# Northwestern

## 1AC---Full Text

### 1AC---Administration ADV

#### Advantage 1 is ADMINISTRATION.

#### Trump has eviscerated federal collective bargaining rights (or CBR).

Rebecca Beitsch 8-15, Senior Staff Writer, National Security & Legal Affairs, The Hill, "Unions' Battle for Survival Hits New Wave with Trump Termination of Bargaining Agreements," The Hill, 08/15/2025, https://thehill.com/regulation/court-battles/5453207-federal-unions-trump/.

Federal employee unions are bracing for battle after courts have lifted a series of injunctions that were stalling the Trump administration’s plans to end collective bargaining rights at a number of agencies.

Trump in March signed an executive order laying the groundwork for a sweeping rescission of a number of existing union contracts at government agencies. The administration argues 18 different departments have sufficient national security roles to qualify under a law allowing the suspension of union rights at such agencies.

Since the most recent lifting of an injunction earlier this month, the Trump administration has canceled previously signed collective bargaining agreements with at least five agencies, and more are expected.

Unions acknowledge they are facing a “setback” and must rethink aspects of their strategy for survival under Trump.

“This ruling is certainly a setback for fundamental rights in America,” Everett Kelley, president of the American Federation of Government Employees (AFGE), the largest federal employee union, said in a statement earlier this month.

Unions had argued Trump was using national security as a pretext to go after organizations that have been vocal in challenging many other administration policies.

But a panel of the 9th Circuit Court of Appeals agreed to a Trump administration request to lift the last of several lower court injunctions that broadly blocked implementation of the order. The panel rejected arguments that Trump’s order and an accompanying fact sheet blaming “hostile” unions for trying to “obstruct agency management” were a sign of the true aim of the order.

“Even accepting for purposes of argument that certain statements in the Fact Sheet reflect a degree of retaliatory animus toward Plaintiffs’ First Amendment activities, the Fact Sheet, taken as a whole, also demonstrates the President’s focus on national security,” the court determined.

In the two weeks since, the Trump administration has quietly terminated collective bargaining agreements at the Department of Veterans Affairs; the Environmental Protection Agency; Department of Agriculture Food Safety Inspection Services; the Coast Guard; Citizenship and Immigration Services; and the Federal Emergency Management Agency.

Court battles on the executive order are still continuicng on the merits, and a lower court judge sided Thursday with the Federal Education Association, granting an injunction that would bar any termination of union contracts at the Department of Education.

But as the legal wrangling continues, many unions are in a fight for their very existence.

“For sure, we are going to fight for our existence. It’s very unsettling and very disturbing that the 9th Circuit issued the ruling that they issued. I don’t think that any president should have any unfettered authority that goes unchecked,” Kelley, the president of the AFGE, told The Hill this week.

“That’s a portion of the reason why unions exist, to make sure there’s checks and balances inside of the agencies.”

The American Foreign Service Association (AFSA), which represents employees at the State Department and other related agencies, also sees it that way.

“The very nature of diplomacy is one of collaboration. It is one of bringing disparate parties together in order to get the input from all people involved, to find a commonality and an agreed upon way forward that isn’t just done by ambassadors sitting in foreign ministries talking to heads of government,” said John Dinkelman, president of the group.

“It percolates down to the very depths of our profession. And what I’ve seen over the past six months is a stifling of the ability to extract from employees the full value of their potential input. Because, frankly, people are afraid,” he added, noting one employee who asked to have their name removed from articles they had written in the AFSA’s journal expressing support for previous administration policies.

But unions are also stuck in a catch-22, facing dead ends in other avenues where they might dispute the termination of their contracts, including the Federal Labor Relations Authority (FLRA), which governs federal employee unions.

“We did file an unfair labor practice saying, ‘You’ve breached our collective bargaining agreement.’ But unfortunately, as expected, the FLRA has said, ‘Hey, you’re not recognized as a union right now, so we’re putting this all on hold until all the until your court case is finished,’” said Sharon Papp, general counsel with the AFSA.

Trump fired the Democratic-appointed chair of the FLRA, Susan Grundmann, in February, despite her confirmation to a five-year term. Though a lower court initially reinstalled her, an appeals court in June removed her from her post while the legal battle continues.

Unions are still hopeful that courts will ultimately side with their arguments that Trump’s move is largely a retaliatory effort, but in the meanwhile, with the order now in effect, agencies can halt the collection of dues and are no longer communicating with union leads.

Papp said she feels the plain language of the executive order makes clear the intent.

In the fact sheet, the White House wrote that “unions have declared war on President Trump’s agenda” and that while he supports “constructive partnerships with unions who work with him; he will not tolerate mass obstruction.”

“They don’t like unions that don’t get in line,” Papp said.

“They don’t like unions that didn’t support Trump when he was running for election, and so it has nothing to do with national security. It has to do with going after unions who gave Trump a hard time by filing lawsuits, by filing grievances, and it’s plain in the language that came out with the executive order.”

But she said some of the union’s members worry about their affiliation and have declined to have a union representative present at disciplinary hearings.

Nurses at the VA also see it as a response to their pushback on Trump plans they said would diminish care for patients.

“This is just the latest salvo in the battle to break the spirit of working people in this country,” National Nurses United said in a statement after their contract was among the first to be terminated following the court ruling.

“Nurses never abandon our patients, and we will continue to fight for the funding and safe staffing levels that our patients deserve. As union nurses, we understand that collective bargaining rights are fundamental to carrying out our critical role as patient advocates.”

#### The credibility of the civil service requires ‘collective bargaining rights’:

#### 1. REGULATORY STABILITY. They constrain fluctuations.

Nicholas Handler 24, JD, MPhil, Fellow & Lecturer, Law, Stanford Law School. Associate Professor, Law, Texas A&M University, "Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power," New York University Law Review, Vol. 99, No. 1, pg. 45-127, April 2024, HeinOnline. [italics in original; language edited]

But, as set forth below, this model of top-down implementation and bottom-up resistance is critically incomplete. More often, the President and the unionized civil service bargain over questions of management, rather than fight out their differences through the exercise of raw institutional power. Indeed, in a sharp deviation from the Progressive Era model of a politically insulated civil service, the CSRA explicitly empowered unions to act in a political capacity, including by lobbying Congress, litigating management disputes before Article III courts, endorsing political candidates, and speaking out publicly on questions of executive branch management and policy. Unions thus engage directly in democratic politics and serve as a key mechanism for bringing other democratic stakeholders, such as Congress and the judiciary, into disputes over the President's managerial power. In short, modern bureaucratic management is far more mutualistic, legalistic, and democratically engaged than administrative law scholarship generally presumes.

Section II.A below examines the substantive rights that labor law confers on civil servants, and the ways in which those rights can reshape presidential administration. Section II.B discusses unionization rights, including the boundaries and limitations of civil servant unionization and the role that federal sector unions play in promoting democratic oversight of the executive branch.

*A. How Substantive Rights Mediate Bureaucratic Relations*

Substantive labor rights, particularly those memorialized in collective bargaining agreements, are at the heart of how labor rebalances executive branch power. The CSRA grants extensive rights to labor. With certain important exceptions, particularly for salary and benefits which cannot be altered by contract,103 unions are permitted to bargain over nearly any issue affecting "conditions of employment." 104 The main limitation on civil servant bargaining, and thus the primary battleground in litigation between agencies and labor, are certain statutorily defined "management rights," which are enumerated in subprovisions of 5 U.S.C. § 7106.105

Through contractual provisions, the President and the civil service can agree to modify any number of key management tools, from employee discipline to performance evaluation metrics to merit pay. For the purpose of analyzing their impact on presidential power, contractual rights can be sorted into three categories. First are rights that act as a check on structural deregulation, or the use of abusive working conditions to demoralize or sideline bureaucrats in order to undermine an agency's substantive policy mission. Second, labor rights can act as indirect constraints on policy by shaping management tools, such as performance reviews and productivity requirements, that are well known to nudge civil servants' decisionmaking in certain ways. Finally, in certain circumstances labor can act as a direct constraint on policy by seriously limiting the types of enforcement directives management can issue to employees.

*1. Check on Structural Deregulation*

A major method of undermining regulatory effectiveness is to defund agencies, undermine the morale of agency personnel, and obstruct agency operations. Jody Freeman and Sharon Jacobs have identified many of the strategies that the President may use to [crush] ~~cripple~~ agencies while evading civil service protections, including imposing burdensome working conditions, reassigning staff to undesirable roles, "demoralizing" staff through denigration and abuse,and cutting funding, resources, and pay.106 These are not direct attacks on an agency's legal authority, but a "structural" attack on an agency's ability to function.107 President Trump's unusually aggressive posture towards administrative agencies has put structural deregulation back in public focus, but it has long been a feature of presidential management, as the controversy surrounding the Malek memo in the 1970s illustrates.108

Here, many of the seemingly prosaic aspects of federal labor law are important. The terms and conditions of employment that govern the quotidian existence of civil servants are precisely the sorts of areas that structural deregulation targets. Changes to remote work policies, scheduling, and other routine workplace concerns can be used to demoralize or undermine an agency's staff.109 Unions routinely leverage contract rights to prevent deterioration in working conditions, litigating issues such as increases in workloads,n0 compensation for travel and other overtime expenses,1" backpay for wrongful personnel actions,112 and how and when to award bonuses or special compensation required by contract or statute.'13 Agencies can also be required to bargain over reductions in staffing levels or reorganization of duties.114

There are numerous examples in which fights over working conditions reflect larger political struggles over the ability of an agency to properly carry out its statutory mission. The infamous nationwide strike in 1981 by the Professional Air Traffic Controllers Organization (PATCO), representing federal air traffic controllers, is a useful example. The PATCO strike flouted the federal prohibition on civil servant strikes, in a bid by the union for higher pay and improved working conditions."s Instead of negotiating, President Reagan broke the strike by calling up military service members and retired controllers to manage the nation's air traffic and firing the strikers (who made up nearly seventyfive percent of federal controllers).116 While PATCO is remembered today for its catastrophic collapse, the union's founding in the 1960s was driven by a decline in conditions of employment that related directly to the substantive mission of the Federal Aviation Administration: Flight speeds for jet planes reduced the margin of error for air traffic controllers, while understaffing and aging equipment made working conditions for controllers increasingly difficult and airport conditions less safe, leading to crashes. It was the FAA's failure to respond to these worker complaints, and its attempt to cover up safety risks, that first inspired the formation of the PATCO union." 7

Contemporary examples abound as well. During the Trump Administration, the Department of Education was a frequent target of structural deregulation. In 2018, the agency purported to impose a new labor contract on employees without bargaining that, among other things, removed protections regarding pay raises, altered performance evaluations, and reduced rights regarding overtime, childcare, and work schedules.11 8 The FLRA subsequently ruled the unilateral contract illegal, forcing the agency to enter into an extensive settlement covering disputed labor issues." 9 Federal prisons were another key site of disputes over labor rights. The Trump Administration sought to cut budgets, weaken unions, and worsen conditions at federal facilities at the Bureau of Prisons (BOP), as a prelude to privatization of many key functions. The agency would, for instance, cut shifts for guards and replace them with untrained, non-custody employees to guard prisons.120 These policies were enacted despite Congress allocating money for staffing, which the Administration refused to spend. 121 At the same time, federal facilities experienced a significant influx of prisoners, including very large numbers of immigrants detained by ICE.122 BOP saw a major decline in prison conditions, leading to increases in assaults, health risks,123 overcrowding, 124 and declining staff morale. 125 The primary means for resisting these deregulatory policies was labor litigation. Many of these labor disputes concerned the precise tactics-shifting schedules, using untrained and unauthorized workers to staff dangerous prisons, understaffing, overcrowding, removing posts from union positions-that the Administration was deploying to defy Congress and pave the way for privatization.1 26 Workplace disputes thus dovetailed closely with a broader agenda of weakening prison standards and asserting greater political control over prisons.

*2. Indirect Constraints on Policy*

Labor can also serve to constrain substantive executive branch policy in many indirect but significant ways. It has long been recognized that certain presidential management techniques, while they putatively concern the internal business of overseeing executive branch resources and personnel, can impact substantive enforcement outcomes. As Jerry Mashaw canonically articulated, the administration of many large-scale federal welfare and regulatory programs requires a species of "bureaucratic justice," where fairness and efficiency are achieved through quality assurance, performance metrics, productivity quotas and other general, organization-wide management tools.127 Labor can reshape how many of these tools are used, in turn reshaping agency outcomes.

One important example is productivity requirements. Determining how much work employees are required to perform, and how they are to perform it, is a well-recognized management tool. These management tools have particularly important impacts on adjudicatory bodies and other discretionary decision-makers: Rules governing decisionmaking processes limit adjudicators' flexibility, while increased productivity requirements reduce the amount of time and effort adjudicators can spend on any one case, making it difficult to rule in favor of poorly represented or underresourced parties.128 The FLRA routinely enforces contractual limitations on the types of productivity quotas agency management imposes, intervening for instance in disputes over quotas for claims processing for veterans' benefits, 129 screening of passport applications by the Department of State,130 and caseload requirements for Taxpayer Advocates employed by the IRS.131

The Trump Administration engaged in particularly hard-fought disputes over productivity and process rules. The Social Security Administration (SSA) extensively litigated proposed productivity requirements for its unionized administrative law judges (ALJs), which would have sped up case timelines, potentially impacting the quality of decisionmaking and the amount of benefits awarded. An arbitrator repeatedly found that the agency's requirements violated the parties' CBA. A two-member majority on the FLRA, appointed by President Trump, however, consistently reversed these rulings,132 over the dissent of Member DuBester, the sole Democratic appointee, who found the policy to be a "straightforward" violation of the parties' agreement. 133 Immigration law judges (IJs), likewise, have used bargaining and litigation to resist increased efficiency requirements during the Trump Administration, which would have limited IJs' ability to assist asylum seekers during removal hearings.134 Similarly, the United States Customs and Immigration Service (USCIS),under de facto head Ken Cuccinelli,135 pressured asylum officers to reduce grants of asylum, citing statistics showing high grant rates, urging officers to use tools to combat "frivolous claims" and make only "positive credible fear determinations." 136 The union resisted these initiatives, which it characterized as pressure to "misapply laws" and "politicize" the asylum process. 1 37 The USCIS union likewise challenged administration guidance to exclude large categories of migrants from asylum consideration and to divert considerable numbers to Honduras and Guatemala, calling the policies "unlawful" and even filing an amicus brief in support of a lawsuit challenging them.1 38

Negotiated provisions governing selection and promotion likewise can yield "significant" divergences from management's preferences.1 39 Federally unionized technicians with the Ohio National Guard, for instance,negotiated extensive contractual requirements for promotions, including criteria used to evaluate candidates and differences in merit promotion procedures.1"' Agencies can be required to honor promotions dictated by contract.141 The FLRA has required the SSA to bargain over promotion plans for adjudicatory employees.142 Union contracts can also prevent discrimination. Unions included clauses in contracts protecting gay employees in the 1990s, well before federal antidiscrimination protections for LGBTQ+ people existed.143

Labor can also substantially reshape employment-based discipline and the hierarchies and incentives that disciplinary power creates. While agencies are subject to formal disciplinary procedures under civil service statutes, they often discipline workers through negotiated grievance procedures, resulting in sanctions that can differ substantially from those that might otherwise apply.1 " A prominent example of this phenomenon involved a group of CBP officers who were discovered to have exchanged racist and threatening messages through a private Facebook group in 2019. Even though the incident aroused public outrage and the CBP Discipline Review Board recommended harsh punishments-including termination for eighteen agents-following a negotiated grievance process, some of the officers received substantially lighter punishments, including letters of reprimand, paid suspensions, and only two terminations.1 45 Indeed, according to data recently released by the Office of Personnel Management, arbitrators who hear cases under labor grievance reinstate three-fifths of all dismissed employees, as compared with only one quarter of all MSPB appeals.1 46 These obstacles to firing and other forms of discipline are some of labor's most powerful tools, and are also among its most controversial: Many critics accuse union-backed limits on employee discipline of rendering government service less efficient, though the evidence on this question is hotly contested.147

Finally, labor rights condition the ability of civil servants to leak, criticize, or otherwise speak out publicly about agency policy. David Pozen and Jennifer Nou,among others,have described how unauthorized disclosures of critical information by civil servants can check agency abuses, inform policy debates, and shape agencies' agendas by shifting public opinion.148 Labor rights are a key guarantor of civil servants'ability to speak publicly about agency policy through testimony, statements to the press, and other means. The CSRA protects the right of employees, when speaking in their capacity as union representatives, to present the "views of the labor organization" to "appropriate authorities," which the FLRA interprets, in many circumstances, to include the press.14 9 Union officials can thus speak publicly about agency policy and management, even when line employees cannot. Union officials have leveraged their protected status to criticize executive branch policy in environmental regulation, education, immigration, and labor, among other policy areas.150 Unions also advocate for the right of other employees to speak out through litigation and labor agreements. Immigration judges, for example, have historically been protected by labor agreements in their right to critique removal policies, even if they are not union officials.151

*3. Direct Constraints on Policy*

Labor provisions may also directly constrain policy choices. Theoretically, many such provisions are limited by management rights.1 52 But labor has been pushing for such contractual provisions more aggressively in recent years, sometimes with the encouragement of sympathetic presidents looking to lock in policy preferences.

By way of disputes over conditions of employment, labor can resist substantive policy directives to which line employees are opposed for professional, ideological, or other reasons. As discussed in greater detail in Part III, law enforcement functions, particularly in the immigration context, are perhaps the most prominent example. Unions representing CBP and ICE agents have successfully used labor rights to challenge many substantive management policies touching core questions of immigration enforcement tactics and priorities, often over the objection that such challenges infringe on protected management rights. These include what weapons agents are issued,153 what types of searches they must perform and how,154 and what information officers must provide to detained immigrants, including identifying information about officers and information about potential legal remedies,155 among many other issues. Complaints about conditions of employment have been used, among other things, to delay the implementation of agency policies directing agents to prioritize detentions of violent criminals and to deprioritize arrests of minors and other nonviolent immigrants. 156

Under President Trump, both CBP and ICE negotiated, with the encouragement of the administration, for even more expansive rights to challenge any enforcement guidance affecting the conditions of their employment and to delay the implementation of those policies until any labor disputes have been resolved, a process potentially lasting years.157 Under the Biden Administration, unionized employees at the EPA are now attempting to bargain for similar protections that would preclude the agency from adopting any policies that violate certain principles of "scientific integrity." 158 These developments demonstrate the capacity for labor to become not only an influence on policy but, through the deliberate use of conditions of employment as a restraint on managerial discretion, a primary driver of it.

#### 2. LABOR FORCE. It ensures recruitment and retention.

Catherine L. Fisk 25, JD, LLM, Distinguished Professor of Law, University of California, Berkeley, "Independence and Accountability in Public Service: Defending the Federal Worker Job Rights and a Nonpartisan Civil Service," Arizona Law Review, Vol. 67, 05/28/2025, pg. 1-32. [italics in original]

The Schedule F debate is part of a broad effort in the conservative legal movement to deprive *all* federal government employees of protection against retaliation based on their beliefs or political affiliation and to strip employees (with the exception of police) of collective bargaining rights. Advocates of it claim their views are compelled by Article II of the Constitution, which, they say, dictates that all federal employees be accountable to the president. Professor Kate Shaw has aptly identified this as a facet of “partisanship creep.”14 In this Essay, I explain that this use of the unitary executive notion goes against 150 years of legal efforts to make civil servants independent of the party in power. History has not been kind to past efforts to make hiring and removal of government workers subject to political litmus tests, whether the spoils system inaugurated by Andrew Jackson in 1829, or the purges of left-wingers during the McCarthy era. It is also pernicious as a matter of civics. Empirical study of the effect of the adoption of civil service protections in the United States and elsewhere shows civil service protections tend to increase efficiency, productivity, and quality of government services.15 \*\*\*FOOTNOTE BEGINS\*\*\* Abhay Aneja & Guo Xu, *Strengthening State Capacity: Civil Service Reform and Public Sector Performance During the Gilded Age*, 114 AM. ECON. REV. 2352 (2024) (surveying the literature on the effects of civil service law and finding, based on analysis of numerous data, that the adoption of civil service protections in 1883 and 1893 improved the efficiency and productivity of the postal service); Mitra Akhtari, Diana Moreira & Laura Trucco, *Political Turnover, Bureaucratic Turnover, and the Quality of Public Services*, 112 Am. Econ. Rev. 442 (2022) (finding that political turnover lowers test scores when public school staff are not insulated from replacement). \*\*\*FOOTNOTE ENDS\*\*\*

Moreover, the effort to make loyalty to the president or his party a criterion for hiring, continued employment, or advancement is contrary to well-settled First Amendment law. Decades ago, and as recently as 25 years ago, the Supreme Court held that government cannot hire, promote, or fire public employees, except the very highest level of political appointees, on the basis of their political affiliation.

This essay has four parts. First, I illuminate the historical background to Congress’ enactment of laws creating rights to be hired and promoted based on merit, rather than politics, race, gender, religion, or campaign contributions. I examine the history of the civil service laws and the long (but not entirely uninterrupted) practice of a nonpartisan, merit-based civil service and the long trend of increasing protections for government employees against arbitrary or discriminatory firings. Second, I canvass arguments and evidence on the benefits and costs of job protections for government employees. Although the evidence shows that specific reforms may be desirable, wholesale abandonment of merit based hiring and promotion would cause more problems than it would cure. Third, I explain the nature and basis of the conservative assault on the legal architecture of government employee job protections. Finally, I explain the flaws in their arguments about the constitutional and policy groundings for the notion that government service should be “at will,” focusing particularly on Article II and the First Amendment to the Constitution.

I. What Is the Point of a Nonpartisan Civil Service? Lessons from History

Histories of federal sector employment note that before the presidency of Andrew Jackson (1829-1837), incoming administrations did not tend to treat government employees as fireable at will.16 Scholars debate whether Congress did or did not decide in 1789, just after ratification of the Constitution, what to make of Article II’s silence about whether the power of presidential appointment does or does not connote a presidential right of removal.17 But, whether or not Article II conferred on presidents the power to remove anyone the president could appoint, historians of government employment have observed that the first six presidents, as a matter of practice, did not generally treat government employee tenure in office as limited to the term of a president.18

Andrew Jackson, the first president elected against an incumbent since Jefferson, believed that replacing government workers was necessary to achieve his goals of reforming and democratizing government. He believed in reducing the influence of elites who had dominated public service and in making government service more representative of the population and more aligned with the president’s party. Although the Tenure in Office Act of 1820 contemplated some degree of rotation in office, “Jackson was the first president to provide an ideological justification of the spoils system and attempt to establish it in the federal government.”19 Not only did he believe it would reduce the influence of elites in American politics, it gave him the chance to rid the government of those whom he suspected of being insufficiently devoted to his agenda. Moreover, creating a norm of government workers leaving office when the White House switched party control would also address the problem of elderly or incompetent government workers.20

But, as is well known, the Jackson Administration did less to democratize government service (it remained, to some extent, a province of elites) than to create all the problems that patronage or spoils systems of political appointments are known for. Both recruitment to and retention in government service during and after the Jackson Administration were based on partisan affiliation, past party work, and on the expectation of future partisan service as well. Criticisms of the practice of firing government employees abounded. Joseph Story wrote, in his 1833 *Commentaries on the Constitution*, that “if this unlimited power of removal does exist, it may be made, in the hands of a bold and designing man, of high ambition, and feeble principles, an instrument of the worst oppression, and most vindictive vengeance.”21 It would, Story warned, corrupt government and deprive officials of their freedoms rather than make government accountable to the voters.

“[I]n a republic, where freedom of opinion and action are guaranteed by the very first principles of the government, if a successful party may first elevate their candidate to office, and then make him the instrument of their resentments, or their mercenary bargains; if men may be made spies upon the actions of their neighbours, to displace them from office; or if fawning sycophants upon the popular leader of the day may gain his patronage, to the exclusion of worthier and abler men, it is most manifest, that elections will be corrupted at their very source.”22

Scholars estimate that during the years when the spoils system prevailed, federal employees were compelled to contribute between 1 and 6 percent of their annual salary to the party, which provided to be an effective political fundraising device. As one employee in the New York customhouse put it in the 1830s, when at first he declined to pay fifteen dollars to the party, “the deputy surveyor observed that I ought to consider whether my $1,500 per annum was not worth paying fifteen dollars for.”23

A large number of nineteenth century political leaders complained bitterly about the spoils system. In the 1830s, Senator John Calhoun complained the “the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power.”24 Daniel Webster allegedly said that patronage “tends to turn the whole body of public officers into partisans, dependents, favorites, sycophants, and manworshippers.”25 Seventy years later, Theodore Roosevelt, who served on the Civil Service Commission before becoming Vice President and then President, said the spoils system was “more fruitful of degradation in our political life than any other that could possibly have been invented. The spoilsmonger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.”26

As evidence of incompetence and corruption in the appointment of federal employees mounted after the Civil War, the political will to enact legislation emulating Britain’s 1854 examinationbased civil service reform grew. The reformers had lofty goals; they “sought to transform the federal service from an arm of the political party in power into a body of politically neutral, technically qualified civil servants shielded from partisan political pressures and dedicated to promotion of the public interest as embodied in law.”27 President James Garfield was assassinated in 1881 by a disappointed office seeker who resented that he had not received a federal job that he believed he had earned through political work to elect Garfield and members of his party. Reformers used the political sentiments surrounding the assassination to push Congress to enact the Pendleton Act of 1883, which created an examination-(merit-)based process for hiring civil servants and forbade removals on political or religious grounds.28 The Pendleton Act created a federal agency, the Civil Service Commission, to administer the new system.29

Although the statute did not originally restrict dismissals except on political or religious grounds and had no procedural safeguards for those dismissed, in 1897 President McKinley issued an executive order, which Congress incorporated into the law in 1912, requiring just cause for dismissal of any employee covered by the civil service law. It also required that the employee be given written notice of the charges and an opportunity to respond.30

The number and percentage of federal workers covered by civil service protection grew over the years, such that by 1900 slightly less than half of the federal workforce were in competitive service positions.31 Today, the vast majority of civilian employees have some job rights, although the discretion available to managers in hiring and the degree of protection against dismissal is weaker for those in the Senior Executive Service or the excepted service. It is not coincidence that the growth of civil service occurred as Congress also created the first independent federal regulatory commission, the Interstate Commerce Commission, in 1887. The task of regulating railroads and the increasingly large and complex economic institutions required expertise and independence from politicians who were lobbied intensely by affected businesses.

The goals of civil service systems are not only to reduce corruption, such as paying and extorting bribes to secure favorable government action, and to prevent incumbent politicians from funding and staffing their re-election campaigns through mandatory contributions and labor from government employees, but also to improve the quality of government policymaking and implementation by professionalizing government service. Under the spoils system that prevailed from 1839 to 1883, tenure in government service was short, there was no opportunity for advancement, and people were chosen for their loyalty to the elected official rather than for knowledge or skill relevant to their job. But after 1883, the number of college graduates in government service grew significantly, which was noteworthy at a time when less than 15 percent of the population graduated from college.

To be sure, presidential administrations have long used expansions and reductions in the positions covered by the merit-based civil service for political reasons. President McKinley, who defeated the Democratic candidate in 1896 and thus ended a relatively long period of Democratic control of the White House, promptly withdrew 10,000 offices from the classified service. And some presidents, including Grover Cleveland in 1888, having appointed people sympathetic to their policies to excepted positions, classified them as they were leaving office to entrench their policies against anticipated change by a successor of the opposite party.32 In other words, Trump is the latest, and certainly the most extreme, of a long line of politicians who were highly political about adding or withdrawing job security for government officials to entrench their policies after leaving office and to smooth the path of undermining their predecessors’ policies.

It is also clear that both before the widespread adoption of the spoils system and after the enactment of the Pendleton Act seeking to eliminate it, racism and sexism operated in hiring, promotion, compensation, and dismissal. In 1810, Congress enacted a law prohibiting employment of nonwhite persons as mail carriers, apparently prompted by the U.S. Postmaster General warning that Black mail carriers might foment or coordinate a rebellion of enslaved persons.33 Although that law was repealed in 1865, in 1913 President Wilson segregated the civil service on the basis of race, allegedly to reduce “friction” between races or “discontent” of white civil servants who worked with Black civil servants.34

The Hatch Act of 1939 (discussed below) both attempted to mandate political neutrality of civil servants and had a limited prohibition on discrimination on the basis of race or religion, which was subsequently expanded by the Ramspeck Act of 1940, which (ineffectually) prohibited race and religious discrimination in compensation, promotions, and other personnel decisions.35 And, although an 1870 statute authorized the appointment of women to federal jobs “upon the same requisites and conditions, and with the same compensations, as are prescribed by men,” it was interpreted to allow department heads discretion about whether to hire women at all, and it was not until the 1960s that women began to gain equal employment opportunities and conditions in the federal government.36 Finally, in 1972, Congress extended the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964 to the federal government, thus expanding the use of merit (or something) rather than status in hiring, promotion, compensation, and firing.37

As noted, the Hatch Act was a further effort to separate politics from government service. While it was motivated by Republican reaction to the perceived consolidation of power of Democrats by the appointment of college-educated liberals to the many New Deal agencies, and the expansion of executive power that accompanied the growth of the administrative state, it had a more long-term goals.38 To ensure that government service below the level of political appointees and their deputies remains nonpartisan, and to prevent coercion of political activity, the Hatch Act restricts the ability of government employees to engage in partisan political activity on paid time as well as during their off hours.39 It excepts several agencies, as well as military personnel.40

The Supreme Court twice upheld the constitutionality of the Hatch Act against the claim that it infringed public employees First Amendment rights. In *United Public Workers v. Mitchell*, the Court reasoned that the restriction on political activity was justified to prevent government officials from using employees in political activities and from pressuring them to participate in campaigns.41 The Court said: “Congress may reasonably desire to limit party activity of federal employees so as to avoid a tendency toward a one-party system. It may have considered that parties would be more truly devoted to the public welfare if public servants were not over active politically.”42 And the Court also recognized that Congress could legitimately conclude that reducing political activity by civil servants would prevent distortions in the political process and improve the efficient operation of government.43 The Court reaffirmed this holding in *United States Civil Service Commission v. National Association of Letter Carriers*. 44 The Court found the the prohibition on political activities by government employees was justified to ensure that “meritorious performance rather than political service” be the basis for hiring and promotions.45

The Hatch Act was not the only result of backlash against the growth of the New Deal agencies and the GOP fear that the Roosevelt Administration and the Democratic majority in Congress were using the growing staff of agencies to stack the government with Democrats. The so-called loyalty-security programs that had been enacted during the World Wars to address specific wartime threats were institutionalized during the Cold War by executive order and then by the Republican Congress that came to power in 1946. In 1947, President Truman issued a “Loyalty Order,” Executive Order 9835, requiring “a loyalty investigation of every person entering the civilian employment of any department or agency in the executive branch of the Federal government,” and created a Loyalty Review Board within the Civil Service Commission to review cases and oversee the process.

The original standard for dismissal or refusal to hire under the loyalty-security statutes was that “reasonable grounds exist for belief that the person involved is disloyal to the government of the United States,” but in 1951 the burden of proof was shifted to the individual and the standard because “a reasonable doubt as to the loyalty of the person involved.” Among the obvious grounds for finding disloyalty (such as engaging in treason or sabotage) was a pernicious political test. For the first time, “membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons designated by the Attorney General as totalitarian, fascist, communist, or subversive” disqualified an employee from federal employment.46 The system was modified and codified by statute in 1950, and was extended by executive order in 1953 to all government departments and agencies.47 And then, in 1955, Congress prohibited membership in organizations advocating overthrow of the Constitution and required federal employees to sign affidavits of noncommunist affiliation, although the Supreme Court declared the statute unconstitutional in part.48

The abuses of the loyalty-security investigations are notorious, ranging from inquiries about whether people had “communist literature” or “communist art” in their homes to their views on interracial marriage and “female chastity.”49 About 600 federal employees were fired for “loyalty-security” reasons in 1950-53 and about 1500 between 1953 and 1956, but many thousands more left government employment after receiving interrogatories or charges.50 My mother–a Phi Beta Kappa graduate of Berkeley who spoke four languages and was recruited into government in 1949 with the promise that her abilities would be put to use to help her country– was one of those fired based on unfounded suspicion that she was a Communist. She was a Democrat and a patriot, but because she perfected her colloquial Russian by speaking with emigres who fled the Soviet Union before 1921, and the person who fired her knew too little Russian history to know that the emigres fled because they were not Communists, she was suspect. It’s little exaggeration to say that for being fired from a job she loved on allegations of disloyalty was a devastating blow from which she never recovered before her death at age 50.

Ultimately the Supreme Court concluded that making current or past membership in a political party or organization grounds for dismissal from employment violated the First Amendment rights of current and prospective government employees. In *Wieman v. Updegraff*, the Court held that a states could not command oaths of noncommunist affiliation under penalty of firing.51 In *Cafeteria Workers v. McElroy*, and *Keyshian v. Board of Regents*, the Court held that government could not deny employment to employees solely because of past affiliation with the Communist Party or “subversive” organizations.52

Alarm about the corruption revealed by the Watergate scandal prompted calls for reforms to strengthen the civil service laws, A galvanizing event was when a witness at the Watergate hearings testified about the Nixon Administration’s plans to replace civil service with a hiring plan that would allow the president to purge all Democrats from government employment. At the same time, however, Congress and President Carter wanted reforms to increase the efficiency of government.53 With these twin aims, Congress enacted the Civil Service Reform Act of 1978, which substantially overhauled the system created by the Pendleton Act and remains in force today.

The CSRA clarified that recruitment, promotion, discipline, and removal, along with pay, should be based on merit and on “fair and equitable treatment” “without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.”54 It broadly prohibits any “personnel action” (including a hire, assignment, transfer, pay, promotion, or dismissal) on the basis of race, color, religion, sex, national origin, age, disability, marital status, or “political affiliation.”55 It prohibits efforts to coerce or to retaliate against an employee because of political activity or lack of it.56 It also protects whistleblowers by prohibiting personnel actions taken because the employee disclosed information the employee “reasonably believes evidences any violation of any law, rule, or regulation” or “gross mismanagement” or “abuse of authority.”57

But it also sought to make the civil service more responsive to political appointees and to increase efficiency and flexibility. It replaced the Civil Service Commission with the Office of Personnel Management (to manage the bureaucracy) and the Merit Systems Protection Board (to handle appeals of adverse employment actions.58) It created the Senior Executive Service (covered by a different set of rules regarding promotion and removal that make them career employees but more subject to control by political appointees59) with the goal of creating a corps of competent, experienced generalists just below the level of political appointee to manage lower level civil servants. Thus, under the CSRA, there are three categories of government employees (other than those in the uniformed or armed services60): the competitive service (comprising the majority of employees who are covered by civil service rules for hiring, promotion, and removal61), the excepted service (comprising about a third of employees who are not62), and the SES. While the CSRA failed to achieve its most ambitious goals of efficiency, flexibility, and invariably high levels of competence, and many subsequent small-scale reform efforts have sought to continue the project, it remains in force.63

The CSRA authorized the President to except some positions from the competitive service if “conditions of good administration warrant.”64 The President, in turn, delegated to OPM the task of defining such positions.65 OPM has issued regulations that include five “schedules” to define and categorize the one-third of federal employees who are in the excepted service.66 Schedule A are non-confidential and non-policy-determining employees for whom it is not practical to “examine applicants, such as attorneys, chaplains, and short-term positions for which there is a critical hiring need.” Schedule B are like schedule A but require the applicant to satisfy basic qualification standards, and are those who engage in scientific, professional, and technical activities. Schedule C are confidential and policy-determining positions and include most political appointees below the cabinet and sub-cabinet levels. Schedule D are non-confidential and non-policy-determining positions for which a competitive examination makes it difficult to recruit students or recent graduates. Schedule E are administrative law judges.67

Trump’s 2020 Executive Order created a new Schedule F for “positions of a confidential, policydetermining, policy-making, or policy-advocating character that are not normally subject to change as a result of a presidential transition.”68 Positions occupied by employees with civil service rights could be involuntarily transferred into Schedule F, which would strip the employee of their rights to appeal an adverse employment action. Agencies were directed to review their workforce to identify all positions fitting this description and to petition OPM to transfer them to the Schedule F excepted service, and also to make all new hires for positions that fit the description without reliance on the civil service procedures.69 The result would be that employees would lose civil service protections. The definition and intended size of the group who would be assigned to the new exempt Schedule F were unclear; the program’s architect said it would be about 50,000 people, but other estimates ranged into the hundreds of thousands. The Government Accountability Office reported that the Office of Management and Budget petitioned to place a full 68 percent of OMB workers in Schedule F.70

One final feature of the CSRA deserves mention because it also limits the discretionary authority of the president over federal employees. Several sections of the statute known collectively as the Federal Labor Relations Act codify a practice first authorized by Executive Order in 1962 creating the right of many federal employees to unionize and bargain collectively.71 The FLRA is patterned on the National Labor Relations Act of 1935, as amended in 1947 and 1959, which protects rights to unionize and bargain collectively in private sector employment. Like the NLRA, the FLRA grants employees the right to unionize and obligates federal agency employers to recognize the union chosen by the employees and to bargain in good faith with it. Like the NLRA, the FLRA makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter,” “to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment,” and to retaliate against employees for participating in the enforcement of the statute.72 It also prohibits unions from coercing and discriminating against workers and grants workers rights to fair treatment by their union.73

The CSRA also protected federal employees who blew the whistle on wrongful government conduct. Those protections were strengthened with the enactment of the Whistleblower Protection Act of 1989.74 Federal employees are protected in the right to disclose information that the employee “reasonably believes evidences a violation of any law, rule or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety” unless the “disclosure is specifically prohibited by law” and is not “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”75 One of the comments cited by OPM in its 2024 regulations protecting the job rights of employees whose positions might have been reclassified as excepted from civil service by Schedule F stated that the whistleblower protections might have been jeopardized by reclassification of the positions of employees suspected of being disloyal.76

The experience of Alexander Vindman bears out the concern that attempts to revive Schedule F may be prompted by the desire to child whistleblowing. Vindman was an NSC staff member who was assigned to listen in on calls between the President and certain foreign leaders. While doing that, he heard Donald Trump threaten to withhold funds to Ukraine unless President Zelinsky produced damning information on Hunter Biden. Concerned that this was illegal, Vindman reported what he heard. His disclosure led to the first Trump impeachment.

