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#### Politics DA:

#### Biden’s PC passes it.

Easley ’11-6 [Jason; 2021; managing editor, White House Press Pool and a Congressional correspondent; PoliticusUSA, “Biden Shows America What a Real President Who Gets Things Done Looks Like,” https://www.politicususa.com/2021/11/06/biden-shows-america-what-a-real-president-who-gets-things-done-looks-like.html]

In a display of total confidence, President Biden was asked what gives him the confidence Congress will pass Build Back Better. He said, “me.”

Video:

Tweet omitted.

The President was asked, “Mr. President, have you gotten assurances from moderate Democrats in the House and Senate that they are going to vote for your Build Back Better plan now that what they really wanted, the infrastructure bill, has passed.

President Biden answered, “You know I’m not going to answer that question for you because I’m not going to get into who or what made what commitments to me. I don’t negotiate in public, but I feel confident that we will have enough votes to pass the Build Back Better plan.

When he was asked, “What gives you that confidence? “

Biden responded, “Me.”

This is what a confident president who gets things done sounds like. Donald Trump turned infrastructure week into a national joke by being unable to deliver for the American people, as he continued to promise and promise, but nothing ever happened.

Biden is reminding America of what a real president can do when they know how to use their power and platform.

Trump talked the talk, but President Biden and the Democrats delivered action and results.

#### Antitrust requires PC. Knocks out competing domestic initiatives.

Carstensen ’21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “The ‘Ought’ and ‘Is Likely’ of Biden Antitrust,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#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.

#### Prevents existential climate disaster.

Moncrief ’11-11 [Aliki; 2021; executive director of Florida Conservation Voters; Orlando Sentinel, “Build Back Better Act would help in climate crisis,” https://www.orlandosentinel.com/opinion/guest-commentary/os-op-climate-change-congress-act-now-20211111-44u6bgyn5fdvnp3eqievkebqpe-story.html]

Last week, Congress passed the Infrastructure Investment and Jobs Act. This bipartisan bill will address upgrades to things like our transportation system, rural broadband, public transit, and clean-water infrastructure. These are badly needed, overdue investments that will make our communities more resilient to the climate impacts we are already seeing. But we know much more is needed.

It’s not enough to just respond to extreme weather — we need to cut the pollution driving it in the first place. That’s why Congress must also pass the Build Back Better Act, the most transformational climate and jobs legislation in our nation’s history. By investing in clean energy and things like electric vehicles and more energy-efficient homes and businesses, we can stop making the problem worse and avoid a growing disaster. We don’t have time for half measures, and Floridians know it — more than 75% of registered voters in the state support bold congressional action on climate change.

The Build Back Better Act takes bold steps to dramatically reduce climate pollution for everyone. But it also centers those who have been disproportionately impacted by this crisis by taking steps to address the decades of unchecked environmental injustice, ensuring at least 40% of the benefits of this bill go to those communities hardest hit by pollution and climate change.

Building a clean energy economy is an investment that will pay dividends for families today and for generations to come. Preventing the most catastrophic hurricanes, floods and heat waves will help ensure that we still bring people from all over the world to our beaches, the Everglades, and every amazing destination across our state that supports our multi-billion dollar tourism industry.

And the robust clean-energy investments in the Build Back Better Act will create millions of good-paying jobs for Floridians in every corner of our state. Florida already ranks fourth in the nation for clean-energy employment, and this legislation would help this industry grow exponentially by tapping into the Sunshine State’s solar power potential.

Orlando has some great members of Congress who understand that climate change is an existential threat to our state and they ran on being a part of the solution to this crisis. Now, we are counting on them to take bold action and pass the Build Back Better Act. This is a win-win-win that creates jobs, lowers energy bills for Floridians, and begins to address the climate crisis at the same time.

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#### T:

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

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

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

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

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

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

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

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

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

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

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

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

## OFF

Labor Law CP:

The United States federal government should

* increase legal presumptions and affirmative defenses to workers under labor law that get triggered when a court finds an employer’s conduct beneficial to consumers but harmful for workers;
* penalize violations with treble damages and escalating civil penalties.

#### The CP expands labor law protections when consumer and labor welfare conflict – solves the aff without watering down antitrust.

Hafiz ’20 [Hiba; March 16; Assistant Professor of Law, Boston College Law School; University of Chicago Law Review, “Labor Antitrust Paradox,” vol. 86 no. 2; KP]

B. Regulatory Sharing Between Antitrust and Labor Law

Regulatory sharing between antitrust and labor law is necessary to ensure against employer arbitrage enabled by antitrust law’s ambiguous welfare standards and the judiciary’s historical favoring of consumer welfare over worker welfare. Establishing a network of labor antitrust triggers for labor rights enforcement, shared merger enforcement between the antitrust and labor agen- cies, and substantive law presumptions and affirmative defenses under labor law generated by labor-antitrust findings avoids the pitfalls of underenforcement in labor-market regulation.

1. Labor antitrust triggers and shared merger enforcement.

Labor-antitrust actions should apply a consumer welfare standard to determine antitrust liability. Yet when a court finds employers’ conduct beneficial to consumers but harmful to workers in either Section 1 or Section 2 cases, that would trigger a “red flag” establishing substantive legal presumptions and affirmative defenses to workers under labor law.114 If plaintiff-enforcers make a prima facie showing of employers’ unlawful agreements or monopsony power, or power to set wages, this would also trigger a “red flag.” The red flag would issue before defendants have an opportunity to rebut “by showing . . . no control over wages,” as others propose,115 because labor markets are naturally monopsonistic and such a rebuttal should not be relevant for labor-law inquiries. It will likely be difficult and costly for plaintiffs to disaggregate employers’ market power from search frictions, information asymmetries, job differentiation, heterogeneous tastes, job-lock, and other market failures that favor employers’ leverage over workers.116 Thus, while an employer may avoid antitrust liability by rebutting evidence of its monopsony power, the source of that power is less relevant in the labor and employment context; if it exists, workers should be entitled to substantive labor-law presumptions and affirmative defenses.

#### Using treble damages and increasing civil penalties solves deterrence.

Kleiner ’10 [Morris M. Kleiner and David Weil; December 2010; professor and AFL-CIO Chair in Labor Policy at the Humphrey School of Public Affairs; Dean and Professor of the Heller School for Social Policy and Management at Brandeis University; National Bureau of Economics Research, “Evaluating the Effectiveness of National Labor Relations Act Remedies: Analysis and Comparison with Other Workplace Penalty Policies,” working paper no. 16626; KP]

In contrast to other statutes listed in Figure 1, the NLRA’s penalty scheme does not provide for escalating penalties in light of past behavior of an employer or union, nor does it allow for consideration of ancillary impacts (“harms-inflicted” in the terms described above) in setting penalties to better serve deterrence ends—even given a broad reading of 10(c). Brudney’s (2010) mandatory minimum penalty idea and the proposed NLRB policies on interest could possibly redress the fact that individuals are not usually made whole under existing procedures. But it seems a stretch that these changes could sufficiently increase expected penalties to the extent required from a deterrence perspective. In fact, even the substantially increased penalties incorporated into the recently proposed Employee Free Choice Act in the U.S. Congress would reduce, but not close, the yawning gap between the benefits and the costs of noncompliance.45

Footnote starts.

45 The Employee Free Choice Act (111th Congress, H.R. 1409, S. 560) proposes two important changes to NLRA policy. First, it would increase the amount an employer would be required to pay in cases of illegal employee discharge or discrimination during an organizing campaign or first contract drive to become two times back pay in the form of liquidated damages, in addition to the back pay owed (that is, treble damages for violations in these cases). Second, it would create civil penalties of up to $20,000 per violation against employers found to have willfully or repeatedly violated employees’ rights during an organizing campaign or first contract drive. Together, the proposals would move the penalty model underlying the NLRA to one closer approximating the harms-inflicted approach and potentially raise deterrent effects appreciably.

Footnote ends.

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Advantage CP:

The United States federal government should

* pass the Consumer Protection and Recovery Act;
* exercise the FTC’s Section 5 authority to regulate scamming, trust, and emerging technology;

#### Solves FTC – their ev advocates the CP.

1AC Mermin ’21 [Ted; 2021; Executive Director Center for Consumer Law & Economic Justice UC Berkeley School of Law; Committee on Energy & Commerce Subcommittee on Consumer Protection and Commerce Hearing, “The Consumer Protection and Recovery Act: Returning Money to Defrauded Consumers,” https://docs.house.gov/meetings/IF/IF17/20210427/112501/HHRG-117-IF17-Wstate-MerminT-20210427.pdf]

To equip the FTC properly to do its job is a straightforward task, and a serious responsibility of this committee. The Consumer Protection and Recovery Act represents a sensible step forward toward restoring essential protections for all Americans.

III. 10 Things This Committee, and This Congress, Can Do to Give the FTC the Tools It Needs to Do Its Job.

The Consumer Protection and Recovery Act advances the first two critical improvements to the FTC Act listed below. But the task before this committee is broader than simply filling the void left by the Supreme Court’s decision last week. The following suggestions – all endorsed in various forms by bipartisan cohorts of FTC commissioners, and all supported by broad coalitions of advocates for consumers, small businesses, veterans, and seniors – would restore the FTC to its rightful and logical position as the nation’s leader in consumer protection.

1. Restore the FTC’s authority to get money back to consumers from whom it was unlawfully taken. This most salient fix is critical to the functioning of the FTC as a consumer protection agency.

2. Give the FTC full authority to obtain an injunction barring future misconduct. A court order barring the conduct that the FTC has gone to such pains to investigate and prove is a vital part of the toolbox of the Commission or any consumer protection agency. A thief who takes your wallet may end up closely monitored on probation or, after prison, on parole – whether or not he had stopped taking wallets by the time he was caught. When a business steals your money, it too should be subject to additional supervision, with quicker enforcement.

3. Provide the FTC with the default ability to require the payment of civil penalties. Give businesses and individuals who are inclined to break the law a reason not to do so. Routine civil penalty authority is exercised by state Attorneys General – and in some states local government authorities – in almost all the cases that they bring.16 It is common sense to ensure that the FTC is able to make use of the same tools as its state and local counterparts.

4. Establish a Civil Penalty Fund dedicated to providing compensation to victims of unfair and deceptive business practices who cannot be repaid by the businesses or individuals that harmed them. All too often, scam artists spend the money they steal from consumers. By the time the FTC can fully prosecute a case, the judgment – frequently for an impressively large amount of restitution – must be suspended because of the defendants’ inability to pay.17 There is a way around this dilemma: Congress can grant the FTC authority to set up a Civil Penalty Fund or Consumer Redress Fund to provide a source of relief to victims, funded by civil penalties collected in other cases. The CFPB has exercised this type of fund effectively and with great benefit to consumers.18 This fund could also receive funds paid pursuant to an order to disgorge illegally-obtained money when it is not practicable to return those funds to consumers.

5. Give the FTC the same ability to make rules that is exercised by other federal agencies. Rulemaking under the Administrative Procedures Act provides all stakeholders the ability to express their views, and requires the agency to consider those views. And unlike the Commission’s current sclerotic Magnusson- Moss rulemaking authority, the proceedings will not be so delayed that the rule is likely to be outdated by the time it is finally issued.

6. Fully fund the FTC so that it may effectively play its role as the nation’s consumer protection agency. As former Commissioner William Kovacic explained at a hearing before this subcommittee in February, the FTC cannot accomplish the mission that Congress has set for it without a significant infusion of resources.19 That money is a wise investment: far greater sums will be returned to consumers and small businesses, and received from customers by competitors who play by the rules.

7. Give the FTC general authority to prevent price gouging in emergencies. This is a power currently held by the states and exercised by attorneys general across the nation.20 Providing the FTC the same authority would add measurably to the nation’s ability to respond to natural disasters and other emergencies; these events are too frequent to make it feasible for Congress to pass separate legislation each time one occurs.

8. Provide the FTC authority over common carriers. When the common carrier exemption was included in the FTC Act more than 100 years ago, it was logical to exempt the monopoly providers of common carrier services, who were not disciplined by competition but rather by detailed rate and service regulation. Since that time, the telecommunications industry and the regulatory role of the federal government have changed dramatically. As the Ninth Circuit observed three years ago, the FTC Act already

9. Give the FTC authority over non-profit corporations. The Internal Revenue Service has nominal authority now, but its purview is limited essentially to whether a tax-exempt organization should be able to maintain that status. Given the widespread business activities of nonprofit corporations like hospital chains, and all-too-common examples of unfair or deceptive conduct by charitable organizations, this extension would close an important gap in FTC protection, including in oversight to data security and privacy practices.

**\*\*\*THEIR CARD STARTS\*\*\***

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

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

IV. Conclusion

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

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

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

#### AND solves emerging tech – their author again!

1AC Spiro ’20 [Michael; December 19; JD from the University of Washington School of Law, an L.L.M. in Innovation and Technology Law from Seattle University School of Law; Seattle Journal of Seattle Journal of Technology Environmental & Innovation Law, “The FTC and AI Governance: A Regulatory Proposal,” vol. 10]

E. The FTC can and Should Exercise its Section 5 Authority

Of particular relevance to emerging technologies, and AI specifically, the FTC has shown itself to be capable of regulating the communication, organizational, and design aspects of new technologies.226 It has acted to protect consumers from privacy and other harms, for example, by notifying commercial firms of their obligation not to act unfairly or deceptively in the design, sale, and use of emerging technologies that interact with consumers.227 In addition to the broad authority to regulate emerging technologies, the FTC’s efforts are further enabled to respond to unfair and deceptive trade practices by the diverse set of tools at its disposal.228

Although much of the FTC’s enforcement activity, vis-à- vis emerging technologies, has been principally in the area of privacy and data protection, there is no reason that the FTC cannot also apply its broad Section 5 authority to machine learning and other automated decision-making processes. During its history, the FTC has repeatedly “recalibrated” how emerging technologies are used to deceive or harm consumers.229 And given its move to assert its authority in regard to the Internet of Things, the FTC does not need any new grant of authority to confront other new technologies.230 Rather, it is enough if a new technology is used in commerce to harm or mislead consumers.231

Indeed, the FTC has begun to address the issue of algorithms in the privacy context.232 Further, the many tools the FTC has – including disclosures and design requirements – can help ameliorate the harms that algorithmic decision-making systems pose.233 The FTC also has looked to hold commercial entities accountable “for design choices that indirectly harm consumers.”234 Because AI often is employed in the backend of systems with no direct consumer interface, this approach offers a potential solution to harms caused by hidden AI. It could also address harms caused by third parties, since those who facilitate “the wrongful conduct of another” will also trigger FTC action under this theory.235

For a trade practice to be unfair, the harm must be substantial.236 The harm can be monetary, but it also may encompass unwarranted health and safety risks.237 Thus, AI technologies that pose such risks can and should meet the unfairness standard.238 Many algorithmic decision-making processes, however, will not fall under this category of harm. Further, trivial, speculative, and “other more subjective types of harm” generally do not constitute an unfair practice.239 Since in many cases it may not be clear the exact extent to which a decision made by an AI system has injured a particular consumer, it may be difficult to establish the requisite level of harm.

On the other hand, notions of what constitute an unfair harm continue to evolve, and there is some indication courts may be open to recognizing more subjective, non-monetary harms under Section 5.240 In addition, the FTC has clarified that a small or incremental injury may constitute sufficient injury if it harms a large number of consumers or if it “raises a significant risk of concrete harm.”241 And even where harms might be incremental for only a single individual, if those harms pose a collective problem, the FTC may still be able to act on them.242 Further, the FTC may consider “the cost to society in general” in determining whether there are countervailing benefits to consumers or competition.243

The FTC’s authority to promulgate rules defining unfair or deceptive acts or practices is limited, and therefore it must enforce its authority indirectly on a case-by-case basis.244 As such, and because it generally lacks the ability to assess civil penalties, the FTC mostly relies on settlements resulting from its enforcement activities to communicate the rules it wants companies to follow.245 In addition, due to staff and budget constraints, the FTC often must rely on informal complaints and self-reporting of potential violations.246 The FTC’s Section 5 authority, furthermore, does not extend to non-profit organizations, common carriers, financial institutions, and certain other entities, nor can it regulate harms committed by consumers in non-commercial contexts.247

**\*\*\*THEIR CARD STARTS\*\*\***

Despite these limitations, the FTC has a formidable reputation as an enforcement authority, and commercial entities, and their lawyers, pay close attention to its orders and decisions.248 For example, when the FTC issues a complaint, it is published on the FTC’s website, which often generates significant attention in the privacy community.249 One reason for this is the fear firms have of the FTC’s auditing process, which not only is “exhaustive and demanding,” but can last for as long as 20 years.250 As such, the FTC settles most of the enforcement actions it initiates.251 Firms are motivated to settle with the FTC because they can avoid having to admit any wrongdoing in exchange for taking remedial measures, and thus they also avoid the costs to their reputation from apologizing.252

Though done by necessity, the rule-making process the FTC engages in with its consent orders and settlement agreements can be of benefit when regulating emerging technologies. 253 For one, it allows the flexibility needed to adapt to new and rapidly changing situations.254 Further, the FTC can wait and see if an industry consensus develops around a particular standard before codifying that rule through its enforcement actions.255 As with the common law, which has long demonstrated the ability to adjust to technological changes iteratively, the FTC’s incremental case-bycase approach can help minimize the risks of producing incorrect or inappropriate regulatory policy outcomes.256

In addition to its use of consent orders and settlement agreements, the FTC has created a type of “soft law” by issuing guidelines, press releases, workshops, and white papers.257 Unlike in enforcement actions, where the FTC looks at a company’s conduct and sees how its behavior compares to industry standards, the FTC arrives at the best practices it develops for guidance purposes through a “deep and ongoing engagement with all stakeholders.”258 As such, not only is the FTC’s authority broad enough to regulate the use of emerging technologies such as AI in commerce, but the FTC’s enforcement actions also constitute a body of jurisprudence the FTC can rely on to address the real and potential harms that stem from the deployment of consumeroriented AI.259

Given its broad grant of authority, the regulatory tools at its disposal, and its experience dealing with emerging technologies, the FTC is currently in the best position to take the lead in regulating AI. The FTC’s leadership is sorely needed to fill in the remaining – and quite large – gaps in those few sectoral laws that specifically address AI and algorithmic decision-making.260 Several factors make the FTC the ideal agency for this role. First, the FTC can use its broad Section 5 powers to respond rapidly and nimbly to the types of unanticipated regulatory issues AI is likely to create.261

Second, the FTC has an established history of approaching emerging technologies with “a light regulatory touch” during their beginning stages, waiting to increase its regulatory efforts only once the technology has become more established.262 This approach provides the innovative space needed for new technologies such as AI to develop to their full potential. Thus, as it has in the past, the FTC would focus on disclosure requirements rather than conduct prohibition, and take a case-by-case approach rather than rely on rulemaking.263 Also, as it has traditionally done, the FTC can hold public events on consumer-related AI and issue reports and white papers to guide industry.264

In other words, the FTC has long taken a co-regulatory approach to regulation, which it can and should proceed to do with AI. As in other emerging technology areas, this will help industry continue to grow and innovate, while allowing for the calibration among all relevant stakeholders of the “appropriate expectations” concerning the use and deployment of AI decision-making systems.265 At the same time, the FTC should use its regulatory powers to nudge, and when necessary, push companies to refrain from engaging in unfair and deceptive trade practices in the design and deployment of AI systems.266 The FTC should also place the onus on firms that design and implement those systems to ensure misplaced or unrealistic consumer expectations about AI are corrected.267

By nudging (or pushing) firms in this way, the FTC can “gradually impose a set of sticky default practices that companies can only deviate from if they very explicitly notify consumers.”268 In terms of disclosure requirements, as it has done in other contexts, the FTC can develop rules and guidelines for “when and how a company must disclose information to avoid deception and protect a consumer from harm,” which can include requiring firms to adopt the equivalent of a privacy policy. 269 Given the black box like nature of most algorithmic decision-making processes, there is much that AI developers might have to disclose to prevent those processes from being deemed unfair or deceptive.270

In addition, given its broad authority under **Section 5**, the FTC is able to address small, nuanced changes in AI design that could adversely affect consumers, but that other areas of law, such as tort, may not be able to adequately handle.271 Again, this is important because AI and algorithmic decision-making can pose profound and systemic risks of harm, even though the actual harm to individual consumers may be small or hard to quantify. And as it has done in the area of privacy, the FTC can become the de facto federal agency authority charged with protecting consumers from harms caused by AI systems and other algorithmic decisionmaking processes.272

The FTC also can, and should, seek to work with other agencies to address AI-related harms, given that the regulatory efforts of other agencies will still occur and be needed in specific sectors or industries, which would impact and be relevant to the FTC’s efforts as well.273 Agency cooperation is essential to ensuring regulatory consistency, accuracy, and efficiency in the type of complex, varied technological landscape that AI presents.274 This should not be a problem as the FTC’s **Section 5 authority** overlaps regularly with the authority of other agencies, and the FTC itself has a history of cooperating with those agencies.275 Further, the FTC can use its experience working with other agencies to build standards and policy consensus within the regulatory community and among stakeholders. 276

The overarching role the FTC has played in protecting consumer privacy within the United States also has given it legitimacy within the wider privacy community. The FTC has been pivotal over time in promoting international confidence in the United States’ ability to regulate privacy by for example acting as the essential mechanism for enforcing the Safe Harbor Agreement with the European Union.277 As it takes on a similar overarching regulatory role for AI and algorithmic decision-making processes in this country, the FTC should gain a similar level of legitimacy internationally. This is important given the increasingly cross border nature of AI research and development.

## OFF

#### Pharma DA:

#### Integration between pharma and biotech is accelerating, unlocking innovation.

Cancherini ’21 [Laura; April 30; Consultant in McKinsey’s Brussels office; McKinsey, “What’s ahead for biotech: Another wave or low tide?” https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/whats-ahead-for-biotech-another-wave-or-low-tide]

Fundamentals continue strong

When we asked executives and investors why the biotech sector had stayed so resilient during the worst economic crisis in decades, they cited innovation as the main reason. The number of assets transitioning to clinical phases is still rising, and further waves of innovation are on the horizon, driven by the convergence of biological and technological advances.

In the present day, many biotechs, along with the wider pharmaceutical industry, are taking steps to address the COVID-19 pandemic. Together, biotechs and pharma companies have [more than 250 vaccine candidates in their pipelines](https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/on-pins-and-needles-will-covid-19-vaccines-save-the-world), along with a similar number of therapeutics. What’s more, the crisis has shone a spotlight on pharma as the public seeks to understand the roadblocks involved in delivering a vaccine at speed and the measures needed to maintain safety and efficacy standards. To that extent, the world has been living through a time of mass education in science research and development.

Biotech has also benefited from its innate financial resilience. Healthcare as a whole is less dependent on economic cycles than most other industries. Biotech is an innovator, actively identifying and addressing patients’ unmet needs. In addition, biotechs’ top-line revenues have been less affected by lockdowns than is the case in most other industries.

Another factor acting in the sector’s favor is that larger pharmaceutical companies still rely on biotechs as a source of innovation. With the [top dozen pharma companies](https://www.mckinsey.com/business-functions/m-and-a/our-insights/a-new-prescription-for-m-and-a-in-pharma) having more than $170 billion in excess reserves that could be available for spending on M&A, the prospects for further financing and deal making look promising.

For these and other reasons, many investors regard biotech as a safe haven. One interviewee felt it had benefited from a halo effect during the pandemic.

More innovation on the horizon

The investors and executives we interviewed agreed that biotech innovation continues to increase in quality and quantity despite the macroeconomic environment. Evidence can be seen in the accelerating pace of assets transitioning across the development lifecycle. When we tracked the number of assets transitioning to Phase I, Phase II, and Phase III clinical trials, we found that Phase I and Phase II assets have transitioned 50 percent faster since 2018 than between 2013 and 2018, whereas Phase III assets have maintained much the same pace. There could be many reasons for this, but it is worth noting that biotechs with Phase I and Phase II assets as their lead assets have accounted for more than half of biotech IPOs. Having an early IPO gives a biotech earlier access to capital and leaves it with more scope to concentrate on science.

Looking forward, the combination of advances in biological science and accelerating developments in technology and artificial intelligence has the potential to take innovation to a new level. A [recent report](https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/our-insights/the-bio-revolution-innovations-transforming-economies-societies-and-our-lives) from the McKinsey Global Institute analyzed the profound economic and social impact of biological innovation and found that biomolecules, biosystems, biomachines, and biocomputing could collectively produce up to 60 percent of the physical inputs to the global economy. The applications of this “Bio Revolution” range from agriculture (such as the production of nonanimal meat) to energy and materials, and from consumer goods (such as multi-omics tailored diets) to a multitude of health applications.

#### Antitrust law is a battering ram for innovation and chills patent stability.

Mosoff et al. ’19 [Adam, Kristen Osenga, Randall Rader, Mark Schultz, and Saurabh Vishnubhakat; January 28; Professor of Law at George Mason University; Regulatory Transparency Project, “How Antitrust Overreach is Threatening Healthcare Innovation,” <https://regproject.org/paper/how-antitrust-overreach-is-threatening-healthcare-innovation/>]

II. The FTC’s Heavy-Handed Meddling Upsets the Delicate Balance Between Branded and Generic Drug Companies, Hindering Innovation and Harming Consumers

Since the late 1990s, the FTC has devoted substantial resources to combating what it views as anticompetitive behavior on the part of drug companies in the healthcare market. The FTC has interposed its scrutiny even where the FDA has approved drugs and when the branded and generic companies have decided a legal fight is no longer worth having. The FTC’s meddling restricts behavior that is lawful under the Federal Food, Drug, and Cosmetic Act (FDCA). The FTC’s meddling also usurps the regime Congress carefully crafted for resolving patent disputes between branded and generic drug companies.

The FTC has devised a series of novel theories to justify treating lawful behavior as anticompetitive and worthy of enforcement action and legislative changes. These theories have been adopted—and adapted—by state antitrust enforcers as well as private antitrust plaintiffs. The FTC has conducted industry-wide investigations and prepared massive reports on supposed anticompetitive conduct to recommend legislative changes despite neither the branded nor generic drug industry seeking such changes. These changes to the law would restrict or punish patent owners and even patent challengers. The FTC has, on its own initiative, made the already volatile world of drug development more uncertain and more hostile, ultimately resulting in less innovation and fewer choices for consumers in the short term (e.g., generic options) and long term (e.g., new drugs).

The FTC’s aggression extends to the courtroom. For nearly two decades, the FTC and other antitrust plaintiffs have attacked patent settlements reached by branded and generic drug companies. As explained above, the regulatory scheme for new drugs gives rise to an unusual type of patent litigation in which the generic drug company—the defendant—is not at risk of money damages for infringement because litigation generally occurs before the generic drug has obtained FDA approval and enters the market. Because of this unusual arrangement, where each side had to yield something of value to the other at the settlement table, a patent owner occasionally pays a settlement to the defendant (rather than forgiveness of damages, which is typically not an option) in exchange for the defendant agreeing to slightly delay the launch of its generic drug. Other considerations, such as the generic company agreeing to source materials from the branded company or other business or research partnerships, are not uncommon.

Beginning in the 1990s, the FTC took the position that such settlements were a categorically illegal restraint of trade. Courts did not agree, as modern antitrust jurisprudence recognizes that declaring something categorically illegal in the absence of more facts and details is dubious. Courts generally concluded that a settlement within the scope of the patent—where the defendant agreed to remain off the market no more than already required by the patent but perhaps longer than a successful court challenge—did not itself violate the antitrust laws. Yet the FTC persisted in arguing its position to the Supreme Court. In the 2013 Actavis case, the Supreme Court declined the FTC’s invitation to find reverse payment settlements categorically anticompetitive, ruling instead that these settlements must be evaluated under antitrust law’s “rule of reason,”, which is a detailed look at all the relevant facts and circumstances of the individual case.7 Still undeterred in the wake of Actavis, the FTC continues to argue that a variety of patent settlements are anticompetitive and accuse district courts of misinterpreting Actavis.

The FTC’s basic position is that antitrust scrutiny is triggered when the patent owner offers anything of value beyond the litigation expenses that settlement would save. Any patent owner who tries to entice a generic competitor to settle by offering anything more than litigation costs is treated suspiciously by the FTC. Even if the settlement is a complex corporate transaction that involves manufacturing and promotion deals or other products—where both parties might benefit beyond merely the ending of a lawsuit—the FTC’s basic position is to presume an antitrust violation.

Not surprisingly, the FTC’s overzealous actions against drug makers make it very difficult to settle pharmaceutical patent litigation without branded and generic drug companies both expecting an antitrust case, which may itself end up effectively revisiting the patent issues the parties sought to move beyond by settling. Companies still try to craft agreements that eliminate the risk that both face in litigation while ensuring that generic market entry occurs well before patent expiry, but no matter the terms, the FTC stands ready to argue that the companies should not have settled. In the end, these parties seem to want patent litigation cases to continue to final judgment, even when this is not in the interest of the branded companies, generic drug companies, consumers or the federal court system.

The FTC has also started to interfere with the ordinary cycle of incremental innovation in the drug industry. Incremental drug innovation is both commonplace and can be medically important. New dosage forms and routes of administration can make life-sustaining drugs easier to administer to new populations. New formulations, such as extended release formulations, can simplify dosing, thus increasing patient compliance.

In recent years, however, the FTC has targeted these patents. The chief complaint advanced by the FTC is that incremental innovations are trivial advances and do not deserve patent protection. Where the branded company replaces an older version of its product with the patented new version, the FTC accuses the branded company of “product hopping” to force the market to move to new drugs. The problem with this argument is threefold. First, these innovations have satisfied the requirements of the Patent Act. Second, if they are indeed trivial, the patents will likely be held invalid in federal court when challenged by generic competitors.  Third, if the branded company’s new product does not provide better outcomes, insurers are unlikely to cover the product and will instead require a patient to use the generic version of the branded company’s first product. The FTC’s actions are thus a solution in search of a problem.

Conclusion

The FTC’s goals may be well-intentioned, but its intrusion into domains that other, more expert agencies already oversee and comprehensively regulate is troubling. By substituting its own agenda for the business judgment of sophisticated parties in the marketplace, the FTC has overreached its proper role and begun to disrupt the cycle of investment, product development, recoupment, further incremental advancement, and risk management that drives the creation of new drugs that save lives and promote greater public health.

#### Innovation optimizes synthetic biology – extinction.

Karoui et al. ’19 [Meriem, Monica Hoyos-Flight, and Liz Fletcher; August 7; Centre for Synthetic and Systems Biology in the School of Biological Sciences at the University of Edinburgh; Innogen Institute in the School of Social and Political Sciences at the University of Edinburgh; Frontiers, “Future Trends in Synthetic Biology—A Report,” <https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full>]

Tackling Risk

Synthetic biology is an example of a dual-use technology: it promises numerous beneficial applications, but it can also cause harm. This has led to fears that it could, intentionally or unintentionally, harm humans or damage the environment. For example, there is huge value in our ability to engineer viruses to be more effective and specific shuttles for gene therapies of devastating inherited disorders; however, engineering viruses may also lead to the creation of even more deadly pathogens by those intent on harm.

“Synthetic biology should be regarded as an extension of earlier developments and technologies”

Some would argue that synthetic biology poses an existential risk and needs to be treated with extreme caution. However, many new technological advances across the decades have met similar concerns. The uncertainty and remote possibility of such risks could hamper the development of useful technology. Scientists, their host institutions and funding bodies should (and indeed already do) consider whether the research planned could be misused. Measures that reduce the likelihood of misuse and its consequences should be implemented and clearly communicated. The synthetic biology community needs to be aware of, and respond to, these challenges by engaging in horizon scanning exercises as well as open dialogue with regulatory bodies and the media.

“Don't avoid risk – manage it”

Being more open about risks, and how they are controlled, provides an opportunity to shift discourse toward the benefits of synthetic biology in addressing urgent global needs, such as the production of biofuels, food security and more effective medicines, and potentially improve public acceptance.

“The questions should not be ‘what’s the next big thing for synthetic biology' but ‘where is the greatest unmet need’.”

Despite the efforts by individual countries to establish synthetic biology research roadmaps, broader, international agreement on common standards (and red lines) across the field may help establish trust and to advance the best pre-competitive research into useful applications.

Meeting participants highlighted the importance of training in responsible research conduct and ethics. Given students' future role as science ambassadors and influencers, their training should not only convey skills and knowledge but also awareness and critical thinking about the prospects and potential for dual use of synthetic biology. All researchers must remain vigilant regardless of the many pressures and distractions of running a successful research lab; they may not have specialist training in identifying the risks of misuse but they are the people best placed to maintain informed oversight of risks.

One example of current synthetic biology research with potential dual use is gene drive technology, which can be used to propagate a particular suite of genes throughout a population. The benefits of using gene drive technology include the eradication of disease-carrying insect populations and the elimination of invading pest species but it has raised concerns about the unintended ecological impacts of reducing or eliminating a population ([Callaway, 2018](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B5); [Collins, 2018](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B9)).

Similar release concerns surround research that is harnessing the ability of pathogens to target particular tissues in the body or particular chemicals in the environment, which could greatly aid efforts to deliver targeted therapies or clean-up contaminated sites. To date, such large-scale release for environmental bioremediation interventions has not been possible.

“We need to mind the gap between R&D scale up and communications …. One bad blog can kill a commercial product”

There was consensus that the need for regulation over this community remains important. Regulation needs to keep up to speed with the emerging technologies and should focus on the product rather than the process used to create it ([Tait et al., 2017](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B34)). Unsuitable regulatory frameworks (as well as unfavorable public perception) could discourage private sector investment in synthetic biology.

## OFF

#### Small Business CP:

#### The United States federal government should

* create a Small Business Board program operated by the Small Business Administration,
* and encourage and match state contributions for the creation of subnational industry-wide Small Business Boards.

#### A network of Small Business Boards solves the case without antitrust expansion.

Atkinson ‘21 [Robert; 4/5/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; Michael Lind; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, J.D. from the University of Texas Law School, M.A. in International Relations from Yale University; "Small Business Boards: A Proposal to Raise Productivity and Wages in All 50 States and the District of Columbia," https://itif.org/publications/2021/04/05/small-business-boards-proposal-raise-productivity-and-wages-all-50-states]

The crisis of pay in the United States is also a crisis of productivity. Low-paying jobs tend to be concentrated in non-exportable, domestic service sectors such as hospitality, nursing care, retail, restaurants, and construction.1 These sectors are dominated by small local firms in markets in which intense competition incentivizes employers to pay the lowest possible wages and provide few if any benefits. An alternative would be for these companies to develop innovative technology and new business models in order to boost firm productivity, thereby permitting both higher profits and higher wages and benefits for workers. But their low profit margins prevent many small businesses from investing in productivity-enhancing technology. The result is these sectors, which account for large numbers of firms and workers in the American economy, being trapped in a low-wage/low-productivity equilibrium, from which none by itself can escape.

To break this low-wage/low-productivity equilibrium in the most technologically laggard and poorest-paying sectors, there are two options. One is the replacement—through acquisitions or market-share loss—of many small firms with larger firms that can exercise at least some market power, enjoy economies of scale, and recycle higher net revenues into research and development (R&D), capital deepening, and higher wages.2 But this might not happen on its own, in part because small business now receives significant incentives and protections that enable them to keep their existing market share even though they are generally less productive.3 In addition, America’s political culture, unlike those of some other nations, would prevent the government from either incentivizing or ordering the merger of small and inefficient firms—a policy that would be demonized by many in the progressive antitrust movement, which seeks to break up big, efficient firms.

The other option is to allow firms to remain small or medium-sized, while at the same time helping them to reap at least some economies of scale and scope in areas such as R&D, investment, marketing, and the purchase of health insurance for workers by means of collaboration among most or all the firms in their sector. To prevent free riding, government must not only allow, but in some cases mandate, limited collaboration among numerous small and medium-sized firms for legitimate purposes. In other words, to maximize economic benefits for firms, workers, and the economy overall, some collective action is needed. As economist Paul Romer noted, “The lesson from economic growth is that collective action is very important and that everything, including institutions, can always be improved.”4

To that end, we propose creating a new Small Business Board (SBB) program, which would be operated by the Small Business Administration to increase productivity and raise wages in small firms. In return for matching grants from the federal government combined with state funding, each of the 50 states and the District of Columbia would be encouraged to create industry-wide SBBs, beginning with pilot projects in the least-productive and lowest-paying non-traded local service sectors. If at least half of the firms in the sector voluntarily agreed to a program, the state government, in partnership with the federal government, would help structure such a program and support joint inter-firm activities. In these cases, all the firms licensed to do business in a particular sector in the state, while competing in other areas, would be required to participate in the program. Depending on the sector, this might involve joint technology sharing; collaboration in R&D; production technology modernization; targeted investments to improve productivity of individual firms; marketing; minimal wage, benefit, and working-condition standards; vocational training; and health insurance and defined-contribution retirement plans for all workers.

The proposed SBB program is modeled on existing federal programs with records of success going back over a century. In the Agricultural Marketing Agreement Act of 1937, Congress allowed procedures for establishing arrangements called “marketing orders,” to be overseen by the Department of Agriculture. Congress also authorized the creation of the agricultural extension service and more recently a Manufacturing Extension Program (MEP) run by the National Institute of Standards and Technology (NIST). The federal government has supported technology research consortiums, such as Sematech, which were provided with exemptions from antitrust law with the passage of the 1984 Cooperative Research and Development Act, the SBA’s small business investment company (SBIC) program, and the combination of federal matching grants and state funding for joint federal-state programs such as Medicare. The Prescription Drug User Fee Act (PDUFA) raised the fees drug companies pay to the Food and Drug Administration (FDA) to enable the agency to hire additional review personnel.5

All that is needed in order to raise productivity and wages in many of the least-healthy sectors of the American economy is to apply the same approaches that have already succeeded elsewhere.

## Inequality

### 1NC – Turn

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC – Labor Power High

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

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

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

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

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

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

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

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

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

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

#### Wages are at historic highs.

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

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

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

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

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

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

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

### 1NC – Antitrust Fails

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

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

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

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

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

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

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

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

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

### 1NC – AT: Inequality

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

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

2. The Empirical Evidence: Is Inequality Really Growing?

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

Chart, line chart

Description automatically generated

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

Chart, line chart

Description automatically generated

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

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

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

Chart, line chart

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

### 1NC – AT: Data

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

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

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

Myth 1: Industry Concentration Levels Have Increased to Dangerous Levels15

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

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

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

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

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

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

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

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

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

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

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

### 1NC – AT: Slow Growth

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

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

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

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

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

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

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

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

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

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

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

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

## FTC

### 1NC – Alt Cause

#### Losing cases is an alt cause. ---Michigan reads yellow

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

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

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

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

The FTC’s Rulemaking Authority

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

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

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

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

The Future of the FTC

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

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

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

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

### 1NC – AT: Terror

#### Terrorism are incompetent misfits.

Walt 16 – Stephen M. Walt, international relations professor at Harvard University. [My Top 5 Foreign-Policy Unicorns — and Why I Want to Kill Them, 9-8-2016, https://foreignpolicy.com/2016/09/08/my-top-5-foreign-policy-unicorns-and-why-i-want-to-kill-them/]

3. The terrorist mastermind. A close cousin to the nuclear rogue is the terrorist mastermind, busily concocting elaborate and highly destructive plots to bring the world to its knees. People like Osama bin Laden and Islamic State leader Abu Bakr al-Baghdadi have made extravagant and dire threats, but the good news is that they’ve never come close to toppling a foreign government, winning millions of followers, or threatening our way of life. I don’t deny that some terrorist groups have devised and executed successful assaults — of which the 9/11 attacks were by far the most damaging — but a word like “mastermind” conjures up images of Dr. Evil-style villains who will inevitably outwit our feeble efforts to stop them and unleash fearsome destruction on an innocent world. In fact, as John Mueller and others keep reminding us, the vast majority of contemporary terrorists are incompetent misfits, and even the very best of them fall well short of evil genius. They can and do stage small-scale attacks that cause modest amounts of harm, but they have repeatedly shown themselves to be incapable of orchestrating complicated operations that could actually bring a stable country to its knees. There have been serious terrorist attacks in Boston; London; Paris; Brussels; Orlando, Florida; and several other places in recent years, for example — yet in each case, these societies proved resilient, and they are thriving again today. Or just look at New York City, which suffered the worst single attack ever and has since fully recovered. Terrorism is a problem, the lives lost to it are an unfortunate tragedy, and those who employ it are dangerous criminals. A few terrorists are moderately clever; most are not. None rises to the level of a “mastermind,” and none poses an existential threat. Reporters, pundits, and speechwriters should drop this term from their lexicon, because this particular animal doesn’t exist. Fortunately.

### 1NC – AT: Emerging Tech

#### No emerging tech impacts – gradualism and hype.

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

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise,

and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

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

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

### 1nc – AT: Scammers

#### No access---the tech barrier is too high

**Liang 15** [CPT Lim Ming - an armoured infantry officer by vocation and is currently a staffofficer in HQ Armour. He received the SAF Academic Scholarship and graduated from the National University of Singapore with a Bachelor of Social Sciences (Honours) in Political Science. “Hype or Reality: Putting the Threat of Cyber Attacks in Perspective”, Ministry of Defense Singapore, April 16, 2015, <http://www.mindef.gov.sg/imindef/publications/pointer/journals/2015/v41n1/feature4.html>] bjs

Another claim advances the asymmetric nature of cyber-attacks and its low entry barriers which facilitate its exploitation by non-state actors or weak states. As the Stuxnet case study demonstrates, cyber-attacks on the higher end of the ‘threat’ spectrum are contrary to the asymmetric claim. Effective cyber weapons are costly and impose high technology barriers beyond the reach of non-state actors such as terrorist groups. Furthermore, they often do not guarantee success and are surgical and ‘one-shot’ in nature. Hence, it is more rational for non-state actors to resort to conventional tactics with higher rates of success at much lower costs.

# 2NC

# Adv CP

#### Resources outweigh.

Bhaskar 1AC Chakravorti 7/7/21. Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. "Lina Khan Has Her Own Antitrust Paradox". Foreign Policy. 7-7-2021. https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

A poisoned chalice is not the most welcoming of gifts for a new chair of a major federal agency. But that is what legal scholar Lina Khan has been handed as she arrives at her office at the Federal Trade Commission (FTC), with media coverage more befitting a rock star than a regulator. She is breathlessly described as a legal wunderkind and her “Amazon’s Antitrust Paradox” may already be the most widely talked about note in the history of the Yale Law Journal. Even Sen. Ted Cruz said he looks forward to working with her—and you know that puts her in an extremely select club. The clock is ticking on her very first assignment—to refile an antitrust complaint against Facebook and convince a federal judge to reconsider a complaint he so expeditiously threw out. Khan has under 30 days.

The best thing Khan can do? Nothing.

Congress ought to make the next move and do the responsible thing by getting its act together and reaching an agreement over a slate of bills it has been bickering over, creating a modern regulatory infrastructure for today’s tech. U.S. lawmakers ought to stop cheering Khan from the sidelines and egging her into a legal skirmish. Instead, they need to do the hard work of taking the longer view—bringing antitrust law to the digital age before refiling another complaint. Unless our lawmakers create the right framework and agency responsible for regulating the digital industry, Khan’s FTC—and U.S. consumers—will be drawn into near-term battles while the actual war rages on.

Here is the plot so far and what must be done.

The Facebook antitrust rewrite Khan is being pushed into is fraught with problems. The FTC, under the previous administration, rushed through a lawsuit against Facebook in December 2020, alleging the company’s acquisitions of Instagram and WhatsApp were anti-competitive. Regardless of the merits or demerits of Facebook’s purchases, a federal judge did not buy it. He did offer a 30-day period for revising and refiling.

To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have argued the agency just needs to be more explicit about its definition of the market and the data it is relying on.

It is useful to recall that, as the judge threw out the complaint, he also ruled that “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case.

Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to 60 percent when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned study found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are not regularly reported. No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.

One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to play fast and loose with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing standard for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in intrusive or abusive ways? Ultimately, the FTC and the courts would have decide if customers are getting a good value in exchange for their data.

Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has argued that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition.

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

#### More funding solves!

Nicolás 1AC Rivero 21. NU Graduate. "Biden’s antitrust crusaders can’t crusade without Congress". Quartz. 3-11-2021. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/amp/

US president Joe Biden is poised to promote two of the country’s most prominent anti-monopoly crusaders to top jobs in his administration. The moves signal that Biden is serious about cracking down on dominant companies that include Facebook, Google, Amazon, and Apple. But for the president’s trustbusting champions to make a real impact, they’ll need support from Congress.

Biden appointed Columbia law professor Tim Wu to the National Economic Council (NEC) as his top advisor on technology and competition on March 5. Politico reports that Biden will soon follow up by nominating Lina Khan, also a Columbia law professor, to the Federal Trade Commission (FTC). (Before she can take her seat as one of the antitrust agency’s five commissioners, Khan must be confirmed by the Senate.)

Khan and Wu are two of the leading voices in a new movement of legal thought that argues the US should fundamentally overhaul the way it approaches antitrust. The crux of their argument is that courts should broaden the values they consider when deciding whether to block a merger or break up a dominant company. Rather than focus narrowly on the impact a company has on consumer prices, they argue that judges should also think about a company’s impact on small businesses, labor rights, and the health of democracy.

Khan and Wu have already secured a win for their cause just by being appointed—essentially a White House stamp of approval on their viewpoints. But despite much handwringing from industry groups, neither appointee will be able to single-handedly remake American antitrust in their image.

How the FTC can tackle antitrust

To be sure, Wu can advocate loudly for his preferred policies from his perch at the NEC, which advises the president on economic policy. And if Khan makes it to the FTC, which is the top US antitrust enforcement agency, she’ll have direct influence over which investigations the agency prioritizes, which lawsuits it brings, and whether its prosecutors will ask judges to impose fines, break up dominant firms, or require them to change their business practices.

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

The FTC could also decide to dust off its rarely used rule-making power and declare certain anticompetitive business practices illegal. But any new rule would almost certainly trigger legal challenges, which would spark a long, expensive court battle in front of judges who aren’t likely to be sympathetic. Kovacic estimates the process could take four or five years—and in the end, judges might just strike the rule down.

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

Ultimately, Congress should be the body that sets US antitrust policy. It has the clearest authority to ban the bullying business tactics for which Big Tech firms have been criticized. Legislative fixes are likely to be quicker and less vulnerable to court challenges—not to mention more democratic—than changing FTC rules. And it has traditionally been Congress’s prerogative to keep the country’s antitrust policy up to date: Legislators updated the monopoly laws every two decades or so between 1890 and 1950 to respond to new threats. They’ve just neglected that tradition for the past 70 years.

#### Advantage starts at zero – judicial activism means not a single antitrust statute in history has been interpreted faithfully.

Crane ‘21 [Daniel A; January 28; Professor of Law, University of Michigan; Notre Dame Law Review, "Antitrust Antitextualism," vol. 86 no. 3]

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute.

If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle.

### 1NC – Can’t Solve

#### Congress won’t check – decades prove they avoid conflict with the courts over interpretive issues

Crane ‘21 [Daniel A; January 28; Professor of Law, University of Michigan; Notre Dame Law Review, "Antitrust Antitextualism," vol. 86 no. 3]

Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: 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 material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

### 1NC – Alt Causes

#### Massive alt causes.

Klaas ’21 [Brian; June 11; associate professor of global politics at University College London; the Washington Post, “Opinion: The world is horrified by the dysfunction of American democracy,” https://www.washingtonpost.com/opinions/2021/06/11/pew-research-global-opinion-us-democracy/]

It’s official: America is no longer a “shining city upon a hill.”

Data released Thursday from Pew Research shows that our allies are beyond delighted that the Trump presidency has ended. Confidence in U.S. leadership has soared. Our friends are breathing a sigh of relief.

But buried in that story about the United States’ post-Trump redemption is some seriously bad news: U.S. allies see our democracy as a shattered, washed-up has-been. We used to provide a democratic model for the world, but no longer. The chaos, dysfunction and insanity of the past several years have taken a predictable toll.

The numbers are depressing. Just 14 percent of Germans see American democracy as a desirable model for other countries, while 54 percent say that it “used to be a good example, but has not been in recent years.” Public opinion in France, Britain, South Korea, Japan and Australia is similarly bleak. In New Zealand, fewer than 1 in 10 citizens sees American democracy as a desirable model.

It turns out the rest of the democratic world wasn’t particularly impressed by the United States’ former authoritarian president, who spread conspiracy theories, tweeted narcissistic absurdities while 400,000 people died of covid-19, and incited a deadly insurrection. Go figure.

But these numbers coming out of our allies aren’t just depressing bits of polling trivia. They have real-world consequences. And they highlight a disturbing, inescapable dilemma that the Biden administration must confront: Until the United States fixes its broken democracy at home, it will be unable to effectively fight authoritarianism abroad.

Put bluntly: The United States’ authoritarian slide isn’t just a domestic policy issue. It’s a foreign policy disaster, too.

Ever since Donald Trump emerged as the Republican front-runner in 2016, China has been exploiting the unhinged turmoil he ushered in as evidence that democracy is a bad joke rather than a serious way of governing a society. As the Trump years descended into mayhem, China ramped up its rhetoric. And when Trump’s failures to contain the covid-19 pandemic became plain for the world to see, Beijing cited it as further evidence that democracy was a failed experiment.

Needless to say, China is no model for the rest of the world; it’s a brutal authoritarian regime that stays in power by committing genocide against ethnic and religious minorities while silencing its critics. But the Trump years were a gift-wrapped propaganda coup for the Chinese in their ongoing battle to challenge the West’s ideological primacy on the global stage.

This matters because emerging economies are slowly getting pulled into China’s orbit as they seek a viable blueprint for their own development. In Afrobarometer surveys of public opinion across Africa, China has pulled even with the United States. Six in 10 Africans have a favorable view of China’s role in their country. And while the United States is still seen as offering the best development model, China isn’t far behind. This is a drastic shift in just a few decades — and it will play an increasingly important role in U.S. foreign policy as some of these developing countries decide whether to follow Washington or Beijing.

The United States has lost the moral high ground. The world might have always been wary of lectures from the United States about the virtues of democracy and freedom, but at least those on the receiving end of those lectures often believed that the country giving the lecture knew how to build a successful democracy. That’s no longer true.

At a time of authoritarian resurgence, we need the words of the U.S. president to pack a democratic punch. Instead, they ring hollow. After all, due to ongoing Republican machinations, American voters can’t even be sure that their right to vote will be protected in the years to come. What can the United States teach the world about democracy when the country is continuing its steady slide toward authoritarian politics?

This won’t just hamper President Biden’s foreign policy; it will also make the world safer for authoritarianism. Although there are still plenty of desirable democratic models around the world (I’m looking at you, Norway), none of them has the power to take meaningful action when a dictator rigs an election or imprisons an opposition leader. Worse, now that the world doesn’t respect or admire U.S. democracy, dictators have a rhetorical trump card. They can point to the fact that Trump (falsely) claimed the U.S. election was rigged; that Republicans are actually trying to rig elections with voter suppression and worsened partisan gerrymandering; and that the former president repeatedly called to jail his political opponents. Our hypocrisy will enhance dictators’ impunity.

Comparisons between the United States’ malfunctioning politics and genuine dictatorships are, of course, hyperbolic. But dictators will nonetheless get plenty of rhetorical mileage out of making them, pointing to Washington’s failures to justify or excuse their own authoritarian plots.

### 1NC – Democracy

#### Democratic peace theory is cherry-picked, and dyadic between two democracies at best.

Doorenspleet ’19 [Renske; 2019; Political Science and International Studies Professor at Warwick University; Rethinking the Value of Democracy: A Comparative Perspective, “Democracy and Interstate War,” Ch. 3]

This finding or ‘law’ has not only been recognized by scholars of international relations, but also found its way outside academia and has influenced foreign policies to promote peace and democracy, most prominently since the 1990s. However, my book will not draw conclusions based on ‘cherry-picking’ of specific studies showing how peaceful democracies are, but on a systematic overview of studies in this field. Therefore, this book relies on my own database with hundreds of different studies, which are relevant for each chapter; the articles had to engage directly with the chapter’s main research question. The next section will provide more detailed information around the selection criteria. This overview includes both highly cited and recent articles which were selected in a systematic way.

Based on analyses of statistical studies around this topic of democracy and war, it will become clear that the overall statistical support for the democratic peace hypothesis is not strong at all. In the rest of the chapter, I will spell out four reasons why democracy does not cause peace, and why the empirical support for the popular idea of democratic peace is quite weak: (1) most studies do not find a strong correlation between democracy and interstate war at the dyadic level, and they show that there are other—more powerful—explanations for war and peace, or even that the impact of democracy is a spurious one, (2) the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear, (3) democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive, and (4) the process of democratization is dangerous and living in a democratizing country means living in a less peaceful country.

In my view, it is difficult—if not impossible—to support the democratic peace hypothesis without any reservations. The key caveats should not be ignored and certainly deserve more attention before we can confidently argue that democracies are more peaceful than other types of political systems. Please notice that I can already reveal that the assumed link between democracy and intrastate war is problematic as well, but this topic will be at the core of the next chapter (Chapter 4).

Selection of Articles: Democracy and War

The instrumental value of democracy cannot convincingly be found in democracy’s expected bond with peace. I have come to this conclusion on the basis of an analysis of statistical studies, which will be discussed in the rest of this chapter. So how did I select the articles for my database?4

For this chapter and Chapter 4, I selected the articles that focused on war and democracy. Using the online database Web of Science (formerly known as Web of Knowledge), I identified a total of almost 8000 articles published in the sampled journals until the end of 2015. I identifed them by entering ‘democr\*’ in the basic search field; this asterisk (\*)-based ‘wildcard’ allows searching for terms including ‘democratic’, ‘democracy’, and ‘democratization’ (in both British and American spellings) simultaneously, in the title, abstract and/or the keywords. As a next step, I excluded articles in which ‘democracy’ is used as synonym for state (e.g. analysis of the relationship between immigration policies and unemployment in European democracies) or a specific political party or movement (e.g. the ‘Democrats’ in the USA, or Uganda’s People’s Democratic Army) or a specifc country (e.g. the Democratic Republic of Congo). In addition, I identified them by entering ‘war\*’ in the basic search feld. The words democracy (democr\*) and war (war\*) need to be mentioned in title and/or abstract—and I also checked for equivalents of ‘war’ like ‘conflict’ and ‘dispute’ and ‘no peace’.5

As it is not feasible to analyse thousands of articles, it is necessary to take a next step in the selection process. I decided to select these articles, which will be part of the database for the third and fourth chapter, in three different ways. The first method is to choose the articles with the most citations. So, for example, in Chapter 3, the articles which are cited more than a hundred times are included in this first list. The article by Beck et al. (1998) has been cited more than 951 times, and as a consequence, this article is part of the database. But also articles with a much lower number of citations (such as Barbieri 1996, with 179 citations) are included in my analyses.

The second method is simply to include the most recent articles published in the past five years, so since beginning 2011 until end 2015. The most recent articles can easily be overlooked by applying the first method of most quoted articles. In my view, however, they still need to be included as they present the most recent findings and engage with the recent and innovative debates, which cannot be ignored in this book. For example, recent studies on democracy and interstate war (Chapter 3) have paid more attention to the mechanisms (see, e.g., Zeigler et al. 2014), and there is a growing attention for the impact of political institutions in recent studies on democracy and intrastate war (Chapter 4; see, e.g., Walter 2015). Those recent findings cannot be ignored in any systematic analysis of statistical studies on this theme.

The third method is the most subjective approach of selecting articles, as it is based on the ‘snowballing method’. So it includes articles which have not been selected by the first and second methods, but which have been quoted extensively and regularly by the previously selected articles. For example, the article by Bethany Lacina (2006) cannot be selected based on having high citations (the first method) and it cannot be included based on being a recent publication (the second method), but it has been mentioned by key studies and hence surfaces via the snowballing method (a third method). This article is important as it clearly distinguishes the determinants of conflict severity from those for conflict onset, and those determinants seem to be quite different, which is crucial information for Chapter 4.

In this way, my study presents and assesses the findings based on a big pool of statistical studies in the published literature. Based on this assessment, I will be able to draw clearer conclusions concerning the significance of the effects of democracy on interstate war (this chapter) and intrastate war (the next chapter). The Appendix shows more detailed information of the selected articles.

The Democratic Peace Hypothesis, Its Roots and Supporters

The democratic peace hypothesis6 states that democracies never or seldom go to war with one another. Where is this powerful idea of ‘democratic peace’ coming from? Before discussing the main findings of the statistical articles and before describing the four caveats of the ‘democratic peace paradigm’, we need to know a bit more around the background and the roots of this idea.

Immanuel Kant’s 1795 essay Perpetual Peace has often been mentioned as the foundation for this hypothesis. Kant believed peace was difficult to achieve, since ‘the natural state is one of war’ (Kant 1795: 10). A state of peace must therefore be established for—in his view—it is certain that hostilities will be committed and people need to be protected from each other. In such a world, each may treat his neighbour, from whom he demands security, as an enemy. In a dictatorship where ‘the subjects are not citizens, a declaration of war is the easiest thing in the world to decide upon, because war does not require of the ruler, who is the proprietor and not a member of the state, the least sacrifice of the pleasures of his table, the chase, his country houses, his court functions, and the like. He may, therefore, resolve on war as on a pleasure party for the most trivial reasons, and with perfect indifference leave the justification which decency requires to the diplomatic corps who are ever ready to provide it’ (Kant 1795: 13).

In contrast, the situation is different in constitutional republics, according to Kant. He argued that the majority of the people in republics would never vote to go to war, except for pure self-defence. Therefore, a world with only republics would be peaceful, since there would be no aggressors. The republican constitution, which requires the consent of the citizens to start a war, gives the positive prospect of perpetual peace.

It is important to note that the ideas of Kant on the one hand and the modern democratic peace scholars on the other hand are not completely similar. For example, Kant talked about republics instead of democratic states as the ideal states to achieve peace. He defined republican states as states with representative governments, in which the legislature is separated from the executive. Not surprisingly—considering the epoch in which he lived—Kant did not include universal suffrage in his definition, which is now seen as an essential dimension of democracy, even of the most minimalist types of democracy (Dahl 1971; see also Chapter 2). Moreover, Kant argued that republics will be at peace in general, which means that such political systems are expected to be not only in peace with each other, but also with other non-republican systems. Nowadays, only few scholars would support this approach of a ‘monadic democratic peace’. As will become clear at the end of this chapter, there is not much evidence for the idea that democracies are more peaceful in general.

Since the 1960s, most statistical studies have not focused on the ‘monadic democratic peace hypothesis’ but on testing the ‘dyadic democratic peace hypothesis’. This dyadic hypothesis states that it is less likely that democracies fight with each other, compared to other ‘dyads’ or other pairs of different types of political systems. The sociologist Dean Babst was the first scholar who started to build on Kant’s old idea in the ‘dyadic’ way, and decided to test it in statistical studies (Babst 1964, 1972). He concluded that ‘no wars have been fought between independent nations with elective governments between 1789 and 1941’ (Babst 1972: 55). His study was not published in one of the journals in the field of international relations, but in a sociological journal and later in Industrial Research. Therefore, it was not read by international relations scholars, and initially, it did not get the attention it deserved in the field of international politics.

Babst’s work was, for example, not cited by Melvin Small and J. David Singer (1976), and their fndings seemed to contradict Babst’s study. However, Small and Singer did not compare the rates of war proneness for democracies and dictatorships, but instead they focused on the question whether wars involving democratic states have historically been significantly different in length or in degree of violence compared to wars involving only dictatorships. For length and degree of violence during the wars, they did not find a difference between democracies and dictatorships, so they concluded that types of political systems did not matter.7 A few years later, Rudolph J. Rummel did cite Babst’s work and replicated Babst’s idea in statistical tests, which were described in the fourth book of his five-volume Understanding Confict and War (1975– 1981). He found clear support for his eleventh (of the 33) propositions about causes and conditions of conflict, which stated that ‘Libertarian systems mutually preclude violence’ (Rummel 1979: 279).

Eventually, those innovative studies from the 1970s helped to evoke the interest in the democratic peace proposition, and in the expected peaceful nature of relationships among democratic states. Since the 1980s, the number of quantitative studies has increased considerably, accumulating into an impressive field of research in international relations with its own ‘empirical law’ of democratic peace (Levy 1989: 270; see also Ray 1998).

This democratic peace hypothesis has not only received support from political scientists, but also from politicians and policy makers. Particularly since 1993, the idea of a democratic peace has inspired American foreign policies aimed at the promotion of peace and democracy. As the 42nd president of the USA (1993–2001), Bill Clinton was the first politician who explicitly bridged the gap between these findings in international relations on the one hand, and his foreign policy strategy on the other hand, at least rhetorically. Anthony Lake, who was Clinton’s National Security Adviser, stated in 1993 that in order to cope with America’s foreign policy challenges, the expansion of democratic states around the world would be essential because ‘it protects our [U.S.] interests and security’ (see Henderson 2002: 20). In his 1994 State of the Union, Clinton declared that ‘Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere. Democracies don’t attack each other’.8 Findings from research in the field of international relations seemed to have a direct impact on policy making, and this move of the Clinton administration can be seen as ‘a textbook case of arbitrage between the ivory tower and the real world’ (Gowa 1999: 109).

Clinton’s successor, George W. Bush, went one big step further in his faith that democratic peace holds. He argued that efforts to turn Iraq into a democratic country would have positive effects on Iraqi’s neighbours. The authoritarian regimes in the region would fall as domino stones and follow the Iraqi example. They would start democratizing as soon as they could, which would then result in achieving a peaceful and stable the Middle East. The real motives for attacking Iraq may have been different, but ‘regime change’ was at the heart of Washington’s rhetoric when the USA started to bomb Baghdad in March 2003. The rhetoric of the Bush administration focused on toppling Saddam Hussein’s regime, and replacing the entire underlying dictatorial system with a democracy.

Moreover, George W. Bush used the democratic peace idea to justify the war in Iraq, declaring, ‘The reason why I’m so strong on democracy is democracies don’t go to war with each other…I’ve got great faith in democracies to promote peace. And that’s why I’m such a strong believer that the way forward in the Middle East, the broader Middle East, is to promote democracy’.9 In 2004, the 43rd President of the USA said: ‘If you think you can have peace without democracy – again - I think you’ll find that - I can only speak for myself, that I will be extremely doubtful that it will ever happen’.10 In his second inaugural address, he stated that ‘the survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world’.

Again, these are just words from speeches and can hence be seen as rhetoric to defend military intervention (cf. Jervis 2003; Kaufmann 2004; Daalder and Lindsay 2005; Owen 2005; Lieberfeld 2005; Schmidt and Williams 2008). Still, in the end, politicians have rationalized their political decisions based on one of the most powerful ideas taken from studies in the field of international relations, clearly showing the influence of this academic idea in political practice.

Hence, the field of international relations seems to have its own law: democracies rarely fight with each other. It cannot be denied that the evidence supporting the democratic peace proposition is quite diverse in character (see Ray 1998): the evidence has been epistemological (Rummel 1975), philosophical (Doyle 1986), formal (Bueno de Mesquita and Lalman 1992), historical (Weart 1994; Ray 1995; Owen 1994), experimental (Mintz and Geva 1993), anthropological (Ember et al. 1992; Crawford 1994), psychological (Kegley and Hermann 1995), economic (Brawley 1993; Weede 1996) and political (Gaubatz 1991). Still, there have been numerous critical studies (see, i.e., Hayes 2011), and the general picture is unclear. We do not yet know much about the overall findings from statistical studies.

So far, it seems as if some quantitative studies—mainly within the field of international relations—have found strong and robust evidence which supports the ‘democratic peace hypothesis’. Those studies show that democracy has had a positive influence on international peace (see, i.e., Rummel 1979; Ray and Russett 1996). In this sense, the idea of a democratic peace seems to be confirmed. Political scientists such as James Lee Ray are passionate supporters: ‘No scientific evidence is entirely definitive’ but ‘based on all the empirical evidence so far’ the more defensible of the two possible definitive answers to the question “Does democracy cause peace?” is “Yes” (Ray 1998: 43). However, based on my own analyses of the empirical studies with statistical evidence, I cannot be as enthusiastic as those scholars; to the contrary, I whole-heartily disagree with them, as a more systematic analysis of the articles shows that there are four important weaknesses, which seriously undermines the idea that peace is one of democracy’s instrumental values.

Caveat 1: It’s Not (Just) Democracy

While analysing the selected articles, the first remarkable finding is that only a relatively small number of studies have actually tested the democratic peace hypothesis. Most of the studies have focused on the mechanisms (see next section, caveat 2), and hence seem to assume that there is a correlation between democracy and war. In this way, the majority of the studies—often unintentionally—reinforce the idea that democratic peace actually exists without testing this proposition. However, none of the studies that directly test the democratic peace hypothesis found strong evidence that democracy is the most important factor when explaining interstate war. All democratic peace studies have controlled for many possible alternative causes of the peace, such as economic development and growth, geographic distance and contiguity, power status, alliance ties, militarization and political stability. The findings show that it is not just democracy which explains war, not at all. Within this group of studies, which explicitly test the democratic peace hypothesis, four different types of findings can be detected. I will discuss those results more in-depth in the rest of this section.

First Result: There Is Correlation, but Other Explanations Are Significant Too

The first subgroup consists of scholars who stress the importance of democratic peace, despite the fact their own analyses have shown that other factors are statistically significant as well (Maoz and Russett 1993; Rousseau et al. 1996; Gleditsch and Hegre 1997; Beck et al. 1998; Ray 2013). For example, some studies (e.g. Rousseau et al. 1996) included alternative independent variables in order to test realist arguments. They tested whether the distribution of power determines decisions to use force, and measures each state’s military capabilities relative to its opponent. A state’s military capability is the average of three elements: number of troops, military expenditures and military expenditures per soldier. They found that this realist variable was strong, positive and statistically significant at the 0.001 level in their analyses (see, e.g., Rousseau et al. 1996: 522, Table 2). However, not only a state’s military capabilities appeared to be an important explanation for peace. In addition, wealth, growth, alliances and contiguity played a crucial role when explaining interstate war (see, e.g., Maoz and Russett 1993: 632, Table 1).11 Moreover, when other factors are included, the impact of democracy on the likelihood of international crises is even spurious (Maoz and Russett 1993: 632; Henderson 2002: 141, see also p. 3).12 Still, scholars in this group keep defending the democratic peace idea, despite the fact that their own analyses showed the significance of alternative explanations.

Second Result: Initially There Is Correlation, but the Impact of Democracy Is Spurious When Other Explanatory Factors Are Included in the Models

The second subgroup of scholars is far more radical. Based on their own analyses, this group concludes that the democratic peace link is a spurious one (Weede 1984, 1996; Barbieri 1996; Mousseau 2013; Gartzke and Weisiger 2014).13 Typically, efforts to demonstrate the spuriousness of the statistical democratic peace pointed to other factors that, when accounted for ‘properly’, eliminated or dramatically reduced the statistical significance of shared democracy. Hence, the studies in this second group did not find strong evidence for the democratic peace hypothesis anymore, once other explanatory factors were included in the models.14

One of the most convincing alternative explanations of peace between countries is that there is no democratic peace, but a capitalist peace instead. The settlement in Germany and Japan succeeded because of the establishment of capitalist peace. Because of economic support by the Americans, who encouraged free trade and offered trade opportunities in practice as well, the poorer economies in Europe and Japan would gain economically, resulting in ‘economic growth, prosperity, and, ultimately, free trade among most of the more technologically advanced economies’ (Rasler and Thompson 2005: 232). By establishing and expanding free trade, the incentives for war would quickly decrease among trading states, according to this approach. To prevent new interstate wars after World War II, the capitalist peace was a far more important factor than the American promotion of democracy and its political institutions.

The capitalist peace, or capitalist peace theory, also states that economic development accounts for both democracy and the peace among democratic nations. Economic development is a key factor to explain democracy (Lipset 1959; see also Hegre 2003; Weede 2004).15 Moreover, economic development also plays a role when explaining peace, and the presence of market-oriented economies in countries have a positive impact on both democracy in those countries and peace between them (Mousseau 2000, 2002, 2003, 2005, 2013; see also Hegre 2014). Democratic peace only exists when both democracies have high levels of economic development, when economic development is well above the global median.

In fact, the poorest 21% of the democracies studied, and the poorest 4–5% of current democracies, are significantly more likely than other kinds of political systems to fight each other (see, e.g., Mousseau 2005). Moreover, if at least one of the democracies involved has a very low level of economic development, then democracy cannot prevent war.16 Still, there is a pacifying effect of free trade and economic interdependence, which is more important than the effect of democracy, because the former affects peace both directly and indirectly, by producing economic development and ultimately, democracy (see Weede 2004).17

Capitalist peace is not the only alternative explanation. Shared interests in general, and political similarities in specific, can also be seen as an important second alternative explanation for war and peace between countries (Farber and Gowa 1995, 1997; Gartzke 2007; Gowa 1999; Henderson 2002). Democracies are not peaceful to each other because they are democratic, but rather because they are similar. So the difference of the scores of both countries also contributes to the conflict proneness of the dyad. If the difference in levels of democracy is big, then the chance of conflict is higher (cf. Oneal and Russett 1997: 281–282).

Many researchers have conflated both the conflict-dampening impact of joined democracy and the confict-exacerbating impact of political distance in the variables focusing on political systems, but as Errol A. Henderson (2002: 32) convincingly argued: ‘Fusing these two contrasting attributes in a single variable makes it difficult to distinguish between the competing processes’. Therefore, it is better to include an additional variable of ‘political dissimilarity’ in the model. Henderson (2002) was one of the first scholars who included this variable and measured it by taking the absolute value of the difference between the two states’ scores. His main variables were not only political similarity, but also geographic distance and economic interdependence, and he concluded that democratic peace is a statistical artefact which disappears when those other variables are taken into account. Political similarity clearly has a pacifying effect18 (see Werner 2000; Henderson 2002; Beck et al. 2004), and it is not democracy per se which is the decisive factor.19

Hence, the benefits of trade and trade interdependence are essential explanations, while democracy is spurious or at least subordinate (see also Rosecrance 1986; Weede 1984, 1996; Hegre 2000, 2014; Jervis 2002; Souva 2003; Rasler and Thompson 2005: 235; Mousseau 2000, 2002, 2003, 2005). Based on those studies, it is safe to conclude that democracy, on its own, is an unlikely cause of the democratic peace.

Third Result: There Is Correlation, but Other Explanations Are Much Stronger

This same point that democracy is just one of the explanations for peace (and not even a very important one) is also at the core of studies in the third subgroup. Scholars of this group keep arguing that there is support for the democratic peace hypothesis, and that the link is not spurious. In this sense, they are less radical than the second group of scholars, as they do not completely reject the value of democracy for peace. On the other hand, their own analyses have clearly shown that alternative factors—hence other factors than democracy or type of political system— are not only statistically significant but also more important when trying to explain interstate war (Bremer 1992; Gelpi 1997; Oneal and Russett 1999a, b; Reiter and Stam 2002; Peterson 2013; Caselli et al. 2015).

Theoretical arguments and empirical evidence suggest that democracy is not the most important factor, while war is more likely to occur between states that are geographically proximate, approximately equal in power, major powers, allied, economically advanced and highly militarized than between those that are not. Bivariate analyses of these factors in relation to the onset of interstate war over all pairs of states in the period from 1816 to 1965 have generally supported these associations. However, multivariate analyses revealed some differences. Stuart Bremer (1992), for example, showed that some factors are far more important than others. The existence of a dangerous, war-prone dyad can be best explained by the presence of contiguity, the absence of an alliance and the absence of more advanced economy. The absence of democratic polity and other factors (absence of overwhelming preponderance, and presence of major power) are less powerful. Overall, these findings suggest that our research priorities may be seriously distorted and that we should not focus too much on the perceived positive impact of democracy, but on other factors (such as alliances and economic factors) instead.

Fourth Result: There Is Correlation, but Only Under Certain Specific Conditions

The final subgroup of scholars argues that we cannot unconditionally accept the idea that democratic peace exists in general, so always and everywhere. Their statistical studies clearly showed that support for this hypothesis heavily depends on other factors. The chance of democratic peace depends not just on the specific historical period (Cold War or not; Gibler and Sarkees 2004; Siverson and Emmons 1991; Weede 1984), but also the stage of the conflict (beginning, duration or severity; see Bremer 1993; Bennett and Stam 1996; Reed 2000), and on the neighbourhood instability (extent of confict in the region; see Gibler and Braithwaite 2013; Gibler and Miller 2013). Despite the differences between the studies, there is one common finding in all studies: when explaining interstate war, we cannot just rely on the impact of democracy, as it is too much dependent on other factors.

Several scholars found strong evidence for the idea that democratic peace exists, but only during some specific historical periods. Based on this evidence, they concluded that democratic peace is simply a statistical artefact of the Cold War. For example, Henry Farber and Joanne Gowa (1995) found statistical support for the idea that peace between democracies is an artefact of the Cold War, when the threat from the communist states forced democracies to ally with one another (see also Mearsheimer 1990). Sebastian Rosato (2003) also argued that most of the significant evidence for democratic peace has been observed after World War II; and that it has happened within a broad alliance, which can be identified with NATO and its satellite nations, imposed and maintained by American dominance.

Since the Second World War, war has become a very costly affair. Scholars discovered that only a handful of states are ‘capable of engaging in major power warfare. That process of elimination has not yet extinguished the possibility of major power warfare, but it has lowered its probability immensely’ (Rasler and Thompson 2005: 219). The chance to achieve something in a war is low in general, and even lower in a bipolar world with two big power players risking high nuclear war costs (Jervis 2002). While war became more costly, trade became less costly; as a consequence, the war/trade costs increased during the Cold War (Rosecrance 1986; see also Jervis 2002). In such a world, war and conflict have become less attractive, while trade and cooperation have become more appealing (Rasler and Thompson 2005: 219). Hence, more states decided to adopt trading strategies in order to prevent confict and war as much as possible. In the end, democracy was part of the story, but only a very small part with a subordinated role next to the power dynamics during the Cold War, the costs of warfare and the benefits of trade.

Some scholars found evidence that the democratic peace still exists in the post-Cold War period (Park 2013) which weakens this argument. However, most analyses showed that dyadic dispute rates have converged after the Cold War (see, e.g., Gowa 2011). Moreover, jointly democratic dyads are likely to be allied only after 1945 (see Gibler and Sarkees 2004); during the 1816–1944 time period, there is even a negative relationship between democratic dyads and alliance formation.20 These findings cast serious doubts on the idea of a general existence of democratic peace.

Not only the historical period, but also the *stage* of the conflict is crucial. Some scholars in this group provided evidence that democratic peace is not universal, but that it depends on the stage and whether we focus on the beginning, duration or severity of the conflict. Although joint democracy has some pacifying effects on the onset of conflict, the results suggest that they are unrelated to the escalation of disputes to war (see Reed 2000). Moreover, democratic peace is dependent on the neighbourhood instability. Democracies often have few territorial issues over which to contend, as they tend to be part of a stable region. Democracies only seldom have territorial disputes with their neighbours, and therefore they can more easily choose favourable conflicts to escalate. The type of political system does not predict conflict selection or victory once controls are added for issue salience (Gibler and Miller 2013; see also Park and James 2015). There is an interaction between joint democracy and regional instability, which confirms the idea that the effects of type of political system on continued conflict apply mostly to dyads in peaceful regions (Gibler and Braithwaite 2013; see also Park and James 2015). Very democratic countries might even become more aggressive and faster than other political systems, once the region becomes more hostile (see, e.g., Baliga et al. 2011).

The General Lesson from the Results in a Nutshell (Caveat 1)

In short, regardless of the differences between the statistical studies on democratic peace, all findings have indicated that other explanations are important as well. It is clear that democracy is just one of the explanations, and certainly not the most important one,21 sometimes even spurious and often heavily dependent on other factors. It is not (just) democracy to be preoccupied with, when trying to prevent war between countries (Table 3.1).

Caveat 2: What Are the Causal Mechanisms?

Most of the statistical studies on democratic peace seem to assume that there is a correlation between democracy and war; based on this assumption, they then decide to focus on the mechanisms. This is problematic as none of the democratic peace studies found strong evidence that democracy is the most important factor when explaining interstate war (see the previous section). As a consequence, the next step of looking for mechanisms is quite irrelevant and not necessary in my view, but most studies nevertheless argue that the field lacks strong theoretical foundations and robust empirical evidence that can reveal convincing causal mechanisms.22 Those studies seem to accept the correlation between dyadic democracy and peace, and then start questioning whether democracy really causes peace before investigating potential mechanisms.

Table 3.1 Statistical studies on democracy and interstate war (dyadic level)

|  |  |
| --- | --- |
| Caveat 1: It’s Not (Just) Democracy | Studies |
| ‘It’s just democracy; democracy is most important explanation for peace between countries’ | No studies found |
| ‘There is correlation, but other explanations are significant too’ | Beck et al. (1998), Gleditsch and Hegre (1997), Maoz and Russett (1993), Ray (2013), and Rousseau et al. (1996) |
| ‘Initially there is correlation, but the impact of democracy is spurious when other explanatory factors are included in the models’ | Barbieri (1996), Beck et al. (2004), Farber and Gowa (1997), Gartzke (2007), Gartzke and Weisiger (2014), Gowa (1999), Hegre (2000, 2003, 2014, Jervis (2002), Mousseau (2000, 2002, 2003, 2005, 2013), Oneal and Russett (1997), Rasler and Thompson (2005), Rosecrance (1986), Souva (2003), Weede (1984, 2004), and Werner (2000) |
| ‘There is correlation, but other explanations are much stronger’ | Bremer (1992), Caselli et al. (2015), Gelpi (1997), Oneal and Russett (1999a, b), and Peterson (2013) |
| ‘There is correlation, but only under certain specific conditions’ | Baliga et al. (2011), Bremer (1993), Bennett and Stam (1996), Farber and Gowa (1995), Gibler and Braithwaite (2013), Gibler and Miller (2013), Gibler and Sarkees (2004), Gowa (2011), Jervis (2002), Mearsheimer (1990), Park (2013), Park and James (2015), Rasler and Thompson (2005), Reed (2000), Rosato (2003), Rosecrance (1986), Gibler and Sarkees (2004), Siverson and Emmons (1991), and Weede (1984) |

# Small Buisness

# Inequality ADV

#### They can’t solve even if labor market concentration were eliminated – their author!

1AC/2AC Posner ’21 [Eric A.; August 31; Kirkland & Ellis Distinguished Service Professor at University of Chicago; “How Antitrust Failed Workers”]

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

#### It can’t be enforced consistently – chills growth.

Sacher ’19 [Seth B and John M. Yun; Summer; Ph.D. in Economics at the University of Maryland, Economist in Washington, DC; Former Acting Deputy Assistant Director of the FTC’s Bureau of Economics, Law Professor at George Mason University; George Mason Law Review, “Twelve Fallacies of the “Neo-Antitrust” Movement,” vol. 26]

III. Fallacy Eight: Expanding the Goals of Antitrust Comes at No Cost in Terms of Managing Tradeoffs

As just noted, there are numerous proposals to expand the contours of antitrust beyond its current emphasis on consumer welfare in the context of the competitive process. These include considering inequality, protecting small business, protecting employment and wages, promoting diversity of opinion, and even improving environmental quality. Many of the proponents of the neo-antitrust movement also want to see a renewed emphasis on structural factors. 147Enforcing such myriad goals will lead to incompatible objectives.

This is not to suggest that there are no tradeoffs within the current consumer welfare standard. One example is when a particular practice might increase prices but also leads to more innovation. While these case-by-case challenges are inevitable, the consumer welfare standard provides a basis to evaluate this tradeoff - the path that leads to more consumer welfare is the one chosen.

Now consider how adding objectives outside of the competitive process can complicate evaluating tradeoffs. For example, goals like increased innovation may be the result of transactions or practices that allow for more automated processes in production. This may conflict with some of the other goals promoted by advocates of the new antitrust, which were mentioned above, like the promotion of employment or concerns with equality.

Unlike a tradeoff between prices and innovation, which can be adjudicated through their net effect on consumers and the size of the economic pie, the conflicting goals of innovation and lower prices on the one hand and the effect on possibly low-skilled and low-income workers on the other, would appear to create conflicting values with no similar adjudicatory framework. Moreover, it is not clear that adjusting enforcement standards to consider concerns related to workers affected by a transaction would even advance the goals of employment and equality. Lower prices can do more to promote equality than any putative concern with workers. It is not difficult to postulate similar unmanageable tradeoffs that will come from expanding the goals of antitrust. For example, should one reduce cancer by allowing anticompetitive [\*1519] tobacco mergers? Ease pollution by allowing all coal and steel plants to merge? Reduce inequality by preventing successful firms from becoming more efficient?

#### Takes years to deploy and entrenches confusion.

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

B. Encouraging Corporate Welfare, Rent Seeking, and Political Influence

Replacing the well-defined consumer welfare model with a vague, new standard that has no unifying objective based in objective economic evidence would dramatically increase the ability and likelihood of interested industry participants to engage in rent seeking when appearing before the federal antitrust authorities.274 Today, the well-established definitions and boundaries of the consumer welfare standard allow courts to hold enforcers (and private parties) accountable and prevent misuse of the antitrust laws and political influence in antitrust enforcement decisions. Unlike sister agencies prone to capture, the FTC and DOJ are relatively well insulated from such influence by the need to apply objective economic principles to a clearly articulate consumer welfare standard.

A new “public interest” or “citizen interest” standard would take years to deploy and even longer before meaningful guidance could be issued similar to that which the consumer welfare standard offers today. In the meantime, firms could use the new standard as leverage over the Antitrust Agencies— something that is not possible today because the consumer welfare standard offers a well-defined framework. By substituting in a vague new standard, Hipster Antitrust proponents ironically would grant large, powerful corporations with the ability to exert undue influence over the Antitrust Agencies’ decision-making process. Moreover, once allowed to influence agency enforcement practices during the initial period when no framework exists, it will be difficult to establish guidelines that do not leave room for such manipulation to continue.

#### There’s no concentration locally which is all that matters. If there was, it wouldn’t cause inequality. They cite bogus studies.

Kennedy ’20 [Joe; October 30; Ph.D. in Economics from George Washington, former Chief Economist with the U.S. Department of Commerce; Information Technology & Innovation Foundation, “Monopoly Myths: Is Concentration Eroding Labor’s Share of National Income?” https://itif.org/publications/2020/10/13/monopoly-myths-concentration-eroding-labors-share-national-income]

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

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

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

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

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

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

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

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

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

Measuring Labor’s Share Through Macroeconomic Data

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

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

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

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

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

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

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

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

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

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

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

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

OTHER EXPLANATIONS

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

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

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

Rising Competition Among Superstar Firms

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

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

Technological Change

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

The Decline of Labor Power

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

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

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

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

#### Census data proves. Local concentration’s fall has boosted earnings AND reduced top percent inequality.

Rinz ’18 [Kevin; September 24; economist in the Center for Administrative Records Research and Applications at the U.S. Census Bureau, Economics PhD at the University of Notre Dame; Census Bureau, “Labor Market Concentration, Earnings Inequality, and Earnings Mobility,” https://www.census.gov/content/dam/Census/library/working-papers/2018/adrm/carra-wp-2018-10.pdf

6 Discussion and Conclusion

This paper's finding that increased local labor market concentration reduces earnings is consistent with other recent findings from online job boards (Azar et al., 2017) and the manufacturing sector (Benmelech et al., 2018). My estimates of the effects of concentration on inequality are consistent with Webber (2015): when concentration increases, the gap between the top of the distribution and the middle of the distribution widens not because earnings increase at the top but because they decline in the middle. The gap between the middle and the bottom increases by more because earnings fall more at the bottom than they do in the middle. To the extent that employers in more concentrated markets have more power over workers, these estimates provide some evidence that that power may contribute to increased inequality, as the Council of Economic Advisers (2016b) suggested it might.

However, these estimates, combined with the fact that local industrial concentration has declined since 1976 indicate that it has not contributed to the increase in inequality over that period. Back- of-the-envelope calculations suggest that the average within-market 90/10 earnings ratio was 6.3 percent lower and average annual earnings were 1.2 percent higher in 2015 than they would have been if average local industrial concentration had been at its 1976 level, which was about 36 percent higher. For context, the national 90/10 ratio increased by about 40 percent between 1976 and 2015, while average annual earnings increased by about 30 percent in real terms for prime-age workers over that period. Changes in concentration appear to have modestly mitigated the trend toward increased inequality rather than contributing to it.

#### Majority of workers aren’t in concentrated markers.

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

On the other hand, our results do not support the idea that employer concentration is a major factor in wage suppression for the majority of U.S. workers. (This does not imply that other sources of monopsony power are not at play for workers in unconcentrated labor markets, notably arising from search frictions, switching costs, or differentiated jobs). While a very large share of occupation-city labor markets are highly concentrated according to typical thresholds, the majority of U.S. workers are not in labor markets with high degrees of employer concentration as measured by typical thresholds.58 This is because the most concentrated labor markets tend to be those with the fewest workers. So, while the effects of concentration on wages are non-trivial for the subset of workers in highly-affected labor markets, the aggregate effect of employer concentration on wages is unlikely to be very large, and employer concentration cannot explain more than a small share of aggregate income inequality.59

#### Big is good – structural anti-corporatism sacrifices growth, wages, and innovation.

Atkinson ‘21 [Rob; 8/25/21; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "Urban myths about economics have taken root — and the cost is high,"https://americancompass.org/the-commons/the-emergence-of-anti-corporate-progressivism/]

Opposition to globalization. Efforts to weaken intellectual property protections. Pushing for municipal broadband. Calls for the National Institutes of Health to develop drugs. What do these positions have in common? They are all examples of the recent turn toward anti-corporate progressivism. This shift is defined by a fierce determination to expand government provision of goods and services; to support small, locally owned firms; and to break up or heavily regulate big corporations.

So-called Big Tech companies face broad scrutiny these days from the media, advocacy groups, lawmakers, and regulators. But for most progressives, this anti-corporatism extends well beyond the tech sector. It has become a general operating principle: the go-to policy formula for righting wrongs. It’s a conviction so firmly held that it is no longer just the means to an end—for many, it’s the end in itself.

This has not always been the case. For more than a century, starting in the 1910s and continuing through to the 1990s, most progressives accepted that large corporations were a permanent and even valuable part of American economic life, to be balanced by other forces, such as unions and regulation.

Yet, over the last two decades, the criteria that progressives have used to evaluate policymakers has shifted dramatically. Rather than assessing policymakers on whether they support policies that generate progressive outcomes—getting broadband to rural areas, fostering drug development, addressing global warming, helping workers get training—many progressives now judge them on whether they advocate for positions that would restrict, restrain, or replace the corporate sector. For example, it’s not enough for the federal government to support broadband deployment to rural areas; the broadband providers must be municipal governments.

Few on the anti-corporate left will acknowledge that anti-corporatism is their true goal, in large part because they realize that few voters support shrinking the corporate sector. Gallup finds that that only 23% of Americans want stronger regulation of big business and a majority have positive views of big business—14 percentage points higher than positive views of the federal government. Three-quarters of Americans do not want the government to break up big tech companies, and more than half of Americans employed in the private sector work for big companies.

Aware of this disconnect, anti-corporate progressives camouflage their endgame by wrapping their proposals in ideas that enjoy near-universal support: lower prices, more privacy, more fairness, more broadband, safer food, a protected climate, cheaper drugs, etc. But the policies they embrace as solutions are first and foremost designed to restrict, restrain, or replace the corporate sector—a silver-bullet solution, they believe, for all of the above, but also an end in itself.

The voters who chafe at anti-corporate sentiment are right. If structural anti-corporate policies are implemented, the result will be lower economic and wage growth, less innovation, reduced U.S. competitiveness, and fewer opportunities for disadvantaged Americans.

On average, large corporations (defined by the Small Business Administration as firms employing 500 or more workers) are significantly more productive than small firms, which translates into lower prices for consumers and higher wages for workers. Indeed, if the United States had the same size distribution of companies as the European Union—which has much tougher antitrust laws—average U.S. household income would be approximately 6.4% lower.

Big companies not only pay their workers more; they also provide more and better benefits, including health care, overtime pay, and retirement benefits. Workers at large companies are less likely to be injured on the job and less likely to be fired or laid off than are workers at small companies. Large companies invest more in training their workers, and they are more likely to employ a unionized workforce than their smaller counterparts. Their workers are also more diverse, with large companies employing a higher share of women, minorities, and veterans than small companies. They invest more in R&D than small firms as a share of revenue and they export more. And contrary to the prevailing narrative that small companies are the source of most new jobs, big companies actually create more net new jobs annually.

If policymakers are to advance effective policies to support competitiveness, economic growth, opportunity, and innovation across a wide array of industries, they need to understand the real nature of the debate. The choice is not between supposedly evil Amazon and smiling small business. The question is which kind of economic system best supports innovation, progress, and American competitiveness. Large corporations—competing with other companies of all sizes and balanced by government regulation and public spending—are clearly a critical component of a healthy ecosystem, and progressives shouldn’t be so quick to dismiss their benefits.

#### Targeting M&As destroys growth by prioritizing stagnating firms – it’s our largest economic problem.

Lind ‘21 [Michael; 3/12/21; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, J.D. from the University of Texas Law School, M.A. in International Relations from Yale University; Robert Atkinson; Founder and President of the Information Technology and Innovation Foundation, Ph.D. in City and Regional Planning from the University of North Carolina; "When The Pandemic Is Over, Don’t Despair the Loss of Laggard Small Businesses," <https://itif.org/publications/2021/02/22/when-pandem>ic-over-dont-despair-loss-laggard-small-businesses]

Some sectors of the U.S. economy have been hit far worse than others as the coronavirus pandemic has upturned personal consumption habits and government has ordered a halt to normal economic activity. But the greatest suffering has been in sectors with low productivity and low wages, such as hospitality, leisure, personal services, and bricks-and-mortar retail. The left has tried to fit this fact into pre-existing narratives by pointing out that workers in these sectors are disproportionately nonwhite and female. The anti-government right, for its part, has explained the disparity as the result of an attack by tyrannical federal, state and local governments on independent small business owners.

But these conventional partisan framings should not blind us to an obvious fact: The sectors that have suffered the most are laggard sectors—laggard, that is, in moving from old-fashioned, labor-intensive and low-wage business models to innovative, capital-intensive, technology- and skilled-based ways of delivering goods and services. Upgrading these backward industries into high-wage, technology-intensive sectors must be a priority for bipartisan public policy in the aftermath of the COVID-19 pandemic.

December data from the Bureau of Labor Statistics provide shocking confirmation of the huge disparity in economic impact. In the leisure and hospitality super sector, unemployment was 16.7 percent and in “other services” 7.4 percent, compared to 4.3 percent in manufacturing, 6.4 percent in information sectors, and 6.1 percent in business and professional services. Not only is pandemic-induced unemployment vastly higher in leisure and hospitality, but wages, benefits, union representation and the number of hours worked per week are also lower.

Real hourly wages grew an unprecedented 5.5 percent in April, due to massive numbers of low-wage jobs workers losing their job, which boosted the remaining average. However, wages fell in real terms from July to December of last year, as the pandemic worsened and the effect of economic stimulus measures wore off. Apart from mass unemployment, all of those sectoral disparities preceded the COVID-19 pandemic and will reassert themselves in the future, unless the country does something about them.

The U.S. economy since 1990 has added 20 million low-quality private sector jobs, compared to only 12 million high-quality jobs, according to the Job Quality Index. The difference is reflected in hours worked, as well as wages. Americans trapped in low-quality jobs work on average only 30 hours a week, compared to 38 hours for those in high-quality jobs. The federal minimum wage of just $7.25 per hour, which has not increased since 2009 while inflation has grown 21 percent, contributes to the problem.

Long before the pandemic, it was clear that many firms in the laggard sectors of retail, leisure, hospitality and personal services were privatizing their profits while socializing their overhead costs—by paying such low wages that many of their workers could survive only with the help of food stamps, the earned income tax credit (EITC) and other aid charged to taxpayers. For example, 52 percent of fast food workers have at least one family member relying on a public assistance program. And as we point out in our book Big Is Beautiful: Debunking the Myth of Small Business, the largest share of these workers are employed by small businesses. Indeed, a 2007 study by the Urban Institute found that “Low-income workers are disproportionately likely to work in smaller firms.”

During the Great Depression, President Roosevelt declared: “It is my conviction that the South presents right now the Nation’s No. 1 economic problem.” During today’s Great Pandemic these laggard, low-wage sectors may be the nation’s number one economic problem. Just as the impoverished rural South was brought up to the standards of the industrialized North by government-sponsored electrification, minimum wage and farm programs, so the sectors that are dragging down U.S. average wages and productivity need to be transformed.

Rescuing good and bad firms alike during the initial stage of the pandemic makes sense. But in the years and decades ahead, American taxpayer support should be limited to businesses that pay and treat their employees well and seek to increase profits, wages and output at the same time by adopting innovative technologies, like self-service technology, and high-performance labor practices. Firms whose business models rely on low-wage labor (and no benefits), or shifting fixed costs to workers, or paying so little that their employees have to use welfare services, deserve to go extinct. This will make it easier for firms that want to do right by their workers to do so.

The low-road firms of the laggard sectors should be replaced either by bigger firms in the same sector, almost all of which pay higher wages and use more technology, or by small firms that have taken the high-road path to high wages and high productivity. When the pandemic is behind us, we should be encouraged, not appalled when laggard sectors replace small, undercapitalized low-road firms with fewer large firms and chains, including many with online business models that reap the benefits of increasing scale or networks effects. For most of us, small-producer romantics to the contrary, the American dream is to earn enough by working to support a family at a decent and rising standard of living—not to own your own tiny, undercapitalized business that cannot turn a profit without underpaying and mistreating its employees. If fewer, larger, and more modern firms in a previously laggard sector can afford higher pay and benefits, all the better.

#### Their solvency ev says they remove consumer welfare

Firat Cengiz 20. School of Law and Social Justice, University of Liverpool. "The conflict between market competition and worker solidarity: moving from consumer to a citizen welfare standard in competition law". Cambridge Core. 10-8-2020. https://www.cambridge.org/core/journals/legal-studies/article/conflict-between-market-competition-and-worker-solidarity-moving-from-consumer-to-a-citizen-welfare-standard-in-competition-law/6E783D1FC4BAB5605DFABCD17FBE3F35

Introduction

This paper offers a critical investigation of the law and economics of competition law enforcement in conflicts between workers and employers in the European Union (hereinafter EU) and the US. In such cases competition law comes into direct conflict with the principle of worker solidarity: according to the principle of market competition individuals are expected to take independent economic decisions and actions, whereas workers need to take collective economic actions and decisions to protect their interests. This conflict is particularly obvious in the context of the so-called gig economy,1 in which employers keep casualised workers at legal arms’ length to reduce labour and regulatory costs.2 If gig workers take collective action against their working conditions, they might face attack from competition law, because legally they might be considered independent service providers, rather than workers.3

The legal conundrum facing gig workers has become an increasingly popular subject in the law and economics literature.4 Nevertheless, the more fundamental question of how the enforcement of competition rules affects the overall position of workers beyond the limited case of the gig economy remains largely unexplored. This paper aims to investigate this broader and more fundamental question. In order to provide a sufficiently global answer, the paper focuses on the legal positions of the EU and US, as the leading competition law jurisdictions and primary competition policy exporters.5 The EU–US comparison shows that despite the slightly different legal tests applied in these polities, competition rules constitute nearly equally disciplining mechanisms against collective worker action on either side of the Atlantic.

This paper also makes an original contribution to the emerging debate on whether and how competition law can contribute to wealth equality between citizens in the post-2008 crisis economy. The existing debate on the competition law–equality relationship takes the ‘consumer welfare’ standard as its main reference point: it focuses exclusively on the distribution of wealth between consumers and producers; as a result, it overlooks the production process that takes place before consumers meet products and services, and the position of workers within it.6 This is a natural result of competition law's reliance on a limited area of neoclassical economics called ‘equilibrium economics’ that understands efficiency exclusively as a market mechanism in which the price manifests itself where supply meets demand.7 Departing from the mainstream competition law and economics methodology, this paper builds its investigation on a holistic theoretical foundation, looking beyond equilibrium economics at labour exploitation theory as established in neoclassical as well as Marxian models. This analysis shows that despite standing at opposing ends of the political spectrum and whilst having some fundamental differences, Marxist and neoclassical models agree that collective worker action is economically beneficial and socially necessary. As a result, a critical analysis of the current legal situation on both sides of the Atlantic in light of this holistic framework illustrates how competition law's hostility towards collective worker action is not only unjust but also economically unsound.

This paper demonstrates that the key problem in competition law's treatment of labour stems from the application of the consumer welfare standard in cases involving the competition–solidarity conflict without paying any attention to the idiosyncratic qualities of labour that render it naturally open to exploitation. Similarly, the consumer welfare standard overlooks the fact that consumers and workers are essentially the same group of people and one's welfare cannot be increased or decreased without affecting the other's.8 Even if worker exploitation could result in reduced labour costs and decreased prices, this cannot be deemed efficient as it reduces the workers’ welfare and results in broader negative socio-economic effects. Similarly, collective worker action resulting in higher labour costs and potentially higher prices cannot automatically be deemed inefficient, because although this might increase the prices consumers pay, they benefit from higher wages and better working conditions in their position as workers. As a result of this critical analysis, the paper proposes an original and more inclusive ‘citizen welfare’ standard that takes into account the economic effects of anti-competitive behaviour on workers as well as consumers. The citizen welfare standard could also potentially be applied in other contexts to solve long-standing conflicts between competition and other policy objectives, such as industrial, environmental and social policy objectives,9 although this paper primarily focuses on the application of citizen welfare to the competition–solidarity conflict.

The structure of the paper is as follows: the next section provides an opening discussion of competition law, consumer welfare and equality. This is followed by a discussion of the economic theory of labour exploitation. Then, the paper investigates how competition law approaches the competition–solidarity conflict in the EU and the US. The fourth section critically discusses the EU and US legal positions in light of economic theory. This section also develops the citizen welfare approach as an alternative to consumer welfare for the resolution of the competition–solidarity conflict. This is finally followed with conclusions. Regarding terminology, this paper uses the term ‘worker’ (rather than employee) as a non-legal, generic term encompassing all individuals who make a living by providing labour power as a production factor in the production process of goods and services. Similarly, the term ‘labour’ is used to refer to the contribution of the workers to the production process as an abstract human factor. However, if the courts or authorities in question use a different term (such as employee) in a specific case, the paper uses the same term in the discussion of that specific case.

#### Demographic shifts make it permanent.

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

Yet in key respects, the shift builds on changes already underway in the tight labor market preceding the pandemic, when the unemployment rate was 4 percent or lower for two straight years.

That follows decades in which union power declined, unemployment was frequently high and employers made an art out of shifting work toward contract and gig arrangements that favored their interests over those of their employees. It would take years of change to undo those cumulative effects.

But the demographic picture is not becoming any more favorable for employers eager to fill positions. Population growth for Americans between ages 20 and 64 turned negative last year for the first time in the nation’s history. The Congressional Budget Office projects that the potential labor force will grow a mere 0.3 percent to 0.4 percent annually for the remainder of the 2020s; the size of the work force rose an average of 0.8 percent a year from 2000 to 2020.

An important question for the overall economy is whether employers will be able to create conditions attractive enough to coax back in some of the millions of working-age adults not currently part of the labor force. Depending on your view of the causes, the end of expanded pandemic-era jobless benefits might also have an effect. Some businesses may need to raise prices or retool how they operate; others may be forced to close entirely.

Higher wages are part of the story. The jobs report issued on Friday showed that average hourly earnings for nonmanagerial workers were 1.3 percent higher in May than two months earlier. Other than in a brief period of statistical distortions early in the pandemic, that is the strongest two-month gain since 1983.

But wages alone aren’t enough, and firms seem to be finding it in their own best interest to seek out workers across all strata of society, to the benefit of people who have missed out on opportunity in the last few decades.

“I’ve been doing this a long time and have never felt more excited and more optimistic about the level of creative investment on this issue,” said Bertina Ceccarelli, chief executive of NPower, a nonprofit aimed at helping military veterans and disadvantaged young adults start tech industry careers. “It’s an explosive moment right now.”

In effect, an entire generation of managers that came of age in an era of abundant workers is being forced to learn how to operate amid labor scarcity. That means different things for different companies and workers — and often involves strategies more elaborate than simply paying a signing bonus or a higher hourly wage.

At the high end of the labor market, that can mean workers are more emboldened to leave a job if employers are insufficiently flexible on issues like working from home.

#### Wage increases across the board.

Bump ‘21 [Philip; August 6; National correspondent focused largely on the numbers behind politics; New York Times, “Among the good jobs news: Wages are rising as businesses look for employees,” <https://www.washingtonpost.com/politics/2021/08/06/among-good-jobs-news-wages-are-rising-businesses-look-employees/>; KP]

The coronavirus pandemic crunched large parts of the economy, and they’re still being rebuilt. In recent months, that rebuilding has often meant that employers have scrambled to fill positions left vacant by some people who are rethinking their career paths. But that scramble seems to at last be doing what economists would have expected: It’s pushing wages higher.

“The data for recent months suggest that the rising demand for labor associated with the recovery from the pandemic may have put upward pressure on wages,” according to the Bureau of Labor Statistics’ July jobs report, released Friday. It’s still a bit murky: “Because average hourly earnings vary widely across industries, the large employment fluctuations since February 2020 complicate the analysis of recent trends in average hourly earnings,” the report says.

There are some places where the effects correlate pretty obviously, though, including in the leisure and hospitality industry. For years, that industry — think restaurants, bars, hotels — has been among the lowest-paying for nonsupervisory employees. It still is. But, as in other private-sector industries, average weekly earnings have climbed since March 2020, when the pandemic first started to shake up the economy.

When considered as change relative to March 2020, the surge in earnings for leisure and hospitality employees is obvious. Since that month, weekly earnings are up about 25 percent. They’re up 13 percent over the pre-pandemic high.

This is also the industry where employers have been most eager to fill jobs. May data on job openings shows that the rate of openings in leisure and hospitality was way over the private sector overall and well over other industries.

More job openings, bigger upward pressure on wages.

This doesn’t hold across industries, mind you. That leisure and hospitality employees make up 1 in 8 private-sector jobs gives that industry significant weight. But some industries that haven’t seen unusual employment demand have also seen large increases in earnings. (We’re comparing the most recent data for each here, but that means comparing May job-opening data to July jobs data.) Those tend to be white-collar, high-paying jobs.

The mining and logging industry, which makes up about 0.5 percent of private-sector employment, has not seen a sharp increase in weekly earnings. But before the pandemic, it was the industry with the highest average weekly wages.

The leisure industry had relatively low wages before the pandemic and made up a large chunk of private-sector jobs. It was also hit hard by the pandemic in a way other industries weren’t, prompting employers to race to fill jobs when the crisis receded. All of that contributes to the recent wage increase.

#### Happens across the board.

Bump ‘21 [Philip; August 6; National correspondent focused largely on the numbers behind politics; New York Times, “Among the good jobs news: Wages are rising as businesses look for employees,” <https://www.washingtonpost.com/politics/2021/08/06/among-good-jobs-news-wages-are-rising-businesses-look-employees/>; KP]

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#### Inequality’s declining.

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

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

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

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

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

#### Firm productivity defeats income inequality.

Atkinson ’18 [Robert and Michael Lind; March 30; PhD from the University of North Carolina; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, JD from the University of Texas Law School, International Relations MA from Yale University; Big is Beautiful: Debunking the Myth of Small Business, “The Bigger the Better: The Economics of Firm Size,” Ch. 4]

Productivity

Some critics of big business argue that the reason big firms pay their workers more is that they have market power and use that to charge higher prices, at least some of which they pass on to their workers in the form of higher wages while the rest is funneled to shareholders.

In fact, large firms pay more because they are on average more productive. One 1978 study of US manufacturing firms sought to determine whether large firms were more productive than smaller firms and, if so, whether that was the reason they were more profitable. The study found that on average, the four largest firms in any industry had profits 57 percent higher than the other firms in the industry.29 But these higher profits did not come from squeezing their suppliers, charging higher prices, or paying lower wages. Rather, the four largest firms in any industry enjoyed labor productivity rates on average 37 percent higher than the remainder of the industry. They passed on at least some of the gains to their workers, with average wages 15 percent higher than in the rest of the industry. And this advantage was experienced at all levels of workers, not just top managers. In fact, production workers in the largest four firms made on average 17.2 percent more than production workers in the rest of the industry.30

Why are big firms more productive? One reason is that they use more capital equipment to drive efficiency. Capital intensity is positively related to productivity and firm size.31 A 1988 national survey of 10,000 manufacturers found that technology use is positively correlated with plant size.32 Likewise, larger banks were significantly more likely to adopt ATMs when they were first developed in the early 1980s.33

But the willingness of large firms to spend money on equipment and software to drive productivity is just one factor. Even when this factor is controlled for by measuring total factor productivity, larger firms are still 16.6 percent more productive than smaller firms.34 This may be because of more economies of scale in production or because larger firms are simply better managed and operated.

#### Big firms are better for workers.

Atkinson ’18 [Robert and Michael Lind; March 30; PhD from the University of North Carolina; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, JD from the University of Texas Law School, International Relations MA from Yale University; Big is Beautiful: Debunking the Myth of Small Business, “The Bigger the Better: The Economics of Firm Size,” Ch. 4]

Wages

For most working-age people, labor income (wages or salary) is the major source of income. And virtually every study shows that big firms pay more than small firms. Even Walmart, the retail giant that progressives love to hate,5 pays its retail workers on average 25 percent more than the industry average.6 One study found that “working in a store with 500+ employees pays 26 percent more for high-school educated and 36 percent more for those with some college education, relative to working in a store with fewer than ten employees.7 So if you are advising your children where to work—in a big corporation or a small company—advise them to go big if they want to maximize lifetime earnings.

This difference is not new. As far back as 1890, when the US Census Bureau first started collecting the data, large manufacturers paid their workers more than small ones.8 This pattern has held over time and across nations. Indeed, it is as consistent a finding as anything in economics. One review of the literature concluded, “Our bottom line is that the size-wage differential appears to be both sizeable and omnipresent.”9

A study from the early 2000s showed that firms with more than 500 workers in the US pay 28 percent more than small firms. In 2015 workers employed by large firms earned on average 54 percent more than workers in companies with fewer than 100 workers.10 And this is true across sectors. For example, workers employed at large US hog farms earn 38 percent more than workers at average-sized hog farms.11 Similarly, as a 2014 study from researchers at Stanford and the University of Michigan found, large chain retailers like Walmart “pay considerably more than small mom-and-pop establishments. Moreover, large firms and large establishments give access to managerial ranks and hierarchy.”12 And large firms give bigger increases to their workers: “Staying an additional year in a large firm brings an estimated average of 3.4% increase in salary in large firms but only 2.6% in small firms.”13 This pattern is repeated around the world. In Germany, average wages in firms with one to nine employees are about half those in large firms.14 Even after controlling for industry to reflect the fact that some industries with larger firms pay more and for differences in level of education of workers between firms, big firms still paid 14 percent more in the United States and 8 percent more in Canada.15

Small firms are also much more likely to employ low-wage workers. A 2007 study by The Urban Institute found that “Low-income workers are disproportionately likely to work in smaller firms. Although 20 percent of all workers are employed in firms with fewer than 10 workers, such firms employ 42 percent of low-wage workers and 35 percent of low-wage workers in low-income families with children.” Large firms with over 500 workers employ just 28 percent of low wage workers, but 44 percent of all workers.16

The wage gap is even larger in many developing nations. Indian firms with five to forty-nine workers paid their workers just 22 percent of what firms with more than 200 workers paid. Indonesian workers at small firms made 32 percent of the salaries of workers in large firms, in the Philippines 35 percent, in South Korea 50 percent, in China 60 percent, and in Thailand 72 percent.17 As a World Bank study concludes, “Large firms offer more stable employment, higher wages and more non-wage benefits than small firms in developed and developing countries, even after controlling for differences in education, experience and industry.”18 So for developing nations in particular, boosting living standards requires boosting firm size.

Is age the determining factor rather than size? Do new firms pay better than older firms? No. The average new firm paid its workers 72 percent of the average wage in the firm’s first year, and even four years later their wages were still below the average.19

The data lead to a clear if controversial conclusion: if policy makers want to improve wages, they should focus their efforts on helping both existing large firms and the minority of small firms that are capable of significant growth.

Benefits

In the United States, workers in large companies receive 85 percent more supplemental pay (e.g., overtime and bonuses), 2.5 times more in the value of paid leave and insurance (e.g., health insurance), and 3.9 times more in retirement benefits (and more than 5 times more in defined benefit plan contributions) than workers in firms with fewer than 100 workers.20 For example, few small retailers match their employee’s 401k contributions, if they even provide plans. But Walmart provides a 6 percent company match after one year on the job.21 Large firms (100 or more employees) are almost twice as likely to offer paid life insurance and disability insurance as smaller firms.22

# 1NR

## Condo

## BBB

## FTC ADV

### 2NC – AT: Emerging Tech

#### It’s empirically overemphasized.

Allenby 16 – Brad Allenby, an American environmental scientist, environmental attorney and Professor of Civil and Environmental Engineering, and of Law, at Arizona State University. [Emerging technologies and the future of humanity, Bulletin of the Atomic Scientists, 71(6), https://journals.sagepub.com/doi/full/10.1177/0096340215611087]

Emerging technologies as an Earth system

The first question to ask about emerging technologies is deceptively simple: Is today really that different? Is there something about today’s emerging technologies—which for purposes of this analysis include nanotechnology, biotechnology, information and communication technology (ICT), robotics, applied cognitive science, humtech (design and engineering of the human as a foundational emerging technology), and their various combinations and permutations—that is qualitatively different from those that characterized other eras of technological change? If there isn’t, much of today’s dramatic language can be understood as simply a reflection of the emphasis that all humans give to the particular era and landscape and culture within which they exist. Each generation tends to overemphasize the degree of change that it experiences, partly because of the immediacy of the stresses to which it is exposed, and partly because it is easy to underestimate how difficult and unpredictable life was in the past, since when one looks back at history it seems to flow logically and necessarily. Indeed, apocalyptic fears have been common when many major technology systems first emerged because of this immediacy, even as subsequent generations grew to view the technology as banal, even boring. In the early days of railroads, for example, there was a widespread belief that traveling at the heretofore unimaginable speed of 25 miles per hour would kill the passengers, in part because such technology was against the obvious will of God. As an Ohio school board put it,

If God had designed that His intelligent creatures should travel at the frightful speed of 15 miles an hour by steam, He would have foretold it through His holy prophets. It is a device of Satan to lead immortal souls down to Hell. (Nye, 1994: 57)3

In this case, however, a strong argument can be made that emerging technologies today are different not just in degree, but in kind, from those of the past. To begin with, the scope, scale, and speed of technological change are unprecedented. Where previous waves of technological change have involved a few core technologies, such as railroads or electrification, today technological evolution is occurring across the entire technological frontier. Partially as a result of such technologies rippling across a population of seven billion people, we now live on a terraformed planet, the first world we know of anywhere that has been shaped by the deliberate activities of a single species. That is not a discontinuous process, but it is qualitatively new.

Moreover, as the discussion of the engineered warrior of 2050 suggests, the human itself has become a design space. It is certainly true that people have always changed themselves in many ways, from consuming intoxicants of all kinds, to medicine, to education, but there is little question that the direct interventions that are now possible, combined with accelerating advances in fields such as neuroscience, genetics and molecular biology, and prosthetics, make virtually all aspects of the human, including cognitive and psychological domains, potentially subject to design. That the designer is not just engineering external systems, but him- or herself, adds a degree of reflexivity, nonlinearity, and complexity that makes simple predictions about particular technologies tangential and irrelevant at best.

It is worth emphasizing in passing that the argument that humans are at risk from emerging technologies is in an important sense circular. Humans are increasingly both designer and designed; they are, in other words, increasingly an emerging technology in their own right. People are many things, but they are now, and certainly will be in the future, a design project. Thus, in a meaningful way the argument that people are at risk from emerging technologies becomes the argument that emerging technologies are at risk from emerging technologies, which makes little sense, and isn’t very helpful analytically, or in guiding policy or practice.

## Pharma DA

### DA Overview – 1NR

#### 2 – Advantage 2 – the link alone turns the case – new antitrust crowds out ongoing enforcement.

Wilson and Hyman ’20 [Christine and David; July 10; Commissioner of the Federal Trade Commission; Scott K. Ginsburg Professor of Health Law & Policy at Georgetown University School of Law; The Hill, “Pharma pricing is a problem, but antitrust isn't the (only) solution,” <https://thehill.com/blogs/congress-blog/healthcare/506763-pharma-pricing-is-a-problem-but-antitrust-isnt-the-only>]

As we address the ills of soaring drug prices, one prescription should be ignored. Rather than focusing on the drivers of escalating prices, some policymakers argue for abandoning settled principles of antitrust law in a misguided attempt to “fix” something — effective, evidence-based antitrust enforcement — that is not broken.

Sen. [Elizabeth Warren](https://thehill.com/people/elizabeth-warren) (D-Mass.) and Rep. [Alexandria Ocasio-Cortez](https://thehill.com/people/alexandria-ocasio-cortez) (D-N.Y.), for example, [propose a ban](https://www.warren.senate.gov/newsroom/press-releases/warren-ocasio-cortez-to-introduce-pandemic-anti-monopoly-actread-one-pager-here) on all mergers large enough to require pre-notification to the antitrust agencies. Warren claims that “giant corporations and private equity vultures are just waiting for a chance to gobble up struggling small businesses.” Even if that were true — notifications have actually declined — a merger moratorium is like choosing old-fashioned chemotherapy and its life-threatening side effects over more targeted therapy. The moratorium will kill a few problematic mergers that might threaten the body economic, but it will also kill many good mergers, needlessly stifling economic activity.

A narrower approach entails banning nearly all pharmaceutical mergers, as [advocated by the Open Markets Institute](https://openmarketsinstitute.org/wp-content/uploads/2019/12/WhitePaper_DrugPrices_Bluhm.pdf). Two FTC commissioners seem amenable. Two months ago, they voted to reject AbbVie’s acquisition of Allergan, and one proposed to unleash the Inspector General on FTC staff for daring to recommend to the Commission that pharma mergers be permitted to proceed. A few months earlier, the same two commissioners voted to reject Bristol-Myers Squibb’s acquisition of Celgene, even though they acknowledged the proposed settlement, involving the biggest divestiture in merger review history, resolved every antitrust problem the FTC identified.

As current and former FTC officials, we believe these proposals represent a flawed approach. The notion that the FTC should prevent mergers absent evidence of an antitrust violation is deeply misguided – and jeopardizes the FTC’s impressive winning streak based on the many cases it has brought. During the past five years, the Commission has challenged 14 pharmaceutical mergers and required companies to divest 131 drugs. Beyond mergers, in 2013 the FTC won a landmark victory at the Supreme Court in [FTC V. Actavis](https://www.supremecourt.gov/opinions/12pdf/12-416_m5n0.pdf), essentially eliminating anticompetitive patent litigation settlements. [And in January, the FTC sued Vyera Pharmaceuticals](https://www.ftc.gov/news-events/press-releases/2020/01/ftc-ny-attorney-general-charge-vyera-pharmaceuticals-martin#:~:text=The%20Federal%20Trade%20Commission%20has,life%2Dsaving%20drug%2C%20Daraprim.&text=%E2%80%9CVyera%20kept%20the%20price%20of,illegally%20boxing%20out%20the%20competition.%E2%80%9D) and “pharma bro” Martin Shkreli. These efforts result in massive savings for consumers and taxpayers; just ending reverse payments in patent litigation settlements [saves](https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-pay-offs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf) $3.5 billion each year.

Still, drug prices continue to rise, especially for new drugs debuting at prices once considered unimaginable. For example, Zolgensma, a gene therapy for treating spinal muscular atrophy, has a [list price of $2.1 million](https://www.npr.org/sections/health-shots/2019/05/24/725404168/at-2-125-million-new-gene-therapy-is-the-most-expensive-drug-ever). Cancer drugs are so expensive that oncologists talk about “[financial toxicity](https://www.cancer.gov/about-cancer/managing-care/track-care-costs/financial-toxicity-pdq)” as a side effect of treatment.

This is a particularly knotty problem for the elderly who receive health care coverage through Medicare and have been hard hit by COVID-19. The government is prohibited from using competitive bidding or direct negotiation when sourcing drugs for Medicare Part B — those administered by medical professionals. So drugmakers name their price and the federal government must pay.

Medicare Part D operates under a different model – companies use formularies to push down prices for outpatient drugs. Even that model falls short for drugs that do not yet face competition, and Part D is [projected](https://www.cbo.gov/system/files/2019-05/51302-2019-05-medicare_0.pdf) to cost more than $88 billion in 2020. Market exclusivity on so-called biologics like vaccines and insulin often outlasts patent protection, given the technological challenges in creating bioequivalent generics known as biosimilars. Incumbents often compound this problem by restricting distribution and withholding samples from potential competitors.

We support efforts to address rising drug prices while maintaining strong incentives for innovation

. Strategies include the new CREATES Act, which allows drug makers to sue for access to drug samples; expedited or automatic approval for biosimilars that have passed muster with the European Medicines Agency; and incentivizing innovation with prizes.

As this list indicates, many causes of breathtaking pharma prices lie beyond the reach of the antitrust laws. Notably, the structure of the U.S. health care system inhibits consumers’ ability and incentive to choose among different providers and products, including prescription drugs. Because insurers pick up much of the tab, patients have little incentive to compare the prices of potentially interchangeable drugs. Even if they were so inclined, the opacity of drug prices and dearth of data available to patients about quality and outcomes inhibits comparison shopping.

To fix the root causes of high pharma prices, we should focus on the drivers of those prices rather than scrapping fundamental antitrust doctrine, including the requirement for evidence of an actual competitive problem.

### Link – 1NR

#### Three links:

#### 1 – Vertical integration – consumer welfare standard is the bedrock of biopharmaceutical innovation – companies orient business strategies around vertical integration AND will decrease innovation if confronted by an upsurge of challengers.

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

Innovation Neo-Brandeisians claim that market concentration impedes innovation—and that the consumer welfare standard ignores this fact.38 Regarding the claim that the consumer welfare standard does not adequately take into account nonprice harms such as reduced product quality and slower innovation, it in fact does incorporate nonprice harms, including threats to innovation. Specifically, it allows regulators to focus on the long-term trajectory of value and price, and take innovation effects directly into consideration. As UC Berkeley professor Carl Shapiro points out, the consumer welfare standard defines welfare broadly and encompasses nonprice aspects such as improved product variety and more rapid innovation.39 This is also clear from the merger guidelines themselves, which explain that potential effects are put in terms of price changes “[f]or simplicity of exposition,” and that nonprice terms and conditions that adversely affect customers also matter, including “reduced product quality, reduced product variety, reduced service, or diminished innovation.”40

Moreover, according to Joshua Wright of George Mason University, between 2004 and 2014, the Federal Trade Commission (FTC) challenged 164 mergers, alleging harm to innovation in 54 of them.41 For example, former FTC Commission Terrell McSweeny wrote that in 2014, “The FTC challenged the proposed acquisition of Eagle-View Technology by Verisk Analytics…. The FTC closely examined whether likely future competition between the merging parties would offer customers ever more innovative products.”42 More recently, DOJ prevented two potential mergers based on the likely effect to research and innovation.43 DOJ guidelines on horizontal mergers explicitly consider whether a merger is “likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger.”44

Neo-Brandeisians also argue that innovation is maximized by less-concentrated market structures. In a concentrated market, they argue, companies face less pressure to innovate, and innovators face higher barriers to entry. Over time, the structure of the market produces stagnation. Bogus, for example, cites research that shows small businesses are more inventive than large firms.45 The Roosevelt Institute claims, “Rather than investing in research and development (R&D) to generate innovative products, corporations have relied on lax merger regulation to buy out competitors, or they have employed a litany of anticompetitive practices to prevent them from entering the market in the first place.”46

The empirical evidence regarding these claims, however, is debatable, and in some cases simply lacking. For example, more recent studies using better data from the National Science Foundation show that large firms invest more in R&D activities and enjoy higher returns on innovation output per dollar invested in R&D.47

Moreover, these questions regarding innovation and market structure must be looked at market by market, and the desirability of any particular market change should be judged by whether it increases innovation or harms consumers. In the process of this investigation, it is very important to keep in mind that while bigness in some cases may pose a threat, in other cases, it is critical to innovation.48 William Baumol, a leading scholar of innovation economics, has written: “In markets without too much difficulty of entry, an increase in concentration in the longer run may not be ascribable to attempts by firms to achieve monopoly power but, rather, to innovation and the resulting technological changes that make it efficient for output to be provided by firms that are larger than previously was the case.”49

In fact, many studies have shown innovation and competition can be modeled according to an inverted “U” relation, with both too much and too little competition producing less innovation. A study of U.K. manufacturing firms discovered this relationship: Competition above a certain level reduces the high profits successful innovators earn and are able to reinvest in their next round of innovation.50 Others, including F.M. Scherer and Toshihiko Mukoyoma have found similar patterns.51 Similarly, in a study of U.S. manufacturing firms, Aamir Hashmi found that too much competition led to slightly less innovation.52 Firms need to be able to obtain “Schumpertarian” profits to reinvest in innovation that is both expensive and uncertain. As Carl Shapiro notes, “Innovation incentives are low if expost competition is so intense that even successful innovators cannot earn profits sufficient to allow a reasonable risk-adjusted rate of return on their R&D costs.”53

The pharmaceutical industry offers an example of this even as neo-Brandeisians often point to this industry as an example of the dangers of bigness. The Roosevelt Institute complains that: “Instead of investing in R&D, many pharmaceutical companies plan their business models around their ability to purchase smaller firms that have shouldered the burden of developing new products.”54 Carl Bogus asks rhetorically: “When, for example, a large pharmaceutical company buys a small firm that invented a potentially profitable new drug, should the law care that there will be one less firm in the industry?”55

The pharmaceutical industry has indeed migrated to a model wherein small companies often perform initial research and are then purchased by large companies. But there are good reasons for this. First, having breakthrough research performed by small companies allows them to be much more focused and lets investors bet on specific therapies or diseases with the assurance company owners have a high stake in their success. OK, but why allow big companies to buy them just when the technology looks most promising? Because the process of testing and marketing a drug is very complicated and time consuming. Federal laws regarding testing, labeling, and marketing are very detailed and complex, so a large firm is much more likely to successfully bring a new drug to market

. Also, given the difficulties in performing an initial public offering, investors increasingly look to an acquisition as a way of cashing out and obtaining the capital to invest in the next company.

Moreover, given the fact that in 2014 domestic pharmaceutical firms devoted 43.8 percent of their gross value added to research and development, it is hard to argue that consolidation is hurting innovation.56 In fact, many studies have shown innovation and competition can be modeled according to an inverted “U” relation, with both too much and too little competition producing less innovation.

Finally, the argument that bigness hurts innovation would have more power if the markets it targets were characterized by low investment and profit-taking. But many of these companies are investing heavily in R&D. Of the top 10 global R&D spenders, half are U.S. technology companies (Amazon, #1; Alphabet [Google], #2; Intel, #3, Microsoft, #6, and Apple, #9).57 Together, they invested approximately $65 billion in R&D in 2017. Big Internet platforms, for example, have made large bets on a wide variety of technologies outside their normal services, including virtual reality, driverless cars, artificial intelligence, broadband coverage, drones, and cloud services. Regardless of whether these investments pay off for shareholders, it is hard to argue that society will not benefit greatly. In summary, irrespective of one’s view on the relationship between firm size and innovation, the consumer welfare standard enables antitrust officials to effectively consider the effects on innovation.

#### 2 – Overaggressive enforcement – Moving away from the CWS reduces innovation and causes overaggressive enforcement.

Miller ’21 [Tracy; 5/3/21; Ph.D. in Economics from the University of Chicago, Senior Policy Research Editor at the Mercatus Center; "Evaluating Arguments for Antitrust Action Against Tech Companies," <https://www.mercatus.org/publications/antitrust-and-competition/evaluating-arguments-antitrust-action-against-tech-companies/>; **Note**: article ends without a period]

In the United States, growing concern that large digital platform companies such as Google, Facebook, Amazon, and Apple are exercising monopoly power has resulted in accusations of anticompetitive behavior and investigations into whether these companies are guilty of exclusionary practices. Tracy Miller examines the validity of these concerns in “Evaluating Arguments for Antitrust Action against Tech Companies.” He finds that increased enforcement could be detrimental to consumer welfare, which has been, and should remain, the guiding light in antitrust policy.

What if Antitrust Laws Were More Stringently Enforced?

* Companies found guilty of antitrust violations would likely face divestiture of acquired firms. Companies that benefit from combining different stages of the production process (known as vertical integration) might find their products and services structurally separated.
* These antitrust remedies would likely harm consumers, who benefit from the lower costs and increased innovation that result from combining complementary products into one ecosystem.
* Assessing the tradeoffs that result from alleged anticompetitive firm conduct would likely be difficult—such conduct often benefits some consumers while making others worse off.
* Further, antitrust decisions may not be based entirely on objective analysis but be influenced by political pressure, sometimes coming from a firm’s competitors.

The Benefits of Keeping the Consumer Welfare Standard

To become dominant in any market, companies must engage in mutually beneficial, voluntary exchanges with millions of customers on a regular basis.

Tech companies can remain dominant only by effectively coordinating the plans of numerous diverse market participants worldwide (a huge undertaking).

Billions of people are better off because of the information they can access thanks to the market-coordination efforts of firms like Google.

The goal of antitrust policy should be the promotion of market competition that results in mutually beneficial transactions. This consumer welfare standard has guided antitrust policy since the 1970s. It also serves as a check on regulators interfering with the plans of consumers and entrepreneurs in a market economy.

Key Takeaway

Firms such as Google, Facebook, Amazon, and Apple have remained dominant, in part, because they continually improve the quality of the goods and services they offer while keeping prices low and affordable. Focusing on static measures of competition (e.g., number of firms competing) may discourage the dynamic competition that has helped spur the innovation that has improved consumer welfare in recent years.

Excessive rules and regulations (such as strict privacy regulations) make it harder for new firms to compete with existing firms. Lowering such barriers to entry allows competitors to find creative ways to keep the pressure on the big tech companies so that, as they try to retain their position in the marketplace, they must continue to provide innovative products and services at affordable prices

#### 3 – Mergers – they’re vital to innovation – err neg because only small minorities harm competition.

ITIF ’21 [Information Technology and Innovation Foundation; June 25; Independent research institute focused on technological innovation and public policy; ITIF, “Pharmaceutical Consolidation & Competition: A Prescription for Innovation” <https://www2.itif.org/2021-pharmaceutical-task-force.pdf>

The Information Technology and Innovation Foundation (ITIF) appreciates this opportunity to comment on the Pharmaceutical Task Force. We first caution against hasty economic analysis about a complex industry. We then envisages the optimal course of actions for antitrust agencies to achieve their stated objectives: namely, limiting market power while incentivizing pharmaceutical innovation. There is no need to radically alter antitrust doctrines and law. However, there are some actionable steps relevant to attain the stated objectives of incentivizing pharmaceutical innovation while controlling drug price increases.

Introduction

In pharmaceutical markets, more than anywhere else, “innovation is the name of the game.”1 Innovation rather than production drives the industry’s growth.2 Pharma markets are the pinnacle of “innovation markets” as defined by Richard Gilbert and as enshrined in the 1995 I.P. Guidelines.3 Because innovation requires sufficient scale, firms have often gained that scale through mergers.4

The FTC’s strong enforcement record in pharma mergers suffers a paradox: While more than 50 consent decrees over the last 25 years required divestitures of products as a condition for merger approval, the political pressure for stricter antitrust enforcement continues ramping up.5 In the year 2020 for instance, notable pharma mergers included AstraZeneca acquiring Alexion for $39 billion, Gilead acquiring Immunomedics for $21 billion, BMS acquiring MyoKardia for $13.1 billion, and Johnson & Johnson acquiring Momenta for $6.5 billion. While popular perception of the pharmaceutical industry greatly improved with its effective response to the COVID-19 pandemic, these and other pharma mergers garnered political concerns.

The political pressure increased partly in response to an academic paper, “Killer Acquisitions,” by Colleen Cunningham, Florian Ederer, and Song Ma. 7 The idea behind killer acquisition theory is that an incumbent buys an innovative nascent company developing a competing product and discontinues the competing product. The acquisition pre-empts future competition. The incumbent killed the potential rival and thereby distorted competition and stifled innovation. The antitrust implications are straightforward: Killer acquisitions go unnoticed by antitrust authorities and require a change of law and new theories of harm. In that regard, the present call for public input fits into the perceived need that the current antitrust framework cannot catch some detrimental mergers. Cunningham et al. assert that killer acquisitions represent only a small share of mergers: 5.3 to 7.4 percent of mergers.

But does the killer acquisition theory materialize in business reality? Do incumbents ever discontinue the acquired firm’s products for anticompetitive reasons? At least one study finds a similar share as Cunningham et al. and suggests that approximately 95 percent of pharma mergers are not “killer acquisitions.” And within the five percent that are allegedly problematic, any discontinuation of products requires balancing against counterfactuals absent the merger. Would discontinuation of the drug have occurred irrespective of the merger due to changing market circumstances or due to different corporate strategies? The authors of the killer acquisition theory assume that these five allegedly problematic percent are all anticompetitive acquisitions. In fact, this number could very well be less. 8 Madl qualifies the very notion of killer acquisition stating that:

The mechanism of action used in the Cunningham, Ederer, and Ma study to identify cases of overlap is not mutation-specific, meaning that two drugs targeting the same enzyme and having the same net effect (e.g., inhibition) may not treat the same patients. Accordingly, purchasing the second drug could expand the acquirer’s market, rather than cannibalize sales.9

In other words, Cunningham et al. overlook the possible positive effects on competition and innovation of these acquisitions. The notion of killer acquisitions overly emphasizes Kenneth Arrow’s concept replacement effect of innovation and overlooks the Schumpeterian aspect of innovation. In other words, the tenets of the notion of killer acquisitions rest upon the assumption that a dominant firm would acquire a rival to avoid the rival’s product “cannibalizing” the dominant firm’s profits. However, the acquiring firm may seek to create complementarities, thereby opening new markets. Schumpeter indeed wrote that entering new markets (through organic growth or mergers) “incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism.

### AT: Turn

#### Profitability is key.

Shepherd ’18 [Joanna; August 8; Professor of Law at Emory; Health Care Law and Policy, “Consolidation and Innovation in the Pharmaceutical Industry: The Role of Mergers and Acquisitions in the Current Innovation Ecosystem,” <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1356&context=jhclp>]

However, concerns about the impact of consolidation on drug innovation are largely based on an outdated understanding of the innovation ecosystem in the pharmaceutical industry. Today, most drug innovation originates not in traditional pharmaceutical companies, but in biotech companies and smaller firms, where a culture of nimble decision-making and risk-taking facilitates discovery and innovation. In the later stages of the drug development process, the biotech companies routinely partner with large pharmaceutical companies to advance through expensive late-stage clinical trials and to effectively manufacture, market, and distribute the drugs. In this current ecosystem, biotech and pharmaceutical firms are each able to specialize in what they do best, bringing expertise and efficiencies to the innovation process. The specialization has led to an environment in which approximately three-fourths of new drugs are externally-sourced. Internal R&D is no longer the primary source, or even an important source, of drug innovation in large pharmaceutical companies.

As a result, analyses that focus on mergers’ impacts on internal R&D and innovation are missing the point. Instead, proper analyses of the impacts of consolidation on innovation should focus on whether consolidation enables firms to better support aggregate drug innovation in the current ecosystem. Concerns about harm to innovation could be relevant in specific mergers or acquisitions if the consolidating firms are the primary innovators in the area, the firms innovate internally, and there are essentially no sources of external innovation. However, such scenarios are increasingly rare in the current ecosystem. As long as there is sufficient market competition so that firms must innovate to ensure their future profitability and market share, consolidation will often allow firms to devote more resources to externally-sourced innovation. The increased demand for externally-sourced innovation will, in turn, spur incentives to innovate in biotech and small companies. Indeed, data suggests that consolidation is associated with increases in aggregate innovation. In recent years, aggregate innovation has held strong notwithstanding dramatic increases in M&A activity; in fact, 2014 and 2015 generated both record numbers of new drug approvals and record pharmaceutical M&A.

### AT: High Costs

#### 2 – Big Pharma doesn’t hurt consumers or workers – effects are unrelated due to inherent market segmentation.

Richman et al. ’17 [Barak, Will Mitchell, Elena Vidal, and Kevin Schulman; June 6; Professor of Law at Duke; Professor of Strategic Management at the University of Toronto; Assistant Professor of Management at Baruch College; Professor of Medicine at Duke University Medical Center; Loyola University Chicago Law Journal, “Pharmaceutical M&A Activity: Effects on Prices, Innovation, and Competition,” vol. 48]

Figure 2 estimates industry concentration based on the Hirschman Herfindahl Index (“HHI”) for both the global and United States pharmaceutical markets.18 It appears that overall concentration in the industry is both low and relatively stable; the 500–700 range is well below the Department of Justice’s guidelines that consider HHI between 1,500 and 2,500 points to be moderately concentrated.19 Figure 2 demonstrates that recent price increases do not appear to correlate with market power based on greater overall concentration in the industry.

Additionally, increases in list prices for drugs can be somewhat misleading because they represent actual market prices. Insurance companies, hospital systems, pharmaceutical benefit managers (“PBMs”), and other payors with market power commonly negotiate deep discounts from list prices through a system of rebates and chargebacks. The health care industry has seen high levels of provider and payor consolidation in the last two decades due to inadequate antitrust enforcement. This consolidation raised health care prices for consumers while simultaneously enhancing market power of providers and payors when demanding discounts from pharmaceutical manufacturers. 21 While these negotiations are typically confidential and nontransparent, there are suggestions that discounts can reach as high as 40–50 percent off the listed prices.22 Other customers, such as the United States Department of Veterans Affairs (“VA”) and Medicaid in the United States, also typically receive prices at a discount from list prices (the VA through direct negotiation and Medicaid through statutory rebates).23 Even with such discounts, overall drug spending is increasing in the United States and in many other countries.24

Instead of prices correlating systematically with industry concentration, it seems that individual price increases are products of specific market structures and opportunities. Specifically, recent price increases appear to have emerged from changes in firm strategies rather than arising from an increase in overall market power. Some instances of price increases are consequences of firms exploiting opportunities to raise prices on generic drugs with few competing products. More generally, many established proprietary drug companies are placing greater emphasis on specialty drugs, including drugs based on traditional small cell science and those stemming from the biological science revolution, that have few competitors in their targeted market segments.25 While these strategies reflect the presence of market power (i.e., there are few competing products in the biofunctional space where these price increases take place), they appear uncorrelated with changes in industrywide concentration arising from M&A trends. Instead, they reflect changes in market segmentation strategy, in which firms target medical needs where there are few competing products.

This suggests that market power is better measured not in industrywide measures, but instead along functional equivalents, which is how antitrust regulators typically scrutinize proposed acquisitions. More important, it suggests that pricing strategies will continue along a segmentation strategy, in which firms will seek market rigidity or a market niche in which there is a lag in opportunities for competitors to respond with competing products.

Such lags are highly sensitive to the surrounding regulatory framework that facilitates or deters entry. The primary source of such lags in the United States is the pharmaceutical regulatory system under the United States Food and Drug Administration (“FDA”). This time, lag means that companies with few, or no, competitors that raise prices on generic drugs will have the market to themselves until another firm is able to bring a competing drug through the Abbreviated New Drug Approval (“ANDA”) process, which often takes several years.26 Similarly, a company that introduces a breakthrough drug at high prices will have the market to themselves until competitors are able to discover, develop, and bring competing drugs through the New Drug Approval (“NDA”) or Biological Licensing Approval (“BLA”) process; this, again, can take several years.27

Reciprocally, market structures also allow for competitive reactions that limit pricing power. In many instances, new drugs that reach the market do lower list prices, deepen discounts, and reduce consumer prices. For instance, the introduction of AbbVie’s Viekira Pak into the Hepatitis C market in 2016 led to extensive price competition with Gilead based on discounts in the tens of thousands of dollars to pharmaceutical insurance and benefit management companies.28 Similarly, Mylan steadily increased the list price of its patent-protected EpiPen. When Mylan acquired the product in 2007, the list price was a little over $100, but its current price is over $600, largely reflecting strong market preference for the company’s proprietary technology for injecting the allergic reaction drug.29 Mylan indicated that it will also be launching a generic version at about half the price, in anticipation of Teva Pharmaceuticals launching a generic competitor, while continuing to offer the branded product.30 Again, while this is a market power issue, the pricing questions have little to do with industry-wide M&A trends. Indeed, industry reports in early 2017 suggest that alternatives to the EpiPen were rapidly eroding Mylan’s market share.31

To the degree that market segmentation strategies are primarily responsible for price increases

, it means that antitrust authorities should scrutinize specific biofunctional markets and evaluate mergers on whether a consolidated entity will have new pricing power within a specific pharmacological space or deter the entry of a pharmaceutical competitor. If AbbVie, for instance, were to seek to purchase Gilead, there could be a case for evaluating the deal because it would eliminate all competition within a specific biofunctional market. Similarly, Teva’s recent acquisition of Allergan’s generic drug lines warranted examination for potential market power in some product classes.32 But despite specific mergers that aggregate market power within a discernable submarket, it is not clear that the general trend in M&A activity warrants suspicion in terms of its impact on prices. The larger lesson is that maintaining a competitive pharmaceutical marketplace requires assessing and improving the surrounding regulatory structure, more so than deterring megamergers.

### AT: Biden XO

#### Everything is non-binding.

Holding et al. ’21 [Christopher, Paul Jin, Andrew Lacy, Arman Goodwin; July 15; Experts at JD Supra, a daily source of legal intelligence on all topics business and personal, distributing news, commentary, and analysis from leading lawyers; JD Supra, “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>]

Key Implications

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;

Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;

Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

#### Corporations don’t think there is a threat.

Graham ’9-16 [Jed; September 16; Author and analyst; Investor’s Business Daily, “FTC, Biden Antitrust Enforcement Push Takes On Amazon, Google — And The Supreme Court,” <https://www.investors.com/news/antitrust-enforcement-push-by-ftc-biden-takes-on-amazon-google-supreme-court/>]

Investors don't seem to see a major threat. Google parent [Alphabet](https://www.investors.com/news/technology/google-stock-buy-now/) ([GOOGL](https://research.investors.com/quote.aspx?symbol=GOOGL)), Apple and Facebook stock have hit all-time highs this month. After Khan's ascension as FTC chair, Amazon stock ran to a record, before its second-quarter revenue miss briefly halted its momentum.

Recent antitrust rulings help explain the apparent lack of concern.

The Supreme Court's June opinion rejecting NCAA limits on educational benefits for student-athletes reads like a celebration of noninterventionist antitrust law, William Kovacic, who chaired the FTC under President George W. Bush, told IBD.

"Markets are often more effective than the heavy hand of judicial power when it comes to enhancing consumer welfare," Justice Neil Gorsuch wrote. Courts examining business dealings should take care not to "set sail on a sea of doubt," he added, elevating William Howard Taft's warning of the danger of a "shifting, vague and indeterminate" antitrust standard.

The words seemed to carry a not-too-subtle message for the Biden team, Kovacic says. "Until the Congress changes the law, we will continue to endorse the approach we have taken for the last 40 years," he said.

Can Parties Unite On Antitrust Law?

The House Judiciary Committee narrowly passed a package of antitrust measures in June called the Ending Platform Monopolies Act. Amazon has warned of massive disruption from restrictions preventing the biggest online platforms from favoring their own goods and services. "These bills would jeopardize Amazon's ability to operate a marketplace for sellers, potentially resulting in hundreds of thousands of small and medium-sized businesses losing access to Amazon's customers and services."

Another measure would shift the burden of proof for Big Tech acquisitions under antitrust law. Companies with a market cap of $600 billion or more — including Apple, Amazon, Facebook and Google — would have to prove that a proposed merger wasn't anticompetitive.

GOP Sen. Josh Hawley's antitrust bill goes much further, essentially banning acquisitions by companies with a market cap over $100 billion.

Skepticism about Big Tech and excessive corporate power is clearly bipartisan. That helps explain why Khan's nomination as commissioner sailed through the Senate with 21 Republican votes. Yet Biden didn't reveal until after the vote that he intended to name Khan FTC chair, which might have given some senators pause.

Fundamental changes to antitrust law are unlikely to pass the closely divided Congress this year, Goldman Sachs analysts say. Some Democratic lawmakers have voiced opposition to the House antitrust package. Meanwhile, Hawley's Trust-Busting for the 21st Century Act has zero co-sponsors.

### AT: No impact

#### It combats numerous global threats.

Karoui et al. ’19 [Meriem, Monica Hoyos-Flight, and Liz Fletcher; August 7; Centre for Synthetic and Systems Biology in the School of Biological Sciences at the University of Edinburgh; Innogen Institute in the School of Social and Political Sciences at the University of Edinburgh; Frontiers, “Future Trends in Synthetic Biology—A Report,” <https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full>]

Introduction

Synthetic Biology offers innovative approaches for engineering new biological systems or re-designing existing ones for useful purposes (see [Figure 1](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#F1)). It has been described as a disruptive technology at the heart of the so-called Bioeconomy, capable of delivering new solutions to global healthcare, agriculture, manufacturing, and environmental challenges ([Cameron et al., 2014](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B6); [Bueso and Tangney, 2017](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B3); [French, 2019](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B19)). However, despite successes in the production of some high value chemicals and drugs, there is a perception that synthetic biology is still not yet delivering on its promise.

Moreover, there are some concerns from governments that synthetic biology expands the pool of agents of concern, which increases the need to develop detection, identification and monitoring systems, and proactively build countermeasures against chemical and biological threats ([Wang and Zhang, 2019](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B37)). The participation of representatives from various government organizations at this meeting is testament to their commitment to maintaining an active dialogue with the synthetic biology community. In this way, they aim to keep abreast of the changing nature of threats and provide the best advice to government about investment in science and technology and the introduction or amendment of regulatory processes.

The cost of DNA sequencing and synthesis have decreased dramatically ([Carlson, 2014](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B7); [Kosuri and Church, 2014](https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full#B25)) and we have access to more genetic information and more powerful genetic engineering capabilities than ever before. Critical investments in infrastructure are bearing fruit and, as is described below, synthetic biology is increasingly becoming, at least part of, the solution to many of our present and future needs in medicine, food and energy production, remediation, manufacturing, and national security. So what is the potential of synthetic biology and what challenges does it still face to realize this?

#### Successful synthetic biology solves global challenges.

Karoui et al. ’19 [Meriem, Monica Hoyos-Flight, and Liz Fletcher; August 7; Centre for Synthetic and Systems Biology in the School of Biological Sciences at the University of Edinburgh; Innogen Institute in the School of Social and Political Sciences at the University of Edinburgh; Frontiers, “Future Trends in Synthetic Biology—A Report,” <https://www.frontiersin.org/articles/10.3389/fbioe.2019.00175/full>]

Conclusions and Recommendations

The short talks presented at this 2-day meeting suggest that synthetic biology is at the cusp of many major breakthroughs and that it is perhaps timely to re-define the meaning of “success” in synthetic biology.

There are many hurdles to overcome but the potential for synthetic biology to deliver solutions to many global challenges—improving healthcare, limiting environmental damage, and creating a wide variety of more sustainable processes—is great.

Meeting participants suggested that as a community they should support the measures listed below to help synthetic biology move beyond the proof-of-concept stage and to ensure that potential risks are minimized and dialog with the public can be optimized.

* Larger and longer investment in better big data management and processing (Artificial Intelligence and Machine Learning) systems, and in fundamental research on biosystems modeling, chassis development, and genome mining.