strong have done too little to help the weak: despite calls for coronabonds, or mutualised debt, the EU is heading for a disappointing economic rescue and recovery package.

At their e-summit on 23 April, leaders agreed to support struggling economies through the European Stability Mechanism (the ESM, hated for imposing austerity on southern Europe during the eurozone crisis) and some combination of grants and loans issued through the EU budget.

It is therefore tempting to predict the EU’s failure. Yet today, as before, the euro-gloomsters make three crucial mistakes.

First, they mis-categorise the enterprise. The EU has fewer powers than a federal state and more responsibilities than an intergovernmental organisation. Even some valid criticisms of it exaggerate because they do not make fair allowances for this hybridity. You can reasonably argue that national health policies should be pooled at an EU level in the future. But you cannot reasonably argue that the EU, which has almost no power over member states’ health policies, “failed” to properly manage responses to Covid-19. That misreads both the function and the scale of the EU’s powers. You might as well argue that your bottle opener “failed” to heat your flat properly.

Second, the euro-gloomsters subject the EU to standards that other polities are spared. Yes, EU leaders talk a lot about solidarity and European values, sometimes sincerely. But that does not mean they do not also have their own electorates and national interests, just as leaders of the US states proclaim their belief in their union while standing up specifically for those who elected them. Even as I write, US state governments are trying to outbid one another to buy medical equipment. Some have talked of closing their borders. Rich states have grumbled about payments to poorer ones. Yet no one asks if the US is about to “fall apart”.

Third, in their obsession with this binary scenario, the euro-gloomsters miss a more interesting question: how are the complicated pressures on the EU changing it? The same mistake was made in the eurozone crisis, which prompted too many articles about the EU’s collapse and not enough about the huge structural shifts that were taking place, shifts that looked impossible beforehand and have changed the EU utterly.

A similar dynamic is playing out today. You can point to the absence of coronabonds and say that the EU is doomed. But far more insightfully, you can look at the other previously unthinkable things that it is now doing. The ESM programmes in its coronavirus rescue package will be shorn of the intrusive conditions that made them so unpopular in the eurozone crisis. The package also includes common unemployment reinsurance, until recently a glint in federalist eyes. And the EU is almost certainly on the path to a permanently and drastically higher budget; where weeks ago leaders were squabbling over fractions of percentages now there is talk of it effectively increasing by half or more.

Even on the shibboleth of mutualised debt, the union is edging in the right direction. Angela Merkel may have stood firm against coronabonds but she has departed from all German orthodoxy by agreeing to a milder version of that idea: the European Commission issuing debt backed by the EU budget. And perpetual bonds – debt with no maturity date – are now also a serious part of the discussion in a way they were not before. Big structural taboos are being broken, in ways that will change the future of the European project.

There remain very many useful, pressing questions about the EU. Is the borderless Schengen zone sustainable in the age of Covid-19 or will we see a return to national borders? Is the virus rescue package a small step towards the fiscal federalism that will give the union its best chance of a cohesive future, or is it a flop? Will disaffection in countries such as Italy express itself in shifting alliances within the EU?

All are so much more pressing – and, frankly, interesting – than the easy, abstract, clicks-driven question of whether the EU is doomed. It probably isn’t. Ask those questions instead.

### Innovation

#### Most small businesses don’t even want to innovate.

Robert Atkinson & Michael Lind 18, Mr. Atkinson is the president of the Information Technology and Innovation Foundation. Mr. Lind is a visiting professor at the University of Texas Johnson School of Public Affairs, “The Myth of the Genius in the Garage: Big Innovation,” Big Is Beautiful: Debunking the Myth of Small Business, MIT Press, 2018, pp 127-153

In conclusion, it should be no surprise that despite the publicity that rewards the rare successful tech startup, most small businesses are not innovative. Few of them want to be. In a 2011 study, Erik Hurst and Benjamin Wild Pugsley found that most small businesses do not intend to grow or innovate.77 Most small business owners cited nonpecuniary reasons, such as being their own bosses or having flexible schedules, as their motives for starting a company; only 41 percent had a new business idea or sought to create a new product.78 Only 15 percent of new businesses surveyed planned “to develop proprietary technology, processes, or procedures in the future.”79 This is not to say that tech startups and small R&D-intensive firms are not important to driving innovation, but to privilege small over large when it comes to innovation is a fundamental mistake.

#### Wealth inequality steady

Scott Lincicome 21, senior fellow in economic studies at the CATO Institute, “Lies, Damned Lies, and Inequality Statistics,” Cato Institute, 7-28-2021, https://www.cato.org/commentary/lies-damned-lies-inequality-statistics

Finally, we find similar definitional problems in the “wealth inequality” debate, which has been a prominent issue since Piketty’s 2014 book, Capital in the 21st Century, alleged a troubling historical rise in wealth concentration among the world’s richest people. As my Cato colleagues Ryan Bourne and Chris Edwards documented in 2019, however, numerous economists and other experts have found that the much‐​heralded book suffers from serious methodological flaws. They also find that subsequent work on wealth inequality from Piketty, Saez, and Gabriel Zucman substantially overstated the growth in U.S. wealth inequality since the mid‐​1970s due to several dubious methodological assumptions. (Feel free to read the paper for the details.) When other economists corrected those assumptions or used other (better) data, the troubling rise in wealth inequality becomes far less troubling: depending on the source, the share of wealth held by the “one percent” is essentially flat since the 1960s or up modestly in recent years. Bourne and Edwards conclude that U.S. wealth inequality is probably rising, but not nearly at the consistent and high speed we hear from the populists.

#### [2] — Countries turn inward — prefer post-COVID evidence.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure.

I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do.

Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible.

#### [3] — Empirics prove — downturn causes threat deflation.

Clary 15, PhD, Assistant Professor of Political Science @ the U of Albany. (Christopher, 04/21/15, “Economic Stress and International Cooperation: Evidence from International Rivalries”, *Massachusetts Institute of Technology Political Science Department*, Research Paper No. 2015-8; pg. 4)

Why Might Economic Crisis Cause Rivalry Termination?

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

#### The grid could survive a nuke.

Cash 19, staff writer at NRECA. (Cathy, 4-30-2019, "Report: Electromagnetic Pulse Would Not Have Widespread Impact on Electric Grid", *NRECA*, https://www.electric.coop/report-electromagnetic-pulse-would-not-have-widespread-impact-on-electric-grid)

The U.S. electric transmission system would largely survive a high-altitude electromagnetic pulse event caused by a nuclear warhead atmospheric explosion, an intensive investigation by the Electric Power Research Institute has found.

EPRI released its three-year study, “High-Altitude Electromagnetic Pulse (EMP) and the Bulk Power System—Potential Impacts and Mitigation Strategies,” on April 30.

Researchers conducted laboratory testing and analysis to determine the effect on the transmission grid from an EMP triggered by the unlikely event of a nuclear warhead detonated approximately 30 kilometers—about 18 miles—above Earth’s surface.

An EMP is a series of fast-moving waves of electromagnetic energy that can damage or destroy electronic components and equipment and also possibly result in voltage stability challenges and high-voltage transformer damage.

There are concerns that an EMP triggered at the right altitude could bring down the U.S. transmission grid as well as other critical infrastructures like telecommunications, emergency services and hospitals.