The history shows that over the last 150 years, Congress has steadily expanded the job protections for federal employees. Its goals included ensuring that hiring, assignment, and promotion are based on merit rather than political service, race, gender, or other irrelevant considerations. Both the legislation and the regulations OPM adopted pursuant to the regulation have tried to balance efficiency and flexibility with fairness, to enable government to recruit and retain employees with the knowledge and skill needed. The legislation and regulations also insist that adverse job actions be based on failure to perform the job rather than retaliation for whistleblowing, or belonging to the “wrong” political party, whether that party is the Democrats, the Republicans, the Socialists, or the Communists.

II. The Arguments About Job Protections for Public Employees

Having examined what the history suggests about the value of job protections and merit selection for government employees, I now turn to contemporary thinking about the justifications for job protections for government employees. As political scientists Stephen Skowronek, John Dearborn, and Desmond King said in a 2021 book, the attack on the so-called Deep State pits two unduly simplistic ideas against one another. On the one hand, Trump and the so-called unitary executive doctrine present a simplified notion that unbridled executive power is good and democratic because the president was elected by the people, which justifies direct, exclusive, and hierarchical control over the entire administrative apparatus of government. This is a vision that pits the chief executive against the rest of the executive branch.

On the other hand, defenders of the administrative state often present a simplified notion that the many administrators throughout government do and should use their substantive expertise, experience, judgment, institutional memory, commitment to the common good. They should exercise fidelity to legislation enacted by Congress to save government from the whims of an ill-informed, self-interested president and [their] ~~his~~ cadre of self-regarding enablers.77 They read the civil service law as evidence that Congress was more concerned with separating politics from administration than from separating the legislative branch from the executive. Indeed, although Congress recognized that governance of the complex modern state necessarily required expansion of the executive branch, they saw overweening executive power as a threat to good government. As Skorownek put it, “Even as they raised the president’s political profile, transforming him into a policy entrepreneur and national agenda setter, they took care to instill administration with an organizational integrity of its own and to set the everyday operations of the executive branch at some distance from the chief executive officer.”78

In this section, I briefly survey empirical studies of the benefits and costs of job security for federal employees. Ultimately, the choice between these two simplistic visions turns on factual questions about the positive and negative effects of job security. These studies complicate the intuitive appeal of the argument that Schedule F makes government responsive to the leaders the voters elected because they show how difficult it is to determine whether job protections do indeed thwart responsiveness to executive or legislative policies.

Empirical study of turnover in the federal bureaucracy below the level of political appointees after an election shows, in the period between 1973 and 2014, a fair amount of turnover, especially at the higher levels of the civil service ladder and at agencies that are ideologically distant from the new administration.79 Thus, there already exists some degree of voluntary staff change that aligns the bureaucracy with the elected leaders’ views. It is to be expected that those committed to strong environmental regulation and climate change policy may want to leave agencies dedicated to environmental protection when there is a new administration that does not share their values.

On the other hand, empirical studies of the effects of two dozen states’ adoption of “radical civil service reform” that, to varying degrees, made state government jobs at will offer weak support for the idea that at will employment leads to responsiveness and efficiency. In Georgia, less than half of state HR managers surveyed ten years after adoption of at will employment (by which time three-quarters of state employees were employed at will) said that at will employment had made employees “responsive to the goals and priorities of of agency administrators” and just over a third said it provided “the needed motivation for employee performance.”80 OPM cited one study of the effect of Georgia’s transition to at will employment which found that over 75% of Georgia state employees disagreed with the proposition that at will employment made Georgia’s government workforce “more productive and responsive to the public.”81

Scholars have reviewed the considerable empirical literature on civil service reform and developed models to explain whether or under what conditions reducing job protections increases the quality and responsiveness of government employee work. One model shows that “bureaucratic performance is greater in any equilibrium in which motivated bureaucrats choose government than in which all equilibria in which they do not.”82 The idea, translated into English, is that some degree of job security improves governance by recruiting and retaining motivated and skilled employees to government, but that too much job security reduces government performance by disincentivizing good work and by making it unduly difficult to dismiss bad employees. Of course, the difficulty is defining and achieving that equilibrium.

Another paper studied and modeled the incentives of populist leaders on whether to replace bureaucrats with loyalists. They find that bureaucrats faced with populist leaders determined to undermine existing policy have incentives to feign loyalty to the leader in the hopes of keeping their job and waiting for a future administration, and that strong civil service protections lessen the need for feigning loyalty. But they also find that when a populist hires a loyalist, strong civil service protections enable the loyalist to stay in office in a future administration. Ultimately, they conclude that “even short-term populism can lower the expertise of the bureaucracy and create poor policy implementation.”83

There is no consensus in the vast empirical and theoretical literature on reforming the civil service, other than that some reforms are desirable, some have been tried and have produced good results, and completely abolishing legal rights to job tenure during good behavior is an extremely risky proposition because of the dissensus about whether it would produce more harm than good.84 As the authors of a volume on radical civil service reform conclude, although their own views about the desirability of eliminating job protections for government employees differ, “increased managerial flexibility coupled with less accountability to civil service authorities may spawn bureaucratic fiefdoms controlled by skilled bureaucratic entrepreneurs. … At a minimum, particularly in large organizations, the result of arbitrary personnel rulings with little opportunity for impartial recourse may lead to an exodus of government’s more skilled and mobile employees and discourage persons at the start of their careers from seeking government employment.”85

#### 3. WORK CONDITIONS. Studies prove it impacts performance.

Dr. Gene A. Brewer et al. 22, PhD, Professor, Public Administration & Policy, University of Georgia; Dr. J. Edward Kellough, PhD, Professor & Department Head, Public Administration & Policy, University of Georgia; Dr. Hal G. Rainey, PhD, Distinguished Professor Emeritus, Public Administration & Policy, University of Georgia, "The Importance of Merit Principles for Civil Service Systems: Evidence from the U.S. Federal Sector," Review of Public Personnel Administration, Vol. 42, No. 4, pg. 686-708, 2022, SAGE.

Clearly, President Trump’s Executive Order would have substantially weakened merit in the federal service if it remained in place. When the order was issued, many observers expressed concern about the erosion of merit principles and damage done to important values central to merit systems, such as neutral competence and due process.2 On January 22, 2021 (2 days after his inauguration), President Biden, through Executive Order 14003, rescinded Trump’s Order creating Schedule F, along with three earlier orders from 2018 that made it easier to fire federal employees, restricted the scope of collective bargaining (which was already highly constrained), and prohibited employees in union positions from conducting union business while at work.3 Nevertheless, President Trump’s orders demonstrated the fragility of merit procedures and highlighted what is at stake for the civil service when merit comes under attack.

Merit principles are intended to limit the reach of partisanship into public management. They require employees be hired on the basis of their ability to perform their jobs, and in doing so, they foster good performance. Merit principles promote fairness in the management of public employees and provide additional benefits. Knowledge of due process rights and expectations of fair treatment, for instance, can lead public employees working under merit system rules and procedures to form more favorable impressions of their agencies as places to work than they would otherwise. These positive attitudes, in turn, can promote better individual performance on the job (Alexander & Ruderman, 1987; Greenberg, 1996; Rainey, 1997). Working in more secure merit structures can also enhance workplace satisfaction, lower turnover intentions, and lead to better quality work-unit output. These are issues examined in this article. Evidence of these kinds of positive effects of adherence to merit principles can buttress and reinforce the foundation of merit-based civil service and modern public administration.

Data for this study come from the 2010 Merit Principles Survey conducted by the U.S. Merit Systems Protection Board (MSPB). The survey was taken midway through President Barack Obama’s first term in office and just before the midterm Congressional elections that autumn, closing on July 15, 2010. The 2010 survey provides the most recent examination of federal employee opinions on how well their supervisors and agencies are adhering to legally mandated merit principles. More recent data on these issues are not available. In fact, 2010 was the only year this complete set of questions on merit principles was included in a MSPB survey, and the wording of the complete set of survey questions was taken directly—and in many cases “word for word”— from the law defining merit principles (5 USC § 2301).4 To the extent that the 2010 data suggest that federal employees value merit principles, and that adherence to merit is positively associated with helpful employee attitudes about their work, those findings should resonate profoundly today given contemporary events such as the Trump executive orders discussed above that demonstrate clearly the merit system’s vulnerability to politically-motivated change.

Civil Service Reform and Merit Principles

The Pendleton Act of 1883 established a merit system for civilian employees in the U.S. federal government, and the subsequent Civil Service Reform Act of 1978 (CSRA) further codified the underlying merit system principles into law (5 USC § 2301). The CSRA was a reaction in part to a perceived lack of bureaucratic responsiveness to elected officials, and more importantly, concern about the ability of managers to administer rewards and punishments to motivate employees and boost organizational performance (e.g., see Brewer & Kellough, 2016; Brewer & Walker, 2013; Rainey, 2006). Critics complained that the civil service system had become rigid and rule bound, with too much emphasis on protecting public employees from undue political interference (Brewer & Kellough, 2016). The civil service system’s centralized nature was also criticized, as was its reliance on compliance-inducing rules and regulations that allegedly limit the ability of managers to oversee work, reward performance, and punish or remove nonperforming employees (Brewer & Kellough, 2016). Since the 1970s, these have been perennial issues.

Nevertheless, as was noted previously, traditional merit-based civil service systems are designed to remove partisanship, favoritism, and patronage from the public service. Core merit principles are enforced through rules intended specifically to limit the discretion of managers, supervisors, and leaders of public agencies. Central personnel agencies, such as OPM at the federal level, establish civil service regulations, and review agency practices to enforce compliance. Because these regulations restrict the actions of political executives and line managers, some political leaders contend that the rules and restrictions are excessive, overly bureaucratic, and cumbersome.5 For decades, politicians have proposed and enacted reforms aimed at eliminating the alleged excesses of traditional centralized personnel systems and seeking to “let managers manage” in order to make the bureaucracy more efficient and responsive to elected officials.6 As a consequence, the U.S. civil service system has evolved over time, as has the federal workforce. The central personnel system is now a more decentralized structure with much authority centered in individual federal agencies.

Interestingly, these types of civil service reforms are not limited to the U.S. federal government. Civil service systems are in transition everywhere. Selden and Brewer (2011), for example, examined changing patterns of civil service coverage and employee job protections in U.S. state civil service systems during the period 1999 to 2006. In that study, personnel directors in many states reported that state civil service coverage had become more limited during the study period; job protections had decreased; and employee turnover had increased. The evidence indicated some states were replacing civil servants with large numbers of non-classified workers, thereby circumventing merit system protections. Similar evidence has been reported at the local level in the U.S. (Battaglio & Condrey, 2006), in other state-level studies (Kellough & Nigro, 2006), and internationally (e.g., Bekke et al., 1996; Bouckaert & Halligan, 2007; Brewer, 2001; Brewer & Walker, 2013). The implication is that civil service reforms that aim to eliminate or limit merit principles are a widespread phenomenon (see e.g., Hays & Sowa, 2006 and Kellough & Nigro, 2006).7

Issues regarding the significance of merit in public employment have been widely discussed but seldom studied empirically (Ingraham, 2005, 2006; Kettl, 2015). Previous research on the erosion of merit principles has featured theoretical arguments but very little observational evidence on their status. Spirited rhetorical claims exist on both sides of the merit system reform debate, but the actual level of employee support for merit principles, and the influence of those principles on their working lives in government agencies, begs for more systematic analysis.

In this study, the initial objective is to understand the degree to which employees perceive support for merit principles within their agencies. This is a critical question because the trend toward personnel system decentralization allows individual agencies to have substantial control over hiring, firing, and rewarding employees, and as noted, the thrust of reform has sought to weaken or dismantle merit-based employee protections. Federal agencies may vary in their adherence to merit principles as a result. Given this context, it is important to know what federal employees think about the implementation of merit in their organizations. It is always possible that civil service policies actually implemented are substantially different from intended policies (Khilji & Wang, 2006). Employee perceptions of those policies can provide insight into how the policies are implemented and subsequently how they may impact organizational environments and performance (Wright & Nishii, 2006). Researchers have long acknowledged that employees are well positioned to judge the reality of policy implementation (Budhwar, 2000; Cunningham & Hyman, 1995, Larsen & Brewster, 2003, Maxwell & Watson, 2006; Renwick, 2003; Whittaker & Marchington, 2003). Consequently, the first questions addressed in our analysis are: “What is the evidence on employee perceptions of adherence to merit principles within the 24 largest federal agencies, and how do those perceptions vary from agency to agency?” Answers to these basic questions provide insight for understanding the status of merit in federal employment.

To the extent that federal employee perceptions of merit system integrity vary across the agencies studied, the question of what factors may help to explain that variation in individual employee perceptions arises. Supervisory status could be one important independent variable because supervisors by virtue of their positions may have more positive attitudes than nonsupervisory employees (Brewer, 2005; Hage & Aiken, 1970). In addition, perceptions of the implementation of merit principles may vary with years of experience in the federal service. It may well be that workers with less tenure will be more optimistic than those with more years of service. Employees with longer tenure will have been through more of the repeated efforts at reforms that potentially threaten merit, and hence may be more skeptical about support for merit principles in their organizations. It is likely also that minority ethnic and racial status will impact these perceptions, and consequently, variables denoting whether respondent employees are Hispanic or black are examined in subsequent analyses with the expectation that minority employees who generally are more likely to experience problems of discrimination will be less likely to believe merit principles are promoted.8 Finally, employee level of education is included in the analysis. We expect that employees with more education will be more sensitive about merit principles and potential threats to them, and hence the relationship between level of education and perceptions of adherence to merit principles will be negative. All of these variables have been found in earlier work to be related to employee perceptions of several dimensions of organizational management and performance.9

The final question examined, and perhaps the most important question, is whether agency adherence to merit principles promotes positive organizational and workrelated attitudes as reflected in general satisfaction with the organization as a workplace, satisfaction with agency leadership and recognition received, lower turnover intentions, and perceived quality of work-unit output. As previously noted, employee perceptions of their agencies as good places to work are important because they indicate a generally positive perception of the organization that can impact employee performance (Rainey, 1997). Employee satisfaction with agency leadership and recognition received is examined because it may be positively associated with productive work behaviors such as organizational commitment and positive organizational citizenship behavior (Rainey, 2014). Concern about employee turnover intentions is warranted because of what they communicate about employee commitment to their agencies. While turnover intentions may not accurately predict actual turnover, researchers have found that an expression of intent to turnover is a good indicator of general dissatisfaction or lack of commitment to an organization (Cohen et al., 2016; Jung, 2010). Finally, perceptions of work unit performance are also a key indicator of an important aspect of the quality of work life. Research has shown that employees who perceive that they work in high-performing work units are happier and more productive workers (Leisink et al., 2021; Walker et al., 2012).

#### A non-credible civil service eviscerates administration. Empirics AND consensus of studies confirms it.

Kohei Suzuki 25, PhD, Assistant Professor, Institute of Public Administration, Faculty of Governance & Global Affairs, Leiden University, "Government Efficiency or Administrative Backsliding?: Warning Signs from Global Experience with Administrative Decline," Asia Pacific Journal of Public Administration, Vol. 47, No. 2, pg. 91-95, 02/28/2025, T&F.

While such reforms might yield short-term efficiency gains and expenditure cuts, they raise serious concerns about the long-term consequences for bureaucratic autonomy and institutional capacity. The fundamental question is whether these changes will truly create an “efficient government” and “make America great again” or instead undermine the professional foundations of American public administration.

To address this question, we must consider why professional bureaucracies are essential to modern governance. Effective policy implementation requires both political direction and administrative expertise. While elected officials establish broad policy goals, they lack the specialised knowledge needed for the thousands of technical decisions that government operations demand daily. Career civil servants bridge this gap, providing the expertise and continuity necessary for effective public service delivery.

Career civil servants’ expertise becomes evident when we examine the complex tasks of modern governance. Daily operations include activities like collecting pension premiums, analysing economic data, implementing financial regulations, and managing defence procurement. These functions demand not just specialised knowledge but years of practical experience and institutional understanding – qualities that cannot be rapidly replaced or replicated.

The effective functioning of democratic governance thus depends on a careful balance: elected officials provide policy direction while professional bureaucrats handle technical implementation. Critical decisions – from monetary policy to drug safety certification – require deep technical expertise rather than political judgement (Fukuyama, 2024). When politicians overreach into these technical domains, their limited specialised knowledge and focus on short-term political gains often leads to suboptimal or even harmful outcomes.

While the need for professional bureaucracy is universal, countries vary considerably in how they balance political leadership and administrative expertise. A 2020 expert survey by the Quality of Government Institute at the University of Gothenburg, Sweden, offers valuable insights into these differences, measuring how strongly countries adhere to merit-based principles in their personnel practices (Nistotskaya et al., 2021). Their survey data in Figure 1 reveals significant variation across OECD member and Asian countries and regions, with higher scores indicating stronger merit-based practices and correspondingly lower levels of political intervention in personnel decisions.

Under merit-based systems, civil service appointments primarily depend on educational background and professional experience rather than political connections. Countries like Norway, Hong Kong, the Netherlands, Singapore, Sweden, and Japan have developed particularly robust merit-based practices. The American system stands out especially among developed nations for its relatively extensive use of political appointments higher degrees of political interference in personnel matters. The contrast becomes stark when comparing specific numbers: while Japan maintains only about 80 political appointments in its entire civil service, the United States replaces approximately 4,000 high-ranking positions through political appointments during administrative transitions (Kobayashi, 2024). Such high degree of political influence in personnel matters has long distinguished the U.S. federal bureaucracy from its counterparts in other advanced democracies.

The extensive use of political appointments in the U.S. federal bureaucracy reflects a broader phenomenon that public administration scholars term “politicisation” - the practice of basing civil service personnel decisions on political criteria such as party relationships, personal connections, or ideological alignment rather than merit criteria (Peters & Pierre, 2004). The current reforms under the second Trump administration would significantly expand this already distinctive feature of American public administration.

The consequences of such politicisation have been extensively studied. A robust body of research, drawing from diverse national contexts including both developed and developing countries, demonstrates that increasing political control over bureaucracy tends to undermine, rather than enhance, government performance. Empirical studies around the world have found strong correlations between excessive politicisation and increased corruption, decreased organisational performance, and reduced operational efficiency (Cornell, 2014; Dahlström & Lapuente, 2017; Lapuente & Suzuki, 2020; Lewis, 2011; Nistotskaya & Cingolani, 2016). In fact, our recent systematic review of over 1,000 peer-reviewed papers provides compelling evidence that merit-based systems yield significantly better outcomes than politicised ones, including reduced corruption, improved efficiency, increased public trust, and enhanced civil servant motivation (Oliveira et al., 2024).

#### Administrative failure impedes attempts to moderate ‘polycrisis.’

Dr. Henry Farrell 25, PhD, Professor, International Affairs, Johns Hopkins School of Advanced International Studies, "When the Polycrisis Hits the Omnishambles, What Comes Next?" Programmable Mutter, 02/21/2025, https://www.programmablemutter.com/p/when-the-polycrisis-hits-the-omnishambles. [italics in original]

The point of Paul’s post, taken from Marvin Hyman Minsky,\* is that one of the key roles of government is to mitigate the tendencies toward irrationality in financial markets. Risks and higher profits tend to go together, encouraging the participants in financial markets to do ever chancier things with their and their clients’ money. To the extent that these risks are correlated, or actively reinforce each other, there is an ever increasing likelihood that people take too much risk and market goes kaput. Government regulators create rules that dampen this “irrational exuberance” to the immediate annoyance of financial people (who want to make as much money as they can) but to the long term benefit of society, making markets more stable, and crises less common. So what happens when the crypto folks (whose *entire business model* is irrational exuberance and ‘number go up’) get their hands on the levers of government? Nothing good.

My and Abe’s argument also talks a lot about the consequences of crypto - but for economic statecraft. We say that the two-decades-old system of economic coercion, under which specialized technocrats set the pace of economic statecraft - is over. We’ve suggested elsewhere that this system had its own tendencies toward irrational exuberance, underestimating the risks that their actions could have unexpected consequences. But those risks are likely to be much greater in Trump’s second administration, which combines a much bigger appetite for pushing other countries around, with a revealed preference to let Elon Musk and the crypto bros start smashing the government structures that actually allow the U.S. to do this.

That is partly down to Trump’s own peevish unpredictability. Thin skin and thick skull are an unfortunate combination in a leader. It is also down to the various factions in government, which seem united only in their enthusiasm to dismantle the administrative state. In our words, “we may be looking at the beginning of a world in which countries disentangle themselves from U.S. dependence at the same time that our machinery of power begins rusting from within.”

These are loosely similar insights - but they concern different aspects of the U.S. state. So is there some way of bringing them together?

A couple of years ago, on my now deleted Twitter account, I had a brief joking dialogue with Adam Tooze, about the concept of polycrisis, which he didn’t invent but has popularized. Adam explains the polycrisis as a concatenation of big problems - e.g. climate change; the crisis of democracy; global migration - that not only hit simultaneously but plausibly make each other worse. I pointed to another neologism, the “omnishambles” (from Arnaldo Ianucci’s dark comedy, *The Thick of It* - Wikipedia definition), describing governmental situations in which no-one has any idea what is going on or what to do, and policy-making is utterly shambolic and fucked up. By construction, I suggested, there must be such things as the polyshambles and omnicrisis.

It wasn’t a very good joke, but I think that there is a useful intuition behind it, which is worth turning into an entirely unfunny diagnosis. We are in a world where our problems are getting bigger, and are feeding on each other. Those of us who live in the U.S. are at the beginning of a sudden and dramatic worsening of the quality of government policy making. In other words, we are about to see a collision between the polycrisis and the omnishambles. So how do we think about this collision usefully?

From this perspective, both Paul’s post, and our op-ed map specific pieces of a larger and more complex problem. And when I use the term ‘complex,’ I use it advisedly. The polycrisis is a simplified way of talking about the world as a complex system. In Scott Page’s description, a “complex system consists of diverse entities that interact in a network or contact structure.” In less academic language, it is a larger system composed of smaller sub-systems that interact with each other. Even when these sub-systems are relatively simple, the whole may be complex and unpredictable. And when they are themselves complex …

This way of thinking about the world helps clarify what the polycrisis involves. Complex interactions may give rise to positive feedback loops, in which different parts of the system reinforce each other so as to induce instability. To apply this to the polycrisis, think crudely of how climate change may increase the likelihood of large scale migration across borders, leading to crises of democracy and government legitimacy, which in turn makes governments less capable of regulating the economic activities that make climate change worse. But complex systems may also give rise to homeostasis, in which some parts of the system become adaptive, perhaps dampening down positive feedback loops and responding dynamically to unexpected changes in the environment.

One of Paul’s early books builds on these ideas (although he later became skeptical, since they are notably better at describing the phenomenon than predicting how it will unfold, let alone providing precise guidance on what to do about it). Indeed, the Minsky cycle is *exactly* an example of how government may act to limit the likelihood of positive feedback loops getting out of hand. Without regulation, irrational exuberance feeds upon itself and the behaviors it induces. The role of the Federal Reserve, famously, is to order “the punch bowl removed just when the party [is] really warming up.”

Behind Paul’s post - and our piece - lies a possible understanding of the larger situation we face. In good times, we have an environment in which the problems are not too big, or can be dealt with one by one, or, ideally, both things are true at once. We have a government that is capable of dealing with them, acting as a kind of homeostatic regulator, which dampens down the possible chaos without, and perhaps even takes advantage of the unexpected possibilities it provides (while avoiding eviscerating the dynamical aspects of the economy - one can absolutely have too much government).

We are not in those good times. Instead, we are in an increasingly unpredictable environment with multiple major problems reinforcing each other in complex ways (the polycrisis). At much the same time, the most significant government in the world is absolutely not acting as a homeostatic regulator. Instead, of dampening down the chaos, it is accelerating it, while ripping out large swathes of the administrative apparatus that potentially allow it to understand the environment and influence it.

Trump’s second term is going to be the apotheosis of the omnishambles. And it is potentially *even grimmer* than that. In an ideal world, there is at least a second order feedback loop such that bigger problems leads to better government and the expansion of capacity for government to deal with these problems in conjunction with other modes of problem solving (markets; democracy). In the world we are in right now, there seems to be just the opposite set of feedbacks. Bigger problems are not leading to better government in the U.S. and elsewhere, but to worse.

As noted already, complexity theory is much better at describing problems like this than at predicting how they will turn out, let alone solving them. But it at least provides a framework for seeing how the different sub-systems might interact together.

The crises we are likely to face in Trump’s second term are not simply going to be crises of financial regulation, or of tariffs, or of withdrawn security guarantees, or breakdowns of scientific knowledge, or loss of capacity to respond to emergencies. They are likely, instead to involve the interactions of two or more of these factors with each other, and with the pre-existing problems of the polycrisis. Mapping out - even crudely - the relationships between these different sub-systems will help us be better prepared for what happens, even if we cannot fully anticipate it.

It provides a better framework for understanding the true weirdness of the ideas animating the agenda of DOGE and many of the Silicon Valley connected people who are backing Trump. Behind Marc Andreessen’s celebration of ‘effective accelerationism’ with its ‘technocapital singularity’ lies the delirious counter-cybernetics of the neo-reactionary thinker Nick Land, who depicts positive feedback loops as a Lovecraftian dark god to be worshipped and celebrated:

The story goes like this: Earth is captured by a technocapital singularity as renaissance rationalization and oceanic navigation lock into commoditization take-off. Logistically accelerating techno-economic interactivity crumbles social order in auto sophisticating machine runaway. As markets learn to manufacture intelligence, politics modernizes, upgrades paranoia, and tries to get a grip. The body count climbs through a series of globewars. Emergent Planetary Commercium trashes the Holy Roman Empire, the Napoleonic Continental System, the Second and Third Reich, and the Soviet International, cranking-up world disorder through compressing phases. Deregulation and the state arms-race each other into cyberspace. By the time soft-engineering slithers out of its box into yours, human security is lurching into crisis. Cloning, lateral genodata transfer, transversal replication, and cyberotics, flood in amongst a relapse onto bacterial sex. Neo-China arrives from the future. Hypersynthetic drugs click into digital voodoo. Retro-disease. Nanospasm.

Finally, it provides a framework for thinking about what we need to do. In a world of proliferating, intersecting crises that feed upon each other and themselves, building state capacity is crucial. This might, or might not mean more state depending - the more crucial and urgent tasks are twofold. First, to remake the state so that it is more flexible and responsive. Second, to create different feedback loops between the state and democracy than the one we are trapped in right now, in which the bigger the crises get, the more that they empower the people who want to ignore them, rip out the control systems, or, in the extreme, actively welcome the crises in. I’ve written before about the beginnings of alternatives that are at least better aware of the challenges we face, but they’re only the beginnings, and we need a whole lot more.

#### That is existential.

Dr. Huan Liu & Dr. Ortwin Renn 25, PhD, Regents Professor, Computer Science & Engineering, Arizona State University; PhD, Professor, GFZ Helmholtz Centre for Geosciences, Former Scientific Director, Institute for Advanced Sustainability Studies, "Polycrisis and Systemic Risk: Assessment, Governance, and Communication," International Journal of Disaster Risk Science, 05/28/2025, Springer. [italics in original]

The last few decades clearly demonstrated that global systems—ranging from finance to national security, to climate change and energy—are highly susceptible to global crises and multiple risks (Renn 2024). As illustrated by the Covid-19 pandemic, Russia’s war on Ukraine, geopolitical tensions, and climate change and others, systemic risks do not remain confined to the global systems in which they originate. With the increasing complexity and interactive dynamics of our interconnected world, these crises are not isolated events, but rather intertwined. They can quickly spread across borders and sectors, as well as amplify and cascade the impact of each crisis from one domain to the next (Lawrence et al. 2024a). For example, the global financial crisis of 2008 not only caused widespread economic disruption but also led to severe political instability (Helleiner 2024). The Covid-19 pandemic has not only induced a health crisis but has also led to severe economic downturns, strained international relations, and accelerated environmental degradation due to constrained supply chains, lack of sustainable substitutes for replacing energy imports, and trade restrictions (Alizadeh et al. 2023). Similarly, climate change, which affects multiple systems simultaneously, including ecosystems, economies, and social structures, also acts as a multiplier, exacerbating existing social and economic inequalities and contributing to political instability and conflict (Kahn et al. 2021; Sillmann et al. 2022). Allegedly separate crises in different global systems influence and amplify each other, creating multiple interacting crises that must be comprehended and responded to collectively as a whole (Moure-Peñín 2024).

In light of these new developments, the emphasis of integrated disaster and risk research has shifted from topical analyses to comprehensive analyses of interconnected and mutually interactive risk sources and crises (Renn 2024). Such interactions have often been framed in the language of “polycrisis,” suggesting that each crisis has the potential to expand, amplify, and cascade from one domain to the next (Lawrence 2024b). The notion of a “polycrisis” serves as an insightful approach for comprehending and tackling significant challenges confronting humanity and has gained traction among an increasing number of commentators, agencies, and researchers who seek to capture the intricate interactions between the world’s conjoined crises (Lawrence, Janzwood, et al. 2022; Hoyer et al. 2023; Helleiner 2024; Lawrence et al. 2024a; Renn 2024). It has been defined and applied in different disciplines over the past two decades, but there are still some disagreements on the definition of the concept, and deficiencies in common understanding as the discussion about polycrisis is still evolving and new elements and aspects have been suggested to create a more comprehensive and operational definition (ASRA 2024).

At the same time, the literature on systemic risk addresses this situation from the perspective of risk assessment and governance (Lucas et al. 2018a; Renn and Lucas 2022; Renn et al. 2022). The concept of systemic risk includes the need to focus on multiple, interacting risks and analyzes the effects of these risks on the functionality and survivability of entire systems such as climate stability, cybersecurity, or energy production. Understanding and managing multiple crises and systemic risks is critical for developing effective strategies to address the intricacies of contemporary global challenges, especially in times of political fragmentation (World Economic Forum 2023). Moreover, geopolitical fragmentation has been identified as a major cause for promoting geo-economic warfare and increasing risks of multidisciplinary conflicts (World Economic Forum 2023). Thus, the significance of studying multiple crises and systemic risks is further emphasized in an era of political fragmentation, highlighting the need for a systemic perspective that assists risk managers to navigate through the complexities of polycrisis and govern their cascading impacts. The conventional risk management framework is incapable of responding to the increasing systemic and existential risks posed by decades of globalization, digitalization, and political segmentation (Lawrence et al. 2024a; Renn 2024).

This review therefore aimed to provide a comprehensive survey of current state-of-the-art research on both polycrisis and systemic risk, and to delineate the implementations of a joint understanding of polycrisis and systemic risk for risk assessment, risk and crisis governance, and effective communication to different audiences. The article first reviews the definitions and concepts of polycrisis and systemic risk, highlighting the commonalities and differences between them. It then summarizes the methods used to assess and model these risks, reviewing new trends for assessing, managing, and governing systemic risks in a complex world. Based on the insights gained from the current literature, it discusses the deficiencies of existing risk assessment, governance, and communication frameworks in the context of addressing systemic risk in polycrisis, and strategies to address these deficiencies. These strategies focus on enhancing the capacity of governance structures to manage interconnected crises, improving the assessment and modeling of systemic risks, and developing effective governance instruments as well as communication strategies to engage diverse stakeholders and affected citizens. Ultimately, the article suggests some lessons to policymakers and practitioners for building more resilient and adaptive response systems capable of dealing with the complexity of interconnected and contemporary global challenges. By synthesizing insights from the polycrisis and systemic risk research, this review also includes implications for future studies.

The article is organized as follows: Section 2 introduces the origin, definition, and concept of polycrisis, followed by Sect. 3, in which we introduce the history and concept of systemic risk, discuss the challenges for risk assessment, governance, and communication, and identify the commonalities and differences between polycrisis and systemic risk. Sections 4, 5, and 6 define the application of a joint understanding of polycrisis and systemic risk to methods of risk assessment, methods of risk management and governance, and types of effective communication to different audiences. In addition, these sections also address the new requirements for coping more adequately than today with systemic risks in situations of polycrisis. Finally, Sect. 7 discusses and summarizes the implications of this review work and delineates directions for future research. Figure 1 presents the overall framework of this review article.

[Figure omitted]

2 Polycrisis: Definitions and Concepts

Recent literature (Lawrence 2023; ASRA 2024; Lawrence et al. 2024a; Lawrence et al. 2024c) has provided a detailed overview of the history and evolution of polycrisis, thus this section only briefly describes the origin of the term “polycrisis” but focuses more on summarizing the various conceptual definitions and proposing a classification for different concepts of polycrisis.

2.1 Origin

The term “polycrisis” was first introduced by complexity theorists Edgar Morin and Anne Brigitte Kern in their 1999 book “Homeland Earth” (Lawrence et al. 2024a). They argued that the world does not face a single vital problem but many complex interconnected problems (Morin et al. 1999). Later, South African sociologist and sustainable transformation theorist Mark Swilling adopted this terminology to describe a complex set of globally interactive socioeconomic, ecological, and cultural-institutional crises that cannot be reduced to a single cause. Swilling also emphasized that climate change, growing inequality, and the financial crisis interact in ways that amplify their combined impact (Swilling 2013). Then, former European Commission President Jean-Claude Juncker used the term “polycrisis” to describe the series of government challenges facing Europe at a time when finance, immigration, and Brexit crises occurred in a 2016 speech, asserting that these crises were not only concurrent but also cascading (Juncker 2016; Ágh 2017; Zeitlin et al. 2019).

More recently, scholars have used the term “polycrisis” to describe the complex interplay between the Covid-19 pandemic, Russia’s war on Ukraine, and climate change, among other issues (Lavell 2021; Sillmann et al. 2022). Columbia University historian Adam Tooze noted in his book *How Covid Shook the World Economy* that while “polycrisis” effectively captures the simultaneous occurrence of different crises, it does not explain their interactions (Tooze 2021). In a *Financial Times* opinion piece, Tooze further suggested that in multiple crises, different shocks interact, making the overall impact more overwhelming than the sum of individual crises (Tooze 2022).

In parallel, the Cascade Institute launched a research program on global multiple crises. In its 2022 discussion paper, the authors proposed the concept of “global polycrisis” as a framework to investigate the causal connections between crises across global systems, providing a clear definition (Lawrence, Janzwood, et al. 2022, p. 2): “A global polycrisis occurs when crises in multiple global systems become causally entangled in ways that significantly degrade humanity’s prospects. These interacting crises produce harms greater than the sum of those the crises would produce in isolation, were their host systems not so deeply interconnected.”

Yet the term “polycrisis” really came into the public eye when it became the main buzzword at the January 2023 annual meeting of the World Economic Forum (WEF) in Davos (Serhan 2023; Lawrence et al. 2024a). The term was placed prominently throughout the document in their first annual report, emphasizing that: “Concurrent shocks, deeply interconnected risks and eroding resilience are giving rise to the risk of polycrisis—where disparate crises interact such that the overall impact far exceeds the sum of each part” (World Economic Forum 2023, p. 9).

The various definitions and characterizations of polycrisis are summarized in Table 1. As one can clearly see, the scope of definitions and concepts is still limited, and most definitions show similar patterns and characteristics. The definitions differ in what they emphasize but they are almost identical in identifying the key features of polycrisis.

[Table omitted]

2.2 A Proposal for Classifying Different Concepts of Polycrisis

Based on the literature review (see Table 1), we came up with a list of crucial features that most sources agree are constitutive for polycrisis: (1) the simultaneity of allegedly independent crises; (2) the potential loss or breakdown of system functionality; (3) the likelihood of crises “infecting” other systems; (iv) the likelihood of risk cascading within and between systems; and (5) the likelihood of amplifying impacts. These features highlight the interconnectedness and complexity of polycrisis, leading to cascading failures across systems and amplifying the effects of individual crises (Lawrence, Williams, et al. 2022; UNDP 2022; Lawrence et al. 2024a; Renn 2024).

Given these characteristics, we found it necessary to produce a more generic framework for understanding and addressing polycrisis. This framework can be categorized into four main dimensions: interconnectedness, complexity and uncertainty, temporal and spatial dimensions, and systemic impacts (Lawrence, Janzwood, et al. 2022; Tooze 2022; Hoyer et al. 2023; Helleiner 2024; Lawrence et al. 2024a; Renn 2024).

* *Interconnectedness* is a defining feature of polycrisis, where multiple crises are interlinked, and their interactions can amplify the effects of individual crises, leading to cascading failures across systems. This interconnectedness means that a crisis in one domain, for instance economic collapse, can trigger or exacerbate crises in other domains. Understanding these linkages is crucial for developing effective strategies to mitigate the impact of polycrisis.
* *Complexity and uncertainty* arise from the multiple, intertwined causes and effects that characterize polycrisis. This complexity makes it difficult to predict outcomes and manage the situation effectively. The unpredictable nature of the interactions between different crises adds a layer of uncertainty, complicating efforts to devise coherent responses. Policymakers and stakeholders must navigate this uncertainty by adopting flexible and adaptive approaches that can respond to evolving conditions.
* *Temporal and spatial dimensions* of polycrisis reflect how these crises can span different geographical regions and evolve over time. The impact of a polycrisis can vary significantly across sectors and populations, affecting different regions and communities in diverse ways. Recognizing these temporal and spatial dimensions is essential for tailored interventions that address the specific needs of affected populations.
* *Systemic impacts* underscore the broad reach of polycrisis, which can affect entire systems such as economic, social, environmental, and political systems. Unlike isolated incidents, polycrisis can disrupt the functionality of multiple systems simultaneously, leading to widespread instability, which highlights the need for integrated approaches that consider the systemic nature of polycrisis.

Therefore, developing a comprehensive framework for understanding polycrisis involves recognizing these features and adopting strategies that address the intricate web of interactions between different crises. By focusing on these four dimensions risk analysts are better prepared to provide more accurate and policy-relevant risk assessments and risk managers to develop more effective, efficient, fair, and resilient coping strategies for dealing with polycrisis (Renn 2024). Such holistic approach is crucial for mitigating the cascading failures and amplifying impacts that characterize polycrisis, ultimately leading to more resilient and adaptive systems.

3 Systemic Risks: Definitions and Concepts

To comprehensively compare and contrast polycrisis and systemic risk, this section first introduces the concept of systemic risk and explores how systemic risk is framed and understood in a variety of academic disciplines. It then elaborates on the commonalities and differences between the two concepts, followed by challenges for risk assessment, governance, and communication.

3.1 History of the Concept of Systemic Risk

The concept of systemic risk has evolved significantly over the decades, reflecting its roots in complexity science and network dynamics. Emerging in the 1950s, it initially focused on mathematical equilibrium and agent-based models to understand impacts such as virus transmission and ecological breakdowns. These early models, however, were limited to assessing risk exposure effects rather than predicting or addressing the systemic nature of risk itself (Faulhaber et al. 1990).

The understanding of systemic risk expanded significantly in the early 2000s, driven by the recognition of “wicked problems” (Rittel and Webber 1973). This period saw an increased focus on how specific events could trigger cascading effects across interconnected systems, leading to widespread losses and potential systemic collapse. The 2007/08 financial crisis and climate-related disasters underscored the importance of these cascading effects, the experience of tipping points in cause-effect relationships, and the relational and procedural aspects of systemic risk (Schweizer 2021; Renn and Lucas 2022; Schweizer et al. 2022).

A major milestone occurred in 2003 when the Organization for Economic Co-operation and Development (OECD) adopted the concept of systemic risks to address threats to essential societal systems like infrastructure, healthcare, and telecommunications. This broadened the concept’s visibility beyond academia into policymaking. Kaufman and Scott (2003) further refined the definition, emphasizing the systemic nature of risk as the probability of breakdowns in an entire system, evidenced by co-movements among its parts. Other authors such as Rodriguez et al. emphasized the systemic relationship between the financial sector and the real-world economy pointing out that allegedly purely financial transactions had systemic impacts on world trade and corporate governance (Rodriguez et al. 2014).

The global financial crisis of the late 2000s, and much later events like the war in Ukraine and the Covid-19 pandemic, clearly demonstrated the real-world manifestations of systemic risks. These crises emphasized the global, catastrophic, and even existential nature of such risks (Helbing 2013; World Economic Forum 2021). De Bandt and Hartmann (2019) characterized systemic risk through the dual components of shocks and propagation mechanisms, highlighting how these elements trigger systemic impacts.

Further refining the concept, Billio et al. (2012) defined systemic risk as circumstances threatening financial system stability and public confidence. Smaga (2014) proposed that systemic risk involves shocks leading to significant imbalances, impairing financial systems and adversely affecting the real economy. The European Central Bank (ECB) (2010) and other scholars have echoed these definitions, focusing on various mechanisms like imbalances, correlated exposures, and feedback behaviors (Caballero 2011; Mishkin 2011; Acharya et al. 2017).

Beyond the financial focus, systemic risk has been recognized as a threat to critical societal systems with impacts extending beyond their origin, as proposed by Renn (2016) and Schweizer and Renn (2019). Other authors studied the connection between physical and political risks (Homer-Dixon et al. 2022; Jerez-Ramíre and Ramos-Torres, 2022). The International Risk Governance Council (IRGC 2018) highlighted the cascading effects that are typical for systemic risks. The extension of systemic risk to include all natural, social, and technological domains led to an inflation of definitions and conceptualizations that emphasize specific features of systemic risks over conventional risks. Table 2 provides an overview of the most popular definitions and characterizations of systemic risks.

[Table omitted]

Based on the intensive discussion on the nature and characteristics of systemic risk, several scholars have suggested core properties of systemic risks, highlighting their complex behaviors (Renn 2016; Lucas et al. 2018a, b; Lawrence, Janzwood, et al. 2022; Renn et al. 2022; Schweizer 2022; Sillmann. et al. 2022). Although terminology may differ, there is consensus that systemic risks possess four key properties (Lawrence, Janzwood, et al. 2022; Lawrence et al. 2023):

* Extremely complex and dynamic networks with multiple, synergistic causes and feedback loops.
* Highly nonlinear cause-effect relationships characterized by disproportional causation, with multiple equilibria, unpredictable tipping points, and hysteresis.
* Causal processes that transcend the boundaries of administrative and political units, social sectors, and scientific disciplines, operating on multiple time scales across natural, social, and technological systems.
* Stochastic relationships involving deep uncertainty about both underlying causes and ultimate consequences.

However, there have been also critical reviews of the concept of systemic risks. Getmansky et al. (2015) argued that the current situation in the literature regarding the definition of systemic risk is not satisfactory and lacks precision and clarity.

Overall, the concept of systemic risk has evolved from its initial mathematical models to a comprehensive understanding encompassing financial, ecological, and societal systems, emphasizing the interconnectedness and cascading effects that characterize modern systemic threats.

3.2 Multiple Perspectives from Different Disciplines

Systemic risk is understood and conceptualized differently across various disciplines, each offering unique insights into its nature and implications (Renn et al. 2022). This section aims to provide a coherent and precise overview of how systemic risk is perceived in fields such as economics, social sciences, engineering, ecology, and disaster risk management.

*Economics and Financial Systems*: In economics, particularly within financial systems, systemic risk is primarily associated with financial crises, regulatory measures, and market interdependencies. Early research focused on bank failures and the theoretical underpinnings of bank runs. Diamond and Dybvig (1983) pioneered the formal modeling of liquidity transformation in banks, illustrating how this could lead to bank runs. Subsequent work by Jacklin and Bhattacharya (1988) and Donaldson (1992) expanded on this by exploring panics, interbank trading, and the probability of financial crises. Kaufman and Scott (2003) provided a widely accepted definition of systemic risk in finance, describing it as the risk of breakdowns in an entire system, evidenced by co-movements among its parts. Systemic risk in banking often refers to a macro-shock affecting the entire financial system (Bartholomew and Whalen 1995) or a sudden event disrupting financial markets (Mishkin 1997). It also includes the micro-level transmission of shocks through interconnected institutions (Kaufman 1995) and the risk of cascading failures triggered by participant defaults (Group of Ten 2001).

*Social Sciences*: Social scientists view systemic risk through the lens of social systems and their vulnerabilities, with a primary emphasis on the unintended or unforeseen effects of multiple interactions between individuals, groups, and organizations modified or shaped by social, economic, political, and cultural context conditions (Lucas et al. 2018a, b). Helbing (2013) highlighted the nonlinear interdependencies resulting from human interactions, which can lead to unpredictable outcomes like social unrest and revolutions. Such systemic risks manifest when societal equilibrium is significantly disrupted by radical movements (Schroter et al. 2014).

*Engineering and Technological Systems*: In engineering, systemic risk is often discussed in the context of infrastructure and technological systems, focusing on resilience, safety engineering, and interdependencies. Technological systemic risk involves potential disruptions within systems like cybersecurity, artificial intelligence (AI), and critical infrastructure, leading to widespread and cascading effects (Schweizer and Renn 2019; Liu et al. 2021). These risks can propagate through interconnected digital infrastructures, affecting sectors ranging from national security to personal privacy.

*Ecology and Environmental Sciences*: Environmental scientists link systemic risk to ecological and environmental systems, assessing interactions between human interventions and natural responses. Systemic risk in this context refers to the potential collapse of ecosystems or widespread disruptions with cascading effects on both ecological and socioeconomic systems (Scheffer et al. 2009; Helbing 2013; Lenton 2013). Examples include climate change, biodiversity loss, and industrial pollution, all of which have far-reaching and interconnected impacts.

*Natural Hazards and Disaster Risk Management*: In disaster risk management, systemic risk involves the potential for natural hazards and disasters to cause widespread, cascading effects across interconnected ecological, social, and economic systems (Lade et al. 2020; Mitra and Shaw 2023; Richardson et al. 2023). This type of risk is shaped by the complexity and interdependencies of modern societies, where disruptions in one area can trigger failures in others. Systemic risks related to natural hazards require comprehensive and integrated approaches to risk assessment and management (UNDRR 2021; Sillmann et al. 2022).

By integrating insights from different disciplines, a more comprehensive understanding of systemic risks can be accomplished. Simultaneously, collaborative governance, adaptive strategies, and holistic analysis are essential for addressing the multifaceted nature of these risks. This multidisciplinary approach is crucial for assessing and analyzing systemic risk as well as developing effective mitigation and management strategies.

3.3 Synopsis: The Relationship between Polycrisis and Systemic Risk

In an increasingly interconnected and complex world, the relationship between polycrisis and systemic risk has gained significant attention. Although these concepts are intimately related, they are also distinct (Lawrence et al. 2024b).

Polycrisis incorporates two core features of systemic risks. First, they both arise from the high degree of interconnectivity among system elements, where a single disruption can generate cascading impacts throughout the system. Second, both imply that discernible boundaries separate one system from another, although discrete systems may influence each other by exchanging energy, matter, information, and people (Lawrence, Janzwood, et al. 2022; Lawrence et al. 2024a; Lawrence et al. 2024c; Renn 2024).

However, polycrisis differs from systemic risk in three important aspects (Lawrence, Janzwood, et al. 2022). First, the studies on systemic risk are primarily focused on the pre-crisis conditions looking into the drivers and causes for interrelated disasters and suggesting potential measures and policies to avoid, prevent, or mitigate these risks. The studies on polycrisis also include the investigation of causal roots of each crisis element but are more focused on how to handle multiple crises once these interconnected crises have manifested themselves. Second, systemic risk is generally assumed to arise within a single system, whereas polycrisis emphasizes the causal entanglement of crises across multiple systems, including coincidences that are not causally related but connected through interacting impacts. This distinction is well established by the concepts of intra-systemic and inter-systemic impacts (Lawrence et al. 2024a). Finally, while systemic risk literature highlights the complexity and nature of interacting risks, polycrisis underscores the complexity of the systems’ environment in which these risks arise (Lawrence, Janzwood, et al. 2022; Lawrence et al. 2024a). Figure 2 provides an overview of the evolution of the debate on systemic risk and polycrisis.

[Figure omitted]

3.4 Challenges for Risk Assessment, Governance, and Communication

The increasingly interconnected and complex world, the emergence of polycrisis and systemic risk—where multiple crises occur simultaneously and interact with each other—presents significant challenges for risk assessment, governance, and communication (Renn 2024). In risk assessment, one of the main challenges is addressing the complex interdependencies between different types of risks. Economic, social, environmental, and political crises do not occur in isolation; they are interconnected through intricate feedback loops (Schweizer 2021). Also, polycrisis situations often exhibit nonlinear dynamics, where small changes in one area can lead to disproportionately large impacts elsewhere (Lucas et al. 2018b). In addition, the combined effect of multiple crises can give rise to emergent properties—outcomes that are not predictable by analyzing individual crises in isolation (Scheffer et al. 2009). Accurate risk assessment relies on the availability of comprehensive data, which are often scarce, incomplete, or difficult to obtain (Sillmann et al. 2022).

Governance in the context of polycrisis is often hindered by fragmented structures and siloed approaches (Renn 2008; Pildes 2023). Different sectors and agencies may operate independently, with limited coordination and communication. This fragmentation can lead to inefficiencies and gaps in the response to crises. Also, polycrisis situations are characterized by rapid changes and high levels of uncertainty. Therefore, enhancing the adaptability and flexibility of governance systems is essential for managing systemic risks (Pildes 2023). Besides, effective governance requires the active participation of a wide range of stakeholders, including government institutions, civil society organizations, the private sector, and local communities (Klinke and Renn 2014). While engaging these diverse stakeholders in decision-making processes can be challenging, they add valuable information and experiential insights for assessing and managing risks. In addition, managing polycrisis requires significant resources, including financial, human, and technical capacities. Many governance structures, particularly in developing regions, may lack the necessary resources to effectively address systemic risks (Sillmann et al. 2022).

#### Independently, it averts nuclear war.

William Walker 25, PhD, Professor Emeritus, International Relations, University of St Andrews, "Reflections on Complexity, Nuclear Ordering and Disordering Over Time," Cambridge Review of International Affairs, Vol. 38, No. 3, pg. 280-301, 04/15/2025, T&F.

These developments have impacts on the problems of war and nuclear war that are as consequential as in other fields (Acton 2018, Chyba 2020, Favaro 2021). Fundamental questions are being asked about, amongst other things, the consequences of automation (where human control begins and ends), cyber warfare and AI (interference with command and control, blurring of reality and unreality) and the increasing vulnerability of nuclear forces to disablement by advanced conventional means. A common fear is that technological change, spurred by rivalry and beyond effective regulation, is contributing to the destabilisation of strategic relations and abilities to manage crises. Hitherto, no substantial proposals have been tabled by governments for negotiation of treaties and agreements to limit the new technologies’ dangerous effects.

These three developments outlined above—structural shifts, hegemonic assertiveness and transgression, and radical technological change—are together militating against the extensive nuclear ordering experienced during the Cold War and its immediate aftermath. For some years, there has been a growing sense of intractable complexity, of a nuclear domain that is becoming ‘beyond ordering’ in a deeply troubled political and economic environment.

The 2024 US election: towards what?

This article is being completed three weeks after Donald Trump and his Republican Party’s remarkable election victory in early November 2024. How much of a discontinuity does it herald? How will the wars in the Ukraine and Middle East and their outcomes be affected? How will relations with friends and foes develop? What does it mean for the United States’ own internal stability?

The questions and uncertainties are legion. The new administration’s arrival adds a disconcerting level of disturbance to an already disturbed international order. In Europe and East Asia, there is particular concern over the United States’ isolationist trend, rendering states more vulnerable to military intimidation if commitments to extended deterrence weaken and confidence in it drains away, possibly provoking of a fresh wave of nuclear proliferation. However, it is not just isolationism that is disconcerting: it is being accompanied by a disturbing level of aggression, expressed by several of Mr Trump’s senior appointees, towards the United States’ own administrative state—the ‘deep state’—and, indeed, towards the rational processes upon which the military-nuclear edifice and much else, including response to the climate emergency, depend. What does this imply for crisis management, let alone policy formulation and implementation? Similar disdain is evident in attitudes towards international institutions.

In terms of our theme, it is as if nuclear history’s organiser-in-chief of complexity is rebelling against the very means by which complexity has been understood and addressed at home and abroad. Only time will tell whether the anxieties are being overplayed.

Conclusion and outlook: the end of the road for hegemonic war?

Near the Cold War’s end, the sociologist Norbert Elias wrote, in very old age, a long essay on the history of hegemonic rivalry and war from classical to modern times (Elias, [1985] 2010). The East-West conflict with US-Russian rivalry at its heart was its latest episode. He drew particular attention to the role of emotion, inflamed by contending powers’ clashing interests, ideologies and imperial drives, in the periodic eruption of mass violence.18 His question: has humankind reached ‘the end of the road’ in this history following the nuclear weapon’s arrival? ‘We are living at a moment of human development in which the next war [among hegemons] will bring with it the destruction of a considerable part of humanity … and not least of the war-makers themselves.’ By entrenching caution through nuclear deterrence, the road leading to great wars might have reached its end. He found this hard to believe.

An implication of Elias’ analysis is that the end of the long road with its cycles of hegemonic rivalry and war marks the beginning of another long road, this time in the presence of nuclear weapons. There has recently been talk of a second nuclearised Cold War, with China and Russia becoming the United States’ main protagonists. To be followed by a third, fourth and yet more spasms over the long new road? So long as the weapons exist and are valued, each cycle will now carry dangers of annihilation.

Elias made scant reference to his new road’s reliance on a rule-based nuclear order. Its development was a primary response to the nuclear technology’s unique dangers and opportunities. It appeared to offer a foundation upon which nuclear relations could rest, problems could be resolved, and a world without nuclear weapons might eventually be constructed. However, it has proved a fragile edifice whose creation was, looking back, heavily contingent upon a particular concurrence and sequence of events, challenges and structural conditions, and by choices made in response to them.

#### The plan upholds CBR for federal workers. That prevents dissolution of administration without overreaching into executive authority.

Alejandro Perez 24, JD, Boston University School of Law, "The Return of Schedule F and the Perils of Mandating Loyalty in the Civil Service," Boston University Law Review, Vol. 104, No. 7, pg. 2233-2265, 2024, HeinOnline. [italics in original]

To adopt the popular slogan of Dunkin', America runs on the civil service. Civil servants play a myriad of important roles-from managing our national parks and administering Social Security benefits to keeping our air and water clean and protecting consumers from exploitation. The civil servants who make up our administrative agencies "are dedicated and talented professionals who provide the continuity of expertise and experience necessary for the Federal Government to function optimally." 9 Without them, the wheels of our government would almost certainly grind to a halt.

The civil service also constitutes a substantial portion of the workforce. According to the Office of Personnel Management ("OPM"), which oversees the civil service, the federal government employs more than two million people, making Uncle Sam the largest employer in the United States.10 To put it in perspective, the next biggest employers are Walmart, with approximately 1.6 million employees," and Amazon, with nearly one million.12

An essential aspect of the civil service is its nonpartisan nature. Under federal law, civil servants are to be appointed on the basis of merit as opposed to political affiliation,' 3 and they are protected against partisan dismissal and retaliation.1 4 However, this was not always the case.

In the early days of the republic, civil service control rested almost exclusively with the executive branch.' 5 Such control invited cronyism, as it was common for newly elected presidents to reward their supporters with positions in their administrations.1 6 This practice was epitomized during Andrew Jackson's inauguration, when a horde of his political supporters overran the White House in search of jobs that the new President had promised them.17 Senator William L. Marcy of New York famously defended Jackson's actions by stating: "[T]o the victor belong the spoils of the enemy."1 8 And so the practice of reserving positions for those loyal to the President came to be known as the "spoils system."

Rewarding political supporters with public office was not without its consequences. During this period, incompetence, corruption, and outright theft within the civil service were common.19 The spoils system seemed to reach its breaking point in 1881. Charles Guiteau, a fervent supporter of then-President James A. Garfield, camped outside the White House for months, waiting for the civil service job that he assumed Garfield would offer him. 20 The job never came, and Guiteau grew disgruntled. Eventually, Guiteau acquired a gun, tracked down Garfield as he entered a Washington, D.C., railroad station, and assassinated him. 21 This grisly incident sparked the push for reform to the civil service. 22

Shortly after Garfield's assassination, Congress passed the Pendleton Act, which put an end to the rampant spoils system and instead required civil service candidates to undergo competitive examinations. 23 The law also included protections for federal employees from removal by the President or Congress for political reasons. 24 Thus, a new tradition of hiring civil servants on the basis of their merit as opposed to their political leanings was born.

More than a century later, the Supreme Court recognized that civil servants possess "property rights in continued employment" and that government employers may not "deprive them of this property without due process." 25 Around the same time, Congress passed the Civil Service Reform Act ("CSRA"), which codified into law the due process right of civil servants to not be removed from their positions except for cause. 26 Specifically, the CSRA provides employees confronted with the prospect of removal the right to: (1) receive notice of the charges lodged against them; (2) be provided with a reasonable opportunity to respond to the deciding official; and (3) appeal to the Merit Systems Protection Board ("MSPB") after the removal takes effect.27 The law also grants whistleblower protections for civil servants, shielding them from adverse actions for bringing wrongdoing to light.28 In all, the CSRA serves as an additional safeguard against the politicization of the civil service.

Of course, such protections from removal can become obstacles for presidents to follow through on the very plans they were elected to enact. So, like many parts of the American system, balance is crucial. For example, the CSRA's protections against removal do not extend to positions "determined to be of a confidential, policy-determining, policy-making or policy-advocating character by . . . the President for a position that the President has excepted from the competitive service." 29 The protections do not apply, for instance, to the roughly 4,000 federal employees who are presidential appointees (also known as "principal officers"). 30 Executive control over these positions enables presidents to effectuate their policies.

In addition to these principal officers, there are two other types of federal employees: competitive service employees and excepted service employees. 31 Competitive service employees apply for jobs that are open to all applicants, compete with others via an examination administered by OPM, and are ultimately selected for their positions based on the merits of their applications.32

The excepted service, like the competitive service, requires that individuals be selected for their positions "solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity." 33 However, these employees are "excepted" from certain competitive service requirements (such as taking a competitive examination), and agencies are permitted to use their own hiring methods and evaluation criteria.3 4 Certain excepted service employees are further classified into lettered categories, or "schedules," of workers. 35 These excepted service positions must be authorized by statute, by regulations issued by OPM, or by executive orders promulgated by the President.36

Both competitive and excepted service employees enjoy CSRA protections.3 7 This means that agencies that wish to fire individuals in these positions need to prove either that they engaged in some type of misconduct or that their performance is unacceptable.38

*B. Attacks on the Civil Service*

In recent years, the Republican Party has attempted to undermine the Pendleton Act and the CSRA, both of which uphold the political neutrality and impartiality of federal employees. During his 2016 campaign and presidency, Donald Trump frequently promised to "drain the swamp" 39 and characterized civil servants as part of a "deep state"40 working against him.41

Trump and his politically appointed officials also took actions to delegitimize and politicize civil servants. One Trump-appointed official accused civil servants of being "Obama holdovers," "traitors," and "disloyal" based on their perceived ideological views, and then subsequently retaliated against them. 42 For instance, Trump officials have done the following: disbanded and cut funding for climate research agencies; 43 repeatedly transferred, demoted, or fired employees involved in investigating his ties to Russia and his efforts to extort Ukraine for political gain;4 and sowed distrust in public health officials charged with developing and distributing the COVID-19 vaccine. 45

Trump is not alone in his criticism of the civil service. JD Vance, Trump's second-term Vice President, has advocated for the removal of "every single midlevel bureaucrat, every civil servant in the administrative state" and their replacement with loyalists. 46 Elon Musk and Vivek Ramaswamy, who Trump has tapped to lead the newly announced Department of Government Efficiency ("DOGE"), have pledged to eliminate federal agencies they deem to be redundant and wasteful. 47

Conservative attacks on the civil service reached their extreme during the last few months of Trump's first term when he issued Schedule F, which amounted to a direct assault on administrative agencies.

II. THE RAMIFICATIONS OF SCHEDULE F

*A. The Features of Schedule F Explained*

With Executive Order 13957, Trump added a sixth category of workerSchedule F-within the excepted service. 48 This order aimed to reclassify certain civil servants into Schedule F to purportedly enhance the executive branch's ability to "effectively carry out [its] broad array of activities." 49 The order stated that such action was rooted in the need for agency heads to have "greater ability and discretion to assess critical qualities in applicants to fill [excepted service] positions."5 0 In essence, the order sought to streamline hiring because, like other excepted service positions, Schedule F positions would be excepted from competitive service requirements, such as the need to take examinations."

The order would have also made it easier to fire employees reclassified into Schedule F. Another stated rationale for the order was to give the President "the flexibility to expeditiously remove poorly performing employees from [their] positions without facing extensive delays or litigation." 5 2 It is clear that the Trump administration closely read the provisions of 5 U.S.C. § 7511(b)(2). As if quoting the statute, Schedule F's reach extended to "positions of a confidential, policy-determining, policy-making, or policy-advocating character." 53 By design, this carveout would specifically deny Schedule F employees the due process protections afforded by the CSRA.54

Additionally, the number of federal employees falling under the purview of this order would be substantial. Among those subject to reclassification-and thereby more easily fired at will-were those who: (1) substantively participate in developing or drafting regulations and guidelines; (2) supervise attorneys; (3) wield substantial discretion in agency legal functions; (4) work with nonpublic policy deliberations; or (5) conduct agency-level collective bargaining negotiations. 55 Experts estimate that anywhere from tens of thousands to hundreds of thousands of federal employees could potentially fall under this reclassification. 56

To be sure, presidents are entitled to appoint personnel who share their views. After all, presidents view their having been elected as a mandate to implement their chosen policy agendas. 57 Is Schedule F no more than a way of ensuring that the President has a team that faithfully supports their agenda? Some contend that the federal government would operate more efficiently if civil servants were treated as private-sector employees, who are more directly accountable to their managers' decisions. 58 The argument goes that the civil service is generally resistant to change and that civil service laws "slow down progress and hamper American innovation," 59 so granting the executive the flexibility of a private employer could more easily "translate election results into policy." 60 Additionally, in recent years, several states have converted some of their own workers into at-will employees. 61 Why should the federal civil service not simply follow the direction of private companies and some state governments?

The answer is because the President already possesses significant influence over their administration through the approximately 4,000 political appointees they can appoint or remove at will.62 Extending more influence over a broader swath of federal employees through Schedule F constitutes an unnecessary and problematic overreach, as discussed further below.]

*B. Reading Between the Lines: Trump's True Intentions with Schedule F*

At the time Trump issued the order, his administration downplayed the significance of Schedule F, deceitfully portraying its implementation as a means to streamline the removal of poorly performing federal employees. 63 Yet one specific episode should sound the alarm about Trump's true intentions for the civil service. A leaked 2017 memo revealed that James Sherk, a senior Trump aide, urged White House Counsel to explore whether the President had the constitutional authority to dismiss any federal employee at will. 64 If this were the case, Sherk reasoned, then "civil service legislation and union contracts impeding that authority [would be] unconstitutional." 65 This was not an insignificant document, and it was clear that Sherk had the ear of the President. Many of the suggestions outlined in the memo were later enacted by Trump through a variety of executive orders. 66 The Sherk memo thus underpinned the issuance of Schedule F.

In the end, Schedule F was never fully implemented. Trump introduced the policy in October 2020, and President Biden swiftly revoked it upon assuming office in January 2021.67 Nevertheless, the idea of fundamentally reshaping the civil service endures. Trump has pledged to reintroduce Schedule F.68 During a campaign rally, he boldly stated his intention to make "every executive branch employee fireable by the President of the United States." 69 Trump has the enthusiastic backing of conservative organizations, such as the Heritage Foundation, which is advancing "Project 2025," an initiative aimed at "replacing existing government employees with new, more conservative alternatives" in positions newly reclassified by Schedule F. 70 Indeed, Trump has selected Russell Vought, a co-author of Project 2025, to serve in his second administration.?i During Trump's first term, Vought was a key architect of Schedule F, and he remains the "lead advocate" of reinstating the initiative. 72

These developments all but guarantee the revival of the spoils system of the nineteenth century in Trump's second term.

*C. The Problems Inherent in the Reinstatement of Schedule F*

The widespread dismissal of career civil servants in favor of political loyalists poses several critical problems, including: the loss of expertise and continuity; the politicization of scientific research; compromised regulatory standards; diminished government quality; reduced effectiveness and morale; and threats to democratic values.

First, the loss of expertise and continuity is a significant concern. Many federal employees work in highly specialized roles involving complex laws, regulations, policies, and scientific theories. Unlike presidential appointees, most civil servants stay on from administration to administration, ensuring continuity in governmental knowledge and reducing the likelihood of repeated mistakes.73 New political hires, lacking this institutional experience, would likely struggle to match the depth of understanding and stability provided by seasoned civil servants. 74

Second, injecting politics into scientific agencies can undermine their effectiveness. Consider the Department of Energy, which provides grants for small businesses to develop innovative projects, such as sustainable aviation fuels and energy-efficient residential heating and cooling systems. 75 If suddenly politicized, these research grants "will go not to the most promising ideas, but to the closest allies."7 6 Similarly, consider the Environmental Protection Agency ("EPA"), which protects the public from climate pollutants. In such a politicized scenario, officials could argue that there is "tremendous disagreement" about the science behind climate change, as Trump's EPA Administrator did in 2017.77

Third, compromising regulatory standards can endanger public health. Take, for instance, a poultry slaughter line. There are regulations put in place to prevent meat from harming consumers, such as rules governing the speed at which inspectors in the U.S. Department of Agriculture ("USDA") must physically examine chickens for defects. 78 However, a poultry company, seeking to maximize its profits by selling more chicken, may have an interest in rushing through food regulation processes. Installing individuals at the USDA who are more amenable to corporate interests could lead to these regulations being disregarded. Consequently, caution and safety would be sacrificed in favor of speed and efficiency. This could compromise food safety and public health,79 illustrating the dangers of politicizing regulatory processes.

Fourth, replacing moderate civil servants with extremists undermines the quality of government. Whereas the ideologies of agency leadership regularly swing from left to right depending on who occupies the Oval Office, civil servants tend to be more moderate. 80 This contrast serves as a checking function on the other's power and thus serves as an "administrative separation of powers." 8 ' Therefore, civil servants act as bulwarks, positioned to resist the efforts of political appointees to push forward hyper-partisan agendas and instead "promote the rule of law, advance reasoned approaches to decisionmaking, and provide intergenerational stability." 82 To witness this in practice, consider Trump's attempt to install Jeffrey Clark as his acting Attorney General to wield the powers of the Justice Department and overturn the results of the 2020 presidential election.83 In a maneuver that would have brought the department's operations to a standstill, hundreds of civil servants threatened to resign en masse, prompting Trump to backpedal on his actions. 84

Fifth, a politicized civil service results in decreased effectiveness and morale. The theory of neutral competence suggests that nonpartisan civil servants are more apt to possess specialized policy expertise, meaningful experience, public management skills, and relationships with key stakeholders. . . . and also serve as 'honest brokers' in a world of partisan and ideological divisions." 85 Politicized civil service systems, on the other hand, result in shorter tenures, greater turnover, reduced morale, and barriers to recruitment of highly qualified individuals.86

Lastly, politicizing the civil service threatens democratic principles. Such a system fosters public cynicism and distrust of administrative agencies.8 7 Additionally, a government of sycophants cannot "check authoritarianism or protect the public interest from exploitation for private gain." 88 Federal employees play a crucial role in reporting illegal or unethical activities and misconduct. 89 They also release essential information, such as election data, unemployment rates, and government spending figures, so as to ensure transparency and accountability. 90 Such information is meant to be unbiased and untainted by partisanship and is a sign of a healthy democracy. By contrast, the concentration of bureaucratic power in the executive is a common strategy used by autocrats to limit oversight, silence opponents, and deny citizens certain rights and liberties.9 1 A civil service influenced by partisanship would almost certainly result in a decline in democratic values.

III. RESPONSES TO SCHEDULE F

*A. Responses to Schedule F that Miss the Mark*

Following its passage, Schedule F was met with widespread condemnation from both sides of the political aisle. Representative Gerry Connolly (D-VA) said the order "undermine[d] our 140 year professional civil service." 92 Representative Brian Fitzpatrick (R-PA) suggested that it would "allow the hiring of political cronies and allies at the expense of expertise." 93 Dr. Ronald Sanders-a lifelong Republican and Trump's appointed Chair to the Federal Salary Council-resigned in disgust, stating that he could not "be part of an Administration that seeks ... to replace apolitical expertise with political obeisance." 94 President Biden, in revoking Schedule F, expressed that the policy "not only was unnecessary to the conditions of good administration, but also undermined the foundations of the civil service and its merit system principles, which were essential to the Pendleton Civil Service Reform Act of 1883's repudiation of the spoils system." 95

For better or worse, Schedule F has exposed a significant vulnerability in the civil service that will likely be exploited by Trump in his second term. Since 2020, both the legislative and executive branches have made efforts to prevent subsequent administrations from reviving this policy. The success of these initiatives, however, has been decidedly mixed. Before proposing new, perhaps more effective solutions, it is important to understand why current responses have failed to adequately address the problem.

1. The Legislative Response

In 2021, Representatives Connolly and Fitzpatrick introduced the Preventing a Patronage System Act ("PPSA"). 96 The PPSA aimed to limit the number of civil service positions that could be moved from the competitive service to the excepted service. 97 The bill also sought to prevent the President from placing federal employees under new schedule classifications without congressional authorization. 98 The bill managed to pass the House, but despite being characterized as a bipartisan effort, the PPSA only garnered the support of six Republicans. 99 Ultimately, the measure stalled in the Senate and failed to become law.100

The legislative approach reveals two critical challenges. The first is the simple reality that, with the GOP gaining control of both the House and Senate, the likelihood of passing any meaningful civil service reform has diminished significantly.101

The second challenge stems from Democrats' reticence to make civil service protections "a big enough priority to warrant fighting for its inclusion in mustpass bills thus far." 0 2 As Professor Don Kettl notes: "The Democrats have been focused for the most part not on the operations of government but larger policy issues .... [They] simply have not paid as much attention to government's internal management functions as perhaps the Republicans have . ... "103 Prior to the 2024 election, Professor Donald Moynihan also pointed out that many Democrats believed that if Trump failed to win the presidency a second time, then the danger of Schedule F would disappear with him.104 This, of course, did not come to pass.

These challenges underscore the necessity for a more strategic approach from Democrats-one that involves fighting for civil service protections as part of critical legislation, rather than treating them as secondary concerns.

2. The Executive Response

As easy as it was for Biden to revoke Schedule F with an executive order, Trump, in his second term, could just as easily reimplement the policy with an executive order of his own. To mitigate this risk, OPM-under Biden's direction-issued a rule to protect against the reimplementation of Schedule F.105 The rule provides that individuals retain their CSRA protections even "if they are moved involuntarily from the competitive service to the excepted service." 0 6 The rule also clarifies that "confidential, policy-determining, policymaking, or policy-advocating" positions specifically refer to "noncareer political appointees" and *not* career civil servants.107

The executive response benefits from offering a far more robust protection of the civil service than the legislative response. The rule is firmly rooted in caselaw and legislative history,108 and it is indeed helpful in developing latter portions of this Note.1 09 Nevertheless, it remains vulnerable to reversal by Trump in his second term."l0 Indeed, Project 2025, the same organization recruiting Trump loyalists to replace career civil servants, is also working on what it calls "the Playbook," which is a "secret compilation of executive orders and initiatives for the first 180 days of the [Trump] administration.""'1 Presumably, an executive order overruling OPM's rule and revitalizing Schedule F is within Project 2025's arsenal."1 2 Thus, OPM's rule may only serve as "a speed bump, rather than a full block, of Schedule F.""13

*B. The Most Effective Response: The Judicial Response*

For the reasons outlined above, the executive and legislative responses are ineffective to prevent the reimplementation of Schedule F. Both approaches seem to assume that Trump's actions are legal, and they aim to block the order from going into effect by changing the law or writing new regulations. However, I do not believe that the legality point should be so readily conceded. Here, I explore whether the presidency actually possesses the power to strip civil service employees of due process protections. I present three reasons why Schedule F may in fact be invalid, concluding that the judicial branch is the appropriate avenue to strike down Schedule F and protect the rights of civil service employees.

There has been very little scholarship devoted to examining the legality of Schedule F. The United States District Court for the District of Columbia briefly considered the issue when the National Treasury Employees Union ("NTEU") sued the Trump administration in October 2020, seeking to enjoin Schedule F's implementation. 114 \*\*\*FOOTNOTE BEGINS\*\*\* Complaint for Declaratory and Injunctive Relief at 2, Nat'l Treasury Emps. Union ("NTEU") v. Trump, No. 20-3078 (D.D.C. Oct. 26, 2020) (asserting E.O. 13,957 violates law because it is contrary to Congress's delegation of authority to President). \*\*\*FOOTNOTE ENDS\*\*\* However, the NTEU voluntarily dismissed the suit once Biden rescinded the order.11 5 Therefore, the judicial response to the reimplementation of Schedule F by a future administration is a live issue. The remainder of this Note suggests three frameworks that uniquely empower courts to invalidate Schedule F.

#### ‘Unionization’ is key. It’s the bulwark against the erosion of the civil service.

Nicholas Handler 24, JD, MPhil, Fellow & Lecturer, Law, Stanford Law School; Associate Professor, Law, Texas A&M University, "Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power," New York University Law Review, Vol. 99, No. 1, pg. 45-127, April 2024, HeinOnline. [italics in original]

This Section sets forth the special rights that unions enjoy under the CSRA, and the ways in which union rights advance the separation-of-powers goals of the CSRA. Unions are the bedrock of legalized resistance to presidential management.The CSRA did not individualize labor rights, but instead provided for collective organization in institutions that are capable of bargaining, litigating, and lobbying.159 Battles between the civil service and the President over the scope of unionization rights, the proper bargaining units to be represented by unions, and the resources and legal rights available to unions reflect the growing centrality of collective bargaining to disputes over bureaucracy and the importance of unions in determining the balance of power between the President and the tenured workforce. The following sections set forth: (1) the value of unions to the civil service and the internal separation of powers, (2) the ways in which the President and the civil servants contest the scope of union power, and (3) the ways in which unions serve to further democratic and interbranch supervision of the President.

1. The Value of Unions

The civil service's move toward unionization reflects a broader recognition of the value of organized groups in protecting rights and pursuing key political objectives.160 Unions accumulate resources and expertise, allowing civil servants to mount sophisticated and well-financed defenses in labor disputes and to lobby effectively on key issues.161 Unions, for instance, are more effective at litigating employment disputes, a key tool in resisting the disciplinary efforts of management. 162 They achieve higher win rates than unrepresented employees before arbitrators, a key strategic consideration for unionside counsel, as well as a key source of criticism from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully litigate employment disputes against agencies in other ways. Through FLRA litigation, unions have secured civil servants *Weingarten* rights: the right to have a union representative present during a disciplinary investigation. 164 Unions have likewise fought, with mixed success, to bargain for specific substantive rights for civil servants during interviews by agency inspectors general.1 65 Unions also provide extensive financial and logistical support to individual employees. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in "critical incidents," such as the use of force.166

Even when unions do not litigate labor disputes directly, the threat of litigation-the possibility of losing, the need to delay policy implementation, the drain on budgets, and the attendant uncertainty-incentivizes agencies to cooperate with unions, and to take their preferences into account when staffing political positions and formulating policy. For instance, powerful unions, including those representing ICE and the EPA, can and do express their opposition to certain agency heads, dissuading the President from appointing them for fear of souring labor relations and inciting costly litigation battles.167

Perhaps the best example of labor's deterrent power is President Clinton's National Performance Review (NPR) program, launched in 1993. NPR's goal was to "reinvent[]" government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for union support for a variety of cost- and personnel-cutting measures, President Clinton granted unions substantial new powers.1 69 The National Partnership Council, which shaped agency reorganization policy, was given four union representatives (one from AFL-CIO, and one each from the largest federal unions-NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President Clinton issued Executive Order 12,871 requiring agencies to bargain over formerly optional subjects, effectively waiving a broad range of management rights and significantly expanding union bargaining power.171 Unions also took a substantialrole in shaping the federal government's downsizing to ensure union positions received protection during workforce reduction.172

In addition to litigation, unions also have extensive statutory power to lobby Congress, often acting as one of the only sophisticated, proregulation advocacy groups in a competition of political influence dominated by private interests and well-funded nonprofit groups. The CSRA created unions that are, in effect, federally subsidized by dues, "official time" (time during which union officials are paid to engage in organizing and bargaining work), and protections against unfair labor practices.173 To facilitate union lobbying, Congress also created numerous exceptions to rules governing political engagement by civil servants, including the right to lobby on behalf of a labor organization and Hatch Act exemptions to participate in politics.174

Unionized federal employees have been politically engaged since the enactment of the CSRA, lobbying on a range of budgetary and regulatory reform issues.175 Unions lobby on issues ranging from regulatory enforcement policy, to the selection of agency leadership, to questions of funding-and their efforts have had substantial influence in Congress.176 Unions representing the employees of the NLRB, Department of Education, and IRS have all, for instance, lobbied for increases in appropriations for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses political candidates, testifies routinely before Congress, and speaks to the press on high-visibility policy issues, often expressing views contrary to the views of agency leadership.178

### 1AC---Plan

#### The United States federal government should strengthen collective bargaining rights for federal workers.

### 1AC---Reorganization ADV

#### Advantage 2 is REORGANIZATION.

#### Global and US democratic breakdown is imminent. Trends are driven by executive consolidation in the US.

Dr. Marina Nord et al. 25, PhD, Postdoctoral Research Fellow, Political Science, University of Gothenburg; Dr. Fabio Angiolillo, PhD, Postdoctoral Researcher, Political Science, University of Gothenburg; Ana Good God, MSc, Associate Researcher, Political Science, University of Gothenburg; Dr. Staffan I. Lindberg, PhD, Director, V-Dem Institute, University of Gothenburg, "State of the World 2024: 25 Years of Autocratization – Democracy Trumped?" Democratization, Vol. 32, No. 4, pg. 839-864, 04/24/2025, T&F. [italics in original]

Finally, we trace the ongoing process of autocratization in the United States of America (USA) under President Trump, and show that, as of the time of writing, his administration is rapidly undermining American democracy by attacking especially horizontal and diagonal accountability. That threatens one of the major strongholds of democracy in the world with democratic breakdown. Scholars have been warning that no country is immune to the global wave of autocratization. The events unfolding in the USA corroborate this warning. We conjecture that given the current trajectory the threat of a democratic breakdown is real.

Liberal democracy in the world, 1974–2024

Democracy is in decline globally, regardless of how we slice the data and which measure we use. Figure 1 shows the developments of the Liberal Democracy Index (LDI) over the past 50 years using four different metrics: country-based averages (Panel A), population-weighted (Panel B), territory-weighted (Panel C), and GDPweighted (Panel D) averages. The black lines represent global averages on the LDI with the grey area marking the confidence intervals. The red lines trace the 2024- level of democracy back in time for each measure.

The 2024-level of democracy is back to 1996, by country-based averages (Panel A). The drop may seem moderate but corresponds to an almost 10% drop from the 2012- level, and the estimate for 2024 is already below the 2012-lower bound.

The level of democracy enjoyed by the average global citizen in 2024 is at levels last registered in 1985 (Panel B), and has not changedmuch since 2023. Indiais only part of the explanation of this decline. Even if we remove India from the data (see blue dashed line in Panel B), the population-weighted level of democracy in the “world excluding India” is back to the 1990-levels. Notably, out of the five countries with the largest populations – China, India, Indonesia, Pakistan, and the USA – only the latter remains a democracy. As we show more extensively below, with the current developments in the USA under the Trump administration, even that country’s democracy now seems to be in clear jeopardy.

[Figure omitted]

The GDP-weighted level of democracy presents the gloomiest picture out of the four graphs in Figure 1 (Panel D). It has been in decline for 25 years, and is far below the 1974-level, thus is at its lowest level in over 50 years. This reflects a joint effect of both the global decline in democracy and the rising economic power of autocratic states, such as China. Yet, China’s remarkable economic growth is only one part of the story. When we remove China from the data (see blue dashed line in Panel D), the GDP-weighted level of democracy in the “world excluding China” is back to 1980 – almost half a century ago.

Taken together, the four measures demonstrate that larger, more populous, and more economically powerful countries drive much of autocratization in the world. Many of these countries are influential on their neighbours, in international organizations, in trade and financial relations, and play important roles in shaping the global order. The consequences of the wave of autocratization are therefore in many ways worse than they would be if autocratizing countries were small and less powerful.

Regimes of the world, 1974–2024

Using the *Regimes of the World* (RoW) measure,3 the world is divided between 88 democracies (liberal and electoral) and 91 autocracies (electoral and closed) at the end of 2024. It is the first time in over 20 years when the number of autocracies surpasses the number of democracies. This is a stark reminder of how far the democratic decline has gone.

Figure 2 (left panel) captures some broader global trends in terms of democracy and autocracy over the past 50 years using the fourfold RoW categorization.4 In recent times, two sides of the global wave of autocratization are visible. First, already authoritarian countries are becoming even more autocratic. The number of closed autocracies has been increasing since 2019 – from 22 to 35 at present while the number of electoral autocracies has been decreasing from 64 in 2019 to 56. During the last year alone, Belarus, Gabon, Lebanon, and Niger descended from electoral to closed autocracies.

The second side of the global wave of autocratization is that democracies are becoming less democratic. Liberal democracies are now the least common regime type in the world. The last time there were only 29 liberal democracies in the world was in 1990. The gradual rise in the number of electoral democracies reflects that many countries who used to be liberal democracies have lost liberal features. Some recent examples include Cyprus, Greece, Israel, and Slovenia.

[Figure omitted]

Which aspects of democracy are affected the most by the current wave of autocratization? Figure 3 shows the number of countries declining (substantially and statistically significantly) on indices measuring different components of democracy from 2014 to 2024. If a component is above the diagonal line, it is improving in more countries than declining, and *vice versa*.

For more than a decade, freedom of expression has been the worst affected aspect of democracy. In 2024, the loss of freedom of expression is truly alarming. Over the last ten years, it has deteriorated in 44 countries – almost a quarter of all countries in the world while improving in only eight countries. Deteriorations in freedom of expression include aspects such as the safety of journalists, freedom of citizens to discuss political issues, and freedom of academic and cultural expression.

[Figure omitted]

Deliberation is the second most affected component of democracy by 2024, deteriorating in 27 countries and improving in only eight. The deliberative component measures aspects such as the extent to which public reasoning is inclusive, and the government has respect for opposition, pluralism, and counterarguments.

Clean elections – a core aspect of democracy – is now declining in 25 countries, while improving in only ten. The clean elections index measures to what extent elections are free and fair, understood as absence of registration fraud, systematic irregularities, government intimidation of the opposition, vote buying, and electoral violence.

Freedom of association is also under substantial attack in a large – and increasing – number of countries during the last decade: It is declining in 22 countries while improving in only three. Freedom of association captures, for example, to what extent civil society can operate freely, and opposition parties are free to form and participate in elections.

Liberal aspects have also deteriorated substantially in a worrying number of countries over the past ten years. Rule of law has declined in 18 countries over the last ten years, legislative constraints on the executive deteriorated in 15 countries and judicial constraints in eleven. These are really concerning pieces of evidence of the democratic declines across the board of components that make up democracy.

In Figure 6A in Online Appendix, we drill down into the indicators of these components to shed further light on the described patterns of change.

Trends of regime transformations

Figure 4 shows the number of autocratizing and democratizing countries (left panel) and the respective share of the world population (right panel) over the past 50 years. We use the ERT methodology6 to identify episodes of autocratization and democratization. As of 2024, 45 countries are in ongoing episodes of autocratization while 19 countries are in ongoing episodes of democratization.

Over the last 50 years, trends for autocratizing countries are almost inverse to the trends for democratizing ones. The dashed blue line in the left panel of Figure 4 shows that the number of democratizers skyrocketed after 1989 and peaked in 1992 when 71 countries were democratizing at the same time.7 The number then plummeted to finally hoover between 15 and 19 in the last five years.

The red line in the left panel shows that the number of autocratizing countries declined gradually from ten in 1974 to zero in 1985. In the early 1990s, the trajectory reversed and increased up to 16 autocratizing countries by 2009. Since then, the numbers rise steeply and hit a historical record of 48 countries in 2021.

As of 2024, 38% of the world population reside in autocratizing countries (right panel of Figure 4). For comparison, nearly no one lived in autocratizing countries between 1985 and 1988, and only 4% as late as in 1997 and 1998. Over the last 25 years, that share has risen steeply and steadily to engulf an ever-larger proportion of people in the world. A small minority – less than 6% – live in democratizing countries in 2024. Notably, the share of the world population living in democratizing countries has stayed below 10% for the last 15 years.

[Figure omitted]

Stand-alone and Bell-turn autocratization

Following Angiolillo et al.,8 we divide autocratization episodes in two types: *“standalone” autocratization* – where the process of autocratization starts independently after a period of relative stability, and “*Bell-turns*” – episodes of two-directional regime transformation where autocratization follows shortly after, and is connected to, a period of democratization.9 Bell-turns can be thought of as episodes of “failed democratization”.

Figure 5 provides the list of all 45 countries that are in ongoing episodes of autocratization, as of 2024. The 45 autocratizing countries are grouped into the 25 stand-alone and 20 Bell-turn processes. Countries are ordered according to their levels on the LDI at the onset of autocratization (year and point estimate in black). The LDI score for 2024 (marked in orange) reveals the total magnitude of deterioration by the end of 2024.

Notably, of the 45 autocratizers, 27 were democracies at the start of their episode. 18 of these are now autocracies; a fatality rate of almost 70%. As these are ongoing processes, the remaining countries are also at risk. Research finds that almost 80% of democracies break down if autocratization sets in.10

Among the ten stand-alone autocratizers that have declined the most (Figure 10A, Online Appendix), eight were democracies before the start of autocratization. Democracy has already broken down in five – Hungary, India, Mauritius, Nicaragua, and Serbia. Autocratization started more recently in the other three – Greece, Mexico, and Peru – and they are the only remaining democracies in 2024. In two of the top 10 stand-alone autocratizers, the downward process started when they were already autocracies: Afghanistan became a closed autocracy after the Taliban’s ascent to power, while electoral autocracy in The Comoros continues to erode further.

[Figure omitted]

We also assess the trajectories on the ten Bell-turns that have autocratized the most (Figure 11A, Online Appendix). Nine of the top 10 ongoing Bell-turns were democracies at some point during the episode. All but two of these ongoing processes have already led to breakdown of democracy. Only Armenia and Romania remain democracies, but their current trajectories are not promising. Four cases where democracy broke down – Burkina Faso, Libya, Mali, and Niger – are now closed autocracies, while El Salvador, Georgia, and Indonesia are electoral autocracies. Notably, in Georgia and Indonesia, democracy broke down in 2024, during the “record year” of elections. Indonesia was already in democratic “grey zone” by the end of 2023 but continued to deteriorate further in 2024. In Georgia, the election year 2024 marked the largest one-year decline since independence, turning it into an electoral autocracy. Myanmar is the only country on the top 10 bell-turn list that has never been a democracy. The period of democratization in the early 2010s led to an electoral autocracy. A closed autocracy was reestablished with the 2021 coup, and the situation remains unchanged by the end of 2024.

Stand-alone and U-turn democratization

Building on the methodology developed by Nord et al.11 and mirroring the analysis of autocratization, we divide the 19 democratizers into nine cases of *“stand-alone” democratization* – or episodes of improvement starting after a period of relative stability, and ten “*U-turns*” – episodes of two-directional regime transformation where democratization follows shortly after, and is connected to, a period of autocratization. Uturns can be thought of as cases where autocratization was halted and reversed. Research suggests that roughly half of all episodes of autocratization become Uturns, which increases to more than 70% when looking at the last 30 years.12

The complete list of all 19 countries that are in ongoing episodes of democratization in 2024 is presented in Figure 6. The 19 democratizing countries are split between the nine stand-alone and ten U-turn processes and within the group, are ordered by their levels on the LDI at the onset of democratization (year and point estimate in black), from lowest to highest. The LDI score for 2024 (marked in blue) reveals the magnitude of improvement by the end of 2024.

Six of the nine stand-alone democratizers were autocracies at the beginning of their episodes and all six have transitioned to democracy: Fiji, Honduras, Montenegro, The Seychelles, Solomon Islands, and Timor-Leste (Figure 13A, Online Appendix). The other three stand-alone cases are in the process of democratic deepening: Dominican Republic, The Gambia, and Sri Lanka. Notably, the stand-alone democratizers are small countries with a combined population of 51 million people (or 0.6% of the world population), and 22 million of those reside in Sri Lanka. This speaks to the dominance of autocratization as a much more influential trend.

[Figure omitted]

Among the ten ongoing U-turns (Figure 14A, Online Appendix), four have either restored or even slightly improved their levels of democracy – Ecuador, Lesotho, The Maldives, and Zambia. The other six – Benin, Bolivia, Brazil, Poland, Thailand, and Tunisia – are still below their starting levels, and some substantially so. However, these processes are still ongoing as of 2024, and the situation may change in the future. Four U-turn countries – Brazil, Ecuador, Lesotho, and Poland – halted and reversed autocratization before a democratic breakdown, exhibiting breakdown resilience. In three countries – Bolivia, The Maldives, and Zambia – democracy broke down for a short period of time, but was restored in a U-turn episode, demonstrating “bounce-back” resilience.13 Two countries – Benin and Tunisia – were democracies about a decade ago but then suffered democratic breakdowns. Recent improvements are minor, and they remain electoral autocracies, substantially below their starting levels. Thailand remained autocratic throughout the whole U-turn episode. Autocratic regression led to closed autocracy, but the U-turn process made it back into an electoral autocracy by the end of 2024.

Disinformation and polarization on the rise

Autocratization over the last decades is intimately connected to the rise in levels of disinformation and polarization. Governments in countries across the world increasingly resort to disinformation to influence public opinion. Figure 7 (left panel) provides some evidence of this. In 31 countries across the world, the level of disinformation has increased substantially and statistically significant by 2024. Two-thirds of those – 21 out of 31 – are autocratizing countries. Governments in these countries purposefully use disinformation to promote state propaganda, discredit opposition, garner support for policies that undermine democracy, or inflate negative feelings and create a sense of distrust within the society, fuelling polarization.14

Political polarization is also on the rise. In 2024, it is increasing substantially and statistically significantly in 45 countries, or a quarter of all countries in the world (right panel of Figure 7). In more than half of them (N = 24), it has already reached toxic levels (approximately upper quarter of the scale). Political polarization shows the extent to which society is divided into antagonistic political camps. When it reaches toxic levels, the division on political issues becomes so high and so permeated in the society, that political differences start to affect social and family relationships, far beyond political discussion.

Two important observations stand out from Figure 7. First, disinformation, polarization, and autocratization go hand in hand and mutually reinforce each other (see also Figure 16A and 17A in Online Appendix). By contrast, successful democratizers reduce disinformation substantially, but do not reduce polarization (see also Figure 17B in Online Appendix). In the recent U-turn case of Brazil, for example, targeted countering of disinformation regarding the elections was a key factor in the process of reversal.15

[Figure omitted]

Second, more than half of all countries (N = 28) affected by increasing political polarization are democracies. Liberal democracies account for almost one third of all countries with increasing political polarization (N = 14), which means that in almost half of all liberal democracies in the world – 14 out of 29 – political polarization is on the rise. In two of them – France and the USA – polarization has already reached toxic levels. When polarization is so high, citizens are more willing to trade off democratic principles for other interests or to help their side win.16

Introducing the “watchlist” initiative

The typical feature of contemporary autocratization is that deteriorations are incremental, making the beginnings hard to distinguish from noise in data. This was established already in one of the first scientific analyses of the third wave of autocratization,17 which laid the grounds for the ERT methodology.18

The ERT method is “conservative” (as scientific methods should be) with asserting that a country has entered a period of regime transformation. Only countries which manifest substantial changes (above 0.1 on the EDI) qualify as autocratizers or democratizers, while smaller changes are excluded. Yet, as smaller changes accumulate into a large aggregate change, uncertainty reduces.

Since last year,19 we label as “near misses” countries that are at least halfway towards becoming autocratizers or democratizers (changes are between 0.05 and 0.1 on the EDI). Figure 8 visualizes such cases, distinguishing between “near miss” autocratizers (red shaded area) and “near miss” democratizers (blue shaded area). Yet, even among these cases it is uncertain how many will lead to manifest autocratization or democratization. Ambiguity reduces the closer to the threshold cases are, naturally. Countries that are above a higher threshold (0.075 on the EDI) have gone at least three-quarters of the way, and we label such cases “watchlist” countries and mark them with dark red and dark blue shaded areas in Figure 8.

[Figure omitted]

There are seven countries that are watchlist autocratizers – Cyprus, Madagascar, Namibia, Russia, Slovakia, Slovenia, and Togo, and three countries that are watchlist democratizers – Czechia, Guatemala, and Malaysia.

Naturally, we cannot be certain that every country on the watchlist will eventually become a manifest episode. To get a quick assessment of the rate of “false positives” among watchlist cases, we re-run the script on earlier versions of the V-Dem dataset (v12 to v14). In data sampled in 2021 (v12), there were eight watchlist countries: seven potential autocratizers and one potential democratizer; by 2024 (v15), six of them (75%) became manifest episodes: five autocratizers and one democratizer. In data sampled in 2022 (v13), ten countries qualified as watchlist autocratizers and two as watchlist democratizers; by 2024 (v15), five became manifest episodes (three autocratizers and two democratizers), while three remained on the watchlist (a total of 67%).

[Figure omitted]

Finally, in data sampled in 2023 (v14), nine countries were on the watchlist (five potential autocratizers and four potential democratizers); by 2024 (v15), three autocratizers became manifest episodes, while four countries (two potential autocratizers and two potential democratizers) remained on the watchlist (a total of 78%). The rate of manifest episodes in v15 from the watchlist cases in v12-v14 is displayed in Figure 9.

The overall rate of false positives for such a crude “early warning” method is relatively low: On average, roughly one out of four watchlist countries do not become manifest episodes. Even with this very crude and simple assessment, we can expect that roughly three out of four watchlist countries will become manifest episodes in the next two-three years.

Another important observation is that this method might work well to identify democracies that faced early worrying signs of deterioration but demonstrated onset resilience to autocratization. For research purposes, it might be important to study such countries separately from countries that have never faced the threat of democratic backsliding at all. Some examples of such countries include Austria, Chile, Nepal, and South Africa – all were on the watchlist in past years, but stabilized by 2024, with Nepal even becoming a near miss case of democratization. There are also some watchlist countries that failed to qualify as manifest democratizers despite being close to the threshold. Most notably, Argentina was a watchlist democratizer in v14 but became a manifest autocratizer in v15.

USA – democratic breakdown in the making

The threat of democratic breakdown has come to the USA. As we write this, the new Trump administration is slightly over two months into its term. Things are moving fast on so many fronts. Below we analyse how, and how much, American democracy is challenged and already dismantled. It may well be outdated already when this is published. It is nevertheless important to take stock of the process already now.

We start with illustrations of the level of fear already present in Washington DC, without disclosing details that could identify the involved citizens. One of us spent almost two weeks in Washington DC towards the end of March. Meeting with state officials, no one speaks about their political views or about the Trump administration’s actions except during walks outside and after turning off their government phones, and even then, in low voices and while watching the surroundings. Republican members of Congress who would want to object to Trump’s executive orders and reassert Congress’ power are fearing for their and their families’ physical safety and therefore remain silent. Members of the American Bar Association have been receiving threats. Colleagues in our profession are on the watch as well. As an example, while having coffee with a colleague in a lounge, one of us was asked after a while to move into a corner. The reason was that two men had come to sit close and seemed to use a phone to record and/or take photos of us. One highly reputable democracy organization did not dare to host an event for a presentation of this year’s Democracy Report. Many witness that they are looking for jobs outside the USA to escape from the Trump regime. No one wants to communicate in any other way than using the Signal app. These behaviours speak of a context in the USA already infused with authoritarian tendencies in very palpable ways.

[Figure omitted]

*Trump 1.0 and USA democracy*

American democracy took a first beating during President Trump’s first time in office. The Liberal Democracy Index fell from 0.85 to 0.73 within four years of the first Trump’s administration, bringing the country back to its 1976-level – far below the regional average (Figure 10 left panel) and political polarization intensified to toxic levels (Figure 10 right panel). Notably, President Trump sought to undermine the results of the 2020 election. However, challenges to the democratic system were contained by opposition from Congress, the courts, the media, the civil society, and resistance from within the Republican party itself.20 American democracy survived Trump’s first term in office, but did not recover fully since then.

*Trump 2.0: Attack on all forms of accountability*

The threat that President Trump and his second administration pose to American democracy is profound. Two months in, its resilience is already being put to the test by “executive aggrandizement” 21 where the end goal seems to be concentration of power. “Executive aggrandizement” has been the modal type of backsliding during the “third wave of autocratization.” 22 Democratically elected leaders such as Erdoğan in Türkiye, Modi in India, Orbán in Hungary, Chávez in Venezuela, and Vučić in Serbia – all dismantled institutional checks on their power and utilized government resources to weaken their political oppositions, eventually turning their countries into autocracies. During his first two months in office, Trump has largely used similar strategies as other notable autocrats of the twenty-first century. Yet, unlike his foreign counterparts, Trump operates openly and acts rapidly. In fact, we might be witnessing one of the most rapidly moving attacks on democracy by a sitting head of executive in recent history.

*Erosion of horizontal accountability*

An executive wishing to monopolize power requires to dismantle horizontal accountability – or constraints imposed by co-equal branches or independent agencies and auditors of the government (in the US, the latter several were created in response to the Watergate scandal and are known as the “accountability state” 24).

In Table 1, we summarize attacks of the Trump administration on *horizontal accountability*, distinguishing between three broad domains: (i) independent supervisory bodies within the executive branch that are collectively known as the “accountability state”, 25 (ii) legislative branch (Congress), and (iii) judicial branch (Supreme Court, federal and state courts).

By the time President Trump took office on 20 January, 2025, Republican-led Congress had already been purged of Trump’s strongest critics.26 During his first term, Trump had found ways to defeat legislative checks and balances by removing Senate-confirmed officials and replacing them with hand-picked acting officials evading the confirmation check from the Senate.27 Critically, during his first term in office, President Trump managed to fill three out of nine seats on the Supreme Court with supporters that in summer of 2024 gave the president broad immunity from prosecution for official misconduct.28

President Trump’s second term started with revoking security clearance of highlevel opposition figures29 and signing 26 executive orders,30 furthering executive aggrandizement. The same day, 20 January, he pardoned 1,500 criminally convicted in the January 6 Capitol attacks in 2021.31 This was one of the first steps in undermining legitimacy of courts and the rule of law, as well as in sending signals of endorsement of future violence.32 According to personal testimonies, the signal of “I could send these guys after you” was received by Congress representatives, judges, and significant NGOs alike.

[Table omitted]

Two days later, 22 January, Trump started nominating political allies to key federal agencies within the executive branch, including law enforcement authorities, civil servants and technocrats in key positions, and the military. The tactic used was to remove undesirable employees from key positions and replacing them with hand-picked loyalists, thereby bypassing the requirement that the head of state only remove officials for cause,33 defeating the check provided by the need for Senate confirmation of key officeholders,34 and sending signal to the rest of the employees that they must “obey and fear” the President. During the first weeks in office, Trump removed officials at high levels of the Department of Defense, the Department of Justice, the Department of Homeland Security. On 24 January, Trump fired at least 17 independent Inspector Generals across agencies, and the head of the Office of Special Counsel, who is responsible for protecting whistleblowers, and removed senior military officers and replaced them with loyal ones.35 By 30 January, several senior FBI employees were given an ultimatum to resign or be fired.36

The purge of civil servants during early stages of autocratization is a tactic used by almost every anti-democratic incumbent in recent times.37 By replacing independent civil servants with personal loyalists, Trump is attempting to eliminate any potential pushback against his power grabs,38 and, on the other hand, to “weaponize government bureaucracy” 39 against anyone who refuses to bend to the will of the aspiring autocrat. Loyal civil servants can later be deployed to disadvantage and weaken opposition, prosecute opponents for alleged crimes, intimidate or co-opt civil society, and reward allies. The end goal is to use government bureaucracy to tilt the electoral playing field in their favour.

On 4 February, Trump signed an Executive Order to freeze almost all operations of the USAID, an independent agency established by the Congress on 4 September 1961, and to dismiss most of its employees. This marks an open attack on the Congress’ “power of the purse” and its constitutional authority to decide whether, when, and how to close down an agency.40Trump since usurped Congress’ “power of the purse” several times by cancelling or freezing funding of other federal programmes and departments.41

Attacks on the judiciary are also prevalent, ranging from verbal attacks,42 symbolic actions like sanctioning of the International Criminal Court,43 to direct violation of rule of law and ignoring of judge orders. As of the time of writing, there are more than 160 lawsuits filed against President Trump and his administration for breaking the law and/or the Constitution over the first six weeks since coming to power.44 As the courts have started to deliver a series of setbacks to his attempt to change the government without approval from Congress, Trump and his supporters have started to resort to the rhetoric and actions that elsewhere have preceded attacks on the judiciary.

On 13 March, the Trump administration asked the Supreme Court to intervene on blocks to birthright citizenship order and to massive layoffs order; it also asked the Supreme Court to narrow the scope of injunctions in the future.45 On 15 March, addressing the Department of Justice attorneys, President Trump defined “horrible people” and “scums” those that fight him in court, the 2020 elections as “crooked”, and described the media as “corrupt”. 46 Trump then invoked the Alien Enemies Act, a 1798 law meant to be used only in wartime. Despite a court order by District Judge James Boasberg to block Trump’s attempt, on 16 March,47 Trump ordered the deportation of 238 Venezuelans allegedly connected to the Venezuela gang Tren de Aragua and MS-13 to El Salvador. On 20 March, Trump rallied against federal judges who blocked his orders and demanded that the Supreme Court halt all national injunctions.48 Treatment of lower court decisions as emergencies warranting intervention of the loyal Supreme Court is not a new tactic. During his first term, Trump had frequently employed this tactic to thwart lower court efforts to check his abuses of executive power.49 On 22 March, in an act of intimidation, Trump instructed and authorized the Attorney General and the Homeland Security secretary to sanction law firms that file lawsuits against his government.50

*Attacks on diagonal accountability*

Attacks on diagonal accountability – or attempts to undermine pressure from civil society and the media – are among the most common tactics of aspiring autocrats (see Figure 3). In Table 2, we summarize attacks of the Trump administration on *diagonal accountability*, distinguishing between three broad domains: (i) the independent media, (ii) academic and research community, and (iii) civil society organizations.

On 20 January, Trump signed 26 Executive Orders that, among others, essentially prohibited diversity, equity, and inclusion (DEI) programmes,51 invalidated birthright citizenship to the children of illegal migrants,52 and cancelled the U.S. Customs and Border Protection’s CBP One app.53 Soon after, on 24 January, Trump reinstated the Mexico City Policy that openly attacks foreign NGOs by imposing them not to “perform or actively promote abortion”. 54 This policy had first been implemented by Reagan in 1985 and had always been rescinded by any Democratic President since Bill Clinton in 1993.

Trump started to attack the independent media already during his presidential campaign when he repeatedly threatened to strip broadcasting licenses from stations. On 11 February, the Associated Press was barred from the Oval Office for refusing to rename the Gulf of Mexico to Gulf of America in its reporting.55 On 25 February, the White House announced that it took control of the entire press pool that covers President Trump, ripping this power away from the White House Correspondents’ Association (WHCA).56 On 14 March, Trump signed an executive order eliminating the US Agency for Global Media (USAGM), thereby terminating grants to Voice of America, Radio Liberty, Middle East Broadcasting, and other similar agencies.57 In a conference on the same day, he launched a series of attacks on the media, including CNN and MSNBC, accusing them of “dishonest” and “illegal” behaviour and promising to shut them down.58 A day later, the government-employed journalists at Voice of America were put on administrative leave.59

[Table omitted]

Trump is also actively attacking universities, science, independent research, and freedom of speech on campuses, thereby seeking control over independent academic institutions. Universities are centres of independent thinking and are often among the first to be attacked in autocratizing and authoritarian settings. The actions of the Trump administration range from verbal attacks to freeze of federal funding.

On 9 February, Trump imposed caps to National Institutes of Health (NIH) research at 15%, half of the current average rate of 30%, thereby directly undermining medical research on deadly diseases such as cancer.60 On 21 February, the House and Senate passed competing budgets proposing from $1 billion to $330 billion cuts to higher education in the coming years, which could result in dramatic changes to student loans and the elimination of loan forgiveness programmes.61

On 7 March, the Trump administration initiated an attack on the Columbia University by revoking its federal funding and demanding stronger actions against antiJewish bias on college campuses.62 Several days later, US authorities sent letters to 60 academic institutions, including Columbia, informing that they were under investigation for “antisemitic harassment and discrimination” and threatening with funding cuts.63 As of the time of writing, Columbia University capitulated to the threat from the Trump administration, while many major US universities are now exposed to this slashing axe on academic freedoms, with MIT, Stanford, Johns Hopkins, and Pennsylvania, among others, freezing hirings and suspending research projects.64 Leadership at universities is also increasingly self-censoring by avoiding any political stance,65 a clear result of autocratic repressive tools.66 On 20 March, Trump signed an executive order to dismantle the Department of Education, which oversees funding for public schools, administers student loans and runs programmes that help low-income students.67

The Trump administration is also attacking civil society organizations, which are central to diagonal accountability. On 19 February, President Trump ordered to effectively dismantle several small independent agencies, including the US Institute of Peace, the US African Development Foundation, and the Inter-American Foundation.68 In response, the US Institute of Peace argued that it is an “independent nonprofit corporation” with an appropriation directly from the Congress and does not fall under the executive branch.69 On 17 March, after threatening its officials with criminal prosecution, the Department of Government Efficiency (DOGE) took over the US Institute of Peace, with the assistance of the Office of the US Attorney for the District of Columbia, the FBI, and DC Metropolitan police.70

*Stirring vertical accountability*

As of the time of writing, there were relatively few attacks on the vertical accountability, and research shows that attacks on vertical accountability typically come last.71 But on 31 January, Trump tried to fire the chair of the Federal Election Commission; she refused to step down claiming that her termination was invalid.72 On 3 February, several governmental agencies removed data from their websites mostly as a result of funding freeze and staffing suspension. These actions prevent citizens from accessing governmental information and thus reduce their ability to hold the government accountable. On 25 March, Trump issued an executive order seeking to change how US elections are administered across the country,73 thereby disregarding that the Constitution grants authority over elections to Congress, the states, and independent agencies, such as Federal Election Commission and Election Assistance Commission.

Is the USA heading to a democratic breakdown?

The democratic instability inherent to presidential systems74 seems to have knocked on the USA’s door stronger than ever. The first two months under the new Trump administration have already taken American democracy close to the brink of democratic breakdown, in our estimation. It is primarily horizontal and diagonal accountability that have been attacked, but the first attacks on the vertical accountability are already present.

It is also notable that the Trump administration is pursuing its agenda primarily via executive orders, not via a long list of legislative initiatives. With the majority in both the House and the Senate, Trump could have given Congress a long list of legislative items to push through, but he has not. One possibility is that this is a sign of passive obstruction from Republican members of Congress and that the legislature is thus flexing a bit of its muscles.

A different possibility is that this is a sign of a strategic choice in an effort to undermine authority of Congress and thus make it irrelevant. By pursuing de facto legislative actions such as appropriations, dismantling and setting up government agencies and departments, limiting freedom of speech and academic freedom, and so on, through executive orders the Trump administration may be intentionally usurping Congress’ powers. That would eventually also undermine the meaningfulness of elections and if they would have any consequences. If the courts can be coerced into accepting some or even many of these encroachments, executive reach will be expanded and power will be more and more concentrated in the executive. That is the definition of autocracy.

#### An independent civil service is the lifeblood of US democracy.

Dr. Donald Moynihan 22, PhD, McCourt Chair, Public Policy, McCourt School of Public Policy, Georgetown University, Former Director, La Follette School, University of Wisconsin-Madison, "Delegitimization, Deconstruction and Control: Undermining the Administrative State," The ANNALS of the American Academy of Political & Social Science, Vol. 699, 01/01/2022, pg. 36-49.

An uneasy relationship with the government and centralized power patterns the U.S. experience of democracy. Mistrust of a distant, unjust, and unrepresentative administration remains, we are told, central to the American political creed (Huntington 1981). But a country does not become a world power without a capable public service. As it gradually emerged from the spoils system, the U.S. public service became larger, more transparent, professional, and more capable (Ingraham 1995). Improvements in the quality of administration arose to match significant new demands upon the state, such as the management of two world wars, a Great Depression, and the emergence of a U.S. welfare state (Carpenter 2005).

This evolution of the modern administrative state retained vestiges from periods when the provision of public services was more openly partisan and, as a result, less professional and capable, more corrupt, in some ways both more inclusive but also more discriminatory depending on the values and loyalties of the regime (Skrowonek 1982). At the same time, the growth of the federal public sector was characterized by efforts to maintain accountability, such as the Administrative Procedures Act to formalize rulemaking power (Rosenbloom 2002), laws enhancing transparency and enabling oversight (e.g., the Freedom of Information Act of 1967, whistleblower protections, the creation of inspectors general), and a reliance on partisan political appointees unusual among peer countries.

The gradual development of the U.S. public sector toward credibility and competence, accompanied by sources of political control that might have made it a little less efficient at the price of being a bit more accountable, looks less certain today. Certainly, V. O. Key’s prediction that “unless our civilization collapses completely this is going to continue be a bureaucratic world” (1942, 146) reflects a different era than the present, an administrative heyday when both political parties largely saw bureaucracy as necessary to democracy, and public trust in government and experts was high (Moynihan and Ingraham 2010).

The current moment feels very different. The public sector is increasingly under attack. These attacks are worrying for democracy, for three reasons.

First, in the starkest sense, administrators from election officials to generals play instrumental roles in validating the integrity of U.S. elections and ensuring that legitimate winners take power (see Jacobs and Choate, this volume). In 2020, election officials resisted false claims of election fraud. In the aftermath, a survey found that one in three felt unsafe because of their job, and one in five identified threats to their lives as a job-related concern (Brennan Center for Justice and Bipartisan Policy Center 2021). At the same time, those who denied the election outcome organized to take control of positions that would oversee and adjudicate future elections (Arnsdorf et al. 2021). For the military, all ten living former Department of Defense Secretaries felt the need to write an open letter declaring the election to be over, a signal to existing military leaders not to join President Trump’s denial of the outcome. Military leaders themselves saw a coup as a real enough possibility that they discussed it, with the Chairman of the Joint Chiefs of Staff reportedly saying, “You can’t do this without the military. You can’t do this without the CIA and the FBI. . . . We’re the guys with the guns” (Leonnig and Rucker 2021).

Second, a public service imbued with democratic values of transparency, and fealty to statutes and the Constitution, provides a bulwark against authoritarian control. Bureaucrats can oppose, undermine, or shine a light on the sort of legal and norm-based violations that come with a shift toward authoritarianism (Nou 2019; O’Leary 2019). Career officials drew attention to a wide range of misdeeds during the Trump administration, testifying against the president in his first impeachment trial, which led to him punishing those officials and seeking to take more direct control over the civil service. Trump’s actions fit a populist pattern of undermining the bureaucracy as well as other sources of independent information and criticism (Bauer et al. 2021). Third, at the broadest level, bureaucracies remain a primary instrument by which democracies convert shared values and goals into realities. A dysfunctional bureaucracy lacking basic professional autonomy is less able to deliver upon the promises of democracy and gives people less reason to have faith in collective action, even as they expect more from government.

The undermining of the public service and its ability to resist antidemocratic pressures did not begin with President Trump. It reflects longer trends, some of which have been pursued by both parties, although more aggressively by Republicans. Each is examined in turn.

#### US democratic strength dictates global trends. Decline portends widespread collapse.

Dr. Stewart Patrick 8-21, PhD, MPhil, Senior Fellow & Director, Global Order & Institutions Program, Carnegie Endowment for International Peace, "A World Unsafe for Democracy," Carnegie Endowment for International Peace, 08/21/2025, https://carnegieendowment.org/research/2025/08/democracy-promotion-trump-putin-europe. [italics in original]

American democracy promotion has always been selective, plagued by hypocrisy, and susceptible to overreach. But Trump’s utter indifference to the cause of liberty is something new in U.S. global engagement. Beyond abandoning beleaguered democrats around the world, his cynical posture promises to reshape global order, accelerating the rise of illiberal multilateralism. It will create a vicious cycle. As domestic governance deteriorates globally, institutions of international governance will become dominated by authoritarian and reactionary forces bent on reversing global progress on freedom and equality and minimizing the constraints of international norms and law on national behavior. The outcome will be a global order that is even more amoral, repressive, and conflictual. In short, a world unsafe for democracy.

The Dismantling of Democracy Promotion

Trump’s demolition of America’s democracy promotion apparatus is among the most disastrous and dumbfounding steps he has taken to overhaul U.S. foreign policy. At the outset of 2025, the United States was the most influential promoter and largest funder of global democratization efforts. Those days are over. The administration has dismantled the U.S. Agency for International Development, a critical source of democracy funding and programming; shuttered the State Department’s Bureau of Democracy, Human Rights and Labor, formerly the diplomatic focal point for U.S. democracy promotion; defunded the National Endowment for Democracy and its affiliates, including the International Republican Institute and the National Democratic Institute; closed the U.S. Agency for Global Media, home of Voice of America, Radio Free Europe, Radio Free Asia, and similar outlets; and cut hundreds of millions of additional dollars in democracy promotion spending through unprecedented recissions of previously appropriated funds.

The administration’s actions have reverberated internationally, as my colleagues Thomas Carothers, Rachel Kleinfeld, and Richard Youngs document, undermining the broader democracy promotion ecosystem. More than 80 percent of U.S. democracy assistance has vaporized, forcing activists, international organizations, and nongovernmental and private sector implementers around the world to curtail or close operations and offices. Going forward, anticorruption advocates, election observers, human rights monitors, independent media organizations, and others will need to look elsewhere for diplomatic support and financing.

This disruption comes at a perilous moment. The global democratic recession is now in its nineteenth straight year, according to Freedom House. And for the first time in two decades, reports the V-Dem Institute, nondemocracies now outnumber democracies ninety-one to eighty-eight. Well before Trump’s return, the world’s democracies were on unstable ground, thanks to external threats and internal weaknesses. China and Russia have embarked on an increasingly brazen effort to make the world safe for autocracy by propping up fellow dictatorships, supporting authoritarian parties and leaders in partial democracies, and spreading disinformation and sowing division in consolidated ones. At the same time, established democracies are being hollowed out from within by rising political polarization and surging distrust of institutions.

Within the United Nations and other multilateral bodies, countries that have long stood beside the United States and counted on its leadership in defending democratic norms—not least the members of the European Union—find themselves without their comrade-in-arms. This would be bad enough if the United States simply took its democracy promotion ball and went home with it, metaphorically speaking. But Trump is actively supporting autocracy abroad, as well as indulging his authoritarian instincts at home. He has repositioned the United States to support far-right political parties in Europe, such as the Alternative for Germany, and has punished Brazil for prosecuting Jair Bolsonaro, another former president who encouraged violence to overturn his electoral defeat. Domestically, the White House has threatened an independent judiciary, ignored Congress’s constitutional prerogatives, intimidated media outlets, chilled free speech at universities, deported immigrants and arrested protesters without due process, and enabled crony capitalism by bestowing favors on well-connected donors.

To those accustomed to the United States as a defender of freedom, these are disorienting days. In July, Secretary of State Marco Rubio—previously a fervent champion of democracy during his tenure in the U.S. Senate—told U.S. diplomats that the United States would henceforth sharply restrict any commentary on the conduct of foreign elections. Accordingly, they “should avoid opining on the fairness or integrity of an electoral process, its legitimacy, or the democratic values of the country in question.” This muzzling edict reflects the president’s America First view that bilateral relations should be solely informed by narrow national interests, rather than pesky concerns about how a foreign government treats its citizens.

In practice, the administration continues to employ such judgments as a selective cudgel. In mid-August, the State Department released a truncated and politicized installment of its previously comprehensive and rigorous annual human rights report. This new edition sharply curtails formal criticism of abuses and corruption by favored administration allies such as El Salvador and Israel, while condemning adversaries such as Venezuela. The report also takes aim at major developing country democracies with which the Trump administration has frosty relations. It chastises Brazil for “disproportionately suppressing the speech of [Bolsonaro’s] supporters,” as well as South Africa, for allegedly tolerating abuse of white farmers in that country. The report even criticizes France and the United Kingdom for censoring far-right political voices with links to the MAGA movement.

A Tradition Upended—and a World Imperiled

The Trump administration’s hostility to democracy promotion and indifference to democratic solidarity are disturbing departures from decades of U.S. foreign policy. They will also corrode the quality of global order and damage prospects for international cooperation.

Support for democracy was at the heart of America’s post-1945 liberal world order–building project, and cohesion among democracies helps explain why the international system it created was so institutionalized and resilient. Western democracies formed the core of the “Free World” coalition that the United States rallied to contain Soviet communism, as well as the open international economic system that emerged under U.S. leadership. Tellingly, this unity survived the end of the Cold War. Although some predicted that the collapse of the Soviet Union would bring European instability and spur other Western democracies to balance against American power, this new era saw a deepening and expanding of the ties that bound them to the United States, and a reinvigorated attention to promoting democracy worldwide.

For the past eight decades, a common dedication to democracy has been an integral component of Western solidarity. The preamble to the North Atlantic Treaty gives voice to these ideals, committing its signatories to “safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law.” These sentiments cannot be dismissed as mawkish window-dressing any more than the Cold War can be reduced to a pure power contest devoid of ideological meaning. A shared attachment to democracy shaped how Western nations understood and defined their national interests, communicated with one another, and resolved diplomatic disputes among themselves, so that (for instance) war among them became inconceivable. These shared principles and institutions helped the liberal international order endure, because it turns out that democracies are better positioned to make credible commitments, by virtue of their political transparency and internal checks and balances. Democratic solidarity shaped the agendas and actions of major Western institutions such as NATO, the G7, and the Organisation for Economic Co-operation and Development, and reinforced common Western positions within more encompassing bodies like the United Nations.

To be sure, Western democracies have faced mounting challenges in the twenty-first century. In the early post-Cold War years, there was heady if naïve optimism that the world’s community of market democracies would inexorably expand, as the winds of freedom and forces of globalization integrated emerging powers, post-Soviet nations, and developing regions into an open, rule-bound international order dominated by free societies and free markets. As it happened, many emerging powers, most notably China, defied assumptions about the linkage between economic and political liberalization. Simultaneously, the quality and vitality of democracy in many Western nations also deteriorated, trends exacerbated by growing economic inequality and policy failures, including responses to the global financial crisis of 2008. Yet despite these and other shocks, including the first Trump administration, the Western democratic heart of the liberal world order continued beating into the 2020s.

Trump’s return to the White House puts all this at risk. By definitively abandoning America’s self-appointed historic mission, the second Trump administration has deprived the world of its leading arsenal of democracy, forcing defenders of freedom to regroup and rethink their strategies. But the implications of America’s anti-democratic turn for world order run even deeper, sounding the death knell of the already beleaguered liberal core of the open, rules-based international system. Reflecting in April on the gravity of the Trump revolution, European Commission President Ursula von der Leyen put it bluntly: “The West as we knew it no longer exists.” The demise of the democratic West threatens the resilience of multilateral institutions, the strength of international law, and prospects for effective international cooperation. It will hasten the rise of illiberal multilateralism.

#### Backsliding is disorderly AND existential. It invites irredentism, resource conflicts, and instability that ensure numerous nuclear conflicts. BUT, no turns since adversarial decline is inevitable in the long run, so management now is key.

Dr. Michael Beckley 25, PhD, Associate Professor, Political Science, Tufts University. Nonresident Senior Fellow, American Enterprise Institute. Director, Asia Program, Foreign Policy Research Institute. Moynihan Public Scholar, City College of New York, "The Strange Triumph of a Broken America," Foreign Affairs, 01/07/2025, https://www.foreignaffairs.com/united-states/strange-triumph-broken-america-michael-beckley/.

The structure of American power thus creates competing pressures for detachment and engagement. The result is a hollow form of internationalism that has sometimes resulted in disastrous failures of deterrence. In the 1920s, for instance, the United States opposed German and Japanese expansion but outsourced enforcement to treaties such as the Kellogg-Briand Pact, which outlawed war, and the League of Nations, which Washington then refused to join. The United States withdrew its forces from Europe while demanding debt payments from allies, who passed the costs on to Germany, worsening its financial turmoil and hastening its slide into Nazism. At the same time, in Asia, the United States abandoned plans for naval modernization and regional fortification but imposed increasingly severe sanctions on Japan, intensifying Tokyo’s perception of Washington as both hostile and vulnerable—thereby paving the road to the attack on Pearl Harbor. A similar pattern played out in the 1990s and the early years of this century. While nearly doubling NATO’s membership to include 12 new countries, the United States halved its troop presence in Europe and shifted NATO’s focus to counterterrorism operations in the Middle East. In 2008, the United States suggested that Georgia and Ukraine might eventually join the alliance but offered no concrete path to membership, thus provoking Russia without effectively deterring it.

In other cases, hollow internationalism led the United States to neglect deterrence entirely. On several occasions, it convinced itself and its adversaries that it had little interest in a region, only to respond massively to aggression there, with catastrophic consequences. In 1949, for instance, the United States excluded the Korean Peninsula from its defense perimeter and withdrew its troops. Yet when North Korea invaded South Korea, the United States intervened forcefully, pushing up to the Chinese border and provoking a ferocious Chinese counterattack. This shock heightened Cold War fears of communist expansion and solidified the domino theory: the idea that if one state falls to communism, its neighbors will, too. This notion in turn propelled Washington’s disastrous involvement in Vietnam. Similarly, in 1990, the United States made no serious effort to deter Iraq’s invasion of Kuwait but then took up arms to repel the attack after the fact. The result was the Gulf War and a prolonged U.S. military presence in the Middle East, which in turn mobilized jihadi groups such as al Qaeda—an outcome that culminated in the 9/11 attacks and the U.S. invasions of Afghanistan and Iraq.

The world now faces converging threats: China is carrying out the largest peacetime military buildup since Nazi Germany’s, producing warships, combat aircraft, and missiles five to six times as fast as the United States can. Russia is waging Europe’s biggest war since World War II. Iran is trading blows with Israel, and North Korea is sending thousands of troops to fight for Russia in Ukraine while preparing for war with South Korea and developing nuclear missiles that can reach the U.S. mainland. Despite treating these regimes as enemies, the United States spends only 2.7 percent of GDP on defense, a level comparable to that of the post–Cold War 1990s and the isolationist 1930s and well below the Cold War range of six to ten percent. A military recruitment crisis compounds the shortfall, with 77 percent of young Americans ineligible for service because of obesity, drug use, or health issues and just nine percent expressing an interest in enlisting. In a potential conflict with China, U.S. forces would blow through their munitions inventory in a matter of weeks, and it would take years for the U.S. defense industrial base to produce replacements. Rising personnel costs, along with an endless array of peacetime missions, are stretching U.S. forces thin.

By pairing diplomatic hostility with military unreadiness, the United States is once again sending the world a mixed signal, a yellow traffic light. Yellow lights, of course, often prompt aggressive drivers to speed up. American ambiguity won’t matter—until it does, when China, Iran, North Korea, or Russia decides it’s time to take what it has long claimed by force.

THE DANGERS OF DECLINISM

Since the Soviet Union’s collapse, experts have urged policymakers to prepare for multipolarity, expecting the United States to be challenged or overtaken by rising powers. But reality has taken a different course. The United States remains economically dominant while other contenders—both adversaries and allies—are slipping into long-term decline. Shrinking populations and stagnant productivity are eroding the strength of once dominant Eurasian powers. Meanwhile, populous countries such as India and Nigeria struggle to ascend global value chains because of poor infrastructure, corruption, and weak education systems. Automation and the commodification of manufacturing are shutting off traditional growth paths, leaving many developing countries mired in debt, youth unemployment, and political instability. Rather than triggering a rise of the rest, current trends are solidifying a unipolar world with the United States as the sole superpower, surrounded by declining great powers and a periphery of middle powers, developing countries, and failing states.

In the long run, a world without rising powers could foster stability by reducing the risk of hegemonic wars. Over the past 250 years, the Industrial Revolution caused economies, populations, and militaries to double or more in size within a generation, sparking intense competition for resources and territory. But that era is winding down. Shrinking populations, stagnant economies, and the concentration of wealth in the United States make the rise of new great powers unlikely. Some analysts characterize China, Iran, North Korea, and Russia as an “axis,” but the world is unlikely to see a repeat of 1942, when Germany, Japan, and Italy seized half of the world’s productive capacity. Today’s fading challengers lack the strength to overrun Eurasia quickly, and once a great power falters, it no longer has the population growth to rebound, as Germany did between the world wars and the Soviet Union did after World War II. It’s hard to imagine Russia, for example, rising from the ashes of Ukraine to conquer large swaths of Europe. As rising powers fade, the world may become more stable.

But right now, several threats loom. Declining powers may resort to desperate wars of irredentism to reclaim what they believe are “lost” territories and avoid slipping permanently into second-tier status. Russia has already done this in Ukraine, and China might take similar actions in Taiwan or against the Philippines in the South China Sea. Although these conflicts may not match World War II’s scale, they could still be ghastly, involving nuclear threats and attacks on critical infrastructure. China, North Korea, and Russia face economic and demographic decline, but so do their most likely targets—South Korea, Taiwan, and the Baltic states—ensuring that Eurasia’s military balances will remain hotly contested. Even without sparking massive wars, China and Russia could gradually transform into gigantic North Koreas, relying increasingly on totalitarianism and military extortion to undermine an international order they can no longer hope to dominate.

Another threat is rampant state failure, particularly in debt-ridden countries with rapidly growing populations. Sub-Saharan Africa, for example, is expected to add one billion people by 2050, yet most of its economies are already in fiscal crisis. Manufacturing no longer provides mass employment, and governments are slashing social spending to pay foreign loan interest. According to the United Nations, an estimated 3.3 billion people live in countries where interest payments exceed investments in either education or health care. The stagnation of major economies is worsening the situation. A slowing China, for instance, has halted most of its foreign lending while reducing its imports from poor countries and flooding their markets with subsidized exports, delivering a triple blow to their economies.

A spiral of state failure could magnify a third threat: the continued rise of antiliberalism in democratic countries. Many democracies are already struggling with demographic decline, sluggish economic growth, soaring debt, and ascendant extremist parties. A surge of refugees from failing states could further strengthen these antidemocratic movements. After the Syrian civil war sent more than a million refugees to Europe, for example, authoritarian parties made substantial gains across the continent. Liberal democracy has flourished in times of economic expansion, population growth, and social cohesion, but it’s uncertain whether it can survive an era of stagnation and mass migration.

The United States must contain these threats while continuing to harness its geographic, demographic, and institutional advantages. A crucial first step is rejecting the misperception that the country is doomed to decline. Nearly four decades ago, the political scientist Samuel Huntington argued in these pages that Americans must fear decline to avoid it. But fear risks becoming a self-fulfilling prophecy. An exaggerated sense of decay is already starting to destabilize democracy, as some Americans lose faith in the system and turn to antiliberal solutions. Some are rallying behind white nationalism, propelled by fears of demographic shifts and “great replacement” conspiracy theories, which falsely claim that political elites encourage mass immigration to replace white Americans with minorities. Others are stoking minority grievances to mobilize voters along ethnic lines. Such cynical strategies have fostered harmful policies, such as defunding the police or mass deportations, eroding trust in democracy and potentially enabling demagogues to dismantle the republic’s checks and balances.

Fearing decline, the United States might lean toward protectionism and xenophobia, walling itself off rather than competing internationally, which would undermine its core strengths. The country has thrived on the free flow of goods, people, and ideas, soaking up foreign talent and capital like a sponge and building a global commercial order that attracts allies. But if the United States embraces a false narrative of decline, it risks becoming a rogue superpower, a mercantilist behemoth determined to squeeze every ounce of wealth and power from the rest of the world. Tariffs, sanctions, and military threats could replace diplomacy and trade, alliances might become protection rackets, and immigration could be sharply restricted. This nativist turn might yield short-term gains for Americans, but it would ultimately hurt them by making the world they inhabit poorer and less secure. Trade and security networks could collapse, sparking resource-driven conflicts and killing off any possibility for cooperation on nuclear nonproliferation, climate change, pandemics, and other global challenges—accelerating a descent into anarchy.

The most immediate danger is that the United States will convince itself—and its adversaries—that it lacks the will or the capacity to counter large-scale aggression. To avoid asserting its interests without backing them up (thereby provoking aggressors without deterring them) or prematurely withdrawing from regions (forcing a rushed and costly reentry), the United States must rigorously reassess its core interests and determine where containing aggression is essential. The U.S. national security establishment believes this means preventing China, Iran, North Korea, and Russia from destroying their neighbors. This conviction—that powerful revisionist tyrannies should be contained—is as straightforward as it is hard learned. After World War I, the United States withdrew from Eurasia, a decision that contributed to the outbreak of World War II. In contrast, after World War II, the United States maintained peacetime alliances in Eurasia, ultimately defeating Soviet communism without triggering World War III, and providing the security foundation for an unprecedented surge in global prosperity and democracy. The key to success, then as now, is blending strength with diplomacy: building a credible military presence to deter aggression while offering revisionist powers a path to reintegration with the West if they renounce military conquest.

During the Cold War, the United States contained the Soviet Union until internal weaknesses forced Moscow to retreat. A similar strategy could work today. China’s economy is stagnating, and its population is shrinking. Russia is bogged down in Ukraine, and Iran has been battered by Israel. Chinese President Xi Jinping, Russian President Vladimir Putin, and Iranian Supreme Leader Ali Khamenei are aging heads of state whose reigns will likely end within the next decade or two. The United States doesn’t need to contain their regimes indefinitely—perhaps just long enough for current trends to play out. As their power declines, their imperial dreams may seem increasingly unattainable, potentially prompting successors to chart a new course. In the meantime, Washington should sap their strength by welcoming their brightest people to the United States through immigration and by strengthening connections with their societies through student visas, diplomatic exchanges, and nonstrategic trade.

China, Iran, North Korea, and Russia, however, are unlikely to mellow overnight. The United States’ struggle against these countries may not last forever, but Washington must prepare for a contest that could last years. In this competition, domestic unity will be essential. Investing in jobs, infrastructure, housing, and education in neglected areas—and rekindling a spirit of civic duty—will be crucial not only to mend national fissures but also to fortify the United States against foreign threats. Calling on Americans to stand up to autocratic aggression doesn’t mean rushing into war; it means creating a future in which peace is secured through sustained investments in military strength and diplomatic outreach. It means rallying a nation to recognize its immense power and accept the responsibility to wield it, not in frenzied reaction but before the storm—with purpose and prudence.

#### Externally, it prevents effective mitigation of numerous existential risks (nuclear war, climate change, AI, pandemics, asteroids, deforestation).

Dr. James Pattison 25, PhD, Professor, Politics, University of Manchester, "The Duty to Confront Global Authoritarianism," European Journal of Political Theory, OnlineFirst, 04/15/2025, SAGE. [italics in original]

The past decade has seen a marked rise in authoritarianism. Authoritarian powers that reject liberal democratic values, most notably China, have increased in global influence. Many previously liberal democratic states such as Benin, Hungary, the Philippines, the United States, Tanzania, and Turkey have taken authoritarian turns, weakening and abandoning key aspects of their liberal democracies. Democratic gains made over the past 30 years have been eroded, with 72% of the world's population now living in autocracies, an increase from 49% in 2004 (V-Dem, 2025). A post-liberal order appears to be emerging in which authoritarian actors have greater influence. According to Freedom House, ‘[t]he global order is nearing a tipping point, and if democracy's defenders do not work together to help guarantee freedom for all people, the authoritarian model will prevail (2022: 1). It is clear that rising global authoritarianism poses a major emerging challenge. This is exacerbated by the more supportive posture of the second Trump Administration towards authoritarian actors.

Yet, despite the dangers posed by global authoritarianism, efforts to respond to rising global authoritarianism have often taken a back seat as states have prioritised other areas. Democracy aid comprises only 10% of total Official Development Assistance (ODA) by OECD countries (Cheeseman and Desrosiers, 2023), with some OECD countries giving very little democracy aid. For instance, the United Kingdom cut its budget for electoral assistance from 6% to 1% of ODA between 2010 and 2020 (Independent Commission for Aid Impact, 2023: 2). Although states have reacted more robustly to coup d'états (e.g. the United States has in the past immediately cut aid after a coup d'état), they have often overlooked the more gradual erosion of democracy and the increase in global authoritarianism (Cheeseman and Desrosiers, 2023).

The aim of the paper is straightforward: to explicate the duty to confront rising global authoritarianism, what it means, and why it should often be taken even more seriously than other global responsibilities. The paper argues, overall, that states are morally required to take much more seriously the threats posed by rising global authoritarianism. In doing so, the paper highlights the threat to the fulfilment of other global responsibilities posed by rising global authoritarianism, arguing that this helps to show most clearly why the duty to confront global authoritarianism is weighty.

The paper aims to contribute to the literature by explicating the duty to confront rising global authoritarianism, which has been largely overlooked. It is widely accepted, by both cosmopolitans and noncosmopolitans alike, that states have several global responsibilities, stemming from global duties of justice and humanity respectively. Indeed, political philosophers have ascribed a wide range of duties to states to respond to major current challenges. These include, most famously, duties to respond to mass atrocities, tackle global poverty, provide refuge to displaced persons, and reduce communicable and noncommunicable diseases.1 Some have extended this to argue that agents have weighty duties to tackle emerging and future challenges, such as those posed by climate change, artificial intelligence, future pandemics, and asteroids.2 \*\*\*FOOTNOTE BEGINS\*\*\* 2. Examples include Bostrom (2013), Cripps (2022), MacAskill (2022), and Singer (2015). Bostrom N (2013) Existential risk prevention as global priority. Global Policy 4(1): 15–31. Cripps E (2022) What Climate Justice Means and Why We Should Care. London: Bloomsbury. MacAskill W (2022) What We Owe to the Future: A Million Year View. London: OneWorld Publications. Singer P (2015) The Most Good You Can Do: How Effective Altruism Is Changing Ideas About Living Ethically. New Haven: Yale University Press. \*\*\*FOOTNOTE ENDS\*\*\* Yet, unlike these other areas, the emerging challenges posed by rising global authoritarianism have been largely underexplored. Of the work in political philosophy that does consider growing authoritarianism, it focuses on the challenges posed by democratic backsliding *domestically* (and especially within the EU), rather than the rise in authoritarianism globally.3

In what follows, the paper first sets out the duty to confront rising global authoritarianism, including its targets, agents, and forms, before outlining its central three bases. Crucial here is that this duty comprises not only self- and other-defence, but also to redress the spillover effects of the rise in global authoritarianism. The paper then goes on to consider how a duty to confront rising global authoritarianism relates to duties to respond to other emerging threats. It argues that the duty to confront global authoritarianism is an ‘indirect duty’ and so should be viewed as very weighty since it is necessary for the fulfilment of other global responsibilities. In the final section, the paper considers what sorts of means could be permissibly adopted to tackle global authoritarianism, focusing on the question of whether it is permissible to adopt measures that themselves violate liberal norms if it appears they will help to tackle authoritarian threats.

Before beginning, three clarifications are necessary. First, I will use global ‘responsibility’ and global ‘duties’ interchangeably. Second, the paper will often focus on states – and often liberal states – as the holders of the duty to confront global authoritarianism. As I will discuss below, this includes a central role for states in the Global South. However, other types of agents may also possess this duty, including international institutions, civil society actors, and individuals. Third, although there have been longstanding authoritarian actors globally (e.g. Russia and North Korea), the paper is particularly concerned with the massively increasing prevalence of authoritarianism globally, which appears to be a step change from recent times, at least since the end of the Cold War.

Confronting global authoritarianism

I will start by outlining the concept of the duty to confront rising global authoritarianism, focusing on the (1) target of the duty, the (2) sorts of actions required by the duty, (3) the bearers of the duty, and (4) the reasons for framing it as a duty, before turning to its bases in the next section.

First, let us consider the targets. Agents can vary in the degree to which they are authoritarian in their behaviours and over time. For instance, established liberal democratic states, although mostly not authoritarian, can sometimes engage in authoritarian behaviour, such as the Rendition programme during the War on Terror. I will therefore follow Marlies Glasius in focusing on authoritarian *practices*, but depart from her in how we should understand these practices, who suggests that they are ‘*a pattern of actions, embedded in an organized context, sabotaging accountability to people over whom a configuration of actors exerts a degree of control, or their representatives, by disabling their voice and disabling access to information*’ (2023: 22; emphasis in original).4 On the one hand, this understanding is too narrow since authoritarianism might not ‘sabotage’ accountability mechanisms. There may be few existing accountability practices to sabotage. It also limits authoritarianism to only two main means: ‘disabling voice’ and denying access to information. This overlooks the range of other authoritarian means that do not involve silencing and obfuscation, from domination by the executive to undermining of the judiciary. On the other hand, the definition also seems too broad since it does not capture the sense that authoritarian practices involve attempts to develop a strict, highly ordered society and attempts to stop or preclude deviance from the perceived societal norms. In other words, it overlooks the rejection by authoritarianism of pluralism, of different political ideas, religions, or ethnic identities, which is a key part of rising authoritarianism (Freedom House, 2024). It also fails to distinguish authoritarianism from poor or weak democratic governance, and from democratic backsliding states, where there is less access to democratic rights but still acceptance of pluralism and difference. I will therefore follow Giorgios Katsambekis in understanding authoritarianism as ‘a set of practices centred around a rigid notion of authority that is characterised by the employment of actions/policies that aim to consolidate a strictly ordered society, limit accountability and counter deviance' (2023: 423).5 This includes not only the attempts to limit accountability (central to Glasius' understanding of authoritarian practices) but also the repudiation of pluralism.

These authoritarian practices are objectionable and states have some reasons to challenge such practices in other states, stemming from concern about the health of democracy in other states and the undermining of pluralism. Yet, on their own, these reasons are unlikely to be sufficient to generate a weighty duty to confront global authoritarianism. That is, the reasons are unlikely to be sufficiently weighty to generate not simply a *pro tanto* duty but also often an *all-things-considered* duty. For this, we need to understand the extent of rising global authoritarianism, and in turn, the much more serious threat that it poses not only to democracy but also to the fulfilment of numerous global responsibilities. I will present this threat over the next two sections.

Let us now turn to the *global* part of rising global authoritarianism. This has three main elements. The first is *internal*: many former liberal democracies, from Asia to Latin America, Europe to Africa, have elected populist, right-wing governments that have undermined civil and political rights, such as by weakening judicial independence, violating LGTBQIA + rights, and denying the rights of migrants to seek asylum.6 Although many of these states are still not autocracies (i.e. they are still either electoral or liberal democracies), they have adopted many authoritarian practices. The second is *international*: autocratic powers that reject liberal democratic values, most notably China, have been rising in global influence, offering an alternative vision to the liberal international order.7 The third is *transnational*: authoritarian actors are increasingly working together in transnational partnerships, defending authoritarian practices and championing illiberal views, such as in partnerships between authoritarian states, such as China and Russia (BBC, 2024), and between authoritarian political leaders, such as between Viktor Orbán, Donald Trump, and Marine Le Pen. The latter include relations formed at the annual Conservative Political Action Conference (CPAC) as well as more ad hoc relationships between authoritarians, such as between Viktor Orbán and Marine Le Pen.8 In his speech to the CPAC conference in Dallas in 2022, Orbán called for ‘conservatives to make friends’ internationally to defeat ‘globalists’, as well as denouncing gay marriage and immigration, and received a raucous standing ovation from the US Republicans in the room (Abrahamsen and Williams, 2023: 29; Stephan, 2023). It also includes actors such as the Russian private military and security company, Wagner (now known as ‘Africa Corps’), which has been used by Russia to export its kleptocratic governance model, helping to establish an anti-Western coalition across Africa with a partnership of autocrats, and the Russian Association for Free Research and International Cooperation, which sponsored phoney election monitoring in several African nations, including Zimbabwe and Mozambique (Rampe, 2023).9

Accordingly, the duty to confront global authoritarianism has three targets. The first is rising authoritarian practices *in other states*, by challenging these practices with measures such as economic sanctions and diplomatic naming and shaming. The second is to confront *global authoritarian powers*, such as attempts to contain and counteract Russia's influence in Africa, and, more forthrightly, to challenge Russia after its invasion of Ukraine in 2022. The third is to confront *transnational authoritarian partnerships*, such as by challenging their ability to organise.

Let us turn to the sorts of actions required. The duty to ‘confront’ global authoritarianism is a catch all, comprising three ‘c's: *challenging*, *containing*, and *counteracting* rising global authoritarianism. *Challenging* global authoritarianism concerns tackling it head on, trying to stop its march and roll it back. It seems unlikely to be feasible to fully tackle global authoritarianism, that is, to *fully* preclude global authoritarianism, at least in the short- to medium-term. What will often be more feasible is containing it, reducing the likelihood of some of the worst potential outcomes and rolling back global authoritarianism as far as possible. Importantly, confronting global authoritarianism can also involve attempting to deal with its challenges. That is, rather than attempting to directly roll it back, it can instead concern efforts to respond to the broader, serious spillover effects of the increase in authoritarianism. The duty to confront global authoritarianism therefore involves not simply attempting to tackle rising global authoritarianism but also to *counteract its problematic effects*. As I argue below, these concern the implications for the fulfilment of other global responsibilities.

Confronting global authoritarianism (in all three forms – challenging, containing, and counteracting) can involve several measures. These include naming and shaming authoritarian actors, such as criticism of Orbán's Hungary by human rights organisations, and the launching of economic sanctions, such as the various Western sanctions on Wagner and Russia in the light of Russia's invasion of Ukraine in 2022. It also includes political sanctions, such as expulsion from international bodies and the denial of voting rights10, as well as (some degree of) military support for actors fighting authoritarianism, such as the provision of arms to Ukraine.

The duty to confront global authoritarianism differs from ‘democracy promotion’, which has been seen as a euphemism for the unilateral, forcible *imposition* of democracy, often through regime change, on undemocratic states by powerful actors for self-interested reasons (such as to open up economic markets) (Independent Commission for Aid Impact, 2023). The forcible imposition of democracy has numerous, well-known problems, not least the major difficulties involved in attempting to impose democracy by coercion. Indeed, the coercive imposition of democracy is highly unlikely to be justified, given the low likelihood of success and the fact that democracy aid would be far better spent elsewhere protecting democracy.11

By contrast, following a shift in language used around democracy aid (Independent Commission for Aid Impact, 2023; Leininger, 2022), the duty to confront authoritarianism concerns democracy *protection* (which involves primarily *containing* and *counteracting* global authoritarianism). That is, it concerns protecting democracy under threat from the march of authoritarianism by those who already accept democratic values, rather than the imposition of democracy on those who do not already endorse democratic norms. Although it does contain elements of *supporting* democratic movements in other states, this is not coercively, that is, it does not involve imposing it on those who do not already accept democratic values.

This point also reduces concerns about the lack of a right to confront global authoritarianism in particular cases because of the potential violation of the sovereignty of states that have a degree of legitimacy. Whether there is a right to interfere in states that are not fully democratic has been much discussed; in the most helpful contribution to the debate thus far, Lucia Rafanelli (2021) argues that various forms of interference can be justified even in legitimate states, depending on how much they work through existing institutions (rather than opposing them) and how coercive they are. The more oppositional and more coercive interventions, she argues, are justifiable only when states are illegitimate, but measures that work through existing institutions and are not coercive can be justifiable in even fully legitimate states.12 This is because these measures can bolster recipients' collective self-determination by challenging, in Rafanelli's words, ‘the colonial and other geopolitical hierarchies that rob societies on their bottom rungs of self-determination’ (2021: 6) – and, we can add, the threats posed by global authoritarianism that potentially rob individuals of accountable governance. The point, then, is that democracy protection measures are likely to work through existing institutions and unlikely to be massively coercive, and so will not face concerns about violating legitimate governance.

The most obvious measure here is the provision of *international democracy support*. This involves, for instance, helping others to build the capacity of independent media and civil society, improving accountability through the courts and parliament, helping with elections, and assisting actors wanting to ensure democracy, such as human rights NGOs (Godfrey, 2022; Leininger, 2022). Such support for pro-democratic actors can be partnered with conditionalities and mildly coercive measures.13 For instance, alongside international rebuke, international support of Senegal’s civil society and electoral processes helped to ensure that Abdoulaye Wade did not circumvent term limits in 2012 (as he had attempted) (Leininger and Nowack, 2022). Measures of democracy support are not generally coercive (or at least minimally so) since they aim to support those who already accept democratic values, and those who live in institutions that value democracy and willing to accept external assistance to support democratic protection efforts. In other words, it is not an *imposition* but rather assisting those who already accept democratic values.

For these measures to be justified, they need to meet the relevant criteria, which may be specific to each measure (at least at the nonideal level) (Fabre, 2018; Pattison, 2018, 2019). Whether there can be unifying criteria across all of the various measures is somewhat moot.14 But, without going into this here, we can point to some broadbrush principles that are generally applicable: that the measures need to be *proportionate* – to do more good than harm compared to inaction – and that the measures need to be *necessary* – better than other ways of confronting global authoritarianism. Meeting these broadbrush criteria (as well as, perhaps, any specific formulation of these principles or additional criteria relevant to the particular measure) will provide actors with the *right* to confront global authoritarianism.15 It will also, I will argue in the next section, mean that they have a correlative *duty* to do so (unless otherwise excessively costly).

Third, the bearers of the duty to confront global authoritarianism are, most obviously, Western liberal states, given their global influence and resources. But other international institutions, individuals, civil society actors, and other, non-Western, liberal states, such as Botswana, Chile, Costa Rica, Ghana, and South Korea, also bear the duty.16 Indeed, it is worth highlighting that states in the Global South have significantly contributed to the development of the liberal egalitarian elements of the existing international order, and are likely to have vital roles in confronting global authoritarianism. As Marcus Tourinho (2021) argues, although it is often assumed that industrialised democratic states presented a coherent set of norms that was resisted by the Global South and that developing countries diluted liberal principles in favour of sovereigntist ones, this is not actually the case. In the mid-twentieth century, certain ‘contributions of postcolonial Latin American, African, and Asian states made the global order more, not less, liberal’ (Tourinho, 2021: 268; emphasis added). This includes the development of the 1977 Additional Protocols to the Geneva Conventions (Tourinho, 2021: 270–1), the emphasis on global justice and equity, and developing and supporting the responsibility to protect (R2P) doctrine, human security, and transitional justice (Acharya, 2019: 15–16). More recently, in 2019 the Gambia (with the support of the Organisation of Islamic Cooperation) filed a case against Myanmar in the International Court of Justice (ICJ) under the Genocide Convention over genocide of the Rohingya in Myanmar. This was not only the first attempt to subject the genocide of the Rohingya to legal scrutiny, it was the first time that the ICJ had received a case bought by a country from a different continent (International Bar Association, 2019).

All that said, rich Western states are required to bear more of the costs of fulfilling the duty to confront global authoritarianism, potentially supporting action by others. Given their (1) previous culpable multiple injustices (e.g. colonial injustices) and given (2) their greater ability to pay, it seems clear that rich Western states can be asked to bear more of the costs of the measures necessary to confront global authoritarianism. This assumes that we adopt a (fairly standard) model of the distribution of costs that looks to those who are most culpable and most able to bear the costs.17 To be sure, even when Western states do not support the costs of the measure, there are still various, often cheaper measures that less wealthy states in the Global South can be duty-bound to undertake to confront global authoritarianism, such as supporting diplomatic initiatives and providing advice and assistance.

Fourth, why is the duty to confront global authoritarianism a *duty* and what does it mean to call it a ‘duty’? The duty to confront global authoritarianism is not an indefeasible duty; it is pro tanto and can, *on occasion*, be outweighed by other international duties, as I discuss below.18 The duty may also, on occasion, be outweighed by states' fiduciary obligations to look after their own citizens' basic interests, when fulfilling the duty would involve very costly action. In other words, the duty to confront global authoritarianism, like other global duties, has a reasonable costs proviso, meaning that it does not require bearers to bear unreasonable costs in discharging it, or helping others to discharge it.19 That said, the duty is, in most cases, an all-things-considered duty and should be acted upon. This is because, as the third section argues, confronting global authoritarianism should sometimes be prioritised over other issues since this will better enable responses to multiple crises. In addition, as just noted, many measures to confront global authoritarianism are not unduly costly, such as diplomatic support to democracy movements.

Why frame the duty to confront global authoritarianism as a ‘duty’? First, as we will see, the three bases concern considerations of very large magnitude that are not easily outweighed – at stake are the self-determination of millions of people and the fulfilment of global responsibilities to millions of vulnerable individuals. Second, the language of duties and responsibilities is a clear signifier to highlight the importance of tackling global authoritarianism. It emphasises to states, and to other actors, that there is an imperative to respond. Third, the language of duties helps to move beyond seeing the threat posed by global authoritarianism simply as a matter of self-defence and the protection of one's national interests. It emphasises that global authoritarianism poses very serious threats to *others*, including self-determination in *other states* and the fulfilment of global responsibilities, which affects vulnerable individuals globally. I will now unpack these points.

Three bases

There are three bases of the duty to confront global authoritarianism. The first is self-defence, both in terms of the defence of the self-determination of the state and the defence of territorial integrity. This concerns the attempts by authoritarian actors to influence the functioning of democracy in liberal democratic states, from the Russian interference in the election(s) of Donald Trump and the Brexit referendum, to the Chinese influence of the 2019 and 2021 Canadian elections and the Qatari attempts to interfere with the voting of the European Parliament (so-called ‘Qatargate’) (BBC, 2023a). These efforts have seemingly been intended to weaken democracy by encouraging divisive actors and to ensure that the sponsors have in place officials who will not contest their foreign policy goals.

In response to external interference by authoritarian actors, states have a right – and a duty – of self-defence. The right of self-defence is a cornerstone of the UN Charter and is widely held in many leading accounts of just war theory to justify the resort to military force when states are under significant threat (e.g. Walzer, 2015).20 The threats are serious: the risk is to the collective self-determination of states, from being able to freely choose their elected officials and to determine their foreign and domestic policies without illicit interference.21 More straightforwardly still, tackling foreign meddling is crucial for the protection of the values of democracy and human rights. Accordingly, the first basis of the duty to confront global authoritarianism is the domestic duty that states possess to defend their citizens' collective self-determination from authoritarian foreign meddling. This basis is, of course, limited to where there is a threat of foreign meddling, although given transnational authoritarianism this threat is pervasive. There is also, more straightforwardly still, a self-defence rationale because of the risk that rising global authoritarianism will lead to your state being attacked, invaded, and annexed – to territorial integrity as well as self-determination. This is a plausible concern, for instance, for those in Taiwan and the Baltic States.

The second basis concerns the threats posed by global authoritarianism to those *in* other states, as seen most vividly in Ukraine. There are duties of humanity – and potentially duties of justice – to help defend other states from illiberal foreign meddling, from invasion, annexation, and attack, and internal illiberal major events (e.g. the imposition of martial law by a flailing leader), stemming from a general duty of assistance or duty to protect.22 It could also, for instance, take the form of helping other states to develop a system of early warning and monitoring and a system of checks and balances to protect themselves from externally supported illiberal major events. This is to help them to ensure the values of democracy and human rights within their state, and to protect their self-determination and territorial integrity. It also concerns, for instance, the dangers posed to Taiwan and the Baltic states, and the duties owed to help these states maintain their independence.

These two bases are an important element of the duty to confront global authoritarianism but are contingent on the existence of threats to undermine self-determination and territorial integrity. Some states may not be subject to these threats, with, for instance, little chance that global authoritarians will invade or interfere with their domestic politics. Focusing only on these two bases therefore risks underplaying the threat posed by global authoritarianism. Focusing on only self-defence is especially problematic because it risks framing the challenges posed by global authoritarianism as matter of only defending democracy at home and/or national self-interest, and this overlooks the risks to those in other states. What these defensive framings miss, more specifically, are the broader implications that rising global authoritarianism has for the fulfilment of global responsibilities, such as climate change obligations and refugee protection. This brings us to the third basis, which is the central part of the weightiness of the duty that I consider below.

To explicate: an international order dominated by authoritarian actors could lead to far less fulfilment of global responsibilities. Authoritarian states typically fail to fulfill their global responsibilities, with fewer resources going towards humanitarian assistance and disaster relief (Huang, 2018: 310) and accepting very small numbers of refugees. For instance, in 10 years, China has accepted only 526 refugees (Norwegian Research Council, 2023) and Saudi Arabia has, according to Human Rights Watch, shot dead hundreds and perhaps thousands of migrants at its borders in a systematic pattern of large-scale killing (BBC, 2023b). Moreover, some authoritarian states commit atrocities within their own borders (e.g. Ethiopia in the Tigray). Some have consistently attempted to block progress in climate change negotiations, such as Saudi Arabia's attempts to postpone, delay, refuse to negotiate, and deny the science (Depledge et al., 2023). Under Bolsonaro, Brazil increased the deforestation of the Amazon, thereby weakening efforts to tackle climate change and harming biodiversity and, under Orbán, Hungary has adopted a xenophobic and punitive attitude towards refugees (much more so than its more liberal neighbours). In his first administration, Trump seemingly wanted to get rid of the rules of war and proposed measures that were clear violations of international humanitarian law (Ford, 2021; Galbraith, 2020).23 Democratic backsliders have reduced their aid budgets. For instance, under the tenure of Boris Johnson, who attempted several ways of undermining British democracy, the United Kingdom cut its foreign aid budget to 0.5% of GDP in light of pressure from right-wing elements of the Conservative party.24 The shift towards authoritarianism tends to reduce attentiveness to global responsibilities.25

Moreover, a post-liberal order dominated by authoritarian actors could create a far less conducive international environment for the fulfilment of global responsibilities. Recent International Relations scholarship has explored the contours of a potential post-liberal order, with three main perspectives. The first predicts a more Realist-nationalist order (e.g. Mearsheimer, 2019). In this order, there will a significant rise in nationalism and security competition between China and the United States, and increases in the instances of mass atrocities and conflicts, as well as the open violation of key international norms such as non-intervention and the failure of international institutions. The second perspective is somewhat less pessimistic, imagining a pluralist-sovereigntist order (e.g. Acharya, 2017; Hurrell, 2018). In this order, statist norms and statist interpretation of norms will become much more prevalent and regions will be more import, including those regions dominated by authoritarian states. Authoritarianism, isolationism, and nationalism will become more prevalent in several previously liberal states and, in general, cosmopolitan elements of international norms will be less influential. By contrast, the third perspective envisages the liberal international order lingering on (e.g. Deudney and Ikenberry, 2018; Ikenberry, 2020). On this view, even the influence of the United States declines, authoritarianism will be significantly constrained and liberal hegemony will still continue. Liberal democracies will still be prevalent but will also decrease in their influence and power relative to other states, and the norms concerning human rights and democracy will decrease in influence globally.

Whichever of these scenarios emerges, it seems likely that a post-liberal order with more global authoritarianism will, first, lead to more crises and issues, as the number of human rights situations, mass atrocities, and conflicts increase, due to greater polarisation and rivalry between great powers and regions. This is likely to be most severe in the Realist-nationalist scenario, as many states, in part led by the whims of their authoritarian leaders, assert aggressively their national interests, and in general, the world becomes less rule-governed and more conflictual.

Second, and related, there is less likely to be successful multilateralism. In recent times, multilateralism has become subject to ‘gridlock’, as international institutions have failed to progress over the past few decades (Hale et al., 2013; Hale and Held, 2017). In the more pessimistic scenarios, a post-liberal order dominated by global authoritarians would see the further weakening of multilateral institutions as there would be an increased polarisation and stymying within organisations, reducing their ability to resolve crises and conflict, leading to more unilateral efforts, or simply inaction. As there are more authoritarian states, regional organisations are already being more and more dominated by them, enabling them to protect each other from criticism and sanctions (Independent Commission for Aid Impact, 2023: 16). International organisations are also being significantly influenced by authoritarian actors. The UN Human Rights Council has elected states that have been major human rights violators, including Cameroon, Eritrea, Qatar, and Sudan, and China and other authoritarian states distort the Human Rights Council practice of Universal Periodic Review, reducing the scrutiny of its human rights record, ‘turning the process into a self-congratulatory exercise and propaganda platform’ (Chen, 2021: 1241). In addition, authoritarian actors often disengage and withdraw from multilateral organisations. Under the (first) Trump administration, the United States withdrew from (or ended funding for) the Paris Agreement, the United Nations Relief and Works Agency for Palestine Refugees, the Trans-Pacific Partnership, UNESCO, the Universal Postal Union, the World Health Organization, the UN Human Rights Council, and threatened to withdraw from the World Trade Organization and the North American Free Trade Agreement (NAFTA) (resulting in the latter's demise) (Talmon, 2019). (The second Trump administration is adopting a similar approach). China, despite working with some institutions (such as the World Bank), has flouted others, including the International Tribunal for the Law of the Sea ruling on the South China Sea, and generally prefers bilateralism over multilateralism, being unwilling to engage in self-binding multilateral agreements that might limit its sovereign discretion (Weiss and Wallace, 2021: 642). According to Tom Ginsberg's (2020: 230) account of ‘authoritarian international law’, authoritarian states are worried about overly constraining themselves with transparent international commitments, which might create a domestic backlash if the benefits do not emerge. This means that authoritarian states are likely to be less committed to major multilateral initiatives.

Third, in the more authoritarian-dominated international orders, liberal and cosmopolitan norms will be weaker, such as the most ambitious aspects of the R2P and international humanitarian law, as they are subject to increased contestation and even open denial (Pattison, 2021). The (first) Trump administration not only withdrew from international treaties, it also showed an attitude of unparalleled contempt or disdain, if not even open hostility’ to the international legal order, and attacked legal bodies such as the International Court of Justice and denied basic laws such as those prohibiting the illegal acquisition of territory (Talmon, 2019: 664) (and, again, the second Trump administration is adopting a similar position). The first Trump administration also proposed a ‘Commission on Unalienable Rights’, which Roth (2020), former Executive Director of Human Rights Watch, called a ‘frontal assault on international human rights law’, as it attempted to justify restrictions on reproductive freedom and the rights of LGBTQIA + people, and attempted to abandon the binding quality of human rights law.

Fourth, more broadly, in a postliberal order dominated by authoritarians, there is likely to be the further erosion of the notion of ‘truth’ as an ideal. Actors will increasingly engage in what Adler and Drieschova (2021) call ‘truth-subversion’ practices. These include ‘false speak’ (deliberate and obvious lying with the intention of subverting the facts), ‘doublespeak’ (with intentional internal contradictions to erode reason), and ‘flooding’ (the intentional presentation of several different messages in order to create confusion). The erosion of truth, Adler and Drieschova argue, has serious ramifications, exacerbating some of the problems above: free and fair elections can be more difficult if the public is misled and confused about accurate information; markets can be undermined since they depend on accurate information for functioning; and multilateralism can be weakened as it requires a reasoned consensus, as well as coordination and cooperation that depend on shared understandings.

Given these four elements, an authoritarian-dominated international order will be far less conducive to carrying out global responsibilities. The fact that there will be more crises to deal with will mean that states will have more responsibilities to fulfil as there will be additional people who are vulnerable with claims to assistance. But there are likely to be fewer states willing to commit to fulfilling global responsibilities, given the rise of authoritarianism. The remaining willing actors, as a result, will have to do a lot more – and many will be unable or unwilling to do even more. Weaker, or non-existent, global norms will exacerbate this, reducing the influence of norms encouraging states to fulfil their global responsibilities. And even when states do act, the weakening of multilateralism will mean that efforts will often have to be unilateral, which will typically jeopardise their effectiveness and increase the burden on those acting. More generally, truth-subversion practices will make it difficult to access the information needed to assess how global responsibilities should be fulfilled and threaten the ability to achieve agreement on action.

As such, this third basis of the duty to confront global authoritarianism is what Chiara Cordelli calls a ‘*prospective duty*’. A prospective duty is a duty ‘to overcome incapacities that make us unable to carry out positive duties to assist’ (2018: 386). That is, there is a prospective duty to overcome the likely incapacity that the international community will face in carrying out positive duties in the future, given the threats posed by a post-liberal order dominated by authoritarianism. It follows that the failure to confront global authoritarianism is wrongful. As Farod Akhlaghi argues, ‘an agent performing an otherwise permissible and not heavily burdensome action… that they have good reason to believe will drastically lower the chances of fulfilling a moral obligation, relative to at least one alternative action available, is pro tanto morally wrong’ (2020: 636). The third basis of the duty to confront global authoritarianism, then, concerns the threats posed to the fulfilment of global responsibilities, as a post-liberal order dominated by authoritarianism reduces the likelihood of these responsibilities being fulfilled.

The dangers for the fulfilment of global responsibilities are most serious in the Realist-national scenario, but also the pluralist-sovereigntist order, both of which would face increased authoritarianism and major negative side-effects, such as reduced ability to coordinate international responses to major crises from climate change to global pandemics. It is important to preclude in particular the Realist-national scenario, given the dangers that this scenario poses. The basis of the duty to confront global authoritarianism therefore concerns not simply rising authoritarianism in other states, which might appear to be only a relatively minor consideration in light of numerous ongoing global political challenges. The basis, rather, concerns the threats posed to self-determination of one's own state, of other states, and the fulfilment of global responsibilities. As argued above, these three elements necessitate the language of duties; the seriousness of the threats involved means that the duty will not simply be *pro tanto* but also often an all-things-considered duty. Indeed, we might think, given particularly the threat to the fulfilment of global responsibilities, that we should see this duty as very weighty – and at times weightier than duty to tackle other major challenges. Establishing this point is the task of the next section.26

Comparison to other duties

Having set out the basis of the duty to confront global authoritarianism, I now want to consider how this duty differs from other duties that focus on emerging global developments, such as the duty to tackle climate change, or reduce the threats posed by technological developments such as the misuse of AI and to minimise the risk of future pandemics. I will argue that the duty to confront global authoritarianism should be viewed as sometimes weightier than these other duties, other things being equal.

Why is this? After all, the other emerging duties concern threats of undoubtedly major magnitude. Take, for instance, the threats posed by future pandemics. Epidemiologists tell us that it is only a matter of time until there is another major pandemic, such as a major influenza strain (Kamradt-Scott, 2018: 544), with, in the worst cases, a potential fatality rate far higher than that of COVID-19 (see, further, Bloom and Cadarette, 2021; Rowe, 2021; Taubenberger et al., 2007). Central to the weightiness of the duty to confront global authoritarianism is that an international order dominated by authoritarianism threatens the political conditions that are necessary for the fulfilment of other global responsibilities, as explicated above. This includes these other emerging duties; a politically conducive international environment is necessary, for instance, to respond to pandemics effectively. The duty to confront global authoritarianism should therefore be seen as sometimes weightier since its fulfilment can be seen as required for the performance of other duties.

To explicate further, it helps to draw on the distinction between ‘direct’ and ‘indirect’ duties that Henry Shue (1988) makes in his seminal article, ‘Mediating Duties’. Whereas *direct* duties concern the attempt to fulfil the duty in question directly, *indirect* duties concern duties to cooperate and coordinate to establish institutions designed to implement the direct duties. Shue argues that mediating duties through institutions can be (1) far more efficient and (2) less onerous for individuals. Indeed, he suggests that fulfilling indirect duties takes precedent for these reasons. He argues that ‘[i]t will often be the case that resources are best employed not in direct action but in maintaining and enhancing institutions that are working to fulfill rights’ (1988: 696). For example,

where police protection of rights to physical security is inadequate, one's positive duties will not normally be to take direct action by conducting armed patrols oneself but to pay higher taxes in order to support a larger or better police force. The direct duties involved in maintaining enough law and order to protect physical security fall upon such institutions as police forces and judicial systems, but individuals generally have various indirect positive duties to support the institutions that bear the direct duties (1988: 696).27

The duty to confront global authoritarianism is, similarly, indirect, given that it is focused on political conditions. This contrasts to other emerging duties, which mostly concern more direct responses to threats, such as the threats to human health posed by pandemics and climate change.

This indirectness means that the duty to confront global authoritarianism is weighty – and at times weightier. Why is this? To start with, fulfilling the duty to confront global authoritarianism is more efficient, other things being equal. The need for a conducive environment means that defending the international order is likely to result in the fulfilment of many more global responsibilities over the longer term – and ultimately many more lives being saved – than acting on direct duties. A post-liberal order dominated by autocrats will make it much harder to fulfil other global duties. It will make it harder, for instance, to respond to climate change, given the need for multilateral efforts to mitigate and adapt to climate change. It will also make it harder to coordinate to deal with the threats posed by the misuse of AI – without global efforts, states may decide to downplay or ignore the risks posed by technology, fearing that their rivals will gain the upper hand. In regard to AI, there has already emerged an illiberal movement that blocks efforts to improve international governance on AI that includes liberal elements, such as on gender equality (Schopmans and Cupać, 2021). There is an ‘unholy alliance’ of antifeminist NGOs, Catholic, Islamic, and post-Soviet states, the United States under Trump, and the Vatican, which have contested women's rights in the UN in an increasingly coordinated manner, which shows a ‘willingness to throw a wrench in any initiative that, even marginally, seems to further progressive ideas on gender and women's rights’ (Schopmans and Cupać, 2021: 336). It is vital, then, to maintain and establish a conducive international environment so that these issues can be confronted effectively (or confronted at least somewhat effectively).28

Related to this, confronting global authoritarianism will mean that global responsibilities are less onerous over the long term, compared to acting on direct duties. By ensuring a system where others are more likely to fulfil their global responsibilities, one particular state will not be left having to do so much. In a more authoritarian post-liberal order, as argued above, there are likely to be many more crises and fewer willing responders. For instance, there will be fewer states willing to deal with famines and droughts, and the increased flooding and heat waves caused by climate change. Those states that are willing to act are likely to have to pick up the slack much more.29 It is crucial, then, to maintain and establish a conducive international environment so that particular states are not required to do too much and ultimately that vulnerable individuals in the future are not left to bear the brunt of major non-compliance.

#### Judicial restoration of collective bargaining mitigates consolidation. That signals democratic strength.

Dr. Robert Roberts 25, PhD, JD, Professor, Political Science, James Madison University, "Policy/Career Schedule Employment & Federal Service: Dismantling Neutral Competence," Public Personnel Management, Vol. 54, No. 3, pg. 307-330, 2025, SAGE. [italics in original]

During an era of post-truth politics, federal civil servants serve the essential function of separating fact and fiction in performing their official duties. When a presidential administration embraces post-truth politics by making false claims and statements to build popular support for their public policy agenda and suppress dissent. One posttruth scholar argues that a “single rhetorical attack on the Bureau of Labor Statistics may not move public opinion significantly. Yet the repetition and circulation of lies about unemployment figures and voter fraud, as well as efforts to retrench government knowledge production, should sound an alarm for observers of American democracy” (Roco, 2020, p. 129). Career federal employees are guardians of the public trust, not presidential puppets. The effort by President Trump to establish Policy/Career Schedule goes far beyond making it easier to dismiss federal employees for inferior performance. It seeks to require any federal employees with policy influencing or policy-making responsibility to implement the partisan or ideological agenda without any input or questions. Research supports the argument that “bureaucrats with greater public service motivation (PSM) are more likely to engage in both voice and sabotage, seeking to convince ‘unprincipled’ principals of ‘principled policies’ (voice) and to frustrate the implementation of ‘unprincipled policies’ (sabotage).” (Schuster et al., 2022, p. 417) Research also support the argument that bureaucrats have a higher likelihood of leaving government to “avoid contributing to the implementation of ‘unprincipled policies’” (Schuster et al., 2022, p. 417). Some bureaucratic scholars argue that “[p]ublic service-motivated bureaucracies thus appear to be short-run stalwarts against ‘unprincipled’ political principals.” “Over time, “principled bureaucrats” intend to depart, leaving “unprincipled” principals a freer hand to pursue policies against the public interest” (Schuster et al., 2022, p. 432).

In January 27, 2025, guidance memo distributed by the USOPM to all federal agencies and departments makes it clear that the Trump administration will push the federal courts to accept the broadest definition of executive branch positions requiring policy loyalty, “In Section 5(c) of Executive Order 13957, as amended, the President provided guideposts for agencies about the characteristics suggesting that a position category belongs in Schedule Policy/Career” states the memo (Ezell, 2025, pp. 2–3). These include positions and job categories involving (1) “substantive participation in the advocacy for or development or formulation of policy, especially: (A) substantive participation in the development or drafting of regulations and guidance; or (B) substantive policy-related work in an agency or agency component that primarily focuses on policy” (2) “the supervision of attorneys,” (3) “substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law” (4) “viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either: (A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or (B) working in the agency or agency component executive secretariat (or equivalent)” (4) “conducting, on the agency’s behalf, collective bargaining negotiations under chapter 71 of title 5, United States Code” (5) “directly or indirectly supervising employees in Schedule Policy/Career positions”; or (6) “duties that the Director [of the Office of Personnel Management] otherwise indicates may be appropriate for inclusion in Schedule Policy/Career.”

The memo informed federal agencies that OPM will issue interim Schedule Policy/Career guidance for positions duties include (1) “functions statutorily described as important policymaking or policy-determining functions, principally, directing the work of an organizational unit; being held accountable for the success of one or more specific programs or projects; or monitoring progress toward organizational goals and periodically evaluating and making appropriate adjustments to such goals,” (2) “authority to bind the agency to a position, policy, or course of action either without higher-level review or with only limited higher-level review,” (3) “delegated or subdelegated authority to make decisions committed by law to the discretion of the agency head,” (4) “substantive participation and discretionary authority in agency grantmaking, such as the substantive exercise of discretion in the drafting of funding opportunity announcements, evaluation of grant applications, or recommending or selecting grant recipients,” (5) “advocating for the policies (including future appropriations) of the agency or the administration before different governmental entities, such as by performing functions typically undertaken by an agency office of legislative affairs or intergovernmental affairs, or by presenting program resource requirements to examiners from the Office of Management and Budget in preparation of the annual President’s Budget Request,” (6) “publicly advocating for the policies of the agency or the administration, including before the news media or on social media,” or (7) “positions described by their position descriptions as entailing policy-making, policy-determining, or policy-advocating duties” (Ezell, 2025, pp. 2–3).

President Trump’s proposed Schedule Policy/Career has nothing to do with making it easier for federal agencies and departments to remove poor-performing competitive schedule executive branch employees. The CSRA empowered federal agencies and departments to remove federal employees that fail to meet clearly defined performance standards. The establishment of a Schedule Policy/Career seeks to turn federal executive branch employees into public policy loyalists or clones. Once a Schedule Policy/Career employee receives an order to implement a policy, they must do so without raising any objectives. Even if an evidence-based justification for a policy does not exist, a Schedule Policy/Career employee will have to create one. If the federal courts fail to block the establishment of Schedule Policy/Career new Schedule Policy/Career employees will have limited options. Do they resign? Do they surrender and assume the role of loyal public policy foot soldiers or robots for the political leadership of their agencies or departments? Do they find ways to exercise their voice in expressing opposition to this coup to protect the public interest and constitutional values? Hopefully, lower federal courts and the U.S. Supreme Court will send a message that the Constitution and federal law did not grant presidents absolute control over federal executive branch employees. Hopefully, lower federal courts and the U.S. Supreme Court will find reject President Trump’s interpretation of unitary executive theory when ruling on the legality of the establishment of Schedule Policy/Career. However, no certainty exists that lower federal courts and the U.S. Supreme to make clear that a President does not have sole authority to establishment policies governing the management of federal executive branch employees.

#### AND balanced restructuring authority enables public service-delivery innovation.

Dr. K. Sabeel Rahman 25, PhD, JD, Professor, Law, Cornell Law School. Former Senior Counselor & Associate Administrator, Office of Information & Regulatory Affairs, "Evolving Expertise: Structural Inequality and Bureaucratic Judgment," Boston University Law Review, Vol. 105, 07/01/2025, pg. 101-120. [italics in original]

Governance paradigms have force not just as a set of ideas and assumptions shaping policymakers’ actions; they are also encoded and instantiated in institutional structures and protocols. These structures and protocols are not just a product of legislation. On a day-to-day level they are more directly a result of internal forms of intra- and inter-agency procedures and practices for policy development, discussion and debate, clearance, and alignment.25 As Anya Bernstein and Cristina Rodríguez document in a recent article, the administrative state is characterized by overlapping layers of review, debate, and approval, resulting in decision-making marked by “broad participation, multifarious input, and ongoing reason-giving characterized as much by negotiation as by supervision.”26 These dynamics include robust give-and-take interactions between civil servants and political appointees, reflecting not a clash between a “deep state” and an electorally-accountable appointee, but rather productive tensions between actors operating on different timescales and with different roles that provide a complementary balance between expertise and responsiveness to the public on the one hand, and channeling the normative vision of the sitting President on the other. These dynamics suggest a potentially broad “policy space” in which regulatory policymakers can maneuver, adapting existing tools and statutes to address emerging problems and pressing issues of injustice or public need. This administrative policy space is not unbounded— and in many ways, highly pressured by a range of external and structural factors—but it nevertheless constitutes an essential site of policy debate, contestation, judgment, and innovation, in ways that are participatory and dynamic as well as expertise-informed.27

An implication of this account is that there is significant “give in the joints” to adapt internal protocols, procedures, and ways of conceptualizing or analyzing public problems to enable agencies to better engage with new, more structural or urgent kinds of public problems. The very structure of bureaucracy is itself a way in which we embed and institutionalize particular ways of thinking.28 If internal protocols and procedures operate to structure administrative action—making some ideas and issues easy to tackle, while making others more onerous to organize around and advance smoothly—then it is also possible to imagine a different configuration of internal processes that would facilitate other kinds of analysis or policy action. Indeed, bureaucratic institutions are themselves capable of evolution and socialization into new approaches. And arguably, the evolution and transformation of existing bureaucracies offers a faster path towards fusing new ideas with the effectuating power of the state.29 This is not to say that bureaucracies should be taken as they currently exist and that visions for structural change and an inclusive society should be tempered to meet the limitations of these institutions. Rather, it is to say that those aspirations for social change require reimagining bureaucratic institutions, with the goal of not only implementing new policies, but of institutionalizing the new ways of thinking and acting as those new policies augur. What we should aspire towards is an administrative structure that institutionalizes—in sticky and durable ways—modes of action and judgment that are not merely efficient and effective, but that are also fit for the broader purpose of building a more inclusive and egalitarian society.

Internally, creative and successful administrative innovation depends on the confluence of personnel appointments and hires with political support internal to the executive branch and with existing bureaucratic processes and capacities that are close enough to the goals at hand to make genuinely impactful innovation in the administrative process possible. Much of the focus on policy change in new administrations tends to emphasize personnel appointments and presidential vision.30 But personnel and top-down directives are only a part of the story. Reforming or evolving approaches to governance requires at times adapting and working through existing vehicles and processes and at other times reprogramming and rewiring them. New ideas and policies may be most challenging to launch and embed where the new policies and concepts do not map neatly on to existing protocols. As a result, new policy directions, particularly when premised on underlying conceptual shifts (for example, bringing concepts like equity into the frame, or shifting focus to macro political economy questions on market concentration or industrial policy), necessarily require thoughtful and effective approaches to organizational and cultural change management within the agencies and the executive branch themselves.

II. EMBEDDING NEW CONCEPTS INTO GOVERNANCE

How might a different approach to understanding and responding to public problems—foregrounding values of equity and problems of concentrated power—be embedded into a bureaucratic structure? This Part highlights some brief examples and implications from efforts to institutionalize a greater focus on corporate power and equity in the administrative state between 2021 and 2024.

*A. Anti-monopoly and the Problem of Concentrated Economic Power*

Anti-monopoly focused on the problem of concentrated corporate power has been a notable battleground where older neoliberal conceptions of economic policy have increasingly been disrupted by a recovery of an earlier tradition of political economic policymaking that takes the problems of market dominance, market concentration, and corporate power more seriously.31 As a host of scholars and advocates have argued in recent years, the idea of antitrust law and anti-monopoly more broadly has long been a tradition in American political and economic thought, as part of a larger vision of political and economic democracy where checks and balances ought to apply as much to concentrations of private power as to concentrations of public power.32 This democratic ethos of curbing market concentration animated major early twentieth-century innovations from the Sherman Act to the creation of the Federal Trade Commission and the broader ethic of market-shaping regulatory policy.33 Antitrust law and practice has also been a good example of a field of policymaking where neoliberal presumptions—toward the self-correcting nature of markets and against more structural forms of governmental regulation—have animated an approach to enforcement, doctrine, and policy that effectively erased from view many of the harms stemming from market concentration on innovation, production, workers and wages, and ultimately the public.34 These critiques have generated a very real alternative paradigm for law, policy, and enforcement strategy: a greater interest in antitrust enforcement; a broader orientation to a wider range of tools including public utility regulation, labor market regulation, and consumer protection regulation; and an orientation to market, corporate, and industry structures rather than harmful outcomes as a way to prophylactically stem the proliferation of particularly exploitative or harmful practices that impact consumers, businesses, and workers.35

The Biden Administration took this renewed critique of concentration and monopoly power as a central pillar of its economic agenda. Through key appointments to the FTC, DOJ, and National Economic Council, and through the President’s own statements, this philosophical shift on competition policy was well noted.36 While the specifics of competition policy can be debated elsewhere, for present purposes what is particularly interesting about this effort is how the administration sought to institutionalize, through internal bureaucratic mechanisms, this renewed attention on antimonopoly and concentration. Agencies shift course all the time, particularly when party control of the executive branch changes hands. But competition policy is somewhat different in that the shift was not a simple matter of flipping a switch; precisely because competition law and policy had operated under an old conventional wisdom for decades, this rediscovery of competition policy necessarily meant pushing agencies to rediscover authorities and tools that, while very well established in law, were not necessarily as well established in day-to-day internal bureaucratic practice.

The Biden Administration’s approach to reviving this broader orientation to competition, market power, and general economic power suggests this effort was as much about shifting culture and worldview as it was about shifting policy. Certainly the lead antitrust authorities at the FTC and the DOJ Antitrust Division increased their attention to enforcement actions and scrutiny of merger activity in ways that generated significant results on curbing excess market concentration.37 But more broadly, President Biden’s Executive Order 14,036 outlined a long list of specific regulatory actions that agencies were tasked with completing—covering everything from renewed attention to statutes like the Packers and Stockyards Act in order to tackle concentration in the poultry industry,38 to the need to address the proliferation of employee noncompete clauses limiting worker mobility and labor market competition.39 This wide range of actions essentially amounted to expanding the competition mission beyond the FTC and DOJ and helping revive anti-monopoly authorities and muscles long dormant in agencies like the Department of Agriculture and the Department of Transportation.

This reorientation across the agencies was facilitated in an ongoing manner by a combination of capacity building from below and coordination and accountability from above. The executive order created a cabinet-level Competition Council, where agency heads updated the President directly once a quarter in a cabinet meeting designed to be partially open the press.40 Meanwhile, agencies expert in analysis of markets—both the DOJ Antitrust Division and the Office of Information and Regulatory Affairs—developed guidance to agencies to support them in developing their internal capacities for analyzing problems of market concentration and competition.41

*B. Equity and Agency Policymaking*

This orientation toward capacity building brought concepts of equity into the regulatory and administrative process by combining lateral support with coordination from the White House. Indeed, a central theme of the 2020 election and 2021 transition was the widespread demand for greater action on systemic inequities—along dimensions of race, gender, geography, income, disability, and more.42 The Biden Administration issued a series of directives aimed at bringing equity into the forefront as a central concept and goal for the executive branch.43 While agencies and the public have long understood concepts of civil rights, the question of how to address systemic inequities beyond conventional civil rights enforcement was in some ways novel. Equity itself is a relatively new term that has increasingly sought to capture the ways in which nominally neutral policies and systems leave in place, or even exacerbate, existing geographic, racial, gender, income and other disparities.44 Here too, the task for agencies was to develop new policy ideas with a greater attentiveness to the unique challenges that many constituencies faced.

First, agencies developed “Equity Action Plans” to be approved by the White House Domestic Policy Council.45 But in the course of developing these plans— which were open-ended and flexible to the particular needs and gaps identified by each agency—agencies identified various internal capacity gaps and needs.46 Data might be insufficient to develop effective policy, prompting the need to collect more and different data and inputs from stakeholders to inform policy focused on mitigating inequities in particular communities.47 Staffing and expertise might be limited.48 Agency resources might have to be redeployed more effectively to respond to a problem that took on higher priority in the course of this process. In some cases, these capacity gaps prompted broader policy shifts. For example, the Office of Science and Technology Policy chaired a process to outline how agencies can build more effective systems for collecting more granular data to shed more light on the specific challenges that different constituencies might face.49 Various White House and Office of Management and Budget (“OMB”) components developed guidance on how agencies can better engage impacted communities to ensure easily marginalized voices are better heard and can shape agency policymaking earlier in the process.50 This combination of coordination from above and capacity building points to a broader orientation in this work around equity that emphasizes not just policy change, but organizational evolution.51

A central difficulty with these efforts, however, stemmed from their broad and diffuse nature. First, internally, despite a wide range of creative proposals generated across different agencies’ Equity Action Plans, most agencies lacked dedicated staffing and resourcing to sustain and deepen these efforts.52 These limited internal resources posed a challenge to continuing to deepen and extend these new approaches. Second, the external conditions and stakeholders were not configured to help leverage and fuel these efforts over the medium run. For example, agencies quickly identified the need for new data sources that offered disaggregated information on how particular communities were experiencing different challenges.53 It proved difficult to source data outside of individual studies.54 Similarly, a wide range of civil society groups provided valuable input to agencies in their policy designs, but here too the advocacy infrastructure was not as developed as, for example, business interests’ savvy engagement with agency policymaking processes.55 Third, these challenges were magnified by a lack of specific prioritization of key policy outcomes and deliverables. In contrast to the economic competition executive order, the equity work did not identify specific high-level goals or outcomes to which agencies could drive their policymaking focus—and around which external researchers, advocates, and stakeholders could be organized.56 Finally, the external political environment became increasingly hostile: Conservative jurists blocked several early efforts, and the Supreme Court ruling on affirmative action further emboldened critics and chilled creativity.57 And the political hostility from the far-right continued to escalate in Congress and among far right activist groups— which, as we have since seen, ultimately culminated in the outright elimination and reversal of these efforts.58

*C. Administrative Burden and Service Delivery*

A third frontier for bureaucratic evolution arose in the context of practices of service-delivery programs, arising from a combination of interest in equity and long-standing interests in good governance and civic innovation.

A central feature of neoliberal political economy is the eroding or dismantling of the public governmental role in providing key goods and services. This ethos manifests in the tendencies toward deregulation and budget cuts that emaciate public provision.59 It also drives the tendency to impose additional hurdles and barriers on individuals accessing government benefits in the design and implementation of safety net programs.60 Paperwork burdens and an often hostile or punitive approach to reviewing new enrollments or monitoring existing beneficiaries have far-reaching effects inhibiting access and disproportionately impacting low-income communities, women, and communities of color.61 This approach to safety net administration, legitimated as an effort to prevent “waste, fraud, and abuse,” is itself a product of a set of normative and political presumptions borne of a historic unease with (at best) and hostility to (at worst) the idea of public provision of these benefits in the first place.62 This conceptualization of the safety net is often encoded in law, in some cases by statutory mandates to prioritize fraud prevention rather than accessibility and in other cases by regulatory requirements or simply bureaucratic inertia and culture.63 Scholars have long emphasized the value of more universal and simple designs to prioritize reach and uptake over such punitive measures.64

By contrast there has been a growing movement among former government officials and civic innovation practitioners encouraging user-oriented design and service-delivery optimization, encompassing not just the technical details of data systems and enrollment processes, but also the growing practice of participatory design approaches that engage users and target constituencies.65 These efforts were emblematic of a broader push to rethink the underlying regulatory designs and conventional agency practices on service delivery, shifting the focus to user experience, direct engagement with impacted communities, and designing for uptake as a goal. Under the executive order on “customer experience”— Executive Order 14,058—the Administration identified five key “life experiences”66 that were among the most challenging moments where Americans might need effective and rapid support from public services—such as support for mothers after childbirth, or support for families dislocated by natural disasters. The task for agencies was to redesign these services to make them as user-friendly, streamlined, and automatic as possible—a tall order when many of the individual programs were administered by different agencies and involved a thicket of paperwork and administrative hurdles for those seeking support.67

Many of these policies are on the chopping block as the new Trump Administration takes control.68 \*\*\*FOOTNOTE BEGINS\*\*\* *See* Natalie Alms, *Satisfaction with Government Hits Record High Just Before a New Trump Admin*, NEXTGOV/FCW (Nov. 12, 2024), https://www.nextgov.com/digitalgovernment/2024/11/satisfaction-government-hits-record-high-just-new-trumpadmin/400992/ [https://perma.cc/KYY3-F6ZD] (highlighting uncertainty about future of service improvements as result of Trump administration plans to reduce federal workforce and restructure agencies). \*\*\*FOOTNOTE ENDS\*\*\* But at the same time, some of these efforts to reorient agency practices on service delivery have been partially codified in new legislation.69 And these efforts point toward a more thorough potential future redesign of service-delivery agencies and systems in ways that would significantly advance goals of economic security and equity for many Americans. But crucially, these early stage efforts, like those around competition and equity, highlight the importance of combining policy change with real attention to the organizational dynamics, cultures and processes internal to the bureaucracies themselves. Reformulating these internal dynamics is as important as shifting on-paper policies. And unlike the competition and equity efforts, this project on administrative burden and service delivery has successfully generated some codification and legislative mandate. It remains to be seen whether this statutory authorization will help protect and further this reform agenda in the coming years.

#### Innovative service delivery enables resilience to a confluence of existential risks.

Dr. Augusto Lopez-Claros & John Miller 25, PhD, Executive Director, Global Governance Forum, Former Senior Fellow, Edmund Walsh School of Foreign Service, Georgetown University; Program Coordinator, Global Catastrophic Risk Initiative, Global Governance Forum, "Navigating Risk in an Uncertain Future," The Global Catastrophic Risk Index, 04/03/2025, pg. 3-13.

Global catastrophic risk is an unavoidably complex topic. It encompasses an array of distinct risks — from environmental disaster to political strife, social unrest, and economic collapse — as well as an intricate interplay between sub-national, national, and international systems. Risks are often linked, and crises often compound one another, with vulnerabilities such as health disparities, human security issues, and competing visions of governance creating a complex web of risks.

This second issue of the Global Governance Forum’s Global Catastrophic Risk Index (GCRI) seeks to distill this complexity and present a clear picture of risk in the world today. To do this, the Index assesses 163 countries across 109 indicators using data from The World Bank, the IMF, the United Nations, and other reputable sources. The findings are optimistic in their highlighting of states’ capacity for mitigation and resilience but are sobering in laying bare the implications of complacence or inaction. The Index is retrospective in its analysis of past trends and historical case studies, is present in its snapshot of the contemporary catastrophic risk landscape and is forward-looking in its prescriptions for a safer and more resilient future.

The Index demonstrates not only that no country is free of risk but also that policymakers globally have often failed to take collective action against systemic and environmental risks. There is a clear correlation between countries’ general level of development and their vulnerability to catastrophic risk, with poor countries already weakened by ineffective or failing governments, low economic activity, and gender and class-based inequities much more at risk. In illustration, the 2025/2026 GCRI finds the most at-risk countries in the world to be Yemen, Afghanistan, Haiti, South Sudan, and Sudan. In contrast, the least-at-risk countries are Norway, Denmark, Sweden, Switzerland, and Iceland.

The impact of risks identified in the Index can be multiplied both by governments’ failure to recognize them quickly, let alone preemptively, and their inability to respond effectively. In the highly integrated modern world, significant systemic shocks are unlikely to be contained within their country of origin. Instead, they will propagate among regional neighbors and trading partners with the potential to create widespread, systemic crises. It is thus critical for policymakers and citizens alike to understand the interactive and reinforcing nature of the risks facing their countries and regions to avoid the governance and societal failures that could prove disastrous for the global population.

The 2025/2026 GCRI makes it clear: in a world characterized by unprecedented uncertainty and complexity, the ability to anticipate and adapt to a multitude of shifting and emerging threats will determine which states emerge as resilient and which are left struggling to respond. It is our belief that only through a robust understanding of risk can one confront it – whether from the standpoint of a policy, civil society, academia, or individual behavior. As we continue to refine our understanding of global catastrophic risks, this report aims to be a guiding resource for policymakers, businesses, and individuals seeking to navigate the turbulent years ahead.

The two and a half years since the publication of the Global Governance Forum’s inaugural Global Catastrophic Risk Index have highlighted the rapidly evolving landscape of global catastrophic risk. Russia’s invasion of Ukraine, war between Israel and Iran and its proxies, extreme weather events around the globe, the continued retreat of democracy, and the aftershocks of the COVID-19 pandemic have left many in the global community feeling a growing sense of precarity.

Daily news reports continue to illuminate the compounding and interconnected nature of risks that defy national borders and hamstring even the most capable governments. It is thus critical for authorities to recognize that risks today come in complex forms, interacting and reinforcing each other, and carry the possibility of major governance and societal failures resulting in severe consequences for the global population. The world has become undeniably interconnected, creating a possibility of reaping collective benefits from globalized commerce and exchange, but also an impossibility of insulation from instability.

By examining a wide array of quantitative and qualitative factors — including economic, political, social, commercial, environmental, and exogenous indicators — the GCRI seeks to shed light on the countries where vulnerabilities are most acute and to point toward those countries which have best positioned themselves for stability and resilience. At its core, the Index functions as a decision-making tool aimed at helping governments, businesses, and civil society understand the myriad risks that lie ahead and prioritize strategies for mitigation and adaptation.

This Index maintains the fundamental emphasis of its predecessor: that risks cannot be considered distinct and must be understood as interconnected, interdependent, and compounding. The economic implications of climate-induced disruptions, for instance, are now routinely entangled with political unrest and migration crises. Meanwhile, the erosion of governance capacity in fragile states continues to serve as both a symptom and a driver of broader regional instability, making it increasingly challenging to disentangle the root causes of risk.

The 2025/2026 GCRI covers 163 countries — up from 118 in 2022 — accounting for nearly 99% of global GDP and 98% of the global population. Each country is scored across eight primary risk categories — governance, health, economics, gender equality, environment, education, business climate, and exogenous indicators — capturing both internal vulnerabilities and resilience factors. By leveraging 109 unique indicators from multiple trusted sources — up from 85 in 2022 — including the World Bank, the United Nations, and he International Monetary Fund, the GCRI integrates nearly 20,000 data points to provide a nuanced yet accessible view of global risk.

The 2025/2026 Index improves on the 2022 edition by adding Health & Human Security as a stand-alone pillar, owing to the centrality of health to a country’s overall risk profile that has been on display since the emergence of the COVID-19 virus. Technological indicators have also been added as a category of exogenous vulnerabilities, as the global proliferation of information technologies has become a critical component of how the global community interfaces and exchanges. Other changes include an array of indicator additions and substitutions (see Figure 2).

Compared to the top 10 most at-risk countries in the 2022 Index, five remain the same (Afghanistan, Mali, Pakistan, Sudan, and Yemen), while five countries have entered the top 10 (Democratic Republic of Congo, Ethiopia, Haiti, South Sudan, and Syria). Among the top 10 least at-risk countries, seven remain the same (Australia, Austria, Denmark, Finland, Ireland, Norway, and Sweden), while three countries are new to the lowest-risk group (Iceland, New Zealand, and Switzerland).

The scores for each indicator highlight the degree to which countries are vulnerable — whether through poor policy, bad geography, or bad luck or a combination thereof — to risks that could result in catastrophe. Addressing vulnerability to these risks requires action on two levels. Some risks can be managed internally through national strategies and reforms, where indices like this one can help guide domestic policy and initiatives. Other risks, however, are beyond the capacity of any single country to mitigate and demand a coordinated regional or global response. In such scenarios, individual nations may only be able to focus on minimizing their exposure and bolstering resilience against these external threats.

The 2025/2026 GCRI makes it clear: in a world characterized by unprecedented uncertainty and complexity, the ability to anticipate and adapt to a multitude of shifting and emerging threats will determine which states emerge as resilient and which are left struggling to respond. As we continue to refine our understanding of global catastrophic risks, this report aims to be a guiding resource for policymakers, businesses, and individuals seeking to navigate the turbulent years ahead.

[Figure omitted]

Methodology

In this edition of the Global Catastrophic Risk Index, an attempt has been made to be comprehensive in coverage, subject to data limitations and the requirements that, for a country to be included, sufficient data be available across the 109 indicators that are incorporated into the Index and, for an indicator to be included, data be available for a broad enough set of countries. This Index aggregates nearly 20,000 individual data points into a set of eight pillars, weighted equally for simplicity. Despite the scale and intention to be comprehensive, data-related challenges unavoidably affect the granularity and precision of indices like this one. However, the primary utility of the GCRI lies in its ability to provide a multifaceted, structured, comparative framework for assessing risk and resilience across a broad sample of risk factors and countries. However, it is important to acknowledge limitations in the data that resulted in limited country coverage and the exclusion of certain countries likely to be at high risk.

The current reality in terms of global datasets that try to capture various risk factors is that there is a wealth of data on macroeconomic and economic development indicators, reflecting the important investments in data collection made in this area by international financial institutions. However, there is considerably less data on environmental and social factors, not to mention other vulnerabilities that are inherently more difficult to measure, particularly in the context of middle and low-income countries. In some cases, a lack of data has resulted in a reliance on proxies which the authors believe to be suitably accurate and descriptive of the item under measurement, or in the exclusion of the country altogether. In this Index, countries are only included if data is available for at least 82 (or 75%) of the 109 indicators used in the Index and a score is able to be calculated for each pillar.

Among those countries not included in the Index due to data unavailability were a number of small island states including Antigua and Barbuda, Dominica, Kiribati, Micronesia, Nauru, Palau, St. Kitts and Nevis, and Tuvalu. In addition to these island states, small countries (in land area and/or population) such as San Marino, Andorra, and Palestine were excluded due to data availability issues. In many cases, these countries suffer from limited resources and institutional capacity for comprehensive data collection. Compounded by their small populations and geographical isolation, these factors make it costly and logistically challenging to maintain robust statistical systems. Even when data is collected by international organizations, these nations are often overlooked in global data initiatives due to their minimal impact on large-scale economic or geopolitical metrics.

Anecdotally, it is evident that even small environmental, economic, or governance shocks can have disproportionately devastating impacts on these countries. With their limited populations, economies, and land areas, there is virtually no margin for error, making precarity the norm rather than the exception. Unfortunately, the lack of reliable and comprehensive data prevents their inclusion in the 2025-26 GCRI. In future editions of the Index, the authors are committed to exploring methods to better capture and represent the risks faced by these small but highly vulnerable nations.

[Figure omitted]

Pillar I: Quality of Governance

Quality governance is a core pillar determining countries’ stability, resilience, and potential for widespread prosperity. A stable, effective government forms the backbone of a country’s ability to mitigate crises and leverage opportunities. Quality of governance is therefore not only a crucial measure of risk in itself but also an important indicator of a state’s capacity to address risks explored elsewhere in the Index. Countries with robust governance structures are better equipped to navigate challenges, maintain stability, and foster long-term growth.

Effective governance ensures the proper functioning of institutions and thus directly influences a country’s economic resilience, social cohesion, and developmental trajectory. Effective governments transparently and efficiently steward resources and provide services to their citizenry, while officials are held accountable through political and legal means. By contrast, weak governance heightens risk by engendering uncertainty, in turn deterring investment, stifling growth, and increasing a country’s vulnerability to external shocks.

#### Particularly, it alleviates the aging crisis.

Dr. Lorraine Johnston & Dr. John Fenwick 25, PhD, Associate Professor, Business, Northumbria University, Head of Research & Knowledge Exchange, Northumbria University; PhD, Emeritus Professor, Public Management, Northumbria University, "New Development: Public Service Innovation," Public Money & Management, Vol. 45, No. 2, pg. 151-156, 2025, T&F.

This new development article contributes to debates on public service innovation through considering how to recruit and retain a fit-for-purpose public service while operating in a complex, uncertain and volatile context. Years of under-investment in public service skills and talent highlights the need to transition from outdated bureaucratic and rules-based to values-based workforces. These ‘cultures of positivity’, as the Organisation for Economic Co-operation and Development (2021) suggest, are an opportunity to recruit fit-for-purpose leaders and workforces. This is an attempt to overcome ‘one-size-fits-all’ recruitment strategies towards fostering equality, diversity and inclusivity in public services. These strategies recognize that human-centred approaches lie at the heart of codesigning public services. These strategies advance more purposeful and meaningful work whereby employees work autonomously and are trusted to progress results (OECD, 2021). Competency-based public service management styles can evaluate skill gaps and align with succession plans to advance cultural change. Yet there are potential drawbacks to self-autonomy in terms of ‘job instability, labour intensification, workaholic lifestyles … through the proliferation of short-term targets and auditing’ (Legge, 2007, p. 131).

Critical to the future success of a fit-for-purpose public service is advancing inclusive recruitment strategies that invest in and equip workers with transferable, flexible, and adaptable skills. More research is needed to recognize the current state of public service values-based leadership in skilling up public service workforces. In the UK, a 2022 House of Lords white paper prioritizes highly integrated public services as necessary to address ‘an ageing population, young people’s services; growing health and adult care needs’. Public service innovation is required to adapt existing mindsets through conducting deliberate strategic planning models to ensure public service delivery is more fully integrated. Likewise, engagement with local communities to ensure local knowledges are embedded in the design, workforce planning and delivery of public services (Bason, 2018). This means providing meaningful opportunities for public service users to share their lived experiences in decision-making frameworks that affect them as the key users of a public service.

#### Uncontrolled ageing causes extinction.

Mark Elsner et al. 25, MPhil, Head, Global Risks, World Economic Forum. Head, Geopolitics & Policy, FiscalNote Holdings. Director, Advisory, Oxford Analytica; Grace Atkinson, MSc, Insights Specialist, Global Risks, World Economic Forum. Senior Statistician, Department for Business & Trade, Government of Great Britain; Saadia Zahidi, MPhil, MPA, Managing Director, World Economic Forum, "Super-Ageing Societies," & "Looking Back: 20 Years of the Global Risks Report," in The Global Risks Report 2025, 20th Edition, Chapter 2.5 & 2.6, 01/15/2025, pg. 60-73.

2.5 Super-ageing societies

Short- (2 years) and long-term (10 years) risk severity score: Insufficient public infrastructure and social protections

[Figure omitted]

* Pension crises will start to bite over the next decade in super-ageing societies as dependency ratios rise further and government finances are stretched.
* Labour shortages in several sectors, in particular long-term care, are likely to become a characteristic of super-ageing societies unless policies shift.
* Super-ageing societies will pose global economic and labour-market challenges, even for countries still benefiting from their demographic dividend.

Countries are termed “super-ageing” or “superaged” when over 20% of their populations are over 65 years old.68 Several countries have already exceeded that mark, led by Japan69 and including some countries in Europe.70 Many more countries across Europe and Eastern Asia in particular are projected do so by 2035. Globally, the number of people aged 65 and older is expected to increase by 36%, from 857 million in 2025 to 1.2 billion in 2035.71

By 2035, populations in super-ageing societies could be experiencing a set of interconnected and cascading risks that underscore the GRPS finding that the severity – albeit not the ranking – of the risk of Insufficient public infrastructure and social protections is expected to rise from the two-year to the 10-year time horizon (Figure 2.13). An ongoing concern is that government funding for public infrastructure and social protections gets diverted during short-term crises.

Some super-ageing societies could be facing crises in their state pensions systems as well as in employer and private pensions, leading to more financial insecurity in old age and exacerbated pressure on the labour force, which includes a growing number of unpaid caregivers. Indeed, super-ageing societies by 2035 are likely to face labour shortages.

Ranked second globally according to the EOS, Labour and talent shortage is selected as the top risk in Europe and Eastern Asia, where superageing is most pronounced. Twenty-one countries place the risk in first place, including two of the most super-ageing societies, Japan and Germany, while 40 other economies view it as one of the top five risks (Figure 2.14).

The long-term care sector will be especially affected by labour shortage. Care occupations are expected to see significant demand growth globally by 2030. Care systems – health care and social care – in super-ageing societies are already under clear and immediate strain. They will struggle to serve a fast-growing population over 60 years of age that has additional care needs while recruiting and retaining enough care workers. Care systems are, in great part, funded by governments and account for about 381 million jobs globally – 11.5% of total employment.72 The accumulation of debt and competing spending needs on, for example, security and defense are likely to constrain the reach and sustainability of public expenditure on care systems over the next decade. Without increased public or blended investment, care demand will continue to be unmet.

Economies already experiencing this challenge are resorting to stop-gap measures, including attracting migrant care workers from other economies. But if this turns into a talent drain from countries with more youthful societies, those countries may then struggle to reap the benefits of their demographic dividend and will, several decades from now, run into super-ageing society challenges of their own.

There will be no easy solutions to this problem set, given the sustained strength to 2035 of the two underlying trends generating higher average dependency ratios, not only across super-ageing societies, but at the global level: declining fertility rates and rising life expectancy, though not necessarily in better health.73

Pension crises

Over the next decade the pensions crises and their implications will start hitting home in superageing societies, as it becomes clear that current state pension systems were designed for a much younger demographic with fewer years of retirement that needed funding. But it is not only state pension systems that will be struggling. Many employees are moving from Defined Benefits to Defined Contribution schemes – putting the onus on the individual to come up with strategies for saving over a lifetime. However, for many people this can be challenging as they may have insufficient income, lack the requisite financial understanding,74 or fail to make good early decisions about savings and retirement.75

As dependency ratios rise, fewer people will be contributing to employer and private pensions schemes relative to the number of people whose retirements need funding, and with the length of those retirements rising. This will put pressure on institutional pension funds, some of which may seek to increase their returns by allocating higher proportions of their assets to riskier investments, such as crypto assets, private credit or other alternative investments. These riskier investments will not always pay off, and over time this could worsen the already suboptimal funding ratios of some of these institutions. If there are extended periods of market underperformance, this could lead to many more individuals facing shortfalls in funding their retirement.76

The pension gaps in super-ageing societies will be exacerbated by the long-term impacts of the rise of the “gig economy” and the associated failure to make sufficient pensions contributions during periods of gig work. Pension shortfalls will also disproportionately affect lower-income workers who have not managed to make significant savings during their careers, even if they have been fully employed. In the EU, for example, already today one in five elderly people face the risk of poverty or social exclusion77 and this figure is set to rise by 2035.

Women on average have significantly higher pensions gaps than men given time taken out of formal employment over the course of their careers to care for children or elderly relatives, as well as their lower average pay compared to men. In the EU, women’s pensions are nearly 30% lower than those of men, meaning that they are at a 35% higher risk of poverty.78

The societal implications of Insufficient public infrastructure and social protections, such as pensions and care systems, are shown in Figure 2.15, which reveals that Inequality was selected by GRPS respondents as a significant connected risk.

A common proposal for alleviating the pensions crisis in super-ageing societies is raising the statutory retirement age, and in some countries this has already occurred. However, attempts to do this to the extent needed to stem the pension crises will face resistance from voters, a rising proportion of whom are themselves close to retirement. This segment of the population tends to have high voter turnout, making it increasingly likely that policy outcomes will be in their favour. Intergenerational tensions could become an ongoing feature of superageing societies, with discontented younger working cohorts resenting being called upon to pay more towards funding retiree pensions.

There is also a gap between what global executives believe needs to be done to adjust pension schemes and what they view as businesses’ responsibilities. One-quarter of global executives (25%) support policy changes to pension schemes and retirement ages, but a lower share (14%) of executives view such measures as an effective business practice for expanding their talent base, as reported in the World Economic Forum's *Future of Jobs Report 2025*. This illustrates the complexity of aligning key stakeholder interests behind pension reforms.

Even if official retirement ages can be increased, the impact on reducing the scale of the pension crises may be smaller than hoped for. Some people do not manage to work to their expected retirement age, as their working lives are cut short by illness or disability, job loss or other reasons. The inability to extend retirement age is an especially significant risk for people in physically demanding jobs. However, many would like to be upskilled or reskilled to be able to extend their careers.

Long-term care crunch

In super-ageing societies, the balance between public sector, private sector and family support in the provision of long-term care is varied. The predominant case globally is that government healthcare and social services, and other government financial assistance for retirees, play important roles.79 In high-income countries with less of a contribution by the public sector, more of a role is played by private insurance, private care facilities, and home care services.80

Given the rising demand for its services, the care sector overall is set to need many more workers by 2035. In the United States, for example, demand for long-term care services and support workers alone is projected to grow by 44% from 2020-2035.81 This rising demand needs to be set against an environment in which staff are often underpaid and overworked. Unless long-term care providers can find ways to improve pay and working conditions, the risk of labour shortages in the sector will only rise. Market forces can lead to more private-sector provision of long-term care filling some of the void. However, for many families, paying for private long-term care will remain out of reach financially.

Immigration into super-ageing societies is already playing a role in addressing the sector’s labour needs. However, migrant workers are overrepresented in the less regulated areas of the care economy, such as home-based care and domestic work, and earn nearly 13% less than the national average.82 The political climate around immigration is strained and may become more so over the coming years, with anti-immigration policies becoming more mainstream in several super-ageing societies.

Similarly, over a 10-year timeframe, there is only so much that increased labour-force participation in super-ageing societies can contribute to addressing the long-term care crunch. Attracting more women to enter the formal workforce can play a role. However, the balance of incentives available to women needs rethinking for there to be a meaningful change in female labour-force participation. Women currently provide two-thirds of unpaid work worldwide, which keeps 708 million of them from joining the labour force.83

Without meaningful transformation of the care sector and its resourcing, the scope for either immigration or increased labour force participation to solve the long-term care crunch over the next 10 years remains limited. Governments and companies may be tempted to turn to technology in an effort to increase sectoral productivity. This can involve everything from automated reminders to take pills, to chatbots responding to medical queries and robots delivering meals, ideally freeing up time for more social interactions wherever possible. But while these and other technologies may help optimize care delivery and reach, demand for care skills and jobs is likely to be far from fully met by technological innovation.

Super-ageing societies of the future

While today’s super-ageing societies are the ones that will feel the brunt of the negative impacts of demographic trends on their economies and societies over the next decade, ripple effects will be felt worldwide, leading to risks elsewhere, too. Global economic growth over the next decade is likely to be constrained by demographics in superageing societies, many of which are among the world’s largest economies. In addition, there are likely to be direct knock-on impacts from today’s super-ageing societies. Despite policy pushback on immigration in the short-medium term, in the longer term the need to fill labour shortages could be decisive in shaping policy. As a consequence, countries with more youthful populations will face the risk of depletion of their own future workforces as many more young, working-age people migrate to super-ageing societies to help fill labour shortages there. Working-age people who remain in the superageing societies of the future could be left hardpressed to sustain the rest of the populations there.

Many countries with youthful demographics are in Sub-Saharan Africa, which has by far the highest fertility rate globally.84 These demographics will help sustain rising working-age populations for several decades. But a key challenge over the next decade will be to generate employment opportunities on a sufficient scale and that offer job security. The International Labour Organization (ILO) notes that 72% of young adult workers (aged 25 to 29) in the region are in a form of work deemed “insecure”.85 Limited investment in human capital, which is essential to developing an attractive economy that can generate sufficient employment opportunities, is a significant risk.86

Societies that are young today and looking at positive demographic trends for the next decade or more could ultimately follow similar demographic trajectories to the super-ageing societies of today and will then face problems that could be even more complex. While this risk may play out fully only over several decades, eventually low-income, super-ageing societies of the future could face a perfect storm – all the social and economic problems associated with today’s super-ageing societies but without fully developed social safety nets in place, and without the pools of private savings accumulated by some in today’s superageing societies.

Actions for today

A. Further encourage flexible work policies

Organizations in both the public and private sectors need to further develop their flexible work policies as part of their Corporate strategies (Figure 2.16), with more options for leaving and coming back to the workforce at different life stages. This will help employees who are taking a non-linear life path, for example, including education, working across different sectors, and professional training or reskilling in the middle of a career, as well as years taken out to care for children or elderly family members before coming back to work.87

B. Campaign to improve pre-retirement health choices

A large-scale, multi-faceted public-private effort to improve the health choices of future retirees should be launched. An impactful way to address the long-term care crisis, and to give the elderly the opportunity to contribute productively to the economy, is for individuals to lead healthier lives pre-retirement, thereby diminishing the need for long-term care in the first place. In Singapore, for example, the government is creating a “health district” to help their citizens live healthier, longer lives.88 Such initiatives can include helping people to understand the impacts of building healthy habits early on, focusing on key areas such as exercise, nutrition and social interactions. National and local regulations, the approach cited in the GRPS as having the most potential for driving action on risk reduction and preparedness when it comes to Insufficient public infrastructure and social protections, can play a role in this regard (Figure 2.16). The initiative would have not only an individual dimension, but a patriotic, nationallevel one, too: By becoming healthier for longer, individuals can contribute to a stronger economy and lower fiscal pressures in the decades ahead.

[Figure omitted]

C. Proactively build social cohesion across generations

At a societal level, all stakeholders need to reconsider the prospect of an inter-generational conflict playing out and take measures today to avoid that. The upcoming demographic shifts could be an opportunity to reframe the conversation. Every young person will become old, if they are lucky; engaging in more cross-generational social activities could increase life satisfaction for everyone, improve long-term social cohesion and provide real benefits towards resolving a range of global problems.89 More can also be done to encourage older individuals to remain in the workforce, for example by reskilling and by tailoring jobs more to their skill sets. Corporate strategies (Figure 2.16) also have a role to play: Organizations could consider incentivizing the creation of crossgenerational teams.

2.6 Looking back: 20 years of the Global Risks Report

The first edition of the Global Risks Report was launched in 2006 in a risks landscape characterized by terrorism and concerns around avian influenza, among other risks. Over the course of the 20 editions of the report, we have lived through significant events that have reshaped our economic and societal landscapes, from the 2007-2008 global financial crisis to the COVID-19 pandemic. We have also witnessed the compounding effects of the Structural forces of Technological acceleration, Geostrategic shifts, Climate change and Demographic bifurcation (Box 2.1). These Structural forces are determining long-term shifts in the arrangement of, and relation between, the systemic elements of the global landscape.

Figure 2.17 shows the average 10-year risk outlook rankings of the risks covered in the current edition of the Global Risks Report over the last 20 years and the fluctuations of those rankings over that time period. The figure illustrates how consistently or variably each risk has been perceived over time, as represented by the standard deviation of its ranking. The sections that follow assess further how the 10- year outlooks for key risks and risk categories have changed over the last two decades.

Key trends in risk perceptions

Environmental risks have consistently topped the 10-year ranking

When assessing the evolution of perceptions of the four Structural forces, Climate change is the one that has been most consistently perceived as experiencing a clear ongoing systemic shift. Environmental risks have dramatically increased in ranking over the 10-year time horizon since the introduction of the *Global Risks Report* in 2006, and in recent years continuously rank as severe concerns. The highest-ranking environmental risks over the last 20 years have been Critical change to Earth systems, Extreme weather events, Natural resource shortages and Pollution, as highlighted in the upper-left quadrant of Figure 2.17. As the effects of Climate change-induced events and developments have become more visible over time, and public awareness of their implications has risen, the rankings of environmental risks have continued to rise.

[Figures omitted]

The clearest example is Extreme-weather events, currently ranked as the #1 risk for the next 10 years. Since 2014, it has consistently ranked as a top 6 risk (Figure 2.18). From 2017-2020 it ranked as the top risk and has retaken that spot since 2024.

The ranking of Extreme weather events has tended to rise as such events have worsened in intensity and frequency. Extreme weather events are becoming more common and expensive, with the cost per event having increased nearly 77%, inflation-adjusted, over the last five decades.90 The effects of climate change-driven Extreme weather events are being felt across the world and often hit the poorest communities the hardest. Global heat records continue to be broken.91

The Pollution risk demonstrates shifting prominence over time in the 10-year risk outlook. First introduced in 2009, Pollution risk initially encompassed Air pollution and nanoparticles pollution (paint, cosmetics, healthcare). Over the subsequent 10 years, the risk evolved in concept and rose in perceived importance (Figure 2.19). In 2017, Human-made environmental damage and disasters (e.g. oil spills, radioactive contamination, etc.) ranked #7 and entered the top 10 risks over the 10-year horizon. Ever since, concerns about Pollution, according to our historical GRPS data, have remained a top 10 long-term risk, and this year also ranked #6 over the two-year time horizon.

Among the other environmental risks, Critical change to Earth systems jumped in ranking in the 10-year risk outlook from #21 in 2013 to #4 in 2014 and has been in the top five ever since, aside from 2017 when it was #6. Biodiversity loss and ecosystem collapse has experienced one of the largest increases in ranking among all risks, moving from #37 in 2009 to #2 in 2025.

Perennial worries about conflict

Both State-based armed conflict and Intrastate violence feature in the upper-left quadrant of Figure 2.17, showing that concerns about conflict, although especially high today, have never been far from top of mind among decision-makers over the last 20 years.

[Figure omitted]

Looking deeper into State-based armed conflict, its 10-year risk ranking experienced noticeable upticks in 2010-2011, when it rose from #24 to #7 – perhaps in part because of the start of the Syrian civil war in March 2011. A similar uptick is seen from 2014-2015, as the war in Syria escalated, with heavy casualties.92

The heightened long-term risk perceptions have unfortunately been validated by the Russian invasion of Ukraine, and the wars in the Middle East and Sudan, among others. Indeed, Statebased armed conflict is the #1 short-term concern today among GRPS respondents. Section 1.3: “Geopolitical recession” notes the growing realization that we are in an era of conflict, without multilateral solutions in sight.

#### The US is key to global ageing.

Dr. Michael Hodin 12, PhD, Adjunct Senior Fellow, Council on Foreign Relations. Executive Director, Global Coalition on Aging, "Population Aging is Tilting the World’s Societies. Is This a Crisis—or an American Leadership Opportunity?" American Society on Aging, 08/30/2012, https://web.archive.org/web/20151031011022/http://www.asaging.org/blog/population-aging-tilting-world%E2%80%99s-societies-crisis%E2%80%94or-american-leadership-opportunity.

Central to this new construction of aging is leadership—leadership at both national and global levels. This leadership needs to bring together diverse public policy initiatives. And there is much to build upon in the past year. The European Union dedicated 2012 as the European Year for Active Ageing. The United Nations held a high-level summit on non-communicable diseases—diseases like Alzheimer’s, diabetes and cancer that mostly afflict older populations. The Asia-Pacific Economic Cooperation “recognized that the rapid rise in non-communicable diseases ... poses a fundamental negative influence on the future of economic growth.” And the WHO dedicated World Health Day to “Aging and Health: Good Health Adds Life to Years.”

Each of these initiatives is valuable, but they are only creating a simmer. Bringing them to a full boil requires leadership. The U.S. Undersecretary of State Robert Hormats has recognized as much, saying, “Working together, we can turn the longevity bequeathed us from the 20th century into a positive driver of growth, contribution and economic activity in the 21st.”

Through Hormats and others, this global leadership void can be filled by the United States. In doing so, America could guide the world to a healthier, more productive future, but it could also strengthen its economy. In this globalized era where national economies are interconnected, the U.S. economy can only thrive with a healthy global economy. U.S. businesses require a strong global consumer market. As many economists argue, the rising global middle class—especially in the BRIC economies (Brazil, Russia, India and China)—is fueling American exports and creating domestic wealth here. If new roles and opportunities are created for aging populations around the world, the United States can sharpen its competitive edge.

Solutions Needed in Three Key Areas

For the United States to establish itself as a leader with global population aging, it must lead by example. It must show the world how to implement sustainable, scalable solutions in three areas: health, education and work. Part of the process is to begin by asking the right questions:

Health. How can we forge new paths for healthy aging? How can the effects of major noncommunicable diseases—like Alzheimer’s, diabetes, cancer and cardiovascular disease—be mitigated so they are no longer automatic disablers for those aging? And how can preventive skin care and skin cancer screening, adult vaccination and prevention of hearing and vision loss enable healthy aging?

#### The plan solves:

#### 1. LIMITATION. It finds the repeal of CBR for federal workers illegitimate under the APA. That restores credible bureaucratic organization.

Dr. Robert Roberts 25, PhD, JD, Professor, Political Science, James Madison University, "Policy/Career Schedule Employment & Federal Service: Dismantling Neutral Competence," Public Personnel Management, Vol. 54, No. 3, pg. 307-330, 2025, SAGE. [italics in original]

“Unitary executive branch theory contends that the president has sole final authority over administration in the executive branch of the federal government” (Rosenbloom, 2019, p. 7). Advocates of the unitary executive theory point to the writing of Alexander Hamilton, who argued that the country needed a strong President to protect the country from external enemies seeking to destroy the young nation (Rosenbloom, 2019, p. 7). In 1939, Congress passed the Reorganization Act, and President Roosevelt signed it into law. President Roosevelt then used his new authority to create the Executive Office of the President (EOP) (Fesler, 1987, p. 292). The centralization of executive branch power in the EOP reflected public management theory that argued the need for a chain of command to ensure the implementation of orders from the President to federal agencies and departments and executive branch federal employees. During his presidency (2001–2009), George W. Bush used unitary executive theory to give him broad authority to pursue the war on terror. He argued that “the president has a constitutional responsibility to protect the constitutional powers and authority of the presidency from encroachments by the other branches of the federal government” (Rosenbloom, 2019, p. 8). Bush also argued that the president had the authority to ignore or determine the constitutionality of a law without waiting for a determination by the federal courts (Rosenbloom, 2019, p. 8).

As applied to the management of executive branch employees, unitary executive theory argues “the president, and the president alone, defines performance and has the right to manage personnel” (Moynihan, 2022a, p. 176). More than empowering the President to manage personnel, unitary executive theory permits a redefinition of merit to include demonstrating “loyalty to the leader’s agenda and perhaps to the leader himself” (Moynihan, 2022a, p. 176).

Applying unitary executive theory to the management of executive branch employees requires rejecting more than a hundred years of evolving civil service law. It rejects the argument that career federal servants have a constitutional obligation to respond to statutory mandates established by Congress or interpretations of federal and constitutional laws by the federal judiciary. From this perspective, all federal employees, whether they work as competitive or exempt schedule federal employees, have one leader: the President.

Support for Schedule F came from many conservatives who argued that bureaucratic abrogate blocked President Trump from implementing much of his first term agenda (Glock & Mukherjee, 2025; Howard, 2017, 2020, 2021). As explained by one critic, federal agencies and departments found it “difficult to fire career employees with entrenched job security—not political appointees who serve at the discretion of the president—perform most federal work. These employees’ jobs do not depend on election outcomes. Career employees thus exercise federal power without adequate transparency and democratic accountability” (Sherk, 2022, 2025, p. 1). Critics accused the competitive schedule of (1) withholding information, (2) refusing to implement policies, (3) intentionally delaying or slow-walking priorities, (4) deliberately underperforming, (5) leaking to Congress and the media, and (6) outright insubordination (Sherk, 2025, p. 3).

Public ethics scholars debate the ethics of competitive schedule federal employees engaging in organizational dissent to attempt to delay or block actions by a presidential administration (Kucinskas & Zylan, 2023, p. 1761; Thompson, 1985, pp. 555– 556). Critics of civil service systems argue that some civil servants use their government positions to delay or block public policy directives from their superiors, justifying the establishment of Schedule Policy/Career. Little doubt exists that Schedule Policy/ Career executive branch employees will have a much more challenging task of expressing their disapproval of the actions of their superiors, including a President. If one believes that federal employees should obey orders from their superiors, Schedule Policy/Career may be considered a reasonable solution to a serious bureaucratic problem. If one believes that honorable federal employees have a moral obligation to oppose administration evil (Vinzant, 2019), one may correctly view Schedule Policy/ Career establishment as an unmitigated disaster. Research has found that many competitive schedule federal employees believe that they have a responsibility to “serve the public and the Constitution, upholding the missions of their agencies and democracy, and working to support leadership and the elected president” (Kucinskas & Perry, 2024). History tells us that “agency heads can make decisions that violate scientific integrity, the law, or morality” (Nou, 2019, p. 373). History also tells us that civil servants “are well-placed to know of these potential deficiencies” (Nou, 2019, p. 373). A decision by a career civil servant to engage in internal or external organizational dissent “raises difficult tensions: between managerial imperative and legitimate bureaucratic action; between efficient agency functioning and constrained governmental power” (Nou, 2019, p. 373).

Establishing the Schedule Policy/Career does much more than seeking to convert “for cause” into “at-will” positions to make it easier for federal agencies and departments to fire inefficient federal employees. It seeks to destroy the neutral competence of career civil service employees. Neutral competence involves much more than obeying orders from the leadership of a public organization. Neutral competence requires career civil servants to use their expertise to engage in reasoned decision-making based on established professional standards. Neutral competence means that civil servants must carefully consider speaking truth to power when the leadership of public organizations seeks to make decisions motivated more by partisanship or ideology than fact. Neutral competence rejects requiring career civil servants to engage in blind obedience to political superiors driven by partisanship or ideology (Shapiro, 2023).

Further complicating efforts by career public servants to be allowed to exercise their unbiased expertise in the implementation of public policies mandated by Congress and presidential administrations, the fact remains that conservative presidential administrations since the 1952 presidential election of Dwight Eisenhower rejected the argument that federal career civil servants provide their duties with “unbiased expertise” (Rourke, 1992, p. 540). Anti-administrative state and civil service critics view competitive service employees as “privileged rent-seekers or ideological foes” (Moynihan, 2022a, p. 177). Conservative Republican administrations have “tended to see bureaucracy as being in the camp of their political enemies, as being perhaps Democrats in disguise—or worse, closet liberals” (Rourke, 1992, p. 541). From this perspective, liberals created the myth of neutral competence to protect liberal bureaucrats from being held accountable by conservative presidential administrations intent on dismantling an oppressive administrative state (Moynihan, 2022b). No reason existed to rely upon the neutral competence of career civil servants. Also, from this perspective, considerable public policy expertise flourishes outside the federal bureaucracy (Rourke, 1992, p. 540). This means a new conservative administration can recruit an army of loyal policy experts from think tanks, consulting firms, and the ranks of lobbyists (Rourke, 1992, p. 540). They do not need the expertise of “biased” bureaucrats but need them to serve as ideological robots programmed to implement not make or influence public policy decisions.

Through the twentieth century and now the twenty-first century, the discipline of public administration supported increased centralization of power in the presidency (Rosenbloom, 2019, pp. 7–9). The rule of law took a back seat to the ongoing crusade to increase governmental efficiency and bureaucratic responsiveness to the President. The discipline of public administration hoped that if civil servants demonstrated a high degree of responsiveness to the wishes of a President, presidential administrations would leave career civil servants alone to exercise neutral competence without undue political or ideological interference. This hope proved unjustified. Unitary executive branch theory has led to the centralization of policymaking within the President’s EOP. From this perspective, federal bureaucrats have become an annoyance rather than a source of vital expertise.

Competitive and Non-Competitive Schedules and the Evolution of Removal Standard for Federal Service

Evaluating the likelihood of federal courts upholding or blocking the establishment of Schedule Policy/Career Schedule requires understanding how the “for cause” removal standard became a requirement of the competitive schedule. It also requires a recognition that decades ago Congress granted Presidents the authority to create non-competitive schedules for executive branch employees (Office of Personnel Management, 2024b, pp. 61177–61205). Discussions of the federal civil service or merit system ignore that Title V of the United States Code gives the President the authority to create non-competitive federal schedules (Moynihan, 2022a, p. 177). The establishment of exempt schedules permitted federal agencies and departments to hire large numbers of federal employees without requiring them to undergo the comprehensive screening process for competitive schedule federal employees. President Franklin Roosevelt used this authority in 1941 to create schedules A and B outside the competitive service (Kluttz, 1941b, p. 17). In April of 1941, however, President Franklin Roosevelt issued an EO granting some 125,000 Schedule A and B federal employees civil service protection (Kluttz, 1941a, p. 1). The Eisenhower administration would view this action to prevent a future Republican administration from treating these employees as at-will federal employees. After Dwight Eisenhower assumed the presidency in 1953, the United States Civil Service Commission (USCSC), in response to an EO issued by President Eisenhower, “stripped job protection rights from many of the 134,000 fulltime employees whose jobs are in Schedule A” (Kluttz, 1953, p. 21). Eisenhower assumed the presidency after 20years of Democratic presidential administration. Eisenhower did not express concern about the possible lack of bureaucratic expertise or competence but worried “over the possibility that partisans had infiltrated the ranks of the executive bureaucracy” (Rourke, 1992, p. 541). In 1953, President Eisenhower issued EO 10440—Amendment of Civil Service Rule VI (American Presidency Project, 2025b). Schedule C permitted the President to appoint individuals to Schedule C positions outside the competitive service because of the need for the leadership of federal agencies to have the discretion to hire individuals for support policy-making positions. Data released in 1955 by the USCSC showed that the Eisenhower Administration had the authority to make 242,000 appointments outside the federal competitive service (Kluttz 1955, p. A1). These included 242,000 Schedule A, 4000 Schedule B, and 1136 Schedule C. (Kluttz, 1955, p. A9).

The fact that competitive schedule federal employees had few protections against arbitrary dismissal by federal agencies and departments may surprise students of civil service reform. Civil service reform historians have documented the late nineteenthcentury civil service reform movement (Hoogenbloom, 1959; Mosher, 1982; Van Riper, 1958). The Pendleton Act did not include broad “for cause” removal protections for federal civil service employees. The Pendleton Act forbade removing civil service employees because of their political affiliation or because they used partisan loyalty to qualify for the new competitive service. It did not restrict the discretion of federal agencies from dismissing employees for any other reason. Because of this fact, many entering the federal civil service viewed federal service as a temporary job and not a long-term career (Hoogenbloom, 1959, p. 311). In 1897, President William McKinley issued an EO that “No removal shall be made from any position subject to competitive examination except for just cause and upon written charges filed with the head of the Department, or other appointing officer, and of which the accused shall have full notice and an opportunity to make a defense” (U.S. Merit Systems Protection Board, 2015, p. 5). McKinley’s civil service EO proved more symbolic than substantive. Federal employees continued to have limited legal options to challenge adverse actions or complain about poor working conditions.

During the early 20th century, the treatment of executive branch federal employees led to a backlash. In the 1900s, the National Association of Letter Carriers began to lobby Congress for better wages and working conditions for postal employees. These lobbying efforts met with a hostile response from President Theodore Roosevelt and President Howard Taft. In 1902, Roosevelt issued an EO prohibiting federal employees from lobbying or testifying before Congress without their supervisor’s permission. “In 1909, President Howard Taft issued the same order” (National Assocation of Letter Carriers, 2025, p. 22). This hostility toward federal employees challenging the authority of their agencies over personnel management policies and practices soon conflicted with the growing need of federal agencies and departments for high levels of professional expertise. To mediate disputes between career civil servants and the political leadership of federal agencies, the discipline of public administration embraced the politics and administration dichotomy. The politics and administration dichotomy, in theory, kept civil service out of public policy making but allowed them considerable discretion to find the most efficient and effective ways to implement public policy directives from political leadership. As the size and power of the federal government grew, the politics and administration dichotomy turned out to be fictional. The progressive period (1900–1920) saw career federal employees become deeply involved in public policy disputes with presidential administrations. The 1907 to 1910 BallingerPinchot affair challenged the ability of career federal civil servants to speak the truth without fear of retaliation. It helped to build support from the Progressive movement to provide career civil servants more excellent protection from being punished over policy differences with their superiors and protect competitive federal employees from being dismissed without cause.

In 1907, Louis Glavis, the head of the Portland, Oregon, field office of the federal General Land Office, refused to allow a corporation to remove coal along the Alaskan Bering River. Galvis backed the argument of several conservationist groups that the corporation had a valid claim to the coal (Roberts, 2001, pp. 16–19). Richard A. Ballinger, the commissioner of the Land Office, overruled Glavis. The Secretary of the Interior then overruled Ballinger, who resigned and returned to private law practice. Glavis had the strong backing of President Theodore Roosevelt, a vocal conservationist. Elected as President in 1908, Richard Ballinger became President Taft’s Secretary of the Interior. Ballinger then stripped Glavis of his authority over the coal claim. In a meeting with Taft, Glavis accused Ballinger of a financial conflict of interest related to the coal claim. Taft fired Glavis for gross insubordination. The firing of Glavis angered Chief Forester and close friend of former President Theodore Roosevelt, Gifford Pinchot. Pinchot openly worked to discredit Ballinger. Taft then fired Pinchot. In 1912, angered by Taft’s anti-conservationist policies, former President Theodore Roosevelt ran as a third-party presidential candidate, which helped Democratic presidential candidate Woodrow Wilson win the presidency (Roberts, 2001, p. 19).

In 1912, Congress passed the Lloyd Lafollette Act of 1912, which included a provision prohibiting federal agencies from punishing a civil servant for testifying before Congress. The law also only permitted the removal of federal civil service employees for the “efficiency of the service” (Frug, 1976, p. 958). Congressional intent for enacting the “efficiency for the service” standard remains debatable. One scholar argues that Congress included the language not to protect federal employees from arbitrary termination but to urge federal agencies to fire unproductive employees (Frug, 1976, p. 958). A 1938 review of the purpose of the Lloyd-LaFollette Act found that “this statute resulted from an incessant struggle between the administration and the postal employees, in which the so-called gag rules had hampered the latter” (Agger, 1938, p. 1115). The same commentator argued that the “efficiency of the service” standard provided federal civil service employees little protection from arbitrary removal. The Lloyd LaFollette Act did not give federal civil service employees any right to a hearing to challenge an adverse action implementing the “efficiency of the service” termination standard. This meant federal agencies and departments frequently fired competive federal service employees without provding them with procedurtal due process. (Agger, 1938, p. 1115). The Veterans Preference Act of 1944 became the first law to provide federal civil service employees with procedural due process rights (Frug, 1976, p. 959; U.S. Merit Systems Protection Board, 2015, pp. 7–8). Through the 1950s, the amount of due process granted to federal employees facing discipline often depended upon the agency the employee worked for (U.S. Merit Systems Protection Board, 2015, p. 8).

Expanded competitive schedule procedural due process standards did not prevent the Truman and Eisenhower administrations from ordering federal agencies to fire federal employees for relationships with allegedly subversive organizations. The 1940s and 1950s saw the widespread implementation of loyalty and security programs terrorizing federal employees. (Rosenbloom, 2014, pp. 111–128). Because the U.S. Supreme Court had not recognized public employees’ First Amendment freedom of speech or association rights, purged federal employees could not file suit in federal court alleging violations of their First Amendment freedom of association rights (Dotson, 1955, pp. 80–81).

The Procedural Due Process Revolution and Federal Civil Service Employees

From the early 1960s through the early 1980s, constitutional, statutory, and presidential EOs led to a procedural due process revolution of competitive schedule federal employees. From a public workplace rights perspective, this procedural due process revolution provided a competitive schedule for federal employees who desperately needed protection from retaliation for doing their jobs or exercising fundamental constitutional rights. From a presidential or federal agency accountability perspective, the expansion of procedure due process protections made it more difficult for federal agencies and departments to fire poor performers or to suppress alleged bureaucratic resistance to a presidential administration’s public policy agenda. Instead of accepting passive neutrality as the status quo, presidential administrations would increasingly expect “passionate commitment” by bureaucrats to their public policy agenda (Rourke, 1992, p. 540). The tension between presidential demands for bureaucratic accountability and responsiveness and the need to protect the neutral competence of competitive schedule federal employees continues today.

On January 17, 1962, President John Kennedy issued EO 10988, EmployeeManagement Cooperation in the Federal Service, extending procedural due process rights to all federal employees in the competitive civil service. This included granting these employees the right to appeal any adverse action to the USCSC. The 1960s saw the U.S. Supreme Court begin to dismantle the public employment “privilege doctrine” by recognizing that public employees had some constitutional protections at work. This included recognizing the First Amendment freedom of association and freedom of speech rights of public employees (Elfbrandt v. Russell, 1966; Sheldon v. Tucker, 1960). The federal employee workplace rights revolution set federal competitive schedule employees apart from private sector employees. Besides being “at-will” employees, private sector employees had no constitutional workplace rights. Collective bargaining agreements constitute the only effective way to place limits on arbitrary dismissals of private sector employees. The employment-at-will doctrine meant that private employers could discipline their employees for almost any on or off-duty conduct unless prohibited by federal or state law (Morrison, 2024, p. 107). During the 1960s and early 1970s, record-low unemployment and the power of private-sector unions meant high job security for private-sector employees. Many Americans had a favorable opinion of public employees, including federal employees. Like individuals flocking to federal service during the New Deal, the 1960s saw many young Americans seek federal jobs as the country took on economic and social inequality in American society. The share of the American public that said “they could trust the federal government to do the right thing nearly always or most of the time reached an all-time high of 77%” (Pew Research Center, 2015). The turmoil of the second half of the 1960s and the massive economic disruptions of the 1970s and 1980s saw public trust in the federal government plunge (Pew Research Center, 2015). Job security vanished for many private sector employees. Job security increased for some public employees because of the spread of public sector collective bargaining. The same period also saw the U.S. Supreme Court expand the constitutional rights of all public employees. The growing perceived disparity between public and private sector employees’ rights helped fuel bureaucratic bashing and calls to make it easier to fire public employees, including competitive schedule federal employees. Seemingly overnight, executive branch competitive schedules federal employees had become part of a privileged class.

In *Pickering v. Board of Education* (1968), for example, the U.S. Supreme Court held that the First Amendment prohibited public employers from firing a public employee for speaking out on a matter of public concern if the employee’s speech did not unduly disrupt the efficient operation of an employee’s organization (Rosenbloom, 2014, pp. 143–144). In *Board of Regents v. Roth* (1972), as another example, the U.S. Supreme Court held that public employees with more than an expectation of continued employment had protected Fifth and Fourteenth Amendment property interests. This meant that all non-probationary civil service employees had a constitutionally protected right to a hearing to challenge a dismissal. By rejecting the argument that all public employees have a protected property interest in their government jobs, the classification of public employees as competitive schedule or at-will grew in importance. In *Cleveland Board of Education v. Loudermill* (1985), the U.S. Supreme Court further expanded public employees’ procedural due process rights with a continued expectation of employment. The U.S. Supreme Court held that all public employers, including federal agencies and departments, must provide public employees with more than an expectation of continued public employment a so-called *Loudermill* pre-termination hearing (U.S. Merit Systems Protection Board, 2015, pp. 13–23). The Civil Service Reform Act of 1978 (CSRA) created statutory due process rights for competitive service federal employees consistent with constitutional requirements (U.S. Merit Systems Protection Board, 2015, p. 10).

The CSRA also addressed the concern that federal law made it too difficult to fire competitive schedule federal employees for inferior performance or misconduct (West, 2016, pp. 370–371). It enacted Chapter 43 as an alternative to Chapter 75 actions for removing competitive schedule federal employees for deficient performance. First, “Chapter 43 imposed a new removal standard that allows agencies to terminate an employee if the employee fails to meet his established performance requirements; this new standard attempted to create a more concrete relationship between deficient performance and the employee’s corresponding termination. Establishing this direct relationship would make it easier for agencies to remove poor-performing employees because if an employee fails to meet the established performance requirements, then, his performance is unacceptable, and removal is justified. Second, Chapter 43 sought to make it easier to remove poor-performing employees by reducing the agency’s burden of proof from preponderance of the evidence to a substantial evidence test” (West, 2016, p. 371).

In *Douglas v. VA* (1981), however, the United States Court of Appeals for the District of Columbia (D.C. Circuit) held that the Merit Systems Protection Board (MSPB) had the authority to require federal agencies to consider twelve factors when evaluating the reasonableness of a disciplinary penalty for a federal employee. As a matter of fairness, the MSPB sought to equalize the treatment of competitive service federal employees facing discipline across all federal agencies. The Douglas factors provided critics of the competitive federal service ammunition that federal agencies and departments found it impossible to fire competitive schedule federal employees for deficient performance. Evidence exists that the Douglas factors did not prevent federal agencies from taking appropriate action against competitive schedule federal employees (Jones, 2018, pp. 41–44). The narrative of an unaccountable federal bureaucracy played well with supporters of Donald Trump’s 2016 Washington outsider campaign.

President Trump’s Declaration of War Against the Competitive Federal Schedule

At the beginning of 2017, a series of presidential administrations had already created non-competitive schedules A, B, C, and D (5 CFR Part 213). Even with creating these non-competitive schedules, most federal executive employees still held competitive schedule positions. On May 28, 2018, President Trump issued EO 13839—Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles (Presidential Documents, 2025) (Turmp, 2018). The EO directed the USOPM to streamline the system for removing poor-performing competitive schedule federal employees. The EO stated that “[s]upervisors and deciding officials should not be required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances” (American Presidency Project, 2025a). The EO directed federal agencies and departments to stop using Douglas’s disciplinary standards to ensure equal treatment of competitive schedule federal employees across departments and agencies. “Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time—particularly where the employees are in different work units or chains of supervision—and agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct” (The Presidency Project, 2025a). The EO directed the USOPM to take several other actions, making it easier to fire competitive schedule federal employees for poor performance. President Trump fully embraced the views of a series of Republican presidential administrations that Democratic presidential administrations protected competitive schedule federal employees from being held accountable.

The Policy/Career Schedule and Judicial Oversight Unitary Executive Branch Theory

Whether President Trump has the authority to establish the Policy/Career Schedule will rest upon how the U.S. Supreme Court defines the Article II powers of the president over executive branch human resource management and his authority under Title V of the USC Code to create non-competitive federal schedules. Federal courts will also have to decide whether President Trump and the USOPM violated the APA by repealing the rules issued by the USOPM, in 2024, protecting competitive schedule employees from losing civil service protections if moved to Schedule Policy/Career. Due to the complexity of these legal issues, it will take time for lower federal courts and the U.S. Supreme Court to sort out President Trump’s authority to move tens of thousands of competitive schedule federal employees into Schedule Policy/Career. Federal courts must consider several arguments attacking the legality of Schedule Policy/Career.

The APA creates the first hurdle that President Trump and the USOPM must overcome before federal agencies and departments may begin to move competitive schedule federal employees or select hire new employees for the Schedule Policy/Career. In *Motor Vehicle Mfrs. Ass’n v.* State Farm *Mut. Auto. Ins. Co.* (1983), the U.S. Supreme Court overturned a decision by the Reagan administration to repeal a rule requiring automakers to install in new vehicles “one of two passive restraints: airbags or automatic seatbelts” (*Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co. 1983, p. 1912*). The Reagan administration argued it had the authority to repeal any rule without going through APA informal rulemaking. The U.S. Supreme Court disagreed. It stressed that unlike a law enacted by Congress, the APA required agencies seeking to repeal or change an existing regulatory policy implemented through rule-making to repeal or change an existing rule. Moreover, the *State Farm* majority held that an agency must “articulate a satisfactory explanation for its actions” (Weisman & Wright, 2022, p. 903). The *State Farm* decision required federal courts to find the action of an agency arbitrary, capricious, or an abuse of discretion if “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, explained its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise” (*Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 1983, p. 43*). “State Farm established a precedent that the rescission of a rule must be judged by the same arbitrary and capricious standards governing rule promulgation, and that agencies cannot change policies simply in response to changes in political preferences. To change policy, agencies must begin the process of notice-and-comment rulemaking de novo. In State Farm, therefore, the U.S. Supreme Court imposed a check on policy swings in rulemaking across presidential administrations” (Wiseman & Wright, 2020, pp. 903–904).

In the *Department of Homeland Security v. Regents of the University of California* (2020), for example, the U.S. Supreme Court faced the issue of whether the Department of Homeland Security had the authority to effectively shut down the Deferred Action for Childhood Arrivals (DACA). In August 2012, President Obama used his executive powers to order the Department of Homeland Security not to pursue deportation of individuals who registered for temporary resident status under the DACA program. Faced with a hostile Congress after the 2010 midterm congressional elections, Obama abandoned his concerns about the unitary executive to embrace it (Bulman-Pozen, 2019, p. 266). By a vote of 5 to 4, the U.S. Supreme Court found arbitrary and capricious a decision by the Trump administration to rescind the DACA program. Writing for the majority, Chief Justice Roberts stressed that “State Farm teaches that when an agency rescinds a prior policy, its reasoned analysis must consider the ‘alternative[s]’ that are ‘within the ambit of the existing [policy]’” (*Department of Homeland Security v. Regents of the University of California*, 2020, p. 1913). Based on the reasoning in State Farm and Department of Homeland Security, lawsuits challenging the establishment of the Policy/Career Schedule argues that President Trump failed to comply with State Farm’s rule-making requirements by failing to engage in reasoned decision-making when revoking the rule issued by the USOPM, in 2024, protecting competitive schedule federal employees from losing civil service protections if moved to Schedule Policy/Career (*PEER v. Trump*, 2025, pp. 28–29).

#### 2. NORMALIZATION. It fashions a clear and predictable brightline for reorganization.

Bijal Shah 23, JD, MPA, Associate Professor of Law, Boston College Law School, Provost Faculty Fellow & Dean's Distinguished Scholar, "The President's Fourth Branch?" Fordham Law Review, Vol. 92, No. 2, pg. 499-550, November 2023, HeinOnline. [italics in original]

Presidential preferences and haste are likely to continue to weaken agency adherence to statutory requirements, including substantive mandates as well as requirements governing administrative procedure and the judicial review of agencies. Recent decisions have expanded the President's power to appoint and remove administrative adjudicators and heads of independent agencies. As the previous part discussed, the former of these dynamics is arguably inconsistent with the President's duty to take care that the laws are faithfully executed 2 38 and may weaken the legitimacy of administration by causing more disruptions in the implementation of law and in public participation in the regulatory process. 23 9 The latter, involving decreasing agency independence from presidentialism, may both be inconsistent with Congress's constitutional power to structure agencies 240 and reduce agency accountability to the values of impartiality and expertise encouraged by structural insulation from political influence. 241

This part offers some suggestions to coax the President and the rest of the executive branch into employing the author's model of presidential administration, 242 in which the President exercises control over agencies to support and amplify agencies' capacity to implement legislation and pursue good governance as intended by Congress. Part II.A argues that courts should reinforce legislative requirements and treat agencies as distinct from the President in certain contexts. Part II.A.1 advocates for the judicial reaffirmation of the minimum procedural requirements of the APA notice-and-comment provisions. Part II.A.2 suggests that courts carefully distinguish agencies from the President, for purposes of enforcing statutory mandates such as NEPA and ensuring that administration is subject to adequate judicial oversight. Part II.B advises that the Court consider the potential fallout of intensifying political control over independent regulatory commissions and agency adjudicators. In lieu of deferring to legislation mandating structural separation, Part IIB.1 argues that courts should, at the very least, establish guidelines clarifying when constitutional appointment and removal requirements in fact apply to lower-level officials-in particular, to administrative adjudicators. Finally, Part II.B.2 encourages more robust judicial enforcement of the provisions of the APA that ensure deliberative and untainted administrative adjudication.

*A. Reinforcing Public Participation and Administrative Substantiation*

Agencies' efforts to pursue the President's interests have led to notice-and-comment rulemaking and environmental policies bereft of substantiation and process, as well as to limitations to the judiciary's ability to oversee the quality of administration. 243 As a result, the executive branch may be in danger of failing to uphold its responsibility to execute the law, and the President may be weakening administrative legitimacy based in the good governance aspects of legislation and in the pluralist values of public participation. This section argues that administrative adherence to statutory requirements should be revived, especially in this context. More specifically, agencies should be held accountable to the minimal requirements of the APA's notice-and-comment provisions. In addition, agency action must be adequately distinguished from presidential directives that may drive those actions, so that agencies adhere to legislative requirements such as NEPA and are subject to sufficient judicial review under the APA.

1. Preserving APA Notice-and-Comment

Presidentialism provides agencies an excuse for watering down the informal rulemaking requirements of the APA. By legitimizing the IFR and presidentially driven "good cause" exceptions, the Supreme Court has allowed agencies to weaken their attention to public participation in rulemaking. And agencies have continued to show themselves willing to further hurried rules, 244 rely on inadequate notice-and-comment procedures, 245 and even proffer pretextual 246 justifications to further the policy preferences of the President. However, the Court has also indicated that it is hesitant to allow agencies to sidestep notice-and-comment requirements altogether when pursuing the President's policy interests. 247 This section argues that courts should continue to police distortions of the APA's rulemaking requirements, particularly when the President is involved in the policy at issue, and hold agencies accountable to the APA's notice-and-comment provisions even when agencies act urgently pursuant to the President's interests.

*Vermont Yankee v. National Resource Defense Council, Inc.*248 limits courts, as a matter of statutory interpretation, from adding to the bare requirements of the APA. Given this expectation, courts should also insist that the executive branch, as a matter of statutory execution, cannot choose to underenforce the minimum obligations of the APA. The judicial response to agencies diluting APA notice-and-comment provisions to further immigration policies has been promising. For example, one case in the DDC held that the agency should have used notice-and-comment rulemaking to promulgate a Trump-era policy narrowing the availability of certain immigration benefits.24 9 In addition, courts enjoined a restrictive immigration IFR soon after publication in the federal register. 250

In addition, courts should refine their approach to allowing post-promulgation notice-and-comment processes such as IFRs. For instance, Professor Kristin Hickman and Mark Thomson have outlined a potential "middle ground" per which courts scrutinize post-promulgation notice-and-comment periods and allow them only under limited circumstances. 25 1 First, they argue, "courts should expressly adopt a strong-if rebuttable-presumption that rules promulgated using postpromulgation notice and comment are invalid." 2 52 Agencies may rebut this presumption by demonstrating responsiveness to comments that were submitted2 53 and showing evidence that pre-promulgation notice-and-comment procedures were not eschewed in bad faith. 254 The authors also advise courts to credit "postpromulgation notice and comment where agencies make significant efforts to publicize the opportunity to postpromulgation public comment ... by hosting public meetings on the interim final rule or conducting significant online campaigns encouraging postpromulgation comments."255 These judicial inquiries would limit agencies' ability to use presidentialism as a justification for substandard attention to public participation in rulemaking.

Consider President Trump's executive order directing OPM to regulate in order to render much of the civil service subject to at-will removal. 256 President Joe Biden has since eliminated this proposal.2 57 But should a future President resuscitate it, as is possible, 25 8 courts should hold the agency's implementation of this presidential directive to the APA's informal rulemaking criteria. In addition, courts should be skeptical of claims that such regulation is merely one "of agency organization, procedure, or practice" and therefore not subject to notice-and-comment requirements. 25 9 Such a rule would have a broad impact on not only the rights of current federal employees who would lose certain employment protections, 260 but also, as a result, on the landscape and quality of administration overall.

Courts should also be certain to apply any other relevant statutory procedural requirements that reinforce the use of notice-and-comment procedures. 26 1

In addition, *Little Sisters* creates the possibility that agencies will expand the good cause exemption, which allows agencies to forgo a notice-and-comment process in rulemaking altogether, by leveraging presidential urgency to justify omitting it.262 However, federal courts have remained a bulwark against recent exploitation of the good cause exemption in the immigration context. Notably, these decisions imply that agencies cannot excise notice-and-comment requirements if they are driven to do so primarily by the President's urgency, as suggested by overly broad justifications for the exception.

First, the DDC issued a nationwide injunction vacating a restrictive asylum rule promulgated with haste and issued a decision determining that neither the good cause nor the "foreign affairs function" exceptions to notice-and-comment rulemaking applied to this asylum rule. 263 Second, two regulations issued by the U.S. Department of Labor and the U.S. Department of Homeland Security (DHS) were struck down by a federal judge, who found that the COVID-19 pandemic did not constitute a "good cause" allowing the agencies to forgo notice-and-comment processes for the rules, which tighten restrictions in the H- 1B nonimmigrant visa program. 264

2. Disaggregating Agencies from the President

Agencies are often characterized as proxies of the President, particularly by unitary executive theorists.2 65 Even in popular conversation, governmental policies furthering the President's agenda are described as the efforts of a particular President or the White House, even though the policies are accomplished or perhaps even initiated by an agency pursuant to authority delegated by the legislature. 266 However, "distinguishing between the President, who possesses 'the executive power' under Article II, and a series of administrators, who are granted delegated authority to act by statute, proves to be crucial to understanding the broader debate" over executive power. 267

Despite the enduring conflation of the President and executive agencies, agencies have "distinct legal personalities" and are not merely legal extensions of the President. 268 Agencies are enabled to act directly by legislation, and it is Congress that sets up the constraints of each administrative office and the expectations that agencies enforce the law with fidelity to statutory mandates and to expectations of administrative legitimacy and good governance.269 This section argues that, for the general purposes of evaluating administration, agencies should be understood as separate from the President, with their own set of responsibilities. More specifically, Congress, courts, and agencies themselves should disaggregate agency action from presidential administration to ensure that even policies spurred by the President are held to legislative standards and subject to sufficient judicial review.

First, courts might excavate the ex parte communication doctrine that limits political interference in certain informal rulemaking processes 27 0 to ensure that rulemaking-once undertaken-remains distinct, or relatively "untainted" by the President's interests, in practice. Arguably, ex parte presidential influence in informal rulemaking is "contrary to the pluralistic values that underlie that procedure." 27 1 Limiting such influence could offset, to a small degree, similarly anti-pluralist efforts to reduce or eliminate notice-and-comment processes in rulemaking. 272 For instance, it could dissuade presidential interference driving agencies to engage in IFRs or to seek good cause exceptions from notice-and-comment altogether.

Even if courts decline to pursue this approach, agencies have a responsibility to be accountable to criteria, such as those represented by notice-and-comment processes, beyond the concerns of the President. At least one agency has heeded this responsibility. For instance, OPM initiated a notice-and-comment process 273 to implement an executive order directing the exemption of administrative law judges from the competitive service,274 even though the President tried to find a way for the executive branch to sidestep this process. 27 5

Second, the legislature could ensure that agencies adhere to NEPA's mandates even when acting in response to presidential directives. Presidents have sought and won exceptions to NEPA requirements for quite some time. 276 As a response, Congress could reiterate, in enabling or addendum legislation, that NEPA's environmental impact statement requirements apply to agencies under all circumstances. In the meantime, courts might begin to limit exceptions to NEPA resulting from presidential involvement or directives, or at least to stave off the more centralized, systematic approach to undercutting NEPA taken by the President in recent years. 277

Third, courts should distinguish administrative responsibilities as primarily accountable not to presidential initiatives, but rather to statutory requirements, including for purposes of judicial review. Doing so requires acknowledging that agency action is both distinct from and beholden to a separate set of governing criteria than presidential action. In *Department of Homeland Security v. Regents of the University of California*,27 8 the Court did just that.279 More specifically, the Court declared that, per the APA, the DHS was obligated to articulate a reason for rescinding its Deferred Action for Childhood Arrivals (DACA) immigration program and to consider various options for rescission independently, regardless of a presidential directive ordering the agency to terminate the program.280

DACA allowed certain undocumented immigrants whom DHS viewed as having favorable qualities-and therefore as a low priority for deportationto apply for a two-year deferral of deportation.28 1 Those immigrants granted such "forbearance" were also eligible for work authorization and various federal benefits. 2 82 The agency, responding to a curt missive from the AG that represented President Trump's immigration goals, rescinded the program immediately (literally, the day after it received the AG's request). 28 3

In *Regents*, the Court applied arbitrary and capricious review to determine that DHS failed to analyze whether the benefits portion of DACA could be severed from the policy granting forbearance against deportation and also failed to assess whether there were reliance interests that must be taken into account in the decision to rescind.2 84 The Court made the point that although there were various aspects of the decision to rescind that the AG letter did not speak to, DHS was nonetheless obligated to consider matters outside the scope of the AG's letter. In doing so, DHS might well have concluded that only part of the program should be rescinded or that the program should be tapered off in a manner that minimized the impact on current DACA recipients.

Implicitly, the Court was suggesting that agencies' behaviors are evaluated by separate requirements outside of those issued by political appointees and that agencies themselves have the responsibility to hold themselves accountable to mandates outside of those set by the President. Just as agencies may question whether they have the statutory authority to pursue the President's goals, 2 85 so too are agencies obligated to resist pressure from the President to pursue administrative actions with haste or in other ways that preclude matters dictating a policy's legitimacy, such as reliance interests.286

Finally, if the judiciary declines to distinguish agency action from presidential action, it might endeavor to make its current doctrine more consistent with this approach. For example, the judiciary (or Congress) might assert that the APA governs a President when the President is involved in an agency action, which is somewhat distinct (in theory, if not in practice) from the view that the President should be subject to the APA. Indeed, even if the President remains exempt from the APA, 287 the APA should "likely still govern the actions of executive branch agencies implementing a presidential directive."28 8 Commentators have suggested as much and have noted the extent to which this is feasible despite existing doctrine exempting the President from APA review more generally. 2 89

*B. Bolstering Impartial and Expert Decision-Making*

Partisan appointment decisions and the threat of politically based removal both dissuade agencies from impartial and expert decision- or policymaking 2 90 and are based in an interpretation of the Constitution that may offend Congress's authority.291 This section argues that the judiciary should acknowledge the drawbacks of expanding the President's appointments and removal authority and build standards that limit their impact. Ideally, courts would ensure high-quality administration by "defer[ring] to Congress's judgments about the appropriate structure of the federal government, including the degree to which agency heads should be shielded from direct presidential control."292 If they do not take this approach, then courts should issue guidelines that clarify the scope of the constitutional appointments power with precision. At minimum, courts should hold agencies accountable to the values of impartiality and process, regardless of the presence of countervailing political pressure, by leaning on the APA to better protect the integrity of agency adjudication overall.

1. Moderating Political Removal and Appointments

The judiciary's recent expansion of the number of administrative adjudicators subject to the Appointments Clause may lead to undesirable consequences, including the elevation of partisan interests over requirements, norms, or values that are mandated or prized by the legislature. 293 This section suggests that since courts are in a "poor position" to understand the trade-offs between political control over and independence in administrative adjudication, 294 the Supreme Court should walk back its unitary executive vision of Article II, furthered in S*eila Law*, by allowing removal protections for independent agency heads to remain standing. 2 95

Given that the Court is unlikely to do this, this section also argues that clarifying the conditions of constitutional appointment could ameliorate some of the repercussions of politicized hiring and firing. 296 In the wake of *United States v. Arthrex*, politically controlled adjudication may come to comprise much of the administrative state. 297 And yet, "[a]lthough the Court has increasingly required greater executive control over agencies through its Article II Take Care Clause and Vesting Clause rulings, it has not decided how much political control over agency *adjudicators* these clauses require." 298 Importantly, more precise guidance from the Court would assist the legislature in creating statutes establishing adjudicative independence that the Court would have to respect.

As to slowing down its unitary executive project, the Court could fine-tune its *Seila Law* holding in a future decision by establishing that legislative provisions insulating multimember regulatory commissions from at-will removal are allowed to remain in place and by creating rules to guide the exercise of removal authority more generally. Given its current ideological composition, the Court might be persuaded by arguments that suggest engaging with formalist and originalist approaches to the separation of powers to support structures of independence in the administrative state. Arguably, *Seila Law* deployed what Professor Jodi Short calls a "facile formalism" that deemed unconstitutional a single agency head with for-cause removal without a sufficiently nuanced-or genuinely formalistanalysis. 299 More specifically, Short suggests that the Court's decision fails an important component of formalism, in that it does not provide a "clear, predictable doctrinal application." 300 In addition, Professor Jed Handelsman Shugerman argues that an originalist reading of the law interpreted in an essential case establishing unitary executive theory, *Myers v. United States*,30 1 "*supports*, rather than undermines, Congress's power to limit presidential removal." 302 These views offer a set of constitutional justifications for the Supreme Court to walk back its rather aggressive approach in *Seila Law* and become consistent once more with its conventional approach, according to which it has "left most decisions about how to structure the Executive Branch" to Congress. 303

#### The lack of administrative procedure drives incongruent and unstable governance.

Dr. Timothy Meyer & Ganesh Sitaraman 25, PhD, JD, Distinguished Professor, International Business Law, Duke University School of Law; JD, Chancellor's Chair, Law, Vanderbilt University Law School, "Presidential Regulation," Yale Journal on Regulation, Vol. 42, No. 2, pg. 803-871, 02/10/2025, HeinOnline. [italics in original; language edited]

Because presidential regulation involves presidential power, rather than agency power, it also involves considerably less judicial review than would agency action (including agency action directed by the president).62 There are two reasons for this judicial deference. First, the Supreme Court has held that the president is not an agency within the meaning of the APA.63 As a result, presidential action—whether authorized by statute or the Constitution—cannot be challenged under the APA.64 This means that the APA and its arbitrary and capricious standard of review is not available to challenge presidential action. 65 Instead, presidential action can only be challenged as in excess of statutory authority or in violation of the Constitution.66 As Kevin Stack has pointed out, though, constitutional challenges to executive orders have an especially weak track record, while courts have not settled on a method for analyzing presