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#### Biden’s continued PC is key to pass Build Back Better next week – despite inflation concerns

Barrón-López 11-11 (Laura Barrón-López, White House Correspondent for Politico, formerly covered Congress for the Washington Examiner, HuffPost and The Hill, BA political science, California State University, Fullerton, “Dems to White House: The only prescription is more Biden,” Politico, 11-11-2021, <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>)

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again.

Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt.

The clearest solution to avoiding this, they argue, is more Biden.

“All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.”

Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.”

Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate.

But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change.

Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15.

“They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.”

White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days.

“There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said.

The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal.

The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.”

A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass.

But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan.

"They need to sell [physical infrastructure] but also act like it's not enough," said the activist.

"How are they also creating the urgency for BBB to get done, for it to stay on the timeline of getting it done by Thanksgiving? It's a balancing act.”

Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country.

“This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a very profound political imperative for Democrats to get this finished, to end the infighting and sausage-making and shift to creating a narrative about what Democrats have just done for Americans because they've been utterly unable to do that.”

A number of groups plan to amp up pressure next week as Congress returns. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president.

“We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to get Congress to act quickly and get the full back package.”

Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.”

The longer it takes to pass the social spending plan, the harder it becomes to keep the party unified, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced Biden to quickly issue a statement addressing the issue and ever-so-slightly shift his messaging, arguing that passage of the social spending plan would combat inflation.

“Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

#### Plan necessarily drains PC – trading off with unrelated agenda items.

Carstensen 21 Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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.

#### PC’s key to global follow-through on climate post-Glasgow summit – impact’s extinction

Chon 11-8 (Gina Chon, Columnist at Reuters Breakingviews, former US Regulatory and Enforcement Correspondent, Financial Times, BS Journalism, Northwestern University, “America’s swing senator can save or scorch planet,” Reuters, 11-8-2021, <https://www.reuters.com/breakingviews/americas-swing-senator-can-save-or-scorch-planet-2021-11-08/>)

The health of the planet hangs somewhere over West Virginia. Joe Manchin, one of the coal state’s senators, is in line to cast the deciding vote on President Joe Biden’s $1.8 trillion “Build Back Better” spending plan. He’ll indirectly be voting on Biden’s ability to influence other countries to fight climate change after the COP26 summit read more.

Biden has faced two main challenges to his spending plan, a companion to the $1 trillion infrastructure legislation Congress approved on Friday. One objection comes from lawmakers worried about the amount of money at stake. After an earlier compromise, climate change initiatives are the biggest chunk of the overall blueprint at $555 billion, more than half of which comes from tax credits for cleaner vehicles and manufacturing. Manchin is already a self-confessed budget worrier.

The other obstacle is unease around specific climate initiatives. Manchin hails from a state with less than 2 million residents, but a heavy reliance on coal. His disapproval helped squash Biden’s proposal for a Clean Electricity Performance Program that would have incentivized utilities to stop using oil, coal and gas. The goal was for 80% of electricity produced in the country to come from clean sources by 2030, compared to the current 40%.

Green-energy tax credits are still on the table and offer a bigger bang for the taxpayer’s buck than the clean electricity program, think tank Resources for the Future estimates. By 2030 they would get the United States to 69% of its electricity coming from clean sources.

Manchin has good reason to keep those tax credits alive. While West Virginia is the second-largest coal producer in the United States and top five in natural gas, according to the U.S. Energy Information Administration, it’s also one of the states most exposed to damage from climate change. More than 60% of its power stations are at risk from a so-called 100-year flood, according to the First Street Foundation.

The senator’s decision will have global repercussions. China, India read more and other countries are only likely to listen to Biden’s pleas to help fight climate change if he looks able to meet such pledges himself. For example, the president wants other countries to help cut methane emissions by 30% this decade, but would still need Manchin’s support to levy fines on U.S. methane-leakers, which is far from guaranteed. For such a small population, West Virginia has a huge responsibility.

**2**

**Core antitrust laws are economy wide**

Gerber 20 --- David J Gerber, Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust”, Ch. 1, page 15, 2020, https://oxford.universitypressscholarship.com/view/10.1093/oso/9780198727477.001.0001/oso-9780198727477-chapter-2

C. **A Core Definition**

The Guide uses the **term**s “competition law” and “antitrust law” to refer to **a general domain of law** whose object is to deter **private restraints** on **competitive conduct**. We look more closely at the terms:

1**. “General”—**The laws included are those that are **applicable throughout an economy** and thereby provide a framework for **all market operations** (there are always some exempted sectors). Laws dealing only with **specific markets** (e.g., telecommunication) **do not play that role.**

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

**Vote neg for limits and ground --- sectors are boundless and create uniqueness and link unpredictability for topic specific disads**

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#### The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes a structural presumption against agricultural mergers and the removal of anticompetitive remedies in agriculture mergers. The FTC should release a policy statement and data sets that reflects this and enforce accordingly.

#### The counterplan solves and competes---the FTC interprets current authority without creating new prohibitions.

Kahn 21 et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s congressionally mandated duty to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the Federal Trade Commission Act to reach beyond the Sherman Act and to provide an alternative institutional framework for enforcing the antitrust laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 These concerns spurred the passage of the FTC Act, which created an administrative body that could police unlawful business practices with greater expertise and democratic accountability than courts provided.15

At the heart of the statute was Section 5, which declares “unfair methods of competition” unlawful.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides no private right of action, shielding violators from private lawsuits and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to leave it to the Commission to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the various unlawful practices, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the agency’s Section 5 authority, holding that the statute, by its plain text, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

#### Our planks about *clear statements* and *data sets* mean CP avoids politics and rollback.

* Assumes rollback efforts from either Political and Judicial actors.
* Empirical examples of FTC rollback go *Neg* – those episodes DID NOT include policy statements or data sets.

Kovacic 15 et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

Longevity for its own sake is hardly a worthy aim. There is little evident value in preserving a competition agency that ensures its survival by committing itself to unobtrusive law enforcement and declining to confront important and potentially controversial market failures. If a competition agency is to retain an economically significant enforcement role, one must ask how the agency is to perform that role without: (a) succumbing to pressure that undermines its capacity to make merits-based decisions about how to exercise its power to bring and resolve cases or use other instruments in its policy-making portfolio; and (b) losing the accountability and effectiveness that requires some connection to and engagement with the political process. What measures might enable a competition agency to resist suggestions that it undertake fundamentally flawed initiatives? How can one protect meritorious enforcement programs from political attack and intervention by political branches of government as such programs come to fruition? Presented below are some possible solutions. A. Greater Specification of Authority One approach is to avoid extremely open-ended grants of authority which application invites objections that the agency has overreached its mandate or inspires political demands that it use seemingly elastic powers to address all perceived economic problems. A fuller specification of powers and elaboration of factors to be considered in applying the agency’s mandate can supply a more confident basis for the authority’s exercise of power and a stronger means to resist arguments that it enjoys unbounded power. B. More Transparency, Including Reliance on Policy Statements and Guidelines Greater transparency in operations can increase the agency’s perceived legitimacy and supply a useful barrier to destructive political intervention. The foundations of a strong transparency regime include the compilation and presentation of complete data sets that document agency activity and matter-specific transparency devices, such as the preparation of statements that explain why the agency closed a specific investigation. Competition agencies can usefully rely extensively upon policy statements and guidelines to communicate their enforcement intentions and delimit the intended application of their powers. One purpose of such statements is to suggest how the agency defines the bounds of the more open-ended and inevitably ambiguous grants of authority its enabling statutes. For example, the FTC’s policy statements in the early 1980s concerning consumer unfairness and deception were important steps towards defining how the agency intended to apply its generic consumer protection powers. By articulating the bases upon which it would challenge unfair or deceptive conduct, the Commission strengthened external perceptions (within the business community and within Congress) that it would exercise its powers within structured, principled boundaries, and it increased, as well, its credibility before courts. The FTC has never issued a policy statement concerning its authority to ban unfair methods of competition, and the failure to do so has impeded the effective application of this power. A second important use of policy statements is to introduce plans for innovative enforcement programs. Before embarking upon a new series of initiatives, the competition agency would issue a policy statement that identifies conduct it intends to examine and, in stated circumstances, proscribe. Here, again, the FTC’s experience provides a useful illustration. Policy statements would be useful when the agency seeks to use section 5 of the FTC Act to reach beyond existing interpretations of the Sherman and Clayton Acts, or to apply conventional antitrust principles to classes of activity previously undisturbed by antitrust intervention. By issuing a policy statement before commencing lawsuits, the FTC would give affected parties an opportunity to comment upon the wisdom of the agency’s proposed course of action and to adjust their conduct. Such an approach would likely increase confidence within industry and within Congress that the Commission is acting fairly and responsibly, and it could well make courts more receptive to the FTC’s application of section 5 as well.

**4**

**Vagueness –**

**The plan’s generic wording is manipulated in implementation – wrecks solvency**

**Baer 20** [Bill Baer former visiting fellow in governance studies at The Brookings Institution and assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice, 11-19-2020 <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/?longform=true>]

Meaningful antitrust reform should be a priority of the next administration and the 117th U.S. Congress. The challenge of drafting legislation is substantial. On the one hand, the legislation must be written for a judiciary that is both increasingly hostile to antitrust claims in general and increasingly textualist in its statutory interpretation. On the other hand, in the context of the antitrust laws, courts have often “abandoned statutory textualism” to interpret the laws “in favor of big business,”15 explains Daniel Crane, the Fredrick Paul Furth Sr. professor of law at the University of Michigan Law School. If given discretion to interpret new legislation, the current judiciary is likely to fall back on the same **skepticism** of antitrust enforcement that it has advanced over the past 40 years. Despite those concerns, legislation remains the best option to revitalizing antitrust enforcement. In drafting legislation, Congress can learn from the past. One case in point: The legislative history of the Celler-Kefauver bill, not its text, reveals the bill’s intent, which courts increasingly ignore.16 Congress can reduce that risk by **being explicit** in the text when vacating or rejecting existing precedent and when identifying relevant factors, such as the importance of protecting both actual and potential competition. Congress should identify in statute the elements sufficient to establish an antitrust violation **as precisely as possible**.

**Voting issue---**

**Aff conditionality destroys ground. 2AC clarifications dodge DA links and counterplan competition.**

### 5

#### FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.

Nam 18 Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“FTC Act”), a model for many other countries that set up their own competition agencies, combines the control afforded by presidential appointment and removal powers over FTC commissioners with an exceedingly discretionary mandate. This Article contends that the FTC Act’s outmoded openness to strong presidential direction, where adapted abroad, has helped detract from antitrust regulator independence. Even advanced players in the liberal international economic order such as South Korea have made use of the United States’ original blueprint for unitary executive-stamped antitrust enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction in antitrust enforcement is particularly suited to capitalist economies helmed by administrations with mercantilist policies, given their belief that the state and big business must cooperate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces preventing global convergence in antitrust enforcement, and of their roots.

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. as a role model while developing their competition regimes.6 It is ironic, then, that to this day a central obstacle to the aspired international “culture of competition” can be found in none other than the influence of the U.S.’s own FTC Act.7

American antitrust priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that would reemerge abroad in many later-developing countries.

The deepening global retreat from internationalism *and* free market principles in the present day, with the specter of trade wars looming, is exacerbated by nationalist competition regimes that are derivative of a U.S. model predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

#### Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.

Nam 18 Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a creeping loss of public confidence in open markets—coupled with the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, as illustrated in this Article—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of protectionist silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even perennial norms and conventions of the U.S. competition regime which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that carried over abroad to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent liberal peace156 often taken for granted. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s formative influence is not above scrutiny or reproach. Still-elusive realization of the liberal economic international order’s intended form will require an expanded constellation of independent competition regulators empowered to enforce antitrust laws consistently.

#### Global free trade reversals will cause *multiple existential impacts*.

Langan-Riekhof 21 et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade and financial connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to develop nuclear weapons, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like the Arctic and space. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, conflicts became endemic, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address climate changes, little was done to slow greenhouse gas emissions, and some states experimented with geoengineering with disastrous consequences.

### 6

#### The 50 states and relevant territories should

#### ---establish an structural presumption against mergers

#### ---engage in multistate antitrust action and enforcement of agricultural mergers ---initiate quo warranto proceedings as a tool of last resort against any non-compliant corporation found to be engaging in anticompetitive petitioning

#### States solve best---multistate organizations, expanded jurisdiction, and can “fill the gap”

Rauch 20 Daniel E. Rauch J.D. Yale Law School. (2020 ). ARTICLE: SHERMAN'S MISSING "SUPPLEMENT": PROSECUTORIAL CAPACITY, AGENCY INCENTIVES, AND THE FALSE DAWN OF ANTITRUST FEDERALISM. *Cleveland State Law Review*, 68, 172. <https://advance-lexis-com.proxy2.cl.msu.edu/api/document?collection=analytical-materials&id=urn:contentItem:5YDM-6NS1-FCK4-G4MV-00000-00&context=1516831>. {DK}

In 2020, as in 1890, states attorneys general have much to offer antitrust enforcement. Illegal anticompetitive conduct is often concentrated locally, rather than nationally, making state-level enforcement especially appropriate. 202Link to the text of the noteMany states have antitrust statutes (or bodies of state law) that allow for prosecutions that the federal laws do not. 203Link to the text of the noteState governments often will have better knowledge of local economic conditions than distant agencies in Washington, making them natural choices for [\*210] antitrust enforcement. 204Link to the text of the noteAnd if the federal government fails to enforce the antitrust laws, state attorneys general often have the ability and political incentives "step up" to "fill the void." 205Link to the text of the note Yet, if the early failure of antitrust federalism holds a single lesson, it is that even such compelling political, historical, and economic imperatives are, without more, insufficient to spur state antitrust action. Unless state prosecutors have the capacity and incentives to take on the antitrust challenge, they will not act. What does this mean for today's state antitrust enforcers? On one hand, the years since 1890 have seen several innovations that substantially mitigate the problem of prosecutorial capacity. Multistate organizations like the National Association of Attorneys General (NAAG) have allowed for coordination and information sharing between attorneys general on antitrust matters, thus reducing the costs and burden of such cases. 206Link to the text of the noteLikewise, the rise of multistate antitrust suits brought jointly by dozens of states allows for cost-and-capacity-sharing. 207Link to the text of the noteChanges in federal law, like the Hart-Scott-Rodino Act of 1976, created an economic incentive for states to pursue antitrust cases by codifying the ability of state attorneys general to sue as parens patriae and by offering states treble damages when they prevail (a strong economic incentive if ever there was one). 208Link to the text of the note Going further, the federal government has sometimes expressly subsidized state antitrust efforts, as with the supplemental funding offered in the Crime Control Act of 1976. 209Link to the text of the noteAnd in some states, the capacity of the attorney general's office has increased to levels inconceivable at the turn of the century: New York's Attorney General, for instance, supervises over 1,800 employees, 210Link to the text of the notewhile California employs a staggering [\*211] 4,500. 211Link to the text of the notePerhaps because of these shifts, it is unsurprising that in recent times at least some state attorneys general have heeded the call to enforce state and federal antitrust laws, from local investigations of healthcare consolidation 212Link to the text of the noteto multistate actions against Silicon Valley behemoths like Apple and Amazon. 213Link to the text of the note

### 7

#### The United States federal government should fund and implement the agricultural reforms outlined in our Searchinger evidence and coordinate with other governments and international institutions to encourage the same behavior

#### Solves case

Searchinger et. al 20 – [[Tim Searchinger - Senior Research Scholar at the Princeton School of Public and International Affairs and Senior Fellow at World Resources Institute, where he serves as technical director of its Food Program, Chris Malins, Patrice Dumas, David Baldock, Joe Glauber, Thomas Jayne, Jikun Huang, Paswell Marenya, May 5th 2020, “Revising Public Agricultural Support to Mitigate Climate Change”, <https://openknowledge.worldbank.org/handle/10986/33677>, eph]

The countries that produce two-thirds of the world’s agriculture provided US$600 billion per year in agricultural financial support on average from 2014 to 2016. Half of this support occurred through direct government spending or targeted tax benefits and half occurred through market barriers that increase prices to consumers. This support amounted to nearly 30 percent of the total value added by agricultural production in these countries. This report addresses the extent to which these transfers help boost agricultural production and mitigate emissions from agriculture and how support programs might be changed to do better. Agriculture generates roughly 25 percent of global greenhouse gas (GHG) emissions, of which slightly more than half come from the production process, which generates mainly methane and nitrous oxide. The remaining GHG emissions from agriculture are generated through the carbon released by the clear- ing of forests and woody savannas for agricultural expansion and the degradation of peat soils. Absent mitigation, the current agricultural emissions of roughly 12 billion tons per year of carbon dioxide equivalents (CO2e) are likely to rise to 15 billion tons per year by 2050. In this scenario, agriculture alone will use up 70 percent of the annual allowable emissions budget for all human emissions, including energy, that will be necessary to hold warming to international climate goals. The single most important source of mitigation in agriculture results from increases in the efficiency with which agriculture uses natural resources and chemical inputs. That includes more efficient use of land, which includes increasing yields and so helps to avoid land use change. That also involves more efficient use of animals, water, and chemicals. These productivity gains also can contribute to increased incomes for farmers. For productivity gains to result in climate mitigation they frequently need to be explicitly linked to the protection of forests and other native landscapes because they can otherwise encourage local land expansion. Mitigation depends particularly on improvements in management in the use of ruminant livestock (mainly cattle, sheep, and goats), which generate roughly half of all emissions from production and land conversion. To achieve climate goals, mitigation efforts must also strongly emphasize innovations, for which there are many promising options. Only a modest portion of current agricultural support has the potential to help mitigate emissions or even to increase production efficiencies generally. The roughly US$300 billion in market price supports boost prices to some farmers but at costs to others. Of the US$300 billion in direct spending, roughly 43 percent is designed to support farmer income and another 30 percent sup- ports production. Only 9 percent of direct spending explicitly supports conservation, while another 12 percent supports research and technical assistance. Over the past two decades, some governments have decoupled payments from conditions on farm production. Governments do so in different ways and to different degrees, but in general, this decoupling reduces the likelihood that subsidies will encourage inefficient production. Input subsidies have been and remain a particularly problematic form of coupled subsidies. Fertilizer subsidies have contributed to the overuse of nitrogen fertilizer in a number of countries, including both China and India, which has resulted in higher GHG emissions and other environmental problems. China has recently phased out fertilizer subsidies. Whether decoupling reduces global emissions depends on how production switches between regions. While decoupling is unlikely to lead to large, global GHG mitigation, the experience of New Zealand, which almost eliminated coupled agricultural subsidies overnight in 1986, illustrates potential gains through increased efficiency and reduced environmental impacts. Price support payments and trade barriers help reduce farmer risk and maintain income for beneficiaries, but they are inefficient in addressing the risks to poorer, smaller farmers, who are prone to poverty traps. Such supports almost always benefit larger farms within a country, and market price supports benefit domestic farmers at the expense of foreign farmers. Some support payments are capitalized into land values, which benefits existing owners but not farm workers, renters, or subsequent owners. The United States and the European Union (EU) have moved to impose some environmental conditions on receipt of farm payments. The prospect of environ- mental conditions holds some promise. Although enforcement is minimal in the United States, conditional payments have probably helped protect some wet- lands and modestly reduced soil erosion there. They have helped protect the most valuable grasslands in Europe. Although no studies yet support the asser- tion, European conditions on support payments have possibly also increased compliance with other environmental laws such as limits on nitrogen. The last round of European agricultural reforms conditioned 30 percent of payments to farmers on additional conservation measures; however, the effect remains unclear and likely modest because criteria were largely unambitious. Case studies of Brazil, China, India, the United States, EU, and Sub-Saharan Africa explore differences in support levels and approaches that confirm these general observations. Significant portions of U.S. and EU spending classified by the OECD as conservation probably have limited effect. The largest land retirement programs to reforest highly sloped cropland and to restore degraded grass- lands in vast parts of the country have been in China. These Chinese programs have had success in reducing soil erosion and moderate success in sequestering carbon. The evidence also suggests that the programs could do more to sequester carbon and that the forest program may have had adverse effects on biodiversity by emphasizing plantation forests. The case studies also highlight initiatives that hold promise for climate change mitigation. They detail efforts in Brazil to tie farm credit to forest protection while boosting grazing productivity. The India case study highlights efforts to require that nitrogen be coated with a compound designed to reduce losses and increase efficiency. Finally, the case studies detail some successful efforts in China to increase efficiency of nitrogen use and specific efforts in Africa to increase dairy efficiency by improving forage quality. The case studies also illustrate a small start toward funding integrated, coordinated projects. Such integrated projects target funds to their best uses, encourage farmers to achieve higher levels of performance, and occasionally support these efforts with ongoing research and technical assistance. The United States has created mechanisms for using a portion of its conservation programs for such integrated purposes. Further, integrated projects provide some of the promising uses of EU funding for rural development. Overall, the study finds that there is substantial potential to redirect farm support toward climate change mitigation. Market price supports are the most challenging to redirect, but Europe has created a model of phasing them down while boosting direct aid. Key recommendations are as follows: Takeaway 1: Redirect funding to focus on mitigation, including measures that increase efficiency in the use of natural resources. Takeaway 2: Focus land retirement efforts where land is becoming abandoned, where farmland is unproductive and unimprovable and peatlands, and emphasize restoration of native forests. Takeaway 3: Condition farm payments on protection of native areas to avoid further land clearing. Takeaway 4: Structure incentive programs so they offer graduated payments for higher climate performance. Takeaway 5: Prioritize innovative, performance-based mitigation strategies. Takeaway 6: Combine financial support for mitigation with requirements for improvements to avoid leakage, moral hazard, and waste of resources. Takeaway 7: Prioritize coordinated projects across multiple producers, integrated with research and technical assistance. Because of the importance of this redirection of support for whether countries achieve climate goals, and because of the need for international cooperation push needed innovations, global action is required.

### 8

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

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

The statute defines "unfair competition" to mean, as relevant here, "unlawful, unfair or fraudulent business practice . . . ." ( Bus. & Prof. Code, § 17200, italics added.) In so doing it effectively requires what the court variously described in the leading case of Barquis v. Merchants Collection Assn. (1972) 7 Cal.3d 94 [101 Cal.Rptr. 745, 496 P.2d 817], as "a 'pattern' . . . of conduct" ( id. at p. 108), "ongoing . . . conduct" ( id. at p. 111), "a pattern of behavior" ( id. at p. 113), and, "a course of conduct" (ibid.). What the Attorney General challenges in this action is the Texaco-Getty merger. Under the Barquis court's construction of the statute, however, the merger itself cannot be characterized as "a 'pattern' . . . of conduct," "ongoing conduct," "a pattern of behavior," "a course of conduct," or anything relevantly similar: it is rather a single act. That the complaint, under [\*\*\*\*156] the Attorney General's reading, alleges that Texaco engaged in certain unlawful, unfair, or fraudulent business practices in the past and may engage in other such practices in the future is simply not enough: the complaint attacks not those past or future practices, but only the merger.

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

## case

### food security

#### Plan spikes food prices and sustains inflation

Bork 21 (Robert H. Bork, Jr., president of the Washington-based Antitrust Education Project, president of the Bork Communication Group, a public affairs agency, eldest son of the late Judge Robert H. Bork, “Biden's antitrust demagoguery will drive inflation, not cure it,” The Hill, 9-8-2021, <https://thehill.com/opinion/finance/571009-bidens-antitrust-demagoguery-will-drive-inflation-not-cure-it>)

If left unchallenged, the Biden administration may succeed in diverting some heat over rising inflation. Large corporations are not in good order with voters on both the left and right. The president cannot be allowed, however, to use a political diversionary tactic that would perversely do the opposite of what he claims to do: Biden’s antitrust policies would raise the prices of basic needs for consumers.

Let’s start with food prices and Big Ag.

Two University of Idaho economics professors, Philip Watson and Jason Winfree, wrote in The Idaho Statesman that larger farms and agricultural companies, which have the capital to invest in expensive technology and economies of scale, actually have been making food steadily more affordable. It is precisely because of these economies of scale that the cost of food, until the disruption of the pandemic, was taking less out of household budgets. The professors conclude that “breaking up Big Ag could have the disastrous effect of raising food prices, which would likely have a disproportionate impact on poorer households.”

If the Biden approach to agriculture and food is demagogic, its approach to oil and gas is risible. The current increase in gasoline prices results from the supply chain disruption caused by the pandemic, exacerbated by recent hurricanes and storms. It also may be partly because of the unrelenting hostility of the Biden administration to American energy, putting public lands off limits, killing the Keystone XL pipeline and using regulation to harass the fracking industry, despite the fact that cleaner-burning natural gas has helped reduce America’s greenhouse gas emissions. Technological advances led the United States to surpass Saudi Arabia and Russia in 2018 to become the world’s leading producer of oil. Biden’s antitrust policy also may be contributing to the sudden reversal of this energy glut. It was out of antitrust concerns that Berkshire Hathaway pulled out of a major natural gas pipeline deal earlier this year.

What has been the Biden administration’s response to recent shortages? It has not been to stimulate production at home or to help clear pipeline bottlenecks. Instead, national security adviser Jake Sullivan issued a statement pleading with OPEC and Russia to come to our rescue. OPEC demurred and Russian President Vladimir Putin used Sullivan’s entreaty to issue a humiliating “nyet.”

#### Turns the entirety of this advantage – their Woodall and Castellaw ev is about food price spikes – immediate shock necessarily outweighs their longer-term monoculture uniqueness

#### SQ solves consolidation

**Shand & Wetter, 19** – Research Director for the Action Group on Erosion, Technology and Concentration

[Hope Shand and Kathy Jo Wetter, “Plate Tech-tonics: Mapping Corporate Power in Big Food,” 2019, ETC Group, https://www.etcgroup.org/files/files/etc\_platetechtonics\_a4\_nov2019\_web.pdf, accessed 7-19-2021]

The seed sector refers to crop seeds (primarily proprietary field crop and vegetable seeds) sold via the commercial market. It excludes farmer-saved seed and seed supplied by governments/institutions. Despite the astonishing level of corporate concentration in the global commercial seed sector, the vast majority of the world’s farmers are self-provisioning in seeds, and farmer-controlled seed networks still account for an estimated 80%-90% of seeds and planting material globally.18

#### No monoculture impact

Andrew **Porterfield 18**, MS in Biotechnology from the University of Maryland, BA from the University of Pennsylvania, Owner of Porterfield Marketing and Communications, Writer, Editor and Communications Consultant for Academic Institutions, Companies and Non-Profits in the Life Sciences, “Is monoculture a bad thing? It’s time to revise simplistic ideological narrative”, Genetic Literacy Project, 5/4/2018, https://geneticliteracyproject.org/2018/05/04/is-monoculture-a-bad-thing-its-time-to-revise-simplistic-ideological-narrative/

In a Nebraska field, thousands of acres of winter wheat stretch to the horizon. In California, workers pick strawberries in a field that has grown no other crop for the past eight years. And in Maryland, a single tomato plant grows in a single pot.

What do these have in common?

They could all fall under the phrase **“monoculture.”** Okay, that last one with the tomato is a bit of a stretch, but it’s an example that underscores how **simplistic** this discussion often plays out. Many critics of modern agriculture, including anti-GMO activists, point to monoculture as what Michael Pollan calls the “great evil of modern agriculture” and a major reason for the loss of biodiversity in agriculture. They say that biotech crops encourage monocultural farming.

So, what is “monoculture” and is it bad or is the issue more complicated?

Andrew Kniss, a plant scientist and weed expert at the University of Wyoming, is one of many scientists who think that the word doesn’t do the practices justice. On the surface, all monoculture means is that a farmer is growing **just one crop** in an area. By that definition, all crops are grown in monocultures except for those grown in the tiniest of farms or home gardens.

So, how big an area defines what is “monoculture”? And how many years must a crop be grown in a given field before it’s considered “monoculture”? Does monoculture actually reduce biodiversity?

What does the science say?

Most critics appear to use the term to suggest that something bad happens in single crop areas: blight, **crop failure**, or loss of biodiversity (in the form of native plants, pollinating insects, or microorganisms).

The **U**nion of **C**oncerned **S**cientists, under the leadership of its prior agricultural sciences director Doug Gurian-Sherman—who left UCS two years ago and now lobbies against crop biotechnology for the Center of Food Safety [read GLP profile of Gurian-Sherman here]—has argued in a post entitled “Expanding Monoculture: 8 Ways Monsanto Falls at Sustainable Agriculture”, that monoculture reduces diversity and leads to a host of other problems.

Monsanto’s emphasis on limited varieties of a few commodity crops contributes to reduced biodiversity and, as a consequence, to increased pesticide use and fertilizer pollution. Large-acreage field crops—corn, cotton, soybeans, canola, and now alfalfa—make up the bulk of Monsanto’s products, in part because of the high cost of developing engineered traits. And the approach to agriculture that this product line encourages—monoculture, the production of only one crop in a field year after year—is not a sustainable one.

The piece is **short** of an **understanding** of the **basic science** of farming and **long on ideology**, say agricultural experts.

Consider **crop rotation**. Most organic food supporters point to crop rotations, which are required for organic certification, as an alternative to the ‘dangers’ of monoculture. But that’s a deceptive argument. Most large farms now rotate their crops as well, so rotating in an of itself does not address the question of the impact of monoculture. And just switching between crops in alternate years doesn’t bring the kind of genetic diversity that can prevent the downsides of mechanized farming.

Monoculture, incorporating crop rotation, can also have **positive impacts**. Just having one crop in the field allows **mechanization** of agriculture. Mechanized farming allows **faster, efficient planting**, **weeding**, and **harvesting**, which **reduces the destruction of habitats**–organic and agro-ecological farming has a **yield lag** averaging 15-45%. Scaled up to meet the growing global demand for food, smaller scare farming would result in **clear cutting of forests** and **dramatically reduce biodiversity**, leading to a sharp increase in **greenhouse gases**. Intensive farming also frees humans to discover other ways to spend our time and make a living.

Kniss also has made the point that a focus on **genetic biodiversity** in farming can help **reduce the problems** of monoculture while **preserving its benefits**. Examples such as the Irish **Potato Famine** shows what can happen when farmers depend **not only** on just **one crop** but on a crop that is **genetically very, very narrow**; they are vulnerable to disease. Planting genetically diverse potatoes (or any other crop) can help protect against the potentially negative impact of monoculture. And newly developed **g**enetically **m**odified crops, such as the Simplot Innate potato, have been **specifically engineered** to protect against the genetically **narrow**ly focused potato blight. Other conventional and organically-grown potatoes are **still vulnerable** to the blight.

**No food wars**

Mark W. **Rosegrant 13**, Director of the Environment and Production Technology Division at the International Food Policy Research Institute, et al., 2013, “The Future of the Global Food Economy: Scenarios for Supply, Demand, and Prices,” in Food Security and Sociopolitical Stability, p. 39-40

The food price spikes in the late 2000s caught the world’s attention, particularly when sharp increases in food and fuel prices in 2008 coincided with **street demonstrations and riots** in many countries. For 2008 and the two preceding years, researchers identified a significant number of countries (totaling 54) with protests during what was called the global food crisis (Benson et al. 2008). Violent protests occurred in 21 countries, and nonviolent protests occurred in 44 countries. Both types of protest took place in 11 countries. In a separate analysis, developing countries with low government effectiveness experienced more food price protests between 2007 and 2008 than countries with high government effectiveness (World Bank 201la). Although the incidence of violent protests was much higher in countries with less capable governance, **many factors** could be causing or contributing to these protests, such as government response tactics, **rather than the initial food price spike**. Data on food riots and food prices have tracked together in recent years. Agricultural commodity prices started strengthening in international markets in 2006. In the latter half of 2007, as prices continued to rise, two or fewer food price riots per month were recorded (based on World Food Programme data, as reported in Brinkman and Hendrix 2011). As prices peaked and remained high during mid-2008, the number of riots increased dramatically, with a cumulative total of 84 by August 2008. Subsequently, both prices and the monthly number of protests declined. Several researchers have studied the connection between food price shocks and conflict, finding at least some relationship between food prices and conflict. According to Dell et al. (2008), higher food prices lead to income declines and an increase in political instability, but **only for poor countries**. Researchers also found a positive and significant relationship between weather shocks (affecting food availability, prices, and real income) and the probability of suffering government repression or a civil war (Besley and Persson 2009). Arezki and Bruckner (2011) evaluated a constructed food price index and political variables, including data on riots and anti-government demonstrations and measures of civil unrest. Using data from 61 countries over the period 1970 to 2007, they found a direct connection between food price shocks and an increased likelihood of civil conflict, including riots and demonstrations. Other researchers have broadened the analysis by **considering government responses** or underlying policies that affect local prices, and consequently influence outcomes and the linkage between food price shocks and conflict. Carter and Bates (2012) evaluated data from 30 developing countries for the time period 1961 to 2001, concluding that when governments mitigate the impact of food price shocks on urban consumers, the **apparent relationship between food price shocks and civil war disappears**. Moreover, when the urban consumers can expect a favorable response, the protests only serve as a **motivation for a policy response** rather than as a prelude to something more serious, such as **violent demonstrations or** even **civil war**. Many in the international development community see war and conflict as a development issue, with a war or conflict severely damaging the local economy, which in turn leads to forced migration and dislocation, and ultimately acute food insecurity. Brinkman and Hendrix (2011) ask if it could be the other way around, with food insecurity causing conflict. Their answer, based on a review of the literature, is "a **highly qualified yes**," **especially** for intrastate conflict. The primary reason is that insecurity itself heightens the risk of democratic breakdown and civil conflict. The linkage connecting food insecurity to conflict is contingent on levels of economic development (a stronger linkage for poorer countries), existing political institutions, and other factors. The researchers say **establishing causation directly is elusive**, considering a **lack of evidence** for explaining individual behavior. The debate over cause and effect is ongoing.

Policies can nevertheless be implemented to reduce price variability. Less costly forms of stabilization, at least in terms of government outlays, include reducing import tariffs (and quotas) to lower prices and restricting exports to increase food availability. However, these types of policy responses, while perhaps helping an individual country's consumers in the short run, can lead to increased international price volatility, with potential for disproportionate adverse impacts on other countries that also may be experiencing food insecurity.

#### Turn --- industrial ag key to food security

Nordhaus 15 [Ted Nordhaus, economist and Sterling Professor of Economics at Yale University, “The Environmental Case for Industrial Agriculture,” The following keynote address was delivered by Ted Nordhaus at the first annual Institute for Food and Agricultural Literacy Symposium on June 3, 2015, http://thebreakthrough.org/index.php/issues/food-and-farming/the-environmental-case-for-industrial-agriculture]

First, and most importantly, the food system globally needs to grow enough food to meet the basic nutritional needs of somewhere in the vicinity of nine billion people by the middle of this century. While the discussion in recent years about food and nutrition in the United States has been heavily focused on obesity, the reality is that much of the world still needs to consume more calories, not less. Nearly a billion people globally still struggle to meet their basic, daily caloric needs. Several billions more are just beginning to consume modest levels of dietary protein and fat. Suffice to say that the daily ration of farm-fresh vegetables that for so many of us symbolizes a healthful diet is still beyond the means of most people on the planet. Second, the food system needs to **liberate most of the global population from work on the farm** and **all of it from subsistence agriculture**. When people leave the land and move to the city, **life expectancy**, education, and **incomes rise**. Fertility rates decline as women can find work outside of the home and children can go to school rather than working in the fields. Manufacturing and industrialization bring greater societal wealth, infrastructure, and higher wages. By virtually every quantifiable economic, health, education, and environmental metric, life improves when people move to the city, even as it brings new challenges. Third, **we need to accelerate the long-term processes of growing more food on less land**. Meeting rising food demand for a global population that will continue to grow for at least the next several decades, without converting virtually all of our remaining forests and grasslands to agriculture, will require that we grow food **ever-more efficiently**. **Making more room for nature will**, perhaps counterintuitively, **require that we use the land on which we produce food more exclusively for production**. **A world with more forests, grasslands and wetlands, and more biodiversity within them, will require less biodiversity in our fields**. Finally, raising yields while reducing environmental impacts will require that we farm with ever-greater precision. Raising yields through greater application of technology has often meant more pesticides, fertilizer, and water. But as technology has improved, these trends have begun to reverse. Measured in relationship to agricultural output, nitrogen and water use on US farms has peaked and is now declining. The same is true in other advanced developed economies. Better seeds, irrigation systems, and application practices are allowing for much more precise delivery of inputs when and where plants need them and where they don’t. All of those trends will need to be accelerated.

#### Merger restrictions don’t solve

James M. **MacDonald 1**, Economic Research Service, USDA; and Marvin L. Hayenga, Iowa State University, 2001, “Concentration, Mergers, and Antitrust Policy,” https://afpc.tamu.edu/research/publications/263/macdonald.pdf

Agribusiness mergers are **one strategy for large firms**, and they could **respond to a ban with other strategic steps**. Those seeking scale economies could **grow internally** by building bigger facilities instead of merging. Because firms have that alternative, a merger prohibition **will not** necessarily **halt increases in concentration** based on scale economies. Second, firms could respond to a prohibition on the purchase of large agribusiness firms **by purchasing other large firms in the economy and becoming conglomerates**. Such moves might be **particularly** inefficient (**cost-raising**).

### sustainability

#### Cant solve other countries

#### Current ag practices reducing resource inputs (answers waters / fertilizers / chemicals etc)

**Blomqvist 16** - Director of Conservation @ The Breakthrough Institute (Linus and David Douglas, "Is Precision Agriculture the way to peak cropland," Dec 7, thebreakthrough.org/issues/the-future-of-food/is-precision-agriculture-the-way-to-peak-cropland)

Precision Farming: The Unsung Hero of Agricultural Innovation The Green Revolution averted a looming food security crisis and spared vast land areas from being converted to cropland, greatly attenuating the loss of wildlife and natural habitats.10,16,17 It also had manifold negative impacts, including pollution from nutrient overload and pesticides, freshwater depletion, and social disruption.10,18 Many of these negative impacts, however, have been mitigated over time, as production increases are stemming less from increasing inputs like water and fertilizers, and more from smarter farming decisions, including more efficient use of these inputs. By one estimate, chemical inputs, land, irrigation, and area expansion accounted for 93% of increased global agricultural production at the height of the Green Revolution in the 1970s, but only 27% in the 2000s. The rest – now representing about three-quarters of production growth – comes from what is called total factor productivity, or more simply, efficiency.19 After a period of blunt and wasteful applications of fertilizers, pesticides, water, and other inputs, agriculture, especially in developed countries, has been cleaning up its act. Farming in many parts of the world has entered an era of “sustainable intensification,” where production continues to increase but with less and less inputs and pollution for each ton of output. Perhaps because of the incremental nature of this shift, it has often escaped notice. The share of fertilizers that is not taken up by crops and thus escapes into water and air has been declining for decades in developed countries.20–22 In the United States, pesticides have declined both in terms of the absolute amount used and in terms of toxicity.23 Soil erosion is on the decline in developed countries, as is the amount of water used per ton of crops in irrigated farming.20,24 And, by one estimate, global farming generates about 40% fewer greenhouse gas emissions per unit of production than it did 50 years ago.25 Alongside these improvements in input efficiency, yields have also continued to improve, as a result of ongoing seed improvements and what is known as precision agriculture: using the right inputs, in the right amounts, at the right time, for each field and crop.

#### Small farms will do all their impacts too

**Black 13**—(former Food section staffer at the Washington Post based in Brooklyn). Jane Black. 8/27/2013. “Smarter Food: Does big farming mean bad farming?.” <https://www.washingtonpost.com/lifestyle/food/smarter-food-does-big-farming-mean-bad-farming/2013/08/26/fb1cbb94-0b7f-11e3-9941-6711ed662e71_story.html>. Accessed 7/12/21.

**Size**, as they say, **isn’t everything**. As shorthand, the big-equals-bad equation is convenient. But it obscures an inconvenient truth: **Plenty of small farmers do not embrace sustainable practices** — the Amish farmers I know, for example, love their pesticides — and some **big farmers** are creative, responsible stewards of the land. “Tony’s is a fantastic operation,” says Helene Murray, executive director of the Minnesota Institute for Sustainable Agriculture. “And he just happens to grow a lot of corn and soybeans.”

Thompson, 57, is a fifth-generation farmer. His family came to the town of Windom in southwestern Minnesota after the Civil War in search of economic and political stability. The family’s Willow Lake Farm was always big. Until the late 20th century, it was diversified, too. The Thompsons raised cattle for beef and dairy, as well as turkeys, sheep and hogs. But in the 1970s, global politics, federal incentives and a growing appetite for grains made corn and soybeans the most profitable crops to grow.

As a young man, Thompson was, as so many of us were, an idealist. He describes challenging his father’s patience with his big plans to transition the farm to organic growing practices. But when he took over, he began to understand that success in agriculture is about finding a balance between economic and environmental sustainability.

“I know I am sending corn into a commodity stream that I have very little control of and very little knowledge of,” Thompson admits. “But I have spent my life trying to understand the margins, trying to slow down the next raindrop and help that raindrop produce a little flower for a bird. It is, maybe, less exciting to talk about. My only opportunity to make change is with the tools I have on the farm.”

Thompson’s farm is not organic as he once dreamed it would be. Indeed, after studying the scientific literature, he finds himself mostly comfortable using genetically modified seeds. The rewards inherent in herbicide-tolerant soybeans outweigh the risks, he says. While he does have some concerns about GM corn, he says, “the prevailing technology is a good path, maybe the best available at the moment. This will change. We will learn.”

Still, Thompson has many tools to improve his farm’s environmental sustainability.

He uses a technique called ridge tilling, which works like this: Instead of plowing the fields with a big tractor, he builds a narrow, elevated bed for his crops. That allows him to turn over smaller stretches of earth, keeping carbon dioxide embedded in the soil rather than releasing it into the air. The ridges also allow Thompson to precisely apply fertilizer to the plants, which means he can use 10 percent less fertilizer and still get the same yield. And the ridges keep the chemicals from running off and entering the groundwater, where they can endanger streams and rivers.

To further deter water and fertilizer runoff, Thompson has built wide buffers between his fields. In them he has planted flowers, such as the gray-headed coneflower, and native prairie grasses. The plants keep the water from reaching the river: “If the grass wasn’t there, the soil would flow directly into the river and remain suspended all the way to the Gulf of Mexico,” Thompson says.

Those buffers also attract pollinators such as butterflies, bees and birds. Neither soybeans nor corn need the pollinators, explains Victoria Wojcik, research program manager at the non­profit Pollinator Partnership in San Francisco. As a result, especially when the price of corn is as high as it is now, it is difficult to incentivize commodity farmers to grow the plants that sustain pollinators: “What is unique is that Tony creates this landscape with no benefit for himself or his bottom line.”

Thompson also has experimented with diversifying what he grows on the farm. Over the years, as the price of corn and soybeans rose and fell, he tried growing specialty grains for the Japanese that are made into tempeh and natto; popcorn, which he packaged on the farm; and specialty wheat, which he milled.

The work was gratifying, Thompson says, even fun. But the premiums he was paid to grow it didn’t even add up to minimum wage for the time spent.

Farmers such as Thompson find themselves in essentially the **same situation** as many Main Street businesses: Does it make more sense to **produce more** and **sell it at a lower price**? Or is it smarter to produce more **artisanal products** to sell at a premium? “There has been **more stability** in my life in the **commodity corn and soybean business**,” Thompson says. “Every time we tried a new product, we encountered risks we couldn’t afford.” And, remember: Stability is what drew the Thompsons to Minnesota in the first place, 150 years ago.

Thompson’s work has drawn local notice. In 2011 he won the University of Minnesota’s Siehl Prize for Excellence in Agriculture, which recognizes individuals who have made extraordinary contributions to the production of food. Within his community, he is considered a leader and a sage. Each August, Thompson holds an agro-ecology summit on the farm and welcomes hundreds of residents and agriculture students. (At this year’s event, Thompson served 800 meals of 100 percent locally sourced food.) But he is far from a national name like Joel Salatin, the most famous farmer in America thanks to Michael Pollan’s bestseller “The Omnivore’s Dilemma,” or even pork producer Bev Eggleston, whose name graces the menu at many Washington restaurants.

New small farms can **help** reinvigorate agriculture, and they deserve champions. **But** large-scale farmers who are **working toward sustainability** also deserve a platform. Like it or not, **those farmers grow the staples that feed (and fuel) our country and the world**. The small, incremental changes that they make can have **dramatic impact** — perhaps more than a dozen or even a **hundred small farms** that adhere to strict environmental standards.

#### No bees impact

Dr. Toby **Ord 20**, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 118

And while extinction is a useful measure of biodiversity loss, it is not the whole story. It doesn’t capture population reductions or species disappearing locally or regionally. While “only” 1 percent of species have gone extinct on our watch, the toll on biodiversity within each region may be much higher, and this may be what matters most. From the perspective of existential risk, what matters most about biodiversity loss is the loss of ecosystem services. These are services—such as purifying water and air, providing energy and resources, or improving our soil—that plants and animals currently provide for us, but we may find costly or impossible to do ourselves.

A prominent example is the crop pollination performed by honey**bees**. This is often raised as an existential risk, citing a quotation attributed Einstein that “If the bee disappeared off the surface of the globe then man would only have four years of life left.” This has been **thoroughly debunked**: it is **not true** and **Einstein didn’t say it**.109 In fact, a recent review found that **even if** honey**bees** were **completely lost**—and **all other pollinators too**—this would **only** create a **3 to 8 percent reduction** in global crop production.110 It would be a great environmental tragedy and a crisis for humanity, but **there is no reason to think it is an existential risk**.

#### No BioD impact

**Kareiva & Carranza 18** (Peter Kareiva⁎ , Valerie Carranza Institute of the Environment and Sustainability, University of California, “Existential risk due to ecosystem collapse: Nature strikes back” <https://www.sciencedirect.com/science/article/pii/S0016328717301726>)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here **the answer is not clear**. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). **There is little evidence that this particular 0.001% annual loss is a threshold**—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. While there are data that relate local reductions in species richness to altered ecosystem function, **these results do not point to substantial existential risks**. **The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species numbers decline locally** (Vellend, 2017**), or are local observations of increased variability in fisheries yield when stock diversity is lost** (Schindler et al., 2010). **Those are not existential risks**. To make the link even more tenuous, **there is little evidence that biodiversity is even declining at local scales** (Vellend et al., 2013, 2017). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, **there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans** (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but **no one is forecasting the loss of all species**. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility of our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? **Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.**

#### No hypoxia impact

**Phytoplankton resilient**

**Collins 14** Sinéad Collins (Ashworth Laboratories, Institute of Evolutionary Biology, School of Biological Sciences, University of Edinburgh), Björn Rost, (Alfred Wegener Institute for Polar and Marine Research, Bremerhaven, Germany) and Tatiana A Rynearson (Graduate School of Oceanography, University of Rhode Island). “Evolutionary potential of marine phytoplankton under ocean acidification.” Evolution Application 2014 Jan; 7(1): 140–155. JDN. SC is funded by a Royal Society UK University Research Fellowship and European Research Council (ERC) FP7 Grant 260266. TAR is funded by US NSF OCE0727227. BR is funded by ERC FP7 Grant 205150. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3894903/>

Marine phytoplankton have many obvious characters, such as rapid cell division rates and large population sizes, that give them the capacity to evolve in response to global change on timescales of weeks, months or decades. However, few studies directly investigate if this adaptive potential is likely to be realized. Because of this, evidence of to whether and how marine phytoplankton may evolve in response to global change is sparse. Here, we review studies that help predict evolutionary responses to global change in marine phytoplankton. We find limited support from experimental evolution that some taxa of marine phytoplankton may adapt to ocean acidification, and strong indications from studies of variation and structure in natural populations that selection on standing genetic variation is likely. Furthermore, we highlight the large body of literature on plastic responses to ocean acidification available, and evolutionary theory that may be used to link plastic and evolutionary responses. Because of the taxonomic breadth spanned by marine phytoplankton, and the diversity of roles they fill in ocean ecosystems and biogeochemical cycles, we stress the necessity of treating taxa or functional groups individually.

**No disease impact**

**Baquero 21** --- Fernando Baquero, Division of Microbial Biology and Evolution, EcoEvoBioma Lab, Department of Microbiology, Ramón y Cajal University Hospital, Ramón y Cajal Institute for Health Research (IRYCIS) and Network Center for Research in Epidemiology and Public Health (CIBERESP). Spain, “Threats of antibiotic resistance: an obliged reappraisal”, Int Microbiol, May 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8141826/

Fear in antibiotic resistance has been amplified by the news in the media, worldwide known as passionate apocalyptic lovers. An indicative random selection of press titles is: “Antibiotic apocalypse: doctors sound alarm over drug resistance (The Guardian), “Antibiotic apocalypse warning” (BBC News Health), “Antibiotic resistance could be much worse than EBOLA” (Yorkshire Post). But not only the media, also serious institutions and journals: “Return to a pre-antibiotic era?” (The World Academy of Sciences), “**A return to the pre-antimicrobial era?** (Science). “War against superbugs” is a metaphor also forming part of this catastrophe discourse, which has been analyzed both in its rhetorical form, and in the implicit political, and professional function (Nerlich 2009). Metaphors used by the media are easily understood, but the resulting understanding can be deeply biased (Brossard 2013). Scientific communication is frequently obliged to a distortive simplification (Ortín and Uranga 2021), which in alliance with our innate human attraction for tragedy produce apocalyptic mental “monsters” (Francisco de Goya dixit).

The biased contribution of susceptibility testing, etiological attribution, and metagenomics

A main problem for the objective estimation of the consequences of a biological phenomenon is the accurateness of the methods measuring the biological parameters and criteria used to define the qualities of the system. Clearly, the burden of antibiotic resistance is estimated according to the definition of “resistance”. In vitro susceptibility testing provides “minimal inhibitory concentrations” (MICs), that, in practice, have been frequently taken as the single parameter for classifying a bacterial isolate into the “resistant” category. If the MIC is over a critical breakpoint, the organism is resistant. Therefore, the lower breakpoint, the higher the proportion of resistant strains in the species, and the feeling of “untreatable” bug. Of course, the advantage of establishing low breakpoints is to detect “first mutational steps” in the evolution of resistance, eventually preventing clinical resistance (Baquero 2001). But tagging such strains as resistant ones might have perverse consequences in the treatment of infections. In most cases infections caused by low-level resistant bacteria can be **successfully treated** with the antibiotic-in-case, and that obliged the international susceptibility testing agencies to “raise the breakpoint” to allow the use of the drug; typically, that has occurred for penicillins in Streptococcus pneumoniae with PBP mutations, or for carbapenems in Escherichia coli harboring carbapenemases.

A second problem was the common confusion (mostly for clinicians) between acquired resistance and natural antibiotic resistance. Many opportunistic non-commensal pathogens are intrinsically resistant to antibiotics, but, when they were listed among harmful human organisms, the feeling was that “antibiotic resistance” was widespread. In fact, in most cases these organisms have a **low pathogenicity for patients** but can be found in human mucosa, particularly in intensive care units where environmental members of the orders Pseudomonadales, Flavobacteriales, or Enterobacterales are present in water systems, not only from built environments (as sinks), but also medical equipment, as ventilators. The detection of these organisms in clinical samples is frequently a poor etiological value, but the alerted clinician might consider these (frequently intrinsically resistant) organisms at the time of therapy, increasing the awareness of “antibiotic resistance.”

**Finally**, the recent boom of microbial metagenomics has contributed to overstate the perception of a widespread antibiotic resistance, listing a number of resistance genes (genes whose loss increase susceptibility) probably approaching 10,000 in currently available curated databases. The ensemble of resistance genes in a microbiome is the “resistome,” accurately detectable by targeted capture metagenomics (Lanza et al. 2018). But resistance genes are simply **everywhere** and have been there for **thousands of millions of years.** The equivocal concept is “a bacterial organism carrying a resistance gene is a resistant organism.” The question is not “what is a resistance gene?” but “what is a resistance gene imposing a risk for therapy and public health?” (Martínez et al. 2015).

Back to the pre-antibiotic era?

This statement is simply an over exaggeration. History never comes back again, and **we will never be back in the dark ages of deadly infections**. Not only antibiotics are responsible for the decline in infectious diseases. In fact, infectious diseases started declining **much before the discovery of antimicrobial agents**, because of the progress of hygiene-ecology and social welfare (McKeown 2016). On the other hand, except in rare cases of organisms producing deadly poisoning toxins, bacteria “start a pathogenic process” that is generally amplified by the reactive host pathophysiology, as in the case of potentially deadly processes (septic shock) following the immunological recognition of molecules present in bacterial envelopes, as lipopolysaccharides or teichoic acids, without any microbial active intervention. Progresses in medicine are able to control in our days most of these host processes. In fact, many severe infectious diseases can now be cured **without the need of antibiotics**. A case-in-point is therapy of (once deadly) infectious diseases, as was cholera, where the lethality has almost disappeared just because of the introduction of oral rehydration therapy, without further need of antibiotics (Guerrant et al. 2003). At hospital level, progresses in the procedures of intensive care units care are able to compensate for most of the complications caused by either susceptible or resistant bacteria involved in severe infections. We will never be back in the pre-antibiotic era.

Direct mortality attributed to antibiotic resistance

Direct mortality attributed to antibiotic resistance accounts for the cases of infected patients who could have been prevented from dying in the absence of antibiotic resistance in the causative organism. Human mortality directly attributed to antibiotic resistance remains based on a few “mantra” figures that are widely used in the introduction of most reports (and particularly grant proposals) concerning antibiotic resistance. “At least…” 25,000–33,000 deaths/year in Europe (European Medicines Agency Joint Report 2012, Boolchandani et al 2019; Cassini et al. 2019) or 23,000 deaths per year in the USA are due to antibiotic resistance (Centers for Diseases Control US 2019). In the world, it has been stated that **a**nti**m**icrobial **r**esistance accounts for over seven million deaths/year, and it will probably reach ten million deaths by 2050 (O’Neill 2016; Hofer 2019). The accurateness of these **alarmist estimations** has been recently challenged, mostly **on the bases of the absence of empirical data** (Baquero 2016; Abat et al. 2017).

Indeed, it is extremely difficult to obtain the real figures. The key-difficulty is to discern between “deaths in infected patients with antibiotic-resistant bacteria” and “deaths in patients where the infection is caused by antibiotic-resistant bacteria and death results from resistance to standard therapy.” Of course, mortality is highly dependent on the age and the underlying diseases, so that critical patients dying from any cause, but carrying multi-drug resistant bacteria, and being under preventive or therapeutic antibiotic exposure might be falsely categorized as “deaths because of resistance.” The way to obtain reliable figures requires precise case–control studies, comparison of the mortality of patients of the same age, same underlying conditions, in the same setting, with the same infection caused be the same pathogen (either antibiotic-resistant or not), and treated in an identical way. Useful approximations to this ideal approach have been attempted in the Netherlands, for instance, matching (1:1) cohorts of patients with the same age, length of stay in the hospital at infection onset with gram-negative infections attributed or not to multi-drug antibiotic-resistant organisms; 30-day mortality after the infection onset **was almost identical** (Rottier et al. 2020). A few years ago, the European **A**nti**m**icrobial **R**esistance Surveillance Network (in the European Center for Disease Control) reported an extremely high frequency of bacteremic Klebsiella pneumoniae multi-resistant strains, including carbapenems, in Greece. Despite the alarm for the increase in mortality, **no difference was found between patients** attended in intensive care units **with** carbapenem susceptible or **resistant strains** (Vardakas et al. 2015). In addition, the burden of mortality attributable to antibiotic resistance should be weighted in comparison with other causes of mortality, to evaluate the “**apocalyptic scenario**.” Even considering as the right ones the data mentioned at the beginning of this section, mortality associated with antibiotic resistance was only able to account for 2–4% of the cardiovascular mortality in the European Union and the USA.

Of course, mortality by infectious diseases is much higher in low-income countries, where nutritional deficiency, lack of proper sanitation, and poor medical care, with low access to intensive care units, remind us of the social pre-antibiotic landscape in Europe two centuries ago. The current benefit of antibiotics in reducing overall mortality in these countries that until very recently were in the “pre-antibiotic era” seems clear (Abat et al. 2018). Under these circumstances, the mortality burden attributable not only to antibiotic resistance to accessible, cheap antibiotics but also to resistance to third generation cephalosporins and carbapenems could be much higher than in the USA or the EU (Huynh et al. 2015; Founou et al. 2017).

Indirect mortality mediated by antibiotic resistance

Antibiotics alter the optimal (evolutionarily selected) proportions of microorganisms in the healthy human microbiota. For co-evolutionary reasons, the most abundant commensal species are non- or very poorly pathogenic towards their host, and antibiotic resistance in these species might in fact protect from the dangerous overgrowth of more pathogenic ones, increasing colonization resistance (microbiota resilience). In fact, the most prominent organisms causing deadly bacteremic infections, as Escherichia coli, Klebsiella pneumoniae, Enterococcus faecium, and Enterococcus faecalis, account for less than 1% of the intestinal organisms. Intensive exposure to antibiotics (for preventive purposes or therapy) is known to increase this relative proportion when these organisms are resistant to antibiotics, and this increase might result in undesirable consequences, even though the acquisition of antibiotic resistance does not increase (in fact might reduce) virulence.

Bacteremia is generally the result of bacterial translocation, the transit from the gut lumen or mucosa to extraintestinal sites, such as the mesenteric-lymph-node complex, liver, spleen, and bloodstream internal tissues (Berg 1995). Translocation is mostly a stochastic effect, so that the possibility of invasion is proportional to the absolute number of viable organisms (Taur et al. 2012). As the translocation rate of susceptible populations remains constant, but increases for resistant ones, the overall frequency of bloodstream infections increases when antibiotic-resistant strains are selected, and as a consequence, hospitalized patients have become progressively more severely ill over the last years (Ammerlaan et al. 2013), as was the case for the community-hospital spreading multi-resistant STc131 E. coli clone; however, it should be noted that mortality is also age-related (Rodriguez et al. 2021) or the presence of particular resistant Enterococcus clones (Bonten et al. 1998; Tedim et al. 2015).

Note that, particularly in elderly people, bacteremia often originates in urinary tract infections; also, in this case, the increased abundance of multi-resistant populations in the intestine facilitates transmission to the urinary tract. An interesting point is if the individual history of antibiotics uptake along life contributes to the cumulative density of antibiotic-resistant bacteria in the microbiota (Baquero 2007); in that case the individual attitude reducing antibiotic exposure might be a preventive of mortality, as occurs with tobacco, high salt, or hypercholesterolemic food for cardiovascular diseases.

More bacteremic episodes certainly mean a higher mortality rate; however, as was commented before, the risk of dying, at least in high-income countries, is similar for multiresistant and susceptible E. coli populations (de Lastours et al. 2020). Probably a direct influence of antibiotic resistance in mortality is likely to occur in low-income countries with limited access to advanced medicine (Becker et al. 2009).

Antibiotic resistance altering human-microbiota interactions

Ecological alterations of the microbiota (dysbiosis), occasionally with clinically intestinal complications, ranging from mild to severe, were described from the early stages in the use of antibiotics (Haenel 1961). The most important was the selection of harmful resistant organisms. Classical examples are enterococcal bacteremia during therapy with third-generation cephalosporins, or more recently the potentially lethal pseudomembranous colitis resulting from the selection of Clostridium difficile (Smits et al. 2016) frequently associated with the use of broad-spectrum antibiotics, particularly those influencing the predominant anaerobic populations.

Alterations of the microbiota are generally restored by surviving minorities and by the organisms of the surrounding human environment. In hospital, nursing homes, or in conditions of limited sanitation in low-income countries, particularly involving water environments (Baquero et al. 2008), restoration might involve the acquisition of antibiotic-resistant populations, substituting (without the need of antibiotic exposure) the old susceptible ones (Schwartz et al. 2020). The final effect is that antibiotic-resistant bacteria are increasingly integrated as “normal members of the microbiota,” and the long-term consequences of such replacements and the creation of a novel microbiota architecture remain unknown. This might be harmful, influencing inflammatory bowel diseases, allergies, asthma, obesity, diabetes, cardiovascular disease, neurobehavioral disorders, and eventually involving alterations in host immunity (Zhang and Chen 2019). Note that resistant populations (by either intrinsic or acquired antibiotic resistance) are poorly affected (resilient) by new antibiotic exposure, facilitating long-term colonization and host adaptation. The invasion of food animals by antibiotic-resistant bacteria and the increasing possibilities of human-animal microbiome coalescence (merging) might contribute to the evolution towards abnormal microbiomes with unpredictable consequences (Baquero et al. 2019).

Antibiotic resistance modifying bacterial population biology and evolutionary biology

Antibiotics exert multi-level selection, that is, they independently select for particular genes, insertion sequences, integrons, transposons, plasmids, integrative-conjugative elements, and also for particular clones and clonal complexes within species, species, genus, and complex microbial communities (Baquero et al. 2013). The effect results in alterations in the relative abundance and diversity of these evolutionary entities. Considering that in a world without anthropogenic antibiotics the microbial (multilevel) entities tend to keep their historical co-evolutionary selected compositions inside their hosts, the disturbance of such equilibrium by antimicrobial agents might result in inadvertent risks. Of course, antibiotic selection of antibiotic-resistant bacteria implies the selection not only of the resistance genes, but of all the mobile genetic elements to which they are associated. In fact, the release in the environment of antibiotics, among other anthropogenic contaminants, increases the local density of harmful antibiotic resistance genes and also mobile genetic elements (Knapp et al 2010; Wright et al. 2008; Gillings 2014). Increased density of mobile genetic elements implies an acceleration of the bacterial evolutionary rate (Souque et al. 2021). In other words, antibiotic resistance might significantly increase the density of tools involved in microbial genetic interactions, once more with unpredictable consequences in shaping bacterial evolutionary trajectories that might influence human and animal health (Baquero et al. 2021a, 2021b).

Antibiotic resistance and the planet microbiosphere

Human health is fully dependent on the health of the biological systems determining the main features of our environment. Antibiotics have historically been and are still constantly released into the environment; it has been estimated that the global annual production of antibiotics reaches 100–200 thousand tons, and one billion tons have been produced since 1940 (Serwecińska 2020), and many of them remain biologically active during extended periods of time. Considering that antibiotics can select antibiotic populations with relative decreases in susceptibility at concentrations of nanograms/ml, and/or interfere at such concentrations with the semiotic network of natural antibiotics, acting as interbacterial signaling agents (Linares et al. 2006), we can expect an effect on the natural microbiosphere. Possible ecological functional disturbances caused by the release of the antibiotics in the environment might include critical aspects for life, as oxygen production, nitrogen transformation, methanogenesis, or sulfate reduction. For instance, Cyanobacteria contribute with more than 25% of oxygen production and carbon dioxide fixation in Earth. Cyanobacteria are susceptible to most antibiotics and contain mobile genetic elements that might facilitate capture of antibiotic resistance, but how this might influence fitness and physiology of these organisms is unknown (Dias et al 2019; Hernando-Amado et al. 2019). There is also an effect of environmental antibiotics on the bacterial components of the rhizosphere, essential for nitrogen fixation and plant health, on the biology of Protistan and protistan consumers in the soil, as well as the microbes-nematode interactions. It is known that low antibiotic exposure influences plant biology affecting plant germination, biomass allocation, and diversity (Minden et al 2017). We can also expect harmful effects on insect vital endosymbionts (Koga et al. 2007), and probably microbe-originated cellular organelles mitochondria and chloroplasts could evolve to antibiotic resistance (Perasso 1974; Wang et al. 2015). A possible risk is the substitution of part of the key antibiotic-susceptible natural species by other intrinsically antibiotic-resistant organisms or selected variants, influencing primary producers, and potentially biogeochemical cycles in the Earth’s surface systems. This certainly will approach an apocalyptic scenario for human health, not the one that we discussed in the first parts of this review.

Final coda

Massive antibiotic industrial production, its use in humans, animals, and agriculture, and the resulting environmental pollution certainly influences the emergence and spread of antibiotic resistance, decreasing the effectiveness of chemotherapy, and constitutes a problem in public health that should be addressed by applying evolutionary principles (Andersson et al. 2020). **However**, it is **highly improbable** that antibiotic resistance could produce an **apocalyptic landscape** because of failing to control infections (Servitie 2019). In this review we suggest that other effects of antibiotics on the microbiotas and environmental microbiosphere can produce at long-term higher risks, deserving public awareness, by creating social norms to expand the protection of the individual health to the protection of one health and global health (Roca et al. 2015; Berendonk et al. 2015; Hernando-Amado et al. 2020). The threat of the spread of antibiotic-resistant organisms adverts us, once more, that the health of humans and the health of Earth are closely intertwined.

**Industrial ag prevents extinction.**

**Combest ’16** (Larry; 1/21/16; Former Representative, citing agricultural witnesses; The Hill, “The rising importance of food to America's national security,” <http://thehill.com/blogs/pundits-blog/homeland-security/266549-the-rising-importance-of-food-to-americas-national>; RP)

Among the witnesses offering testimony was Ambassador John Negroponte, former U.S. deputy secretary of State, who discussed what he called "**agricultural megatrends**" that come packed with homeland and global security implications. Negroponte, of course, served in senior diplomatic and national security advisory roles under four of the past five American presidents, beginning with President Reagan. Negroponte spoke to "the pressing need to feed the future world of **9 billion people**," observing that "the world must **increase food production** by 50 to 60 percent to satisfy expected global **population growth** and changing consumption patterns by 2050." While I have read other sources approximating that a 70 percent increase is more on the mark of what will be needed, any of these required increases in food production within this space of time is wake-up call enough, even for those of us who have experienced firsthand the **unprecedented increases** in yields many American farmers have experienced over the past 30 years thanks in large part to the **biotechnology** pioneered by Dr. Norman Borlaug, father of the "Green Revolution." The anticipated increase in population and the corresponding need for more food, Negroponte notes, also result in "**rising competition** for limited resources such as **waters** and **arable land**" that, he says, "could affect political stability" and even "**shift military priorities**." Negroponte goes on to point out that this situation could, for example, "fuel further **instability in the Middle East**, where water scarcity in particular has the potential to **aggravate interstate conflict**." Down the road, vulnerable U.S. allies, Negroponte stresses, may well depend on America to secure their food supplies. At the same time that global population is expected to grow by some **28 percent** and an emerging middle class in developing countries uses greater disposable incomes to enhance diets, some in richer countries, particularly those of Europe, but increasingly here at home, too, are rejecting the very food science that allowed Borlaug to save billions of human lives and millions of acres of pristine lands in favor of production systems that use more resources while producing less food. Of this, Negroponte warns, "If science skepticism accelerates, this could undermine our ability to **increase production** enough to feed the world." While Negroponte's testimony did not touch upon legislation pending in Congress to create a federal preemption vis-a-vis state and local biotech labeling regimes that, against all science, seek to stigmatize the **breakthrough technologies** that have been widely utilized by farmers and that are **absolutely indispensable** to feeding future generations, anyone listening carefully could hear the canary in the coal mine. By opposing federal preemption, those agitating against all food science would have lawmakers awkwardly welcome Borlaug's statue to the Capitol even as they effectively throw out the lifesaving policies that earned him his place in Statuary Hall. In assessing what all might be done to "enhance both national and **global security**," Negroponte spoke directly to the "need to find a way to encourage agriculture and food policy to align with science on such issues as biotechnology." But Negroponte also spoke to the need to assess "counterproductive policies that tax producers and **undermine food availability**."

#### CAFOS are key to food production and are using innovation to decrease environmental harms

Lusk 16 Jayson Lusk. professor of agricultural economics at Oklahoma State University. 9/25/2016. “Why Industrial Farms Are Good for the Environment.” <https://www.nytimes.com/2016/09/25/opinion/sunday/why-industrial-farms-are-good-for-the-environment.html?_r=0> {DK}

Large farmers — who are responsible for 80 percent of the food sales in the United States, though they make up fewer than 8 percent of all farms, according to 2012 data from the Department of Agriculture — are among the most progressive, technologically savvy growers on the planet. Their technology has helped make them far gentler on the environment than at any time in history. And a new wave of innovation makes them more sustainable still. A vast majority of the farms are family-owned. Very few, about 3 percent, are run by nonfamily corporations. Large farm owners (about 159,000) number fewer than the residents of a medium-size city like Springfield, Mo. Their wares, from milk, lettuce and beef to soy, are unlikely to be highlighted on the menus of farm-to-table restaurants, but they fill the shelves at your local grocery store. There are legitimate fears about soil erosion, manure lagoons, animal welfare and nitrogen runoff at large farms — but it’s not just environmental groups that worry. Farmers are also concerned about fertilizer use and soil runoff. That’s one reason they’re turning to high-tech solutions like precision agriculture. Using location-specific information about soil nutrients, moisture and productivity of the previous year, new tools, known as “variable rate applicators,” can put fertilizer only on those areas of the field that need it (which may reduce nitrogen runoff into waterways). GPS signals drive many of today’s tractors, and new planters are allowing farmers to distribute seed varieties to diverse spots of a field to produce more food from each unit of land. They also modulate the amount and type of seed on each part of a field — in some places, leaving none at all. Many food shoppers have difficulty comprehending the scale and complexity facing modern farmers, especially those who compete in a global marketplace. For example, the median lettuce field is managed by a farmer who has 1,373 football fields of that plant to oversee. For tomatoes, the figure is 620 football fields; for wheat, 688 football fields; for corn, 453 football fields. How are farmers able to manage growing crops on this daunting scale? Decades ago, they dreamed about tools to make their jobs easier, more efficient and better for the land: soil sensors to measure water content, drones, satellite images, alternative management techniques like low- and no-till farming, efficient irrigation and mechanical harvesters. Today, that technology is a regular part of operations at large farms. Farmers watch the evolution of crop prices and track thunderstorms on their smartphones. They use livestock waste to create electricity using anaerobic digesters, which convert manure to methane. Drones monitor crop yields, insect infestations and the location and health of cattle. Innovators are moving high-value crops indoors to better control water use and pests. Before “factory farming” became a pejorative, agricultural scholars of the mid-20th century were calling for farmers to do just that — become more factorylike and businesslike. From that time, farm sizes have risen significantly. It is precisely this large size that is often criticized today in the belief that large farms put profit ahead of soil and animal health. But increased size has advantages, especially better opportunities to invest in new technologies and to benefit from economies of scale. Buying a $400,000 combine that gives farmers detailed information on the variations in crop yield in different parts of the field would never pay on just five acres of land; at 5,000 acres, it is a different story. These technologies reduce the use of water and fertilizer and harm to the environment. Modern seed varieties, some of which were brought about by biotechnology, have allowed farmers to convert to low- and no-till cropping systems, and can encourage the adoption of nitrogen-fixing cover crops such as clover or alfalfa to promote soil health. Herbicide-resistant crops let farmers control weeds without plowing, and the same technology allows growers to kill off cover crops if they interfere with the planting of cash crops. The herbicide-resistant crops have some downsides: They can lead to farmers’ using more herbicide (though the type of herbicide is important, and the new crops have often led to the use of safer, less toxic ones). But in most cases, it’s a trade-off worth making, because they enable no-till farming methods, which help prevent soil erosion. These practices are one reason soil erosion has declined more than 40 percent since the 1980s. Improvements in agricultural technologies and production practices have significantly lowered the use of energy and water, and greenhouse-gas emissions of food production per unit of output over time. United States crop production now is twice what it was in 1970. That would not be a good change if more land, water, pesticides and labor were being used. But that is not what happened: Agriculture is using nearly half the labor and 16 percent less land than it did in 1970.

#### The plan fails---lack of political will, loopholes, and no resources

Brown 21 Alex Brown Staff Writer Stateline. “Environmentalists Make Long-Shot Attempt to Ban New Factory Farms.” February 19, 2021. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/19/environmentalists-make-long-shot-attempt-to-ban-new-factory-farms> {DK}

It’s unclear how many lawmakers have the appetite to challenge the system that accounts for much of the nation’s food supply. Republicans in some states want to limit local jurisdictions’ ability to oversee factory farms through zoning laws and permitting decisions. CAFOs have proven difficult to regulate, say environmental activists. Many companies have found loopholes in the federal Clean Water Act to avoid monitoring their contaminants or obtaining permits. Many of the air pollutants emitted by livestock are not regulated under the Clean Air Act. Meanwhile, some state agencies tasked with enforcing those laws lack the resources or interest to crack down on pollution.

#### Courts circumvent

**Crane 21**—(Professor of Law, University of Michigan). Daniel A. Crane. 2021. “Antitrust Antitextualism”. 96 Notre Dame Law Rev. 1205. <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>. Accessed 9/12/21.

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a **readily discernable meaning** on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the **statutory texts** [of the antitrust laws] have considerably more specific meaning than the **conventional wisdom would suggest**.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts **frequently acknowledge** that the statutory texts have a **plain meaning**, **and then refuse to follow it**.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in **one consistent direction**—toward reading down the antitrust statutes **in favor of big business**. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and **continues to this day**. In brief: within their first decade of antitrust jurisprudence, the courts read an **atextual** rule of reason into section 1 of the **Sherman** Act to transform an **absolute prohibition** on agreements restraining trade into a **flexible standard** often invoked to bless large business combinations; after Congress passed **two reform statutes** in 1914, the courts incrementally read much of the **textual distinctiveness** out of the statutes to lessen their **anticorporate bite**; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that **not one** of the principal **substantive antitrust statutes** has been **consistently interpreted** by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has **bent always in favor of capital**.

Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that.

Inquiring into the nature and implications of **antitrust antitextualism** is particularly salient at the present when, for the first time in a generation, there is **widespread dissatisfaction with antitrust** enforcement and **impetus for potential reform legislation**.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 **We have seen this play before, and also its sequel.** In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

To begin informing an answer to that question, this Article undertakes to diagnose and analyze the longitudinal phenomenon of antitrust antitextualism. Part I sets the stage by contextualizing antitrust law within broader jurisprudential conceptions of statutory regimes, statutory interpretation, and legislative-judicial dynamics. More specifically, it presents the conventional understanding of the Sherman Act as a “super-statute” delegating broad common-law powers to the courts, thus removing antitrust law from usual controversies over statutory interpretation methodologies.9 It then establishes that, if the conventional wisdom is wrong and the antitrust statutes have determinate meanings that the courts are consistently ignoring in favor of big capital, the most obvious inference is that the courts have an ideological bias at odds with congressional purpose. Part I concludes by establishing a framework for assessing whether antitrust antitexualism generally represents a conservative judicial bias against the will of a more progressive Congress.

Part II subjects the historical record of antitrust antitextualism to the analytical framework described in Part I. It presents the consistent pattern of judicial disregard of the antitrust statutes’ text and purpose across all five of the principal substantive antitrust statutes—the Sherman Act of 1890, the FTC and Clayton Acts of 1914, the Robinson-Patman Act of 1936, and the Celler-Kefauver Act of 1950, and shows that the pattern of judicial disregard has a unilateral direction—toward softening the blow of the antitrust laws on big business. However, Part II also shows that the progressive Congress/conservative courts hypothesis fails to capture the burden of the historical record. In particular, the judges responsible for reading down the antitrust statutes were not generally conservative by conventional measures, Congress has not shown much interest in overriding the judicial recasting of the statutes, and the courts have not undertaken to constitutionalize their holdings in order to prevent congressional overrides, even though they had many occasions to do so. Something other than ideological conflict between the legislative and judicial branches must be behind the phenomenon.

Part III offers a counterhypothesis—that the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche: the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve economic efficiency. Congress expresses **populist idealism** through legislative pronouncements reining in big business, but then **implicitly acquiesces as the courts** (often in conjunction with the executive branch) **read down the statutes** to strike a balance between the aspirational and pragmatic impulses. For better or for worse, **this is the way things have worked for 130 years**. Part III concludes by considering the implications of the idealistic Congress/pragmatic courts thesis for future legislative reforms, the dynamism of the antitrust system, and jurisprudential understanding of legislative/judicial dynamics more generally.

# 2NC

**Section 5**

**2NC OV**

**Their ev says faulty interpretation is the problem – cp solves (MSU = Green)**

Hannah **Kass 19**, Master’s degree candidate in environmental studies at the University of Pennsylvania, “Breaking Up Big Ag Requires Reasonable Antitrust Enforcement”, 12/26/19, The Regulatory Review, https://www.theregreview.org/2019/12/26/kass-breaking-up-big-ag-antitrust-enforcement/

In 2007, food sovereignty activists from around the world convened in Sélingué, Mali to write the [Declaration of Nyéléni](https://nyeleni.org/spip.php?article290). That declaration asserts that activists should seek to democratize the flows of power, wealth, and resources that have moved predominantly toward the core industrialized countries and multinational corporate agribusinesses, and away from farmers all over the world.

The declaration aims to ensure that the food system protects those who produce and consume the world’s food supply: farmers and people, rather than corporate agribusinesses. Yet in the **U**nited **S**tates and elsewhere, the food system has a long way to go toward meeting the needs of both farmers and consumers.

Farmers are increasingly driven out of **ag**riculture by the **unequal distribution of market power.** To ensure fair competition in the agri-food marketplace, it is imperative that the **federal government** provide the proper **enforcement of antitrust reg**ulation**s.** Currently, corporate agribusinesses [hold](https://www.iatp.org/sites/default/files/451_2_89014.pdf) a disproportionate amount of market power in the agri-food economy. Farmers, on the other hand, are under economic pressure to compete in a growing global market, and often must [rely](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) on contracting with just **a few processing companies** to sell their products.

Many of these contracts contain [conditions](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) which force farmers to **buy seeds and equipment** from a small handful of input companies. Often, the big food companies are **vertically integrated**—that is, the same companies operate at various levels of the supply chain. At the end of the day, farmers only [receive](https://1yd7z7koz052nb8r33cfxyw5-wpengine.netdna-ssl.com/wp-content/uploads/2018/05/042718-FarmerShare-1.pdf) 14.8 cents per every dollar consumers spend on food—yet the costs of production amount to 80 cents per dollar. The majority of the revenue is realized by **corporate agribusiness** executives and shareholders.

In 2015, the four largest beef firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 85% of the beef market. The four largest U.S. corn seed firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 85% of the corn seed market, and the four largest U.S. soybean seed firms [controlled](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 76% of that market. In 2017, after the Bayer–Monsanto and Dow–Dupont mergers, the four largest global herbicide and pesticide firms now [own](https://openmarketsinstitute.org/wp-content/uploads/2019/04/190322_MonopolyFoodReport-v7.pdf) 84% of the market share.

The [Federal Trade Commission](https://www.ftc.gov/) (FTC) and [Antitrust Division of the Department of Justice](https://www.justice.gov/atr) interpret and implement antitrust statutes. The [Sherman Antitrust Act of 1890](https://www.ourdocuments.gov/doc.php?flash=false&doc=51&page=transcript) renders price-fixing, restraint of trade, and excessive market monopolization illegal, and the [Clayton Antitrust Act](http://euro.ecom.cmu.edu/program/law/08-732/Antitrust/ClaytonAct.pdf) asserts that it is unlawful for any business to merge with or acquire any part of its industry in a manner that significantly damages that industry. Despite these laws, corporate agribusiness’ monopolization of the agricultural market continues to persist at the expense of farmers in the United States.

Over the past 40 years, corporate agribusinesses have benefited from the FTC and Antitrust Division**’s** **lax interpretations of antitrust statutes**. These agencies have [permitted](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1065&context=gblr) large corporate agribusinesses to merge and monopolize the market excessively, despite the fact that antitrust statutes were created explicitly to regulate monopolies and ensure fair market competition.

Admittedly, given that the Sherman Act makes it illegal to restrain trade, it might be said that only by allowing agribusinesses to merge, acquire other businesses, and monopolize the market is trade able to continue unrestrained. But that trade is unrestrained only for the big firms. **Small farmers are unable to**[**compete**](https://foodfirst.org/wp-content/uploads/2013/12/BK7_4-Fall-2001-Vol-7-4-Freedom-to-Trade.pdf) in the marketplace when the concentration of big firms continues unrestrained, particularly when mergers and acquisitions promote the monopolization of the market.

Consider how **small farmers** have fared under the consolidation of the meat packing industry. According to the [Packers and Stockyards Act of 1921](https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/42/STATUTE-42-Pg159b.pdf), price-fixing was supposedly rendered illegal, but even with this protection the plight of small farmers has been profound.

In 2004, for example, cattle farmer Henry Lee Pickett [sued](https://caselaw.findlaw.com/us-11th-circuit/1492709.html) meat packer Tyson Foods when he noticed that Tyson was lowering prices in its marketing agreements with farmers. Pickett preferred to charge the cash market price to avoid being paid an unfair price. Even if farmers did not sell their products through marketing agreements like Tyson’s, often they still needed to lower their prices on the open market. Pickett was unable to provide evidence that Tyson’s market agreements were producing unfair competition practices, so he lost his case.

Separately, pork producers also unsuccessfully [fought](https://law.justia.com/cases/federal/district-courts/FSupp2/183/824/2285063/) meat packer Smithfield Foods, citing illegal price-fixing under the Packers and Stockyards Act. The marketing agreements were seen by the judiciary as reasonable business practices because they cut costs to the agribusiness contractors.

In both of these cases, Tyson and Smithfield were protected by the **“freedom of contract” principle**, which declares that everyone is free to participate in, or opt out of, any contractual agreement. However, the share of this “freedom” in terms of food sovereignty is certainly asymmetrical. When the market price is controlled by an artificially low price created by a marketing agreement, farmers are not free from poverty. When marketing agreements are adopted by the majority of processors, and there are not alternative agreements offered, farmers are not free from opting out of unfair contracts. In effect, farmers are locked into receiving an unfair price for their product.

**The**[**Agricultural Adjustment Act of 1933**](http://nationalaglawcenter.org/wp-content/uploads/assets/farmbills/1933.pdf) contained an important policy for agrarian viability: parity pricing, or a price support that covers producers’ costs of production in setting commodity prices. But that policy [lapsed](https://onlinelibrary.wiley.com/doi/abs/10.1526/0036011042722750) in 1973 and has never returned as part of federal agricultural law. Reinstating a parity price for farm products would ensure that consolidated corporate agribusinesses would not be able to fix prices below the costs of production. **Farmers** would have to **be paid a fair price** for their products under the law.

Another important solution will be for farmers and food sovereignty advocates to **seek judicial review of mergers and acquisitions** approved by the FTC and DOJ. When firms are too big, they accumulate too large a share of power, land, and wealth. This inequality inherently renders farmers dispossessed of their ability to compete in the marketplace.

Instilling food sovereignty into our food governance requires prioritizing our farmers’ needs. The law must guarantee a fair price for the food they grow to feed all of us. **The judiciary must consider the “restraint of trade” that their previous merger approvals have imposed on farmers**, and enforce antitrust laws in favor of farmers going forward.

**A2: Congress**

***Even if* the political branches would otherwise hate the Cplan, Agency Guidance docs *won’t face retaliation*.**

**Raso ‘10**

CONNOR N. RASO – J.D., Yale Law School expected 2oo; Ph.D., Stanford University Department of Political Science expected 2010 - “Strategic or Sincere? Analyzing Agency Use of Guidance Documents” – Yale Law Journal – v. 119:782 - #E&F - https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5196&context=ylj

Guidance documents generally attract **less attention from Congress** and **the President,** giving agency leaders greater latitude to impose their preferred policy choices. Guidance is not subject to the many procedural requirements **devised to alert the political branches** to agency rulemaking activity. 92 In addition, **guidance documents arouse less attention and opposition.** Agencies can generally issue a guidance document without attracting advance publicity. The agency therefore has the opportunity to set a new status quo before opponents mobilize. This status quo may generate self-reinforcing feedbacks that strengthen the agency's position. **By contrast**, agencies must solicit comments on legislative rules. This process generates political activity that may be noticed by Capitol Hill and the White House; some important legislative rulemakings gain political salience as interest group conflict escalates during the notice and comment process. 93 This comparison is not intended to suggest that interest groups are unaware of guidance documents. Rather, at the margin, legislative rules arouse more interest group attention and opposition, which results in greater congressional interest. Guidance documents, therefore, are relatively more attractive in cases where Congress and the President are likely to intervene against the agency.

**This is uber empirically false**

Our 1NC Khan ev is from the FTC Chair – who EXPLICITLY SAID she intends to be more aggressive with Section 5. There’s been no agency stripping or political retal.

**The CP explicitly solves this through data and clear interpretation – Kahn’s on board**

**2ac Vaheesan 17**, Regulations Counsel at the Consumer Financial Protections Bureau, “Resurrecting "A Comprehensive Charter of Economic Liberty": The Latent Power of the Federal Trade Commission”, University of Pennsylvania Journal of Business Law, 19 U. Pa. J. Bus. L. 645, Spring 2017, Lexis

C. Recognizing the Threat of Adverse Congressional Action Does Not Compel Continued Adherence to the Antitrust Status Quo

Among those sympathetic to an expansive Section 5, some are likely to express reservations about its **political feasibility**. **History** certainly lends **support** to this concern. Congress has been **hostile** to an activist FTC in the past and could be **expected** to **move** to **rein in any activism**. In the 19**70s**, the FTC zealously pursued its antitrust and consumer protection missions. 251 This period of aggressive enforcement and rulemaking triggered a **powerful backlash** from corporate America. 252 The Washington Post condemned the Commission as the "National Nanny" in a stinging editorial. 253 This period of zeal **ended poorly for the FTC**. Congress [\*694] asserted **new power** over the agency and imposed additional **procedural conditions** on the use of its consumer protection authority. 254

This fear of a political backlash from business and Congress may be the strongest line of criticism of an expansive Section 5. Corporations pour money into Congressional campaigns to ensure that their interests are represented and advanced. Although the FTC has been averse to policy activism or innovation for decades, the House has tried to limit the FTC's authority to challenge mergers under Section 5, in the name of creating harmony between the FTC and the DOJ. 255

The recent experience of **another** federal agency is **instructive**. Congressional Republicans, **with the support of some Democrats**, have been **try**ing to **hobble** the Consumer Financial Protection Bureau **("CFPB")**. 256 The CFPB is seen as aggressively pursuing its statutory mission, bringing a wide range of enforcement actions and writing a number of rules to regulate consumer finance markets. 257 In light of its vigor, the opposition from Congress does not come as a surprise. **Even under more favorable political circumstances**, an FTC that seeks to **breathe life** into Section 5 is **certain to invite comparable Congressional opposition**.

The **probable reaction** from many **ideologically** or **financially captured** members of Congress should **not be underestimated**, let alone ignored. Corporate interests and their Congressional allies would **seek to curtail any Section 5 expansions**. The FTC is a creation of Congress and so **must answer** to Congress. Congress can undertake a **range of actions** to **limit** the FTC's day-to-day ability to function and its statutory power. At an extreme, Congress could **repeal the FTC Act** and **shut down the FTC entirely**. The risks to the FTC's future would include various **existential threats** and should not be brushed aside. Undertaking a reinterpretation of Section 5 without an **awareness** of **political dynamics** on Capitol Hill would [\*695] be a **grave mistake**.

Yet, these **political risks do not call for resignation** and indefinite inaction. Just as the power of corporate interests in American society cannot be dismissed, the **changing political dynamics** in the United States **should also not be discounted**. Forty years of **income stagnation** and a dramatic rise in **inequality** have brought the merits of existing political economic arrangements, including **weakened antitrust**,258 **into doubt**.259 At a 2016 Senate antitrust oversight hearing, Democrats and Republicans raised concern over inadequate antitrust enforcement.260 Even Senator Mike Lee, a hardline conservative from Utah, questioned the effectiveness of current merger policy.261 Senator Bernie Sanders, a self-described democratic socialist, championed economic populism and a revival of the New Deal and won twenty-two states in his campaign to be the Democratic nominee for president—a campaign that seemed quixotic just a year ago.262 The Democratic Party now has a faction that seeks to challenge the status quo across a number of areas,263 including **antitrust**.264 Public concerns about the power of corporations are being reported in the **mainstream press** again, after years of neglect.265 **Even** President **Trump has raised concerns about corporate mergers** and monopolies,266 though it seems unlikely he will act in any systematic fashion.

The Federal Communications Commission’s (“FCC”) rule to impose non-discrimination and no-blocking requirements on broadband providers (popularly known as “net neutrality”)268 offers lessons on how the FTC could proceed. The FCC’s campaign to establish net neutrality challenged some of the most powerful corporations in the country and involved judicial setbacks and multiple policy reversals.

The FCC succeeded in large measure because of the political support for net neutrality. Activists and advocates effectively conveyed the importance of net neutrality to the broader population and tailored their message to different communities.270 Businesses that stood to lose from the exclusionary practices of broadband providers also played an important role in championing net neutrality.271 Furthermore, the FCC enjoyed key support in Washington, with President Obama272 and a number of Representatives and Senators273 calling for strong net neutrality rules.274 The groundswell of public support, reflected in the 4 million mostly supportive comments that were submitted to the FCC,275 and pressure from high-profile political figures persuaded the FCC to take a strong approach and surely steeled its political will.

Political and public support for a broad Section 5 is essential. If the FTC were to proceed without strong public support and backing from the White House and progressive factions in Congress, it would face long odds of success. One agency alone, regardless of its determination, cannot stand up to the power of big business.

**2NC v PDB**

**Plan and perm include *non-FTC actors*.**

**Involvement of external actors *that are political appointees* creates *perceptions* of external influence. That erodes the signal of FTC independence.**

* The article outlines a difference between political appointees subject to *at-will* removal by POTUS (serve at the pleasure of the President – i.e. Solicitor General, AG, DOJ, etc) **VIS-A-VIS** *for-cause* agency Committee members. FTC Commissioners – an example in the article - operate on 7 year terms, spanning Administrations, and can solely be removed for-cause.

**Kovacic ‘15**

et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

On March 16, 1915, the Federal Trade Commission (“**FTC**”) opened for business and began what has proven to be a **uniquely compelling experiment** in economic regulation. The FTC was the first law enforcement agency to be designed “from the keel up” as a competition agency. One vital consideration in forming the new institution was to define its relationship **to the political process**. Among other features in the original FTC Act, Congress provided that the agency’s commissioners would have fixed, seven-year terms and that a commissioner could be removed during his or her term only **for cause**.

Through these and other design choices, Congress created what would come to be known **as the world’s first “independent” competition agency**. The **FTC**’s degree of **insulation from** direct **political control** supplied **an influential model** **of institutional design** and contributed to **the acceptance of a norm**, evident in modern commentary about competition law, that **public** enforcement agencies **should be politically independent**. This Essay examines the relationship of competition agencies to the political process. We use the experience of the FTC to address three major issues. First, what does it mean to say that a competition agency is “independent”? Second, how much insulation from political control can a competition agency achieve in practice? Third, how is the pursuit of political independence properly reconciled with demands that a competition agency be accountable for its decisions—an important determinant of legitimacy—and with the need to engage with elected officials to be effective in performing functions such as advocacy?

In addressing these questions, we seek to develop themes we have addressed in earlier work involving the establishment and operations of the FTC. We approach the topic in the spirit of Professor Herbert Hovenkamp, whose work shows how historical research can improve our understanding of a competition system. Professor Hovenkamp’s scholarship has deeply influenced our approach to this field, and we are honored to participate in a symposium that celebrates his extraordinary contributions to competition law and policy.

II. The Relationship of the Competition Agency to the Political Process: Design Tradeoffs

The suggestion that competition agencies **be independent** reflects a desire to enable enforcement officials to make decisions **without** destructive **intervention** by elected officials or by **political appointees who head other** government **departments**. One method of providing the desired independence from these forms of interference is for the law to state that competition agency leaders can be removed by elected officials only for good cause. Political intervention undermines sound policy making when it causes the agency to bend the application of competition law to serve special interests at the expense of the larger society’s well being. As discussed below, because antitrust-relevant behavior (e.g., a merger) can involve large commercial stakes and affect the economic fortunes of individual firms and communities, the decisions of a competition agency can attract close scrutiny by heads of state, legislators, and cabinet officials.

The need for independence arguably varies according to the function that the competition agency is performing. In carrying out some functions, particularly certain law enforcement functions, the agency requires **greater insulation from political pressure**. For other functions, broader involvement by elected officials in setting the agency’s agenda and determining its choice of projects may be appropriate.

The **utmost degree of independence** is warranted when a competition agency **functions as an adjudicative decisionmaker**. Congress gave the FTC authority to use **administrative** adjudication to **develop norms** of business conduct. After the agency initiates a formal prosecution and functions as a trade court, the legitimacy of its decisions **requires** the **highest degree of assurance** that sound technical analysis, **not political intervention**, determined the outcome.

**A2: Courts**

Framing issue - This card reads well, but ignores the cp’s guidance, policy statements, and data sets which our Kovacic cards says makes the courts side with the FTC – previous FTC attempts at using section did not include these, but the cp does which means the counterplan succeeds where other FTC enforcement has failed

**Additionally, SCOTUS goes neg**

**1NC Khan says The Court’s repeatedly affirmed the FTC’s Section 5 authority.**

**Prefer SCOTUS *precedent* AND *empirics dipped from when the Court’s ideology was most aligned with the Chicago School*.**

**Dagen ‘10**

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

The FTC enforces Section 5, which makes unlawful “unfair methods of competition.”118 **In FTC v. Sperry** & Hutchinson Co., the Supreme Court held that Section 5 “empower[s] the Commission **to define** and **proscribe** an unfair competitive practice, **even though the practice does not infringe either the letter or the spirit of the antitrust laws**.”119 Many believe that the interpretation of Section 5 as broader than the Sherman Act is a remnant of a bygone era. But **even during the Chicago School era**, the Supreme Court reaffirmed its understanding that Section 2 and Section 5 differed. **For example, in Copperweld Corp**. v. Independence Tube Corp., while attempting to limit the reach of the Sherman Act, the Reagan antitrust team, led by Assistant Attorney General William Baxter, and FTC Chairman James Miller, submitted an amicus brief highlighting that “[t]he courts have held that some forms of less dangerous, but nonetheless anticompetitive, unilateral conduct may be subject to Section 5 of the Federal Trade Commission Act.”120 The Court thereafter explained that single firm conduct was governed not only by Section 2 but also by Section 5.121 In 1986, the Court more specifically and directly referenced the “spirit” of Section 5, stating that Section 5 “encompass[es] not only practices that violate the **Sherman** Act and **other antitrust laws**, . . . but also practices **that the Commission determines are against public policy for other reasons.”**122

**And – post-dating distinction**

**Aff Rollback args don’t assume the FTC’s recent recission of 2015 guidance *OR* our Cplan plank that sets a clear interpretation.**

**Salop ‘21**

et al; Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center “A New Section 5 Policy Statement Can Help the FTC Defend Competition” – Public Knowledge – July 19th - #E&F - https://publicknowledge.medium.com/a-new-section-5-policy-statement-can-help-the-ftc-defend-competition-a76451eacb39

We generally agree with the **F**ederal **T**rade **C**ommission’s decision to rescind its 2015 Section 5 Policy Statement. Just as the Department of Justice and Federal Trade Commission Merger Guidelines are regularly updated on the basis of agency experience, legal and economic developments, so should this type of policy statement. Rescinding the old statement is particularly relevant in light of the growing recognition of the hurdles preventing effective antitrust enforcement.

Calls for reform have not come solely from Neo-Brandeisian commentators (including both FTC Chair, Lina Khan, and Tim Wu, now a member of the National Economic Council). The need for reform and a varied set of proposals has also been expressed by economics-oriented commentators, including this group of former Justice Department enforcers, Jonathan Baker and Herbert Hovenkamp, among others. Chair Khan in her statement suggested that the Commission would next consider replacing the Policy Statement with a new statement explaining **how they plan to use Section 5** to increase competition. We think this would **be a valuable way to** show parties and courts what is coming. This article provides several suggestions that would be useful to consider and possibly include in the revised Section 5 Policy Statement. It should not be taken as an exhaustive list; there certainly may be other approaches to a revised statement that could also be effective.

A revised Policy Statement should make it clear that Section 5 is not identical to the Sherman and Clayton Act and that conduct can be challenged as an **unfair** method of **competition** under Section 5 even if it would not violate these other antitrust laws. In fact, even the original 2015 Policy Statement explicitly made this point. But the distinction between Section 5 and these other statutes is often ignored or suppressed by commentators who object to more vigorous antitrust enforcement by the FTC. Eventually, the FTC’s cases and rules under Section 5 will likely face the scrutiny of the courts. At that time, it may be **particularly helpful** to have **a clear** Policy **Statement of how the FTC is** **interpreting** Section 5. This can help maximize the impact the FTC can have, while assuaging concerns of detractors who say there is no limiting principle.

**2NC v PDCP**

**We compete on three phrases:**

* **“Law v. Reg”** – (POGO ev – below - CP expands and enforcement Agency’s Regs/Rules – not external “Law”)
* **“increase prohibitions”** (selectively under-enforced v. more enforcement)
* **“expand scope”** (“agency interp” vs. “a larger legal scope than presently exists on paper”)

**First, Aff severs *“Law”***

* We aren’t prohibiting or expanding anything (below);
* But *if we were*, it’s NOT an expansion of the LAW:

**P.O.G.O. ‘15**

Project On Government Oversight *- Internally quoting Chief Justice Roberts’ Majority Opinion in US Supreme Court’s 7-2 decision in Department of Homeland Security v. MacLean* (2015) - which dealt largely with statutory interpretation. The Project On Government Oversight (POGO). POGO’s investigators are experts in working with whistleblowers and other sources inside the government who come forward with information that we then verify using the Freedom of Information Act, interviews, and other fact-finding strategies. We publish these findings and release them to the media, Members of Congress and their constituents, executive branch agencies and offices, public interest groups, and our supporters. In addition to quoting the Majority Opinion from the Chief Justice, this article was authored by POGO’s Phillip Shaverdian – who is currently a Judicial Law Clerk within the U.S. District Court System and, at the time of the writing, was an intern within and correspondent on behalf of the Project On Government Oversight - “Agency Rules and Regulations Are Not Laws” - FEBRUARY 10, 2015 - #E&F – modified for language that may offend - https://www.pogo.org/analysis/2015/02/agency-rules-and-regulations-are-not-laws/

Agency Rules and Regulations **Are Not Laws**

In January, in one of the most riveting cases of the current session, the Supreme Court ruled **7-2** in favor of Transportation Security Administration (TSA) whistleblower Robert MacLean, holding that **agency rules and reg**ulation**s** **do not equate** to **laws**. **Chief Justice John Roberts wrote the majority opinion for the Court.** And now that we’ve had time to celebrate the victory for MacLean, it’s time to turn our focus to what Department of Homeland Security v. MacLean may mean for whistleblowers in general.

Current federal whistleblower protection law—the Whistleblower Protection Act (**WPA**)—protects individuals against backlash from employers for disclosing information about “any violation of any **law,** **rule** or regulation” or “a substantial and specific danger to public health or safety” by a federal agency. However, in the same statute there exists an exception for disclosures that are “specifically **prohibited** by ***law***.”

The question the Court sought to answer was whether MacLean’s disclosures were “specifically **prohibited** by ***law***.”

The Homeland Security Act of 2002 states that the **TSA’s** “Under Secretary shall prescribe **reg**ulation**s** prohibiting the disclosure of information obtained or developed in carrying out security” if they decide that the disclosure of that information would “be detrimental to the security of transportation.” The resultant **reg**ulation**s** thus **prohibit** the disclosure of “sensitive security information” (**SSI**) without the proper authorization. Among the various types of information that could be designated SSI is “information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.”

The government argued that **MacLean’s** disclosures were “specifically prohibited by law” and that the WPA did not offer protection **for two reasons: 1)** the disclosure was prohibited by specific TSA **regulations** on SSI; **and** **2)** the **H**omeland **S**ecurity **A**ct authorizes the TSA to promulgate the **regulations**.

The Court addressed and subsequently **rejected both arguments**, affirming the judgment in favor of MacLean by the U.S. Court of Appeals for the Federal Circuit.

The Court **rejected the** government’s **argument** that a disclosure that is prohibited **by regulation** **is** also “specifically prohibited **by law,”** as prescribed by federal whistleblower statute.

The Court elaborates that **in the WPA** Congress repeatedly used the phrase “law, rule, or regulation,” but did not use the same phrase in the statutory language at question in this case. Instead, Congress used the word “law” alone, suggesting that it meant to exclude rules and regulations from the specific stipulation. Congress’s omission of “rule, or regulation” **must be** ~~viewed~~ (**considered**) as **deliberate** because of the use of “law” and “law, rule, or regulation” in the same sentence, as well as the frequent use of the latter phrase throughout the statute. These “two aspects of the whistleblower statute make Congress’s choice to use the narrower word “law” seem quite deliberate,” opined the Court.

After creating an exception for disclosures “specifically prohibited by law,” the WPA also creates a second exception for information “specifically required by Executive order to be kept secret.” The second exception is limited to actions taken by the President, and thus suggests that the first exception and the use of “law” is limited to actions by Congress.

The Court also reasons that “If **‘law’** included **agency rules and reg**ulation**s**, then an agency could insulate itself from the scope of Section 2302(b)(8)(A) merely by promulgating a regulation that ‘specifically prohibited’ whistleblowing.” Instead, “Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks.” **The Court concluded** that “it is unlikely that Congress meant to include rules and regulations within the word ‘law’” and that **the specificity of the phrase** “specifically **prohibited by law**” was meant to deliberately **exclude rules and reg**ulation**s**.

* **Second is *“Increase prohibition*”;**

**The underlying conduct’s *already prohibited* – albeit in vague terms which beg questions of enforcement and interpretation. That’s Khan – we’re re-including for clarity, but 1NC read all this:**

**NOTE**: All highlighted portions (green and blue) of this card were read in the 1NC. The 1NC card made solvency and competition claims – and, to offer context, we’ve used blue highlighting to outline the parts of the ev that augment our perm/competition claims.

**Kahn ‘21**

et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

**Section 5** of the **F**ederal **T**rade **C**ommission **A**ct **prohibits** “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s **congressionally mandated duty** to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the **F**ederal **T**rade **C**ommission **A**ct to reach beyond the Sherman Act and to provide an alternative institutional framework for **enforcing** the **antitrust** laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 **These concerns spurred the passage of the FTC A**ct, which created an administrative body that could police unlawful business practices with **greater expertise** and **democratic accountability** than courts provided.15

**At the heart of the statute was Section 5,** which declares “unfair methods of competition” **unlawful**.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides **no private right of action**, shielding violators from **private lawsuits** and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to **leave it to the Commission** to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the **various unlawful practices**, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the **agency’s Section 5 authority**, holding that **the statute**, **by its plain text**, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

**The CP has an agency alter its enforcement discretion related to an existing statutory prohibition. That’s not an increase in prohibitions.**

**Kusserow ‘91**

R.P. Kusserow, Inspector General, Department of Health and Human Services - 42 Code of Federal Regulations - Part 1001, RIN 0991-AA49 – “Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions” - Monday, July 29, 1991 (56 FR 35952) - AGENCY: Office of Inspector General (OIG), HHS. ACTION: Final rule - #E&F - https://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm

Response: This regulation covers many categories of business arrangements, providing standards to be met within each safe harbor provision. If a person participates in an arrangement that fully complies with a given provision, he or she will be assured of not being prosecuted criminally or civilly for the arrangement that is the subject of that provision.

**This regulation does not expand the scope of activities that the statute prohibits**. The **statute itself** describes **the scope of illegal activities**. The legality of a **particular** business arrangement must be determined by comparing the **particular facts** to the proscriptions of **the statute.**

The failure to comply with a safe harbor can mean **one of three things**. **First,** as we stated in the preamble to the proposed rule, it may mean that **the arrangement does not fall within the ambit of the statute**. In other words, the arrangement is not intended to induce the referral of business reimbursable under Medicare or Medicaid; so there is no reason to comply with the safe harbor standards, and no risk of prosecution.

**Second,** **at the other end of the spectrum**, **the arrangement could be a clear statutory violation** and also not qualify for safe harbor protection. In that case, assuming the arrangement is obviously abusive, prosecution would be very likely.

**Third,** the arrangement may violate the statute in a less serious manner, although not be in compliance with a safe harbor provision. Here there is no way to predict the degree of risk. Rather, the degree of the risk depends on an evaluation of the many factors which are part of **the decision-making process** regarding case selection for investigation and prosecution. Certainly, in many (**but not** necessarily **all**) instances, prosecutorial discretion would be exercised not to pursue cases where the participants appear to have acted in a genuine good-faith attempt to comply with the terms of a safe harbor, but for reasons beyond their control are not in compliance with the terms of that safe harbor. In other instances, there may not even be an applicable safe harbor, but the arrangement may appear innocuous. But in other instances, we will want to take appropriate action.

We do not believe the Medicare and Medicaid programs would be properly served if we assured protection in all instances of "substantial compliance," "technical violations," or "de minimis" payments. **Unfortunately**, these are vague concepts, **subject to differing interpretations.** In this regulation, we have attempted to provide bright lines, to the extent possible, for safe harbors in order to provide clarity and predictability as to what conduct is immune from government action. Our endorsement of the concepts mentioned above would only serve to blur these lines and produce litigation as to what "substantial," "technical" and "de minimis" really mean. The OIG therefore declines to adopt these concepts.

**Third they sever “expand scope”.**

**Agencies can *lean on interpretive discretion to reverse selective under-enforcement*. That’s distinct from *expanding legal scope on paper*.**

**Theoretically, Section 5 could already challenge the practice outlined by the Aff.**

**Federal Register: Rules and Regulations - ‘9**

Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf

b. Examples 7-9 – New Media Several commenters raised questions about, or suggested revisions to, proposed new Examples 7-9 in Section 255.5, in which the obligation to disclose material connections is applied to endorsements made through certain new media.91 Two commenters argued that application of the principles of the Guides to new media would be inconsistent with the Commission’s **prior commitment** to address word of mouth marketing issues on a case-by-case basis.92 Others urged that they be deleted in their entirety from the final Guides, either because it is premature for the Commission to add them, or because of the potential adverse effect on the growth of these (and other) new media.93 Two commenters said that industry self-regulation is sufficient.94

The Commission’s inclusion of examples using these new media is not inconsistent with the staff’s 2006 statement that it would determine on a case-by-case basis whether law enforcement investigations of ‘‘buzz marketing’’ were appropriate.95 All Commission law enforcement decisions are, and will continue to be, made on a case-by-case basis, evaluating the specific facts at hand. Moreover, as noted above, the Guides **do not expand the scope** of liability **under Section 5**; they simply provide guidance as to how the Commission intends **to apply** governing **law** **to** various **facts**. **In other words**, the Commission ***could*** challenge the dissemination **of deceptive representations made via these media** **regardless of whether the Guides contain these examples**; thus, not including the new examples would simply deprive advertisers of guidance they otherwise could use in planning their marketing activities.96

**Those cards access the Precision and Context warrants.**

**They’re from the formal Code of Federal Regs, use topic phrases, and get at whether agency interps “prohibits” or “expands scope”.**

**Aff severance a voter – Plan’s the locus, we’re reactive, so it’s worse for them. No clash or in-round education. Independently proves they are not topical!**

**It is a zero-sum game – so consider whether it’s *worse* if Cplan were – instead – a topical Aff. Their thread NECESSARILY mean “Agency interp Affs” are topical - which Ends EDUCATION about “prohibit vs. agency interpretation”, wishes away the topic, and lets aff’s be squo interps of laws - perms cannot include non-topical characterizations of the aff**

**A2: Okuliar**

**Our *Guidance distinction* means no rollback**

* Agencies can issue *“Guidance”* (and enforce) – or they can create *“Rulemaking”* – both have legal force, but the latter tends to encounter more judicial review/resistance.

**Raso ‘10**

CONNOR N. RASO – J.D., Yale Law School expected 2oo; Ph.D., Stanford University Department of Political Science expected 2010 - “Strategic or Sincere? Analyzing Agency Use of Guidance Documents” – Yale Law Journal – v. 119:782 - #E&F - https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5196&context=ylj

**5. Judicial Challenge**

Agencies concerned that the courts will invalidate their policy decisions will be motivated to use **guidance documents** more frequently relative to **legislative rules.** Guidance documents are advantageous because **they are less likely to be challenged**. **Even if challenged**, agencies have a reasonable **probability of winning** on **ripeness** or finality grounds.

**Rollback assumes Core Antitrust *at present* – it’s less likely precisely because the Aff *expands beyond* current core understandings.**

**Dagen ‘10**

Richard – Formerly, Adjunct Professor Boston University School of Law (Aug 2005 - Dec 2006) specializing in Antitrust; former Kramer Fellow - Harvard Law School. At the time of this writing, the author served as Antitrust, High Tech and Antitrust Special Counsel to the Director, Bureau of Competition, Federal Trade Commission “RAMBUS, INNOVATION EFFICIENCY, AND SECTION 5 OF THE FTC ACT” – BOSTON UNIVERSITY LAW REVIEW - Vol. 90 - #E&F - http://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf

In Part III, I provide a more comprehensive analysis of Section 5. I begin with a general discussion of the breadth of Section 5 and then address the concern that using Section 5 to fill in gaps in the antitrust laws will cause mayhem. Although some maintain that the FTC should not use Section 5 because three different appellate courts chastised the FTC in the 1980s for trying to expand the antitrust laws, those defeats involved core competition practices that the courts protect the most. **As** the **conduct moves** away **from** either **the core** or the essential, authority under both the Sherman Act and **the FTC A**ct is broader.

**I am going to preempt some 1ar arguments:**

**FTC can issue civil damages under Penalty Offense Authority – means that treble damages are not key**

**Gordon ‘21**

et al; Len Gordon, chair of Venable’s Advertising and Marketing Group, is a skilled litigator who leverages his significant experience working for the Federal Trade Commission (FTC) to help protect his clients’ interests and guide their business activity. Len regularly represents companies and individuals in investigations and litigation with the FTC – From: “The Regulatory Road Ahead: Payments Law Virtual Bootcamp” - June 8, 2021 – This specific section was written January 19, 2021 and reconsolidated into a broader doc - #E&F - https://www.venable.com/-/media/files/events/2021/06/the-regulatory-road-ahead.pdf?la=en&hash=7DA62C06072C24DB3A3C8A743AEE41FCC12E3410

Finally, the FTC could utilize a somewhat unused avenue for obtaining redress—the **Penalty Offense Authority**, which we’ve previously discussed here. This Authority authorizes the FTC to seek civil penalties (**directly not through the DOJ**) against a defendant in federal court where (1) the FTC has obtained a litigated cease and desist order against another party through an administrative proceeding p**ursuant to Section 5**(b) **of the FTC A**ct**;** (2) the cease and desist order identifies a specific practice as unfair or deceptive; and (3) a party on notice of the order (i.e., someone with actual knowledge that the practice is unfair or deceptive) then engages in that same violating conduct after the order is final.

**Section 5 has teeth. It effectively enforces without wave one damages.**

**Melamed ‘16**

A. Douglas Melamed - Professor of the Practice of Law, Stanford Law School – “PREPARED STATEMENT For the SENATE COMMITTEE ON THE JUDICIARY SUBCOMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS on SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT” - April 5, 2016 #E&F - https://www.judiciary.senate.gov/imo/media/doc/04-05-16%20Melamed%20Testimony.pdf

(2) Some have emphasized that **only the FTC** **can enforce Section 5** and that the only remedy for Section 5 is a “cease and desist” order issued by the FTC. Because there are no treble damages for Section 5 violations, it is suggested, there should be no fear that businesses will be unfairly punished for engaging in conduct that they did not understand to be unlawful or that businesses will be deterred from engaging in procompetitive conduct for fear of violating an ambiguous Section 5. Of course, if that were true, the prospect of standalone Section 5 enforcement would also not deter anticompetitive conduct.

There are two problems with this argument. First, the premise that remedies for violating Section 5 are inconsequential is incorrect. The FTC has for decades taken the position that its authority to issue “cease and desist” orders permits it to enter broad injunction orders that require parties to take a wide range of actions to rectify alleged harm and to ensure that they will not engage in the future in what the FTC regards as conduct similar to that alleged to have violated Section 5. Businesses sometimes find the prospect of such intrusive or sweeping restrictions on how they conduct their business to be far more worrisome than the prospect of treble damage liability.

**Adv 1**

**No food wars**

**Vestby et al 18** [Jonas Vestby, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is **little scholarly merit** in the notion that a short-term reduction in access to **food increases the probability that conflict** will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink **of starvation are not in the position to resort to violence**, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests. Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

# 1nr

## sustainability

### Block --- BioD

**No impact to bio-d loss**

**Kareiva 12** (Peter Kareiva et. al, – Chief Scientist and Vice President of the Nature Conservancy, Michelle Marvier, Robert Lalasz, “Conservation in the Anthropocene Beyond Solitude and Fragility”, The Breakthrough, http://thebreakthrough.org/index.php/journal/past-issues/issue-2/conservation-in-the-anthropocene/)

2.

As conservation became a global enterprise in the 1970s and 1980s, the movement's justification for saving nature shifted from spiritual and aesthetic values to focus on biodiversity. Nature was described as primeval, fragile, and at risk of collapse from too much human use and abuse. And indeed, there are consequences when humans convert landscapes for mining, logging, intensive agriculture, and urban development and when key species or ecosystems are lost.

But ecologists and conservationists have **grossly overstated** the fragility of nature, frequently arguing that once an ecosystem is altered, it is gone forever. Some ecologists suggest that if a single species is lost, a whole ecosystem will be in danger of collapse, and that if too much biodiversity is lost, spaceship Earth will start to come apart. Everything, from the expansion of agriculture to rainforest destruction to changing waterways, has been painted as a threat to the delicate inner-workings of our planetary ecosystem.

The fragility trope dates back, at least, to Rachel Carson, who wrote plaintively in Silent Spring of the delicate web of life and warned that perturbing the intricate balance of nature could have disastrous consequences.22 Al Gore made a similar argument in his 1992 book, Earth in the Balance.23 And the 2005 Millennium Ecosystem Assessment warned darkly that, while the expansion of agriculture and other forms of development have been overwhelmingly positive for the world's poor, ecosystem degradation was simultaneously putting systems in jeopardy of collapse.24

The trouble for conservation is that the **data simply do not support** the idea of a fragile nature at risk of collapse. Ecologists now know that the disappearance of one species **does not necessarily lead** to the extinction of any others, much less all others in the same ecosystem. In many circumstances, the demise of formerly abundant species can be **inconsequential** to ecosystem function. The American chestnut, once a dominant tree in eastern North America, has been extinguished by a foreign disease, yet the forest ecosystem is **surprisingly unaffected**. The passenger pigeon, once so abundant that its flocks darkened the sky, went extinct, along with countless other species from the Steller's sea cow to the dodo, with **no catastrophic or even measurable effects.**

These **stories of resilience are not isolated** examples -- a thorough review of the scientific literature identified **240 studies** of ecosystems following major disturbances such as **deforestation, mining, oil spills**, and other types  of **pollution.** The abundance of plant and animal species as well as other measures of ecosystem function recovered, at least partially, in 173 (72 percent) of these studies.25

While global forest cover is continuing to decline, it is rising in the Northern Hemisphere, where "nature" is returning to former agricultural lands.26 Something similar is likely to occur in the Southern Hemisphere, after poor countries achieve a similar level of economic development. A 2010 report concluded that rainforests that have grown back over abandoned agricultural land had 40 to 70 percent of the species of the original forests.27 Even Indonesian orangutans, which were widely thought to be able to survive only in pristine forests, have been found in surprising numbers in oil palm plantations and degraded lands.28

Nature is so resilient that it can **recover rapidly** from **even the most powerful human disturbances**. Around the Chernobyl nuclear facility, which melted down in 1986, **wildlife is thriving**, despite the high levels of radiation.29 In the Bikini Atoll, the site of multiple nuclear bomb tests, including the 1954 hydrogen bomb test that boiled the water in the area, the number of coral species has actually increased relative to before the explosions.30 More recently, the massive 2010 oil spill in the Gulf of Mexico was degraded and consumed by bacteria at a remarkably fast rate.31

Today, coyotes roam downtown Chicago, and peregrine falcons astonish San Franciscans as they sweep down skyscraper canyons to pick off pigeons for their next meal. As we destroy habitats, we create new ones: in the southwestern United States a rare and federally listed salamander species seems specialized to live in cattle tanks -- to date, it has been found in no other habitat.32 Books have been written about the collapse of cod in the Georges Bank, yet recent trawl data show the biomass of cod has recovered to precollapse levels.33 It's doubtful that books will be written about this cod recovery since it does not play well  to an audience somehow addicted to stories of collapse and environmental apocalypse.

Even that classic symbol of fragility -- the polar bear, seemingly stranded on a melting ice block -- may have a good chance of surviving global warming if the changing environment continues to increase the populations and northern ranges of harbor seals and harp seals. Polar bears evolved from brown bears 200,000 years ago during a cooling period in Earth's history, developing a highly specialized carnivorous diet focused on seals. Thus, the fate of polar bears depends on two opposing trends -- the decline of sea ice and the potential increase of energy-rich prey. The history of life on Earth is of species evolving to take advantage of new environments only to be at risk when the environment changes again.

The wilderness ideal presupposes that there are parts of the world untouched by humankind, but today it is impossible to find a place on Earth that is unmarked by human activity. The truth is humans have been impacting their natural environment for centuries. The wilderness so beloved by conservationists -- places "untrammeled by man"34 -- never existed, at least not in the last thousand years, and arguably even longer.

### Block --- Disease

**ABR won’t get close to extinction, intervening actors solve it, but the aff cant**

Ed **Cara 17**, Science Writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

**A**nti**b**iotic-**r**esistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some **10 million deaths annually by 2050** — eclipsing cancer in general as a leading cause. These deaths largely **won’t** come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here.

Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives.

For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are **very actively involved** in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty.

Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess.

“There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture.

In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help **prevent future cases from spilling into the public**. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains.

Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging.

**Even with the best public policy**, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC.

Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s **no army of sentient E. coli that will rise up and someday overthrow the human race**.

But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability.

**The antibiotic apocalypse will be gentle**, if it fully arrives, but it won’t be any less devastating to the human spirit.

## FTC da

### ov

#### At the top -

#### Our internal net benefit is *perception of FTC independence*.

#### The CPlan *boosts it* because the FTC’s the lone actor. Plan and perm *don’t solve* - they involve *non-FTC actors*.

#### Our Nam cards are shockingly strong. The global community models FTC independence levels. External actors might be good or bad domestically, but – overseas - they greenlight involvement of political appointees. That boosts mercantilist postures and crushes global free trade.

#### Free trade turns case – it checks ongoing global wars which structurally complicate the Aff advantages AND detract resources for Aff enforcement.

#### Our ev lists six extinction warrants – we’ll deepen the terminals:

#### ( ) geoengineering overcompensates – fails and causes extinction.

#### Baum ‘13

Et al; Dr. Seth Baum is an American researcher involved in the field of risk research. He is the executive director of the Global Catastrophic Risk Institute (GCRI), a think tank focused on existential risk. He is also affiliated with the Blue Marble Space Institute of Science and the Columbia University Center for Research on Environmental Decisions. He holds a PhD in Geography and authored his dissertation on climate change policy: “Double catastrophe: intermittent stratospheric geoengineering induced by societal collapse” - Source: Environment Systems & Decisions - vol.33, no.1 pp. 168-180 - #E&F – available via: https://pubag.nal.usda.gov/catalog/122717

Perceived failure to reduce greenhouse gas emissions has prompted interest in avoiding the harms of climate change via geoengineering, that is, the intentional manipulation of Earth system processes. Perhaps the most promising geoengineering technique is stratospheric aerosol injection (SAI), which reflects incoming solar radiation, thereby lowering surface temperatures. This paper analyzes a scenario in which SAI brings great harm on its own. The scenario is based on the issue of SAI intermittency, in which aerosol injection is halted, sending temperatures rapidly back toward where they would have been without SAI. The rapid temperature increase could be quite damaging, which in turn creates a strong incentive to avoid intermittency. In the scenario, a catastrophic societal collapse eliminates society’s ability to continue SAI, despite the incentive. The collapse could be caused by a pandemic, nuclear war, or other global catastrophe. The ensuing intermittency hits a population that is already vulnerable from the initial collapse, making for a double catastrophe. While the outcomes of the double catastrophe are difficult to predict, plausible worst-case scenarios include human extinction. The decision to implement SAI is found to depend on whether global catastrophe is more likely from double catastrophe or from climate change alone. The SAI double catastrophe scenario also strengthens arguments for greenhouse gas emissions reductions and against SAI, as well as for building communities that could be self-sufficient during global catastrophes. Finally, the paper demonstrates the value of integrative, systems-based global catastrophic risk analysis.

#### ( ) *Prolif* independently cause extinction

* Climate change is true and real bad
* Prolif = probable scenario for extinction bc of *miscalc*, *user error*, or *unauthorized use*.

Thakur ‘15

Ramesh Thakur, Director of the Centre for Nuclear Non-Proliferation and Disarmament in the Crawford School of Public Policy, The Australian National University. 2015. “Nuclear Weapons and International Security.” Routledge

The world faces two existential threats: climate change and nuclear Armageddon. Those who reject the first are derided as denialists; those dismissive of the second are praised as realists. Nuclear weapons may or may not have kept the peace among various groups of rival states; they could be catastrophic for the world if ever used by both sides in a war between nuclear-armed rivals; and the prospects for their use have grown since the end of the Cold War. Even a limited regional nuclear war in which India and Pakistan used 50 Hiroshima-size (15kt) bombs each could lead to a famine that kills up to a billion people. 1 Having learnt to live with nuclear weapons for 70 years (1945–2015), we have become desensitized to the gravity and immediacy of the threat. The tyranny of complacency could yet exact a fearful price with nuclear Armageddon. The nuclear peace has held so far owing as much to good luck as sound stewardship. Deterrence stability depends on rational decision-makers being always in office on all sides: a dubious and not very. reassuring precondition It depends equally critically on there being no rogue launch, human error or system malfunction: an impossibly high bar. For nuclear peace to hold, deterrence and fail-safe mechanisms must work every single time. For nuclear Armageddon, deterrence or fail-safe mechanisms need to break down only once. This is not a comforting equation. It also explains why, unlike most situations where risk can be mitigated after disaster strikes, with nuclear weapons all risks must be mitigated before any disaster. 2 As more states acquire nuclear weapons, the risks multiply exponentially with the requirements for rationality in all decision-makers; robust command-and-control systems in all states; 100 percent reliable fail-safe mechanisms and procedures against accidental and unauthorized launch of nuclear weapons; and totally unbreachable security measures against terrorists acquiring nuclear weapons by being able to penetrate one or more of the growing nuclear facilities or access some of the wider spread of nuclear material and technology.

#### And, turns case – open trade stabilizes all of the aff’s unsustainability warrants – trade collapse causes them

Hochman ‘21

et al; Gal Hochman is a Professor at the Department of Agricultural, Food, and Resource Economics at Rutgers University - “Economic incentives modify agricultural impacts of a regional nuclear war concerning food insecurity and famine” - Selected Paper prepared for poster presentation at the 2021 Agricultural & Applied Economics Association Annual Meeting, Austin, TX, August 1 – August 3 – Originally drafted in December 21, 2020 - #E&F – https://ageconsearch.umn.edu/record/313021/

The findings strongly indicate the need for policies aimed at prevention of conflicts, especially those that may lead to regional nuclear wars. The literature suggests that the post-conflict environment becomes less favorable than otherwise might be expected. Additionally, despite reconstruction and redevelopment in a particular region following a conflict, there may be an add-on effect of substantially more famine and food insecurity in other regions where such problems were already endemic. From a policy standpoint, the short-run food crisis created through the regional nuclear war emphasizes the importance of a proactive inventory-management policy and the need for mechanisms that mitigate the spike in prices (Hochman et al., 2014). Regions without any safety nets will face serious negative ramifications and food insecurity. In addition, investment in outreach and infrastructure that improves the management of food supply distribution and enhances productivity can also go a long way toward alleviating a global food crisis. The analysis also suggests that preserving the world trading system is key to preventing widespread famine and suffering – a thriving world trading system minimizes the costs arising from disruptions to the climate because of nuclear war.

### Hosed now

#### FTC recently expanded authority. That renders Aff disads to the CPlan are not unique – but it doesn’t complicate our internal net benefits. This happened RIGHT AFTER their card

Roach ‘21

Lee Roach – Partner with Faegre, Drinker, Biddle & Reath LLP. Holds a J.D. (cum laude), Notre Dame Law School – “The FTC Expands Section 5 Enforcement Efforts With Potentially Broad Implications” – JD Supra – July 12th, 2021 - #E&F - https://www.jdsupra.com/legalnews/the-ftc-expands-section-5-enforcement-7020931/

The Federal Trade Commission (FTC) recently updated its interpretation of its authority to challenge “unfair methods of competition” under Section 5 of the FTC Act. It will no longer limit enforcement actions under Section 5 to conduct that violates the consumer welfare standard. This may significantly expand the sorts of business activities the FTC investigates and challenges.

Although this adjustment, in conjunction with other recent developments at the FTC, is widely interpreted to signal increased scrutiny of Big Tech companies, the FTC’s pivot on its Section 5 authority may have broader implications. Companies should monitor the FTC’s next steps closely for further insights on conduct it may challenge in the future.

#### Section 5 would boost resources available for enforcement.

Khan ‘20

et al; At the time of this writing, Lina Khan was an Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; and former Legal Fellow, Federal Trade Commission. Now, Lina Khan serves as the head of the FTC. The co-author for this piece is Rohit Chopra, who was previously The Assistant Director of the Consumer Financial Protection Bureau and currently sits on the FTC. “The Case for “Unfair Methods of Competition” Rulemaking”, 87 U. CHI. L. REV. 357, 359-63 - #E&F – 2020 - https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/ChopraKhan\_Rulemaking\_87UCLR357.pdf

A key feature of antitrust today is that the law is developed entirely through adjudication. Evidence suggests that this exclusive reliance on adjudication has failed to deliver a predictable, efficient, or participatory antitrust regime. Antitrust litigation and enforcement are protracted and expensive, requiring extensive discovery and costly expert analysis. In theory, this approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the exclusive reliance on case-by-case adjudication has yielded a system of enforcement that generates ambiguity, drains resources, privileges incumbents, and deprives individuals and firms of any real opportunity to participate in the process of creating substantive antitrust rules. It is difficult to quantify this harm.

This Essay argues that rulemaking under § 5 of the Federal Trade Commission Act should supplement antitrust adjudication, and that this institutional shift would lower enforcement costs, reduce ambiguity, and facilitate greater democratic participation. We build on existing scholarship to debunk the view that the Federal Trade Commission (FTC) does not have competition rulemaking authority pursuant to the Administrative Procedure Act conferring Chevron deference, and trace legislative history to underscore how Congress designed the FTC to play a unique institutional role.

#### CPlan makes FTC enforcement easier and more affordable.

Khan ‘20

et al; At the time of this writing, Lina Khan was an Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; and former Legal Fellow, Federal Trade Commission. Now, Lina Khan serves as the head of the FTC. The co-author for this piece is Rohit Chopra, who was previously The Assistant Director of the Consumer Financial Protection Bureau and currently sits on the FTC. “The Case for “Unfair Methods of Competition” Rulemaking”, 87 U. CHI. L. REV. 357, 359-63 - #E&F – 2020 - https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/ChopraKhan\_Rulemaking\_87UCLR357.pdf

Antitrust law today is developed exclusively through adjudication. In theory, this case-by-case approach facilitates nuanced and fact-specific analysis of liability and well-tailored remedies. But in practice, the reliance on case-by-case adjudication yields a system of enforcement that generates ambiguity, unduly drains resources from enforcers, and deprives individuals and firms of any real opportunity to democratically participate in the process.

One reason that antitrust adjudication suffers from these shortcomings is that courts analyze most forms of conduct under the “rule of reason” standard. The “rule of reason” involves a broad and open-ended inquiry into the overall competitive effects of particular conduct and asks judges to weigh the circumstances to decide whether the practice at issue violates the antitrust laws. Balancing short-term losses against future predicted gains calls for “speculative, possibly labyrinthine, and unnecessary” analysis and appears to exceed the abilities of even the most capable institutional actors.1 Generalist judges struggle to identify anticompetitive behavior2 and to apply complex economic criteria in consistent ways.3 Indeed, judges themselves have criticized antitrust standards for being highly difficult to administer.4 And if a standard isn’t administrable, it won’t yield predictable results. The dearth of clear standards and rules in antitrust means that market actors face uncertainty and cannot internalize legal norms into their business decisions.5 Moreover, ambiguity deprives market participants and the public of notice about what the law is, thereby undermining due process—a fundamental principle in our legal system.6

Decades ago, former Commissioner Philip Elman observed that case-by-case adjudication “may simply be too slow and cumbersome to produce specific and clear standards adequate to the needs of businessmen, the private bar, and the government agencies.”7 Relying solely on case-by-case adjudication means that businesses and the public must attempt to extract legal rules from a patchwork of individual court opinions. Because antitrust plaintiffs bring cases in dozens of different courts with hundreds of different generalist judges and juries, simply understanding what the law is can involve piecing together disparate rulings founded on unique sets of facts. All too often, the resulting picture is unclear. This ambiguity is compounded when the Supreme Court assigns to lower courts the task of fleshing out how to structure and apply a standard, potentially delaying clarity and certainty for years or even decades.8

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business.

Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16

Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

### No spillover

#### Nam says FTCA narrowly spills over but other AT does not matter for modeling purposes

#### Yes modeling – lists six specific nations.

Nam ‘18

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

There is little evidence to suggest that either presidents or their legislative allies in the early twentieth century could have foreseen the ramifications of their formative roles in shaping competition regimes worldwide. American competition laws, including the FTC Act, came to serve as a template for foreign governments that freely transplanted many elements while modifying others. A cognizant DOJ and FTC issued their Antitrust Enforcement Guidelines for International Operations in 1995, stating: “Throughout the world, the importance of antitrust law as a means to ensure open and free markets, protect consumers, and prevent conduct that impedes competition is becoming more apparent.”18 But these guidelines do not paint the full picture. Inspired foreign states modeled their regulatory regimes after foundations originally shaped under the auspices of Roosevelt and Wilson, both powerful executives with aforementioned hands-on preferences in matters of antitrust. At the FTC’s launch, “Wilson emphasized assistance to business rather than the investigative functions highlighted in the House or the prosecutorial functions highlighted in the Senate.”19 The language of the U.S. antitrust laws inevitably allowed leeway for presidential influence on industry-level economic direction.

All the same, the enforcers of old were watchmen for a U.S. economy which, then as now, operated within a market economy framework. Many countries that followed the United States’ regulatory lead have been less beholden. As the prominent international relations scholar Michael W. Doyle confirms:

The most striking rates of growth of the post-war period appear to have been achieved by the semi-planned capitalist economies of East Asia—Taiwan, South Korea, Singapore, Japan, and now China and India. Indicative planning, capital rationing by parastatal development banks and ministries of finance, managed trade, and incorporated unions—capitalist syndicalism, not capitalist libertarianism—seemed to describe the wave of the capitalist future.20

The close coordination between government and big business common to state-sponsored capitalist economies is also conducive to mercantilist thinking and dependent on the incumbent administration’s economic worldview. Originating from a “historical association with the desire of nation-states for a trade surplus. . . whether it is labeled economic nationalism, protectionism,”21 or the like today, mercantilism is characterized by the subservience of economy to the state and its interests, and a willingness to give home-grown business enterprises an extra competitive advantage.22 Thus-inclined governments view international economic relations as conflicting, zero-sum, and better overseen through state-private sector coordination than left to wholly free markets.23 Nor is the mercantilist phenomenon limited to illiberal states that feature stateowned enterprises and other such overtly hybrid forms of corporate governance. As political leaders continue to promote economic growth and highlight personal expertise to justify and fortify their democratic legitimacy, an expansion of governments’ coordination with the private sector has followed.24 When their major industries face dismal market conditions, countries inured to “capitalist syndicalism” per Doyle are not above protectionist adjustments at the expense of their neighbors. Together with the standard mercantilist strategies of prioritizing exports and frequent use of various non-tariff barriers to thwart competitive imports,25 selective antitrust enforcement offers another tool.

This Article contends that the FTC Act’s outmoded openness to strong presidential direction, where adapted abroad, has helped detract from antitrust regulator independence. Even advanced players in the liberal international economic order such as South Korea have made use of the United States’ original blueprint for unitary executive-stamped antitrust enforcement without sharing its long historical evolution of counterbalancing regulatory norms. Strong executive direction in antitrust enforcement is particularly suited to capitalist economies helmed by administrations with mercantilist policies, given their belief that the state and big business must cooperate in the face of zero-sum international competition. South Korean President Lee Myung-Bak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces preventing global convergence in antitrust enforcement, and of their roots.

### LIO resil

#### 1NC Nam gave a separate internal link – when other nations are commitment to a model that support agency independence in Antitrust regulation It checks rivalry spirals that hampers support for global Internationalism *outside of free trade*.

#### Trade Key to LIO resilience

Charnovitz 20 Steve Charnovitz George Washington University - Law School Associate Professor. "Solving the Challenges to World Trade." GWU Legal Studies Research Paper 2020-78 (2020). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736069> {DK}

World trade faces fundamental challenges. While the social and economic benefits gained through exchange have been apparent to humans since antiquity, the litany of political complaints about cross-border commerce may be more extensive and louder than ever before. As always, the market recognizes the importance of international trade to prosperity. Yet many politicians express doubt as to when participation in international trade enhances the national interest. One of the biggest indicators of diminishing support for trade is the moribund status of the leading institution of the trading system, the World Trade Organization (WTO) in Geneva. There are three branches of WTO governance and all three are in trouble: The Trump Administration has discombobulated the judicial branch by refusing to agree to new judges for the Appellate Body. The post of the WTO Director-General, who heads the executive branch, has been vacant since August 2020. The topmost body of the WTO’s legislative branch, the Ministerial Conference, has failed to meet since 2017. Overall, the WTO’s decrepitude demonstrates “constitutional failure.” Globalization and the governance of globalization will survive. The transborder movement of goods, services, capital, technology, and people will survive because most countries are not attracted to the deprivation that would be entailed by an alternative strategy of national (or subnational) self-sufficiency. The WTO will (probably) also survive now that the Trump Administration will soon pack its bags. The WTO survives because lawmakers and influential economic and social actors on the world stage know that international law and international rules are needed to restrain beggar-thy-neighbor trade politics. Around the world, many countries continue to be interested in enhancing mutual commitments to deepen trade ties as reflected most recently in the November 2020 signing of the Regional Comprehensive Economic Partnership (RCEP) The underperformance of the WTO, of course, is hardly the biggest policy dysfunction on Earth. Our biggest problems include an unchecked viral pandemic, worsening global warming, widespread poverty, and a proliferation of nuclear ballistics in states with malign intentions. As governments address such conditions, a basic question arises as to whether international trade is part of the solution or part of the problem. Seventy-five years ago, the conventional wisdom was that trade was part of the solution for peace1 , economic growth, and social development. In my view, that conventional wisdom remains convincing today. Yet the dialectics of the cosmopolitan conversation have led to reassessments of many economic, social, and political practices within each society and between countries. Are existing trade patterns supportive of solutions to the most pressing problems facing the planet? Under what conditions does trade undermine optimal solutions, especially to the challenges of global warming and underemployment? Although trade per se is conceptually distinct from the international supervision of trade policies, these two phenomena are difficult to disentangle. Voluntary international trade makes traders better off and so too does global commerce enhance the wealth of nations. The freedom to engage in transnational commerce promotes social progress and enables bottom-up prosperity. Nevertheless, from Aristotle onward, some trade theorists have argued for economic autarky and other top-down controls over individual liberty and transborder exchange. Acting on the evidence that international trade enriches societies, leading publicists have championed intellectual justifications for free trade — in the 16th century Hugo Grotius, in the 17th century Dudley North, in the 18th century Adam Smith, and in the 19th century David Ricardo. Nevertheless, those liberal philosophies were often ignored by political arguments that states have a right to and should control trade in order to promote mercantilist, diplomatic, industrial or security objectives. Yet the domestic political debate on trade, however edifying, was necessarily imperfect and incomplete because other countries (the other side of the transaction) were not equal participants in that debate. To gain the greatest benefits from mutual market access, the political debate on trade has to occur on two levels, the international and the domestic.