But EPRI’s study found that, while direct exposure to the initial pulse could damage or disrupt some transmission electronics, existing resiliency built into the grid would likely prevent catastrophic failure. Recovery from an EMP would be similar to that from other large-scale power outages, EPRI said.

“An EMP is an extremely unlikely event, but one that the electric industry needs to clearly understand and ensure that cost-effective potential mitigation measures do not result in unintended consequences or impacts,” said NRECA CEO Jim Matheson. “This comprehensive study by EPRI will be a vital tool in that process.”

## 1NR

### FTC Tradeoff

#### 1---timeframe

FA 20 (Farm Aid, “Understanding the Economic Crisis Family Farms are Facing,” <https://www.farmaid.org/blog/fact-sheet/understanding-economic-crisis-family-farms-are-facing/>)

Faced with multiple years of losses that have whittled away equity, many farmers are making hard choices. Many are selling off land, livestock or equipment in an effort to hold on. Others are finding off-farm jobs to supplement farm income, only to see those jobs go away. Some farmers are choosing to retire early, while others are declaring bankruptcy in an effort to keep their farm. These tough choices are raising concerns that we are on the cusp of a slow but huge wave of farm losses not seen since the 1980s. Chapter 12 bankruptcy was created during the 1980s Farm Crisis specifically for family farmers and fisherman and offers one indicator of extreme stress in the farm sector. Because most farmers who are in crisis do not end up filing a Chapter 12, bankruptcy data is really just the tip of the iceberg that contains much larger number of farms in crisis. By June 2020, Chapter 12 bankruptcy filings totaled 580, representing an 8% rise from June 2019 levels.[25] The largest increases in bankruptcies came from the Midwest (23%), Northwest (70%) and Southeast (22%), with more than half of filings occurring in the Midwest alone over the last year. Wisconsin, the country’s second largest dairy state, had the country’s highest number of Chapter 12 filings (69) between July 2019 and June 2020, followed by Nebraska (38), Georgia (36), Minnesota (36), Iowa (33) and Kansas (32). In total, 23 states saw bankruptcy filings rise over the last 12 months, with the biggest increases occurring in Wisconsin, Oregon and Iowa.[26]

#### That comes first because it determines whos impact turns whose and you can only die once

#### 2--- magnitude---WW3

**FDI 12**

Future Directions International. “International Conflict Triggers and Potential Conflict Points Resulting from Food and Water Insecurity.” May 25th, 2012. http://futuredirections.org.au/wp-content/uploads/2012/05/Workshop\_Report\_-\_Intl\_Conflict\_Triggers\_-\_May\_25.pdf

There is little dispute that conflict can lead to food and water crises. This paper will consider parts of the world, however, where food and water insecurity can be the cause of conflict and, at worst, result in war. While dealing predominately with food and water issues, the paper also recognises the nexus that exists between food and water and energy security. There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. Page 9 of 22 In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### 2---Turns warming

Trudell 5 – JD

Robert H., Fall, Food Security Emergencies And The Power Of Eminent Domain: A Domestic Legal Tool To Treat A Global Problem, 33 Syracuse J. Int'l L. & Com. 277, Lexis

In 1994, the United Nations Development Program, an organization dedicated to sustainable development in the developing world, identified seven main categories of threats to human security: economic, health, environmental, personal, community, political, and food security. 71 Certainly, food security is fundamental to each of the other listed threats because a population that cannot feed itself will not be able to thrive, will be increasingly unhealthy, and will destroy the environment of the land it depends upon in its desperate pursuit of food.  [\*288]  The lack of food security in sub-Saharan Africa makes it one of the least stable regions of the world. 72 Such instability has a negative effect on global security, especially in the poorer countries of the world, which suffer from major violent conflicts. 73 One cause of this instability can be seen in the connection of food insecurity with the degrading sub-Saharan environment. 74 In the search for sustainable agriculture, the pressures of a growing population have resulted in a reduction of cropland. 75 In Africa, forests are cut down to make grazing pastures, then grazing pastures erode away and become deserts or areas of land incapable of producing any sustainable harvest because the soil has no more nutrients. 76 One commentator, writing about sub-Saharan Africa, noted: "the relationship that exists between human security and environmental degradation is best illustrated in the agricultural sector." 77 Many of the farmers in this region still use the "slash-and-burn" method of subsistence farming. 78 The forests of sub-Saharan Africa are cut down for agriculture because, as will be further discussed below, the African soil quickly loses its ability to sustain plant life so more and more land is needed to grow the same amount of food. 79

#### 3---Turns democracy

Brinkman 11 – Henk-Jan Brinkman Chief of Policy, Planning and Application in the Peacebuilding Support Office of the United Nations and Cullen S. Hendrix, Assistant Professor at the The College of William & Mary and Fellow at the Robert S. Strauss Center for International Security and Law at the University of Texas at Austin, “Food Insecurity and Violent Conflict: Causes, Consequences, and Addressing the Challenges”, Occasional Paper n° 24, July, <http://ucanr.edu/blogs/food2025/blogfiles/14415.pdf>

Most of the types of political violence addressed here are more prevalent in societies with higher levels of chronic food insecurity. There is a correlation between food insecurity and political conflict in part because both are symptoms of low development (Collier et al., 2003). Nevertheless, a growing body of research makes both direct links and indirect links – as proxied by environmental scarcity or access to water resources – between food scarcity and various types of conflict. The causal arguments linking food insecurity to political violence lack microfoundational evidence – evidence based on actions of individuals – to explain how the mechanism works, but there are plenty of theories. The theories tend to rest either on the perspective of motivation, emphasizing the effect of food insecurity on economic and social grievances; or on the perspective of the opportunity cost, emphasizing the perceived costs and benefits of participating in violence relative to other means of securing income or food (Gurr, 1970; Tilly, 1978; Humphreys and Weinstein, 2008; Blattman and Miguel, 2010). These arguments are most valid with respect to participation in civil war and rebellion, where participation is better explained by a mixture of grievances – which provide motivation – and selective incentives – protection from violence and opportunities to engage in predation or to receive food, clothing, shelter and other material benefits – rather than grievances alone (Berman, 2009). A study of demobilized combatants in Sierra Leone found that poverty, lack of educational access and material rewards were associated with participation in the civil war (Humphreys and Weinstein, 2008). Interestingly, in Liberia, women were more likely than men to fight for material benefits (Hill et al., 2008). Thus, grievances are important, but so are motivations related to that individual’s economic and opportunistic considerations. Civil Conflict Civil conflict is the prevalent type of armed conflict in the world today (Harbom and Wallersteen, 2010). It is almost exclusively a phenomenon of countries with low levels of economic development and high levels of food insecurity. Sixty-five percent of the world’s food-insecure people live in seven countries: India, China, the Democratic Republic of Congo (DRC), Bangladesh, Indonesia, Pakistan and Ethiopia (FAO, 2010), of which all but China have experienced civil conflict in the past decade, with DRC, Ethiopia, India and Pakistan currently embroiled in civil conflicts. Pinstrup-Andersen and Shimokawa (2008) find that poor health and nutrition are associated with greater probability of civil conflict, though their findings are based on small sample sizes. Countries with lower per capita caloric intake are more prone to experience civil conflict, even accounting for their levels of economic development (Sobek and Boehmer, 2009). This relationship is stronger in those states where primary commodities make up a large proportion of their export profile. Some of the countries most plagued by conflict in the past 20 years are commodity-rich countries characterized by widespread hunger, such as Angola, DRC, Papua New Guinea and Sierra Leone. The mixture of hunger – which creates grievances – and the availability of valuable commodities – which can provide opportunities for rebel funding – is a volatile combination. World commodity prices can trigger conflict, as higher prices, especially for food, increase affected groups’ willingness to fight. Timothy Besley and Torsten Persson (2008) find that as a country’s import prices increase, thereby eroding real incomes, the risk of conflict increases. Oeindrila Dube and Juan F. Vargas (2008) arrive at similar conclusions when looking at Colombia, where higher export prices for coffee (which is labour intensive and a source of rural income) reduced violence in coffeeproducing areas while higher export prices for oil (which is capital intensive and a source of income for rebels and paramilitary groups) increased violence in regions with oil reserves and pipelines. Other research links transitory weather shocks to civil conflict. In these studies, weather shocks – like drought and excess rainfall – are thought to fuel conflict by causing crops to fail and reducing agricultural employment opportunities, thus increasing food insecurity both in terms of food availability and food access (ability to pay). The people most likely to participate in armed conflict – young men from rural areas with limited education and economic prospects – are likely to seek work in the agricultural sector. As that work dries up, fighting looks more attractive. However, the empirical link between transitory weather shocks and civil conflict is still ambiguous. Some studies find that civil conflict is more likely to begin following years of negative growth in rainfall (Miguel, Satyanath and Sergenti, 2004; Hendrix and Glaser, 2007), suggesting that drought and decreased agricultural productivity expand the pool of potential combatants and give rise to more broadly held grievances. However, approaches that look at levels of rainfall, rather than growth in rainfall from year to year, find tenuous, or in fact positive relationships, between rainfall abundance and the onset of conflict (Burke et al., 2009; Buhaug, 2010; Hendrix and Salehyan, 2010; Ciccone, forthcoming). Some case-based research, however, links drought to conflict – though mediated by the government’s response to the crisis. For example, during the Tuareg rebellion in northern Mali, drought – aggravated by the government’s embezzlement of drought relief supplies and food aid – was a significant source of grievance that motivated young men and women to take up arms (Benjaminsen, 2008). Recently, warmer temperatures have been linked to an increase in civil conflict, though this finding has been challenged (Burke et al., 2009; Buhaug, 2010). Civil war is also more likely in the aftermath of quick-onset natural disasters, such as earthquakes, major volcanic eruptions, floods, and cyclonic storms (Brancati, 2007; Nel and Righarts, 2008). The relationship between disaster and conflict is strongest in countries with high levels of inequality and slow economic growth; food insecurity and resource scarcity are among the more plausible explanations for this correlation. Interstate War The links between food insecurity and interstate war are less direct. While countries often go to war over territory, previous research has not focused directly on access to food or productive agricultural land as a major driver of conflict (Hensel, 2000). However, wars have been waged to reduce demographic pressures arising from the scarcity of arable land, the clearest examples being the move to acquire Lebensraum (“living space”) that motivated Nazi Germany’s aggression toward Poland and Eastern Europe (Hillgruber, 1981) and Japan’s invasion of China and Indochina (Natsios and Doley, 2009). Water, for drinking and for agriculture, is also a cause of conflict (Klare, 2002). Countries that share river basins are more likely to go to war than are other countries that border one another (Toset et al., 2000; Gleditsch et al., 2006). This relationship is strongest in countries with low levels of economic development. Institutions that manage conflicts over water and monitor and enforce agreements can significantly reduce the risk of war (Postel and Wolf, 2001). Jared Diamond (1997) has argued that for centuries military power was built on agricultural production. Zhang et al. (2007) show that long-term fluctuations in the prevalence of war followed cycles of temperature change over the period 1400–1900 CE, with more war during periods of relatively cooler temperatures and thus lower agricultural productivity and greater competition for resources. Similar findings linking cooler periods with more war have been established for Europe between 1000 and 1750 CE (Tol and Wagner, 2008). Democratic and Authoritarian Breakdowns Democratic breakdowns occur when leaders are deposed and replaced by officials who come to power without regard for elections, legal rules, and institutions. Not all breakdowns are violent – “bloodless” coups account for 67 percent of all coups and coup attempts – but many have been very bloody, and the autocratic regimes and instability that follow democratic breakdowns are more likely to lead to the abuse of human rights, in some cases leading to mass state killing (Poe and Tate, 1994; Harff, 2003). Food insecurity, proxied by low availability of calories for consumption per capita, makes democratic breakdown more likely, especially in higher-income countries, where people expect there to be larger social surpluses that could be invested to reduce food insecurity (Reenock, Bernhard and Sobek, 2007). Though statistical evidence is lacking, rising food prices have been implicated in the wave of demonstrations and transitions from authoritarian rule to fledgling democracy in some countries across North Africa and the Middle East in 2011. There are some historical precedents for this: a bad harvest in 1788 led to high food prices in France, which caused rioting and contributed to the French revolution in 1789; and the wave of political upheaval that swept Europe in 1848 was at least in part a response to food scarcity, coming after three below-average harvests across the continent (Berger and Spoerer 2001). Protest and Rioting Throughout history higher food prices have contributed to or triggered violent riots. Protests and rioting occurred in response to sharp increases in world food prices in the 1970s and 1980s (Walton and Seddon, 1994). Record-high world food prices triggered protest and violent rioting in 48 countries in 2007/08 (see Figure 1). The ratio of violent to non-violent protest was higher in low-income countries and in countries with lower government effectiveness (von Braun, 2008). Recent research links higher world food prices for the three main staple grains (wheat, rice and maize) to more numerous protests and riots in developing countries, though this relationship can be mitigated by policy interventions designed to shield consumers from higher prices (Arezki and Brückner, 2011; Bates, 2011). International market prices are not the only source of food-related protests. The lifting of government subsidies can lead to rioting as well. Until recently, the biggest demonstrations in modern Egyptian history were the three-day “bread riots” in 1977 that killed over 800 people, which were a response to the Egyptian government’s removal of state subsidies for basic foodstuffs, as mandated by the International Monetary Fund (IMF) (AFP, 2007). “IMF riots” can be traced to popular grievances over withdrawn food and energy subsidies (Walton and Seddon, 1994; Abouharb and Cingranelli, 2007). However, the relationship between “IMF riots” and food insecurity is more complicated. Generalized food and energy subsidies are regressive, meaning that wealthy and middle-class households generally capture more of the benefits. As such, it may be real income erosion, rather than acute food insecurity, that is driving participation in protest. Communal Violence Competition over scarce resources, particularly land and water, often causes or exacerbates communal conflict (Homer-Dixon, 1999; Kahl, 2006; Ban, 2007). Communal conflict involves groups with permanent or semi-permanent armed militias but does not involve the government. However, it can escalate to include government forces, as in the massacres in Darfur, Rwanda and Burundi. These conflicts have the potential to escalate to civil war when the government is perceived to be supporting, tacitly or otherwise, one communal group at the expense of the other (Kahl, 2006). While the conflict in Darfur began as a communal conflict over land and water, its impact escalated to devastating proportions following the government’s support for Janjaweed militias in their fight against the Sudan People's Liberation Army/Movement and Justice and Equality Movement rebels. Communal conflicts are common in the Sahel, the zone of transition between the Sahara desert and the savanna, particularly in years of extremely high and low rainfall (Hendrix and Salehyan, 2010). Recurrent, long-lasting droughts in the Sahel have undermined cooperative relationships between migratory herders and sedentary farmers, leading to food insecurity and increased competition for water and land between farmers and herders, but also within herding and farming groups. As a pastoralist in the Sudan noted: “When there is food, there is no cattle raiding.” (quoted in Schomerus and Allen, 2010). Once violence begins, conflict escalates and persists because of security dilemmas (fear of future attacks leads to preemptive attacks – see Posen, 1993) and lack of alternative dispute mechanisms between groups and effective policing within groups (Fearon and Laitin, 1996). These conflicts have been particularly lethal in Kenya, Nigeria, the Sudan and Uganda. Repeated clashes between Fulani herders and Tarok farmers in Nigeria’s Plateau State killed 843 people in 2004. Similar clashes between Rizeigat Abbala and Terjam herders in the Sudan killed 382 in 2007. Cattle raiding in the Karamoja Cluster, a cross-border region of Ethiopian, Kenyan and Ugandan territory, resulted in more than 600 deaths and the loss of 40,000 heads of livestock in 2004 alone (Meier, Bond and Bond, 2007). These conflicts tend to occur in politically marginalized territories far from the capital (Raleigh, 2010). Context Matters: Demographic, Social, Political, and Economic Mediators Food insecurity is a clear contributor to political instability and conflict. But neither hunger nor conflict exist in a vacuum: other aspects of the political, economic and social environment affect the degree to which food insecurity, and grievances more generally, are expressed violently (Tilly, 1978).

#### 4---Turns growth

Sanborn 18, managing editor @ Health Care Finance (Beth Jones, “Healthcare spending in the U.S. sends damaging ripple effect across other major sectors, households, Moody's report says,” *Health Care Finance News*, <https://www.healthcarefinancenews.com/news/healthcare-spending-us-sends-damaging-ripple-effect-across-other-major-sectors-households>)

Significantly higher healthcare spending in the United States will continue a damaging ripple effect across the economy, crunching public sector budgets and those of businesses and households as well. That's according to a new report from Moody's Investor Service. The U.S. spends almost double what other high-income countries spend as a share of their economies, Moody's said, totaling $3.3 billion in 2016 or 18 percent of GDP. Households and businesses made up nearly half of the spending. "An aging population and rising costs will drive spending higher, with credit negative implications for the public and private sectors," Moody's said. Rising healthcare spending will also strain public sector budgets. Medicare and Medicaid funding exposes state budgets to ballooning healthcare costs, as Medicaid accounts for nearly 30 percent of states' spending and 16 percent of their own revenue. State Medicaid spending is projected to increase faster than tax revenue over the next decade, and will absorb an even greater share of state resources. Medicaid expansion states face greater uncertainty thanks to cuts in federal contributions that could further strain budgets. Some states also face additional pressure and credit risk from employee health coverage costs. For some states, that includes retiree health benefit coverage and other postemployment benefit liabilities. Growing healthcare costs also impact America's households, which are unable to spend their money in other sectors when their healthcare takes up more of their resources. Health insurance premiums and out-of-pocket expenses represent the bulk of U.S. household spending on healthcare. Roughly half the population get their healthcare coverage from their employer, but premiums have grown faster than wages. Medicare beneficiaries aren't immune either, since they have to pay premiums and then also purchase supplemental coverage for services not covered like vision and dental. "The impact of healthcare costs on household finances and well-being reverberates through the U.S. economy since household consumption accounts for nearly 70 percent of annual economic output. The erosion of households' purchasing power could weaken the retail goods and services sectors, whereas the impact on households' debt repayment capacity might affect the large US consumer finance sector," the report said. Economic growth is also being increasingly encroached upon by healthcare spending in that the high spend comes without notable improvements in population health compared to countries that spend less, and potential investments in education and infrastructure are sidelined because resources have already been soaked up. This trend could mean prolonged stalling of economic growth potential and could serve as a barrier to U.S. businesses becoming more competitive.

#### 5--- Turns cyber

Arntz 20, was Microsoft MVP in consumer security for 12 years running. (Pieter, 3-13-2020, "The effects of climate change on cybersecurity", *Malwarebytes Labs*, https://blog.malwarebytes.com/awareness/2020/03/the-effects-of-climate-change-on-cybersecurity/)

By 2030, climate change costs are projected to cost the global economy $700 billion annually, according to the Climate Vulnerability Monitor. And The International Organization for Migration estimates that 200 million people could be forced to leave their homes due to environmental changes by 2050.

Climate change and its implications will act as a destabilizing factor on society. When livelihoods are in danger, this will spark insecurity and drive resource competition. This does not only have implications for physical security, but in modern society, this also has an impact on cybersecurity and its associated threats.

From a big picture, worst-case-scenario perspective, climate change could trigger profound international conflicts, which go hand-in-hand with cyberwar. Beyond nation-state activity, individuals that have no other means of providing for their families could turn to cybercrime, which is often seen as a low-risk activity with a potentially high yield.

#### **Enforcement against multiple big tech merger magnifies the link.**

Sutner 20, News Director @ TechTarget. (Shaun, 12-15-2020, "Efforts to break up big tech expected to continue under Biden", *SearchCIO*, <https://searchcio.techtarget.com/news/252493702/Efforts-to-break-up-big-tech-expected-to-continue-under-Biden>)

Biden pushed on antitrust

Antitrust activists, though, are optimistic about the prospects of a Biden administration clamping down on big tech -- an outcome they argue is long overdue, with decades of light enforcement of antitrust laws. They are pushing Biden toward aggressive antitrust policy. Thirty-three antitrust, consumer and progressive groups in a letter on Nov. 30 urged Biden to reject the influence of big tech vendors and to exclude big tech executives, lobbyists, lawyers and consultants from his administration. Prominent among the signatories was Public Citizen, the liberal consumer advocacy group that has called for Biden to triple the FTC's annual funding, from $400 million to $1.2 billion. "At the front end we want these investigations to be pressed. There are supposed to be investigations of Amazon and Apple and we believe there are cases to be brought there," said Alex Harman, competition policy advocate at Public Citizen and former chief legal counsel to Sen. Mazie Hirono (D-Hawaii). "It's a lot to bring big antitrust cases against multiple companies, and that requires resources," Harman said. "As a lawyer, I don't want to say 'Biden does this,' but we want results that structurally change these companies. We don't want quick resolutions and quick settlements."

#### New enforcement priorities trigger a tradeoff from health care

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” <https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit>)

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony: “The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.” I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making. The problem of resource constraints is particularly acute in the case of healthcare merger reviews, given the increasing consolidation of healthcare institutions. As one noted healthcare scholar stated in 2019, “The Affordable Care Act did not start the consolidation rapidly occurring with hospitals/health systems and medical groups, but it most definitely accelerated the movement to combine. In the last five years, the number and size of consolidations have been at an all-time high.”

#### Antitrust enforcers are drawing from other areas to challenge health care mergers now. The plan flips that strategy on its head.

Baer 20, Visiting Fellow, Governance Studies, The Brookings Institution (Bill, “Before the United States House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law,” <https://www.brookings.edu/wp-content/uploads/2020/05/Bill-Baer-5.19.20-Submission-to-Subcommittee-on-Antitrust-Commercial-and-Administrative-Law-of-the-House-Judiciary-Committee.pdf>)

The dollars and resources need to be increased for a number of reasons. First, as I have discussed, the courts today place a high burden on the government to prove an antitrust violation. That means the enforcers need to devote significant resources to investigating and proving their cases, including extensive document reviews, witness interviews and depositions and expert opinion – industrial organization economists and others. It is time-consuming; it is expensive; and it is resource-intensive. As an example in 2016 the Antitrust Division challenged two proposed mergers that would have dramatically consolidated the health insurance industry: Anthem’s proposed acquisition of Cigna and Aetna’s effort to acquire Humana.13 We successfully persuaded the courts to enjoin both deals, but to get there required the commitment of 25 to 30% of the Division’s professional staff. My colleagues in the FTC’s Bureau of Competition were similarly constrained as they litigated in multiple forums during that same time. That inevitably meant other matters were understaffed. That is no way to ensure adequate enforcement.

#### The plan requires significant resources---that trades off with other areas

DOJ 15 (COMPETITION AND MONOPOLY: SINGLE-FIRM CONDUCT UNDER SECTION 2 OF THE SHERMAN ACT : CHAPTER 9, originally published in 2008, updated in 2015, https://www.justice.gov/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-9)

The rapid changes and innovation typical of new-economy industries raise the question whether current antitrust enforcement mechanisms, which often involve lengthy investigation, followed by complex, time-consuming trials, are suitable for implementing effective remedies that adequately protect competition. Developing an equitable remedy in these markets has been likened to "trying to shoe a galloping horse."(116) One panelist observed that "the system seems broken in terms of speed, cost, and effectiveness of remedies."(117) Professor Hovenkamp explained the problem in the context of the Microsoft litigation: "[T]he legal wheels turn far too slowly. By the time each round of Microsoft litigation had produced a 'cure,' the victim was already dead."(118) Similar criticisms were directed to the long-running litigation against IBM. A panelist concluded that the IBM case highlights the "need for speed" and demonstrates "how the industry and the technology tend to change in a manner that by the time you are done, everything you thought when you started the case is irrelevant."(119) The time required for litigation may present particularly acute concerns in new-economy industries because in many instances, if anticompetitive conduct has eliminated potential competitors, the opportunity for robust competition may be difficult to recreate. As one panelist explained, in fast-moving, high-technology markets, "it's extremely difficult to resuscitate a competitor, after the competitor has been crushed. The convergence of factors that produced a competitive challenge before it was anticompetitively excluded[] may never re-appear, not in the same fashion, anyway."(120) To be sure, antitrust litigation ideally would be more rapid, reaching resolution and a remedy before the markets change significantly. In some cases, this issue can be addressed by consent decrees entered into before litigation; in others, it may suggest seeking preliminary injunctive relief. More generally, the effort to develop clear, objective standards for liability discussed in chapters 1-8 can help address this concern. The clearer and more objective the standard for liability, the more efficient and effective the antitrust enforcement. Violations are more likely to be deterred, litigation is likely to be faster and less expensive, and parties are more likely to reach prompt and effective settlements. Once an appropriate judgment has been issued, steps can be taken to ensure the efficacy of relief in dynamic industries. One possibility is to fashion remedies that go beyond the precise conduct at issue. For example, some panelists suggested that, before the Microsoft litigation ended, "the browser wars were over."(121) For that reason, the remedies at least partially focused on protecting competition that might arise through future middleware technologies. Of course, even when an industry's dynamic nature makes effective injunctive relief problematic, antitrust enforcement continues to play an important role. Thus, the Microsoft court recognized that, while the passage of time in fast-changing settings threatens enormous practical difficulties for courts considering the appropriate measure of relief . . . . [e]ven in those cases where forward-looking remedies appear limited, the Government will continue to have an interest in defining the contours of the antitrust laws so that law-abiding firms will have a clear sense of what is permissible and what is not."(122) The same potential for dynamic change between complaint and judgment that complicates crafting a remedy in the first place raises further complexity after a remedy is in place. Panelists warned that when technology is changing rapidly, a fixed remedy running years into the future may have damaging, unintended consequences.(123) Panelists' general admonitions that decrees should provide adequate flexibility(124) and should run no longer than necessary for re-establishing the opportunity for competition are therefore particularly applicable to cases in technologically dynamic settings.(125) V. Monetary Remedies The antitrust-remedial system in the United States is not limited to conduct and structural remedies. There are also a variety of monetary remedies available that can both deter future anticompetitive conduct and help restore injured parties to the position they would have been in without the unlawful conduct. Private plaintiffs in antitrust cases can seek monetary damages, which by law are trebled automatically.(126) Similarly, the federal government may seek treble damages in instances in which anticompetitive conduct harmed the United States itself,(127) and the states may recover damages they suffered themselves as well as on behalf of injured citizens in their parens patriae capacity.(128) In addition, certain monetary equitable remedies, such as disgorgement and restitution, may be available.(129) The antitrust enforcement agencies, however, do not have the authority to impose civil fines. Private Monetary Remedies--Treble Damages The U.S. antitrust laws permit private plaintiffs to recover three times the damages they prove they have suffered. Although treble damages can increase deterrence and overall enforcement, a number of observers argue that, in the section 2 context, treble damages also can chill procompetitive conduct and that the rationale for trebling is weaker here than in other contexts. As explained below, these concerns have led to questions about the appropriateness of treble damages in private section 2 cases. A successful plaintiff in a section 2 case is entitled to recover "threefold the damages by him sustained."(130) Plaintiffs also may recover attorneys' fees and, in limited circumstances, pre-judgment interest.(131) These private monetary remedies provide incentives for private enforcement and advance at least three important goals: deterrence, punishment of wrongdoers, and compensation of victims.(132) Trebling damages generally increases deterrence by compensating for the possibility that anticompetitive conduct will not be detected and prosecuted.(133) Likewise, the possibility of winning multiple damages enhances plaintiffs' incentives to seek out and detect anticompetitive conduct and to bear the time, expense, and uncertainty of bringing suit.(134) The Department believes that private actions and resulting monetary remedies play an important role in overall antitrust enforcement. The government has finite resources to prosecute antitrust violations; private enforcement supplements these efforts. Indeed, private plaintiffs, rather than the government, undertake a significant portion of antitrust enforcement, including section 2 enforcement.(135) Moreover, by deterring violations, private damages can reduce the need for government enforcement in the first instance.

#### The plan extends antitrust beyond its institutional capacity

Sokol 20, University of Florida Research Foundation Professor of Law, University of Florida (Daniel, “Antitrust's "Curse of Bigness" Problem ,” <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=2020&context=facultypub>)

Antitrust works well because it is technocratic in that a singular (but flexible within its economics) goal is administrable institutionally. To introduce the world of political imperfections into a technical process that examines markets would create further distortions affecting consumers.152 Antitrust does well dealing with antitrust problems. To the extent that there are other related problems, the right answer is not to create an antitrust that lacks democratic accountability (because antitrust becomes regulation via the backdoor) and exceeds its mandate of the past forty years. Rather, the better solution is to identify the underlying problem and solve it with more effective tools. If the problem is one of redistribution, tax is a better choice than antitrust.153 If the problem is one of privacy, strengthen privacy laws. 154 If the problem is one of financial institutions or sector regulators not doing what they need to do, correct structural problems with sector regulators. Antitrust has increasingly moved out of sector regulation 155 and toward advocacy. 156 The advocacy budget of the antitrust agencies is tiny, and to the extent that the problem is the rules of the game for particular industry sectors, Wu falls short by not suggesting greater competition advocacy. Wu’s concern with big tech companies because they are big (p. 126) is as misplaced now as it was earlier in antitrust history. Antitrust has gone through various moments in which it had reevaluated whether it has the proper tools to combat anticompetitive behavior in technology-related markets.157 It does have such tools and can bring important cases in these markets.158 It was just a decade ago that we were told that Walmart was taking over shopping, that eBay was the largest online marketplace, or that Facebook was the primary way in which users shared information. Today, Uber competes with Lyft, Amazon has eclipsed eBay, Facebook is a legacy service, and younger people use any other set of applications to share information— such as Pinterest, Twitter, or Snapchat. In a world of continuous change, antitrust is what remains constant. It has the tools to police against unlawful exercise of monopoly power and adapts to changes in economic theory and empirics. To ask antitrust to go beyond its institutional capacity sets up antitrust to fail, because Wu’s deeper concern is with how society is structured. That structure can be changed through elections to the presidency and Congress and through changes as to the makeup of the Supreme Court. Antitrust history shows that it is the Supreme Court that changes antitrust law and policy the most because of antitrust’s common law–like nature. 159

#### Antitrust lawsuits are resource-consuming---they trade off with each other

**Mcgill, 19**, technology reporter for POLITICO Pro, (Margaret Harding , “Why breaking up Facebook won't be easy,” *POLITICO*, <https://www.politico.com/story/2019/05/27/breaking-up-facebook-antittrust-1446087>)

3) Antitrust cases take time and money The Justice Department’s antitrust lawsuit against AT&T, and its unsuccessful battle to break up Microsoft, were yearslong affairs that started under one presidential administration and ended in another. That means whoever wins the White House in 2020 could well be out of office before a potential case against Facebook is decided or settled. The AT&T case began in 1974 and ended in 1982, after which the government spent another two years implementing an agreement that split up the company into eight smaller entities. The government spent another decade in the 1990s and early 2000s waging an antitrust war against Microsoft for anti-competitive behavior, arguing that its operating system and internet browser should be separated. But by the time the court approved a settlement in 2002, requiring changes to the company's business practices but leaving Microsoft intact, the penalties did not have much impact, Verveer said. “Technology will change, business models will change, consumer preferences will change,” he said. “You could end up at the end of a long process with something that frankly doesn't make very much difference because the world has moved on.” That's one reason some Facebook critics, including former DOJ antitrust official Gene Kimmelman, argue that imposing restrictions on how social media companies use data could be a more effective strategy than breaking them up. A lengthy lawsuit against Facebook would also consume a lot of resources at the DOJ, which might have to hire outside attorneys and other experts as it did in the Microsoft case. The expense could even require additional appropriations from Congress, Schwartzman said. “It is a really daunting enterprise,” Schwartzman said. “The likelihood the Justice Department or Federal Trade Commission would be able to undertake such an activity is remote.”

#### This card says there are no new regulations or laws that these create and the rest of it is

MFEM 8-19, Masuda, Funai, Eifert & Mitchell, Ltd., "The Implications of President Biden's ‘Executive Order on Promoting Competition in the American Economy’," Mondaq, 08/19/2021, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1103288/the-implications-of-president-biden39s-executive-order-on-promoting-competition-in-the-american-economy.

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

Although the implications of the Order are not limited to the area of antitrust, the Order reflects the Biden Administration's emphasis on it. For example, the Order encourages the DOJ and other agencies responsible for banking to update guidelines on banking mergers to provide heightened scrutiny of mergers. The Order also encourages the DOJ and the FTC to challenge prior “bad mergers,” meaning that mergers that went unchallenged under previous administrations may be challenged in the future. Another specific area that the Order focuses on is the right to repair; it encourages the FTC to limit equipment manufacturers from limiting consumer's rights to repair.

Other affected areas of law include, but are not limited to, labor and employment (e.g. non-compete agreements) and consumer protection (e.g. financial data portability). Corporations with any significant activity in the United States should assess the impact that the Order would have on their businesses and prepare for the materialization of the specific initiatives included in the Order.

#### Resources are sufficient for effective health enforcement now — their card is not specific

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

During my years as an executive in the FTC’s Bureau of Competition and as FTC general counsel, I became quite familiar with FTC antitrust development and policy research applicable to healthcare. In my opinion, the FTC staff possesses the legal tools (with the exception of the nonprofit limitation, discussed earlier) to fully investigate and take action against anticompetitive behavior in this sector. What’s more, the FTC has had an excellent enforcement track record, including in hospital mergers. It currently is addressing a broad range of healthcare-related activity. Existing agency guidance, including the 2020 Vertical Merger Guidelines, provide ample support for appropriate, evidence-based, economically sound enforcement. New general legislation is not needed.

#### Prioritization of antitrust in health care successful promotes competition

Sage 3, MD, JD, vice provost for health affairs @ UT (William, et al, “Why Competition Law Matters To Health Care Quality,” *Health Affairs*, 22.2)

Competition law has successfully defended price competition in health care, and courts have made some progress incorporating quality as a competitive dimension. However, the recent rapid conversion of the health care system to market governance places greater demands on competition law. For market processes to result in the appropriate mix of cost, quality, and output, competition law must be proactive. In other words, quality must be fully factored into the competitive mix, allowing consumers to weigh both price and nonprice characteristics of health care. Courts have had few guideposts for this endeavor, and health care antitrust cases involving plausible assertions of quality-motivated conduct are accordingly dealt with at a high level of generality. Developing an effective analytical framework requires reconciling opposite notions of quality. Competition law treats quality as one attribute of a good or service, which must be traded off against price and other attributes, while the medical profession has historically regarded quality as an irreducible minimum standard, to be determined by physicians without reference to cost. As one of us has previously observed, “these conflicting orientations toward quality lead in fundamentally different directions. The medical professional wants to impose professionally predetermined restrictions on market processes, while the antitrust lawyer strives to free the market from such restrictions, with both groups asserting their positions in the name of quality.” 32 The rise and subsequent decline of managed care has not eliminated this conflict, but it has changed the landscape in important ways. First, managed care has sensitized judges to trade-offs between price and quality. Indiana Federation was written as if the primary reason for utilization review was the elimination of waste. A judge familiar with managed care would be more likely to perceive the review procedures as enforcing a price-quality trade-off. Second, the battle between managed care and pharmaceutical companies, played out in the market through pharmacy benefit management and direct-to-consumer drug advertising, has highlighted the importance of nonphysicians in the health care system. Third, managed care has increased judicial skepticism regarding the motives of insurance companies that claim to be agents of consumers. Courts may well have become more willing to accept the medical profession (and nonprofit hospitals) as patient representatives. Fourth, the bottom-line orientation of some managed care plans has forced the question of whether a market model is compatible with traditional social objectives in medicine, such as compassion, charity, and trust. Treat all quality claims as empirical issues. Courts have historically relied on presumptions and burdens of proof to handle health care antitrust cases. As noted previously, California Dental requires judges to decide quality cases based on objective empirical evidence. Unfortunately, statistical analysis of quality is, as yet, virtually invisible in antitrust litigation. For example, the well-established relationship between hospital volume and quality has yet to be reflected in legal analysis. One promising sign in this regard is that the FTC recently closed an investigation in which physician collaboration resulted in a substantial degree of market concentration because the parties demonstrated dramatic objective improvements in quality of care. 33 Hospital merger cases involving quality-related scale economies represent a logical extension of this approach. Consolidation that would be problematic applying general antitrust principles might well be defensible based on verifiable improvements in clinical outcomes for patients undergoing particular procedures. Preserve technological innovation at the patent-antitrust interface. Legal protection of innovation depends on a complex interaction between patent and antitrust law, the former granting a conditional monopoly as an incentive to future inventors, the latter attempting to confine the monopoly narrowly to benefit current consumers. Strategic behavior by patent holders can improperly enlarge the scope of patent protection. Private plaintiffs rarely pursue technology-related antitrust claims because they usually do not meet strict legal requirements regarding standing to sue and antitrust injury. Furthermore, defendants routinely argue that their conduct is shielded by the Noerr-Pennington doctrine, which protects “political action” such as lobbying the patent office or FDA, even if it is engaged in collectively by competitors, and even if it produces anticompetitive effects. Incentives for strategic manipulation of public processes involving patents are particularly intense because the stakes are structured in zero-sum fashion: A government decision strengthening one competitor simultaneously weakens all others. These factors make it particularly important for the DOJ and FTC to make such cases an enforcement priority, as they have done in recent years. 34

#### Consolidation wrecks affordable quality health care provision---antitrust enforcement solves

Karas 21, Dr., JD Candidate @ Harvard (Laura, “Is It Time to Reverse Health System Consolidation?,” <https://blog.petrieflom.law.harvard.edu/2021/04/08/is-it-time-to-reverse-health-system-consolidation/>)

Concentrated corporate power poses an obstacle to the provision of affordable health care across the state of Massachusetts. In particular, a few large hospital systems wield monopoly power to maintain supracompetitive hospital prices. Is it time to consider breaking up large health systems? Health care expenditures per capita in Massachusetts have been among the highest in the nation, and until recently, total health care spending growth in Massachusetts exceeded national averages. Though Massachusetts boasts the highest rate of health insurance coverage in the country, recent research demonstrates that health care remains unaffordable for a substantial proportion of Massachusetts residents. And the state’s near-3% rate of uninsurance masks variation across counties; “hot-spot” communities composed of lower-income residents, many of whom are young adults and noncitizens, experience higher rates of uninsurance. Hospital consolidation has played a role in maintaining unaffordable health care prices, fueling health care spending growth, and compromising equitable health care provision in Massachusetts (and across the United States). What, if anything, should be done in response? I consider this question and discuss recent antitrust investigations and actions against the Commonwealth’s behemoth health care providers. Confronting the Problem of Hospital Prices Drug manufacturers continue to come under scrutiny for “price gouging” the American public with high pharmaceutical drug prices, whereas hospital prices have tended to attract less attention. Relative inattention to hospital spending and hospital prices is a mistake. Hospital care and physician services comprise the bulk of U.S. health care spending, and the link between provider consolidation and higher prices is well established. Hospital prices traditionally have been enshrouded in secrecy, though the CMS final rule mandating hospital price transparency that took effect January 1, 2021, aims to change that. Hospital expenditures grew at a faster rate in 2019 (6.2%) than did physician expenditures (4.6%) and retail prescription drugs (5.7%). And the COVID-19 pandemic is likely to boost hospital expenditures even higher in the near term and drive further provider consolidation. Outpatient volume remains depressed below pre-pandemic levels, placing pressure on outpatient providers to close or consolidate. A 2019 Health Affairs article reported that growth in hospital prices outpaced growth in physician prices in recent years for common, high-volume services such as C-sections and knee replacements, leading the authors to suggest that that “there may be significant differences in the bargaining leverage of hospitals and physicians,” and that “policymakers should devote more of their efforts to addressing growth of hospital prices.” Blocked Merger Attempts and Price Caps: Are They Enough? Partners HealthCare, recently renamed Mass General Brigham in a costly and criticized rebranding effort, is the Commonwealth’s preeminent health care provider. It resulted from the merger of Massachusetts General Hospital and the Brigham and Women’s Hospital — previously considered “fierce rivals” — in 1994. Partners’ domination of the market for health care provision in Massachusetts should give ordinary citizens and regulators pause. And indeed it has. In 2009, the Massachusetts Attorney General’s Office (AGO) began an investigation into deals between Partners HealthCare and Blue Cross Blue Shield of Massachusetts that increased prices paid to Partners’ physicians and hospitals, an investigation apparently prompted by Boston Globe reporting. In 2010, the Department of Justice announced its investigation into Partners HealthCare for potential Sherman Act violations based on the health system’s contracting practices with health insurers like Blue Cross Blue Shield and others. Later, in 2015, a Massachusetts Superior Court rejected a settlement between Partners HealthCare and the Massachusetts AGO to put in place conduct remedies for Partners’ proposed acquisition of South Shore Hospital, leading the two health systems to terminate their merger plans. The decision warned: [T]he settlement, if adopted by this Court, would cement Partners’ already strong position in the health care market and give it the ability, because of this market muscle, to exact higher prices from insurers . . . . These Partners-driven increases in costs are estimated by an independent state agency, the Massachusetts Health Policy Commission (HPC), to amount to tens of millions of dollars a year. . . . The Proposed Consent Judgment . . . does not reasonably or adequately address the harm that is almost certain to occur as a consequence of the anticompetitive conduct by Partners . . . . Concerns regarding Partners’ market position and market power remain. Yet, little has been done to address its market dominance. To be sure, the Massachusetts Health Policy Commission, the Massachusetts AGO, and federal agencies like FTC and DOJ continue to examine hospital mergers in Massachusetts. But the merger of Beth Israel Deaconess Medical Center and Lahey Health System was allowed to proceed in 2018, despite research from the Massachusetts Health Policy Commission finding that the merger will likely result in “significant price increases.” Specifically, the final report from the Massachusetts Health Policy Commission on the proposed merger of Beth Israel Deaconess and Lahey Health noted the following: After the transaction, [Beth Israel Lahey Health]’s market share would nearly equal that of Partners HealthCare System, market concentration would increase substantially, and [Beth Israel Lahey Health] would have significantly enhanced bargaining leverage with commercial payers[,] . . . enabl[ing] it to substantially increase commercial prices that could increase total health care spending by an estimated $128.4 million to $170.8 million annually for inpatient, outpatient, and adult primary care services. . . . These figures are likely to be conservative. In this particular case, the Massachusetts AGO imposed a seven-year price constraint and secured commitments from the merging entities for capital investment in safety net affiliates that serve underserved communities in Massachusetts. But, temporarily slowing price growth while permitting consolidation may not be enough. Professors Clark Havighurst and Barak Richman have called “monopoly power in the hands not only of nonprofit hospitals but also of other providers or suppliers of health services or products . . . more, not just equally, harmful to both consumers and the general welfare than monopolies of other kinds” (emphasis added). Elsewhere, Richman has called “health sector concentration combined with health insurance . . . cause for particular alarm,” and has explained that promises of charitable investment — such as that secured from Beth Israel Lahey Health — should not be viewed favorably in the antitrust analysis. Charity amounts to “a common tactic to solicit community support and judicial sympathy, even though [it] reduce[s] the efficiency of health care investments and further damage[s] the market for health care services.” Richman has encouraged courts to view assurances of research and charity as “reason[s] to oppose, not support, the mergers.” Are Health Systems Becoming “Too Big to Fail”? The newly rebranded Mass General Brigham seeks to become “the premier integrated healthcare system of the future.” But will the lofty and aspirational “integrated health system of the future” also be one that possesses unbridled power set to prices, ultimately driving unsustainable spending and health care inequities that deprive some residents of health care access and many more of affordable care? Bigger doesn’t always mean better. But bigger health systems will mean higher prices. The provider consolidation that Mass General Brigham and Beth Israel Lahey Health exemplify is reminiscent of the consolidated power of financial institutions that later required government bailout in the 2007-08 financial crisis. As former Chairman of the Federal Reserve Alan Greenspan famously stated, and as others have echoed, “if they’re too big to fail, they’re too big.” Maybe the time has come to reverse provider consolidation in Massachusetts (and elsewhere, since, to be sure, the trend toward health system consolidation has been occurring nationwide and is predicted to continue post-pandemic). If the goal really is affordable health care, then it might be time to break up the large hospital systems and find ways to achieve integration of services and efficiencies across health systems without common corporate ownership.

#### It’s all interconnected

Macy & Lee 17, \*Creighton J., Attorney, Baker McKenzie. Formerly served as chief of staff and senior counsel in the Department of Justice Antitrust Division, working as a senior advisor to the acting assistant attorney general on civil and criminal antitrust enforcement and policy matters, as well as budget and personnel issues. \*\*Craig Y., Attorney, Baker McKenzie. Leads the Firm’s global cartel task force (12-14-2017, "When Merger Review Turns Criminal", *American Bar Association*, https://www.americanbar.org/groups/business\_law/publications/blt/2017/12/07\_lee/)

But that separation of criminal and civil enforcement sections at the Antitrust Division does not create walls or silos. The different criminal offices often work together on large investigations and trials. Similarly, the size of many civil investigations requires pulling resources from the various civil sections, as well as from the Antitrust Division’s Appellate, International, and Competition Policy and Advocacy sections. But the collaboration does not end there. Coordination between the civil and criminal sections is the norm. Section managers meet regularly to discuss matters and often consult on an informal basis. Cross‑pollination occurs at the trial attorney level as attorneys are detailed to other sections for specific matters or periods of time. And understanding this collaboration between the civil and criminal sections is vital to attorneys and their clients subject to the merger review process. A recent case not only shows how in sync the Antitrust Division’s criminal and civil sections are, but also highlights the implications of that collaboration.

In December 2014, two packaged seafood companies announced their proposed merger. As is customary to the review process, the parties submitted documents to one of the Antitrust Division’s civil sections. What followed was anything but routine. However, based on the level of collaboration within the Antitrust Division, it should not have been unexpected.

From document review to charges for price-fixing

The Antitrust Division’s civil attorneys reviewed the documents submitted by the parties and uncovered information that raised concerns of price‑fixing. When the parties walked away from the deal on December 3, 2015, then-Assistant Attorney General Bill Baer’s statement in the press release made a veiled reference to their problematic documents. He said, “Our investigation convinced us—and the parties knew or should have known from the get-go—that the market is not functioning competitively today, and further consolidation would only make things worse.”

The parties’ abandonment of the deal did not end the Antitrust Division’s investigation. Instead, the civil attorneys conducting the merger review shared their findings with their criminal counterparts. A criminal section proceeded to open a price‑fixing investigation based on the shared materials. That investigation has borne fruit and is ongoing. To date, three individuals and one company have been charged for participation in a price‑fixing conspiracy. Criminal antitrust violations, such as price-fixing, have serious implications. Not only are the criminal penalties substantial, but companies can be subject to civil suits with treble damages (15 U.S.C. § 15.).

For individuals, the maximum penalties are 10 years in prison and a $1 million fine. For corporations, the maximum fine is $100 million. Fines for both individuals and corporations can exceed the statutory maximum amount by up to twice the gain derived or twice the loss by victims. See, e.g., Price Fixing, Bid Rigging and Market Allocation: An Antitrust Primer, Department of Justice Antitrust Division, available at https://www.justice.gov/atr/priceifxing-bid-rigging-and-market-al location-schemes (discussing the Sherman Act).

While it is not public what specific information was contained in the documents that raised the attention of the reviewing attorneys, or exactly how the process happened, the Antitrust Division did state that the criminal investigation was triggered by “information and party materials produced in the ordinary course of business.” Until more information is revealed, several questions remain, including whether similar criminal investigations based on documents submitted for merger review could be waiting to surface.

The packaged seafood matter is not the first criminal case to stem from a civil investigation and likely will not be the last. The hand‑in‑hand coordination between the civil and criminal sections of the Antitrust Division will continue. Companies need to be increasingly aware of the risks that ordinary course documents present, not just in impacting merger approval but also in criminal implications. Merger review does not exist in a vacuum. Once documents fall into the Antitrust Division’s (or FTC’s) hands, parties can expect that they will be closely reviewed with an eye toward both civil and criminal actions. Documents always tell a story—and attorneys need to be sure that the story told is one to support a proposed deal and not a criminal investigation.

Similarly, the FTC and Antitrust Division share a close working relationship. We will continue to explore and monitor the collaboration between those two agencies as well as with state attorneys general. We also plan to address the collaboration among competition agencies around the world. Stay tuned.

#### They said Section 7 — still links

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” <https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit>)

Many healthcare entities (particularly hospitals) are organized as nonprofit corporations. This fact does not present problems for FTC and Antitrust Division merger enforcement under section 7 of the Clayton Act, which applies both to for-profit and not-for-profit enterprises. The Sherman Antitrust Act of 1890, enforced by the Antitrust Division (but not the FTC), also applies to nonprofits. Unfortunately, however, FTC nonmerger antitrust enforcement is stymied by the fact that it does not reach nonprofit corporations. This limitation makes no sense. It places major if not insurmountable obstacles before the FTC’s ability to investigate and, where necessary, take enforcement action against a wide range of monopolizing or otherwise anticompetitive conduct in the healthcare sector.

#### FTC is empirically effective

Abbott 21, formerly served as general counsel of the Federal Trade Commission (Alden, “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare,” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit)

During my years as an executive in the FTC’s Bureau of Competition and as FTC general counsel, I became quite familiar with FTC antitrust development and policy research applicable to healthcare. In my opinion, the FTC staff possesses the legal tools (with the exception of the nonprofit limitation, discussed earlier) to fully investigate and take action against anticompetitive behavior in this sector. What’s more, the FTC has had an excellent enforcement track record, including in hospital mergers. It currently is addressing a broad range of healthcare-related activity. Existing agency guidance, including the 2020 Vertical Merger Guidelines, provide ample support for appropriate, evidence-based, economically sound enforcement. New general legislation is not needed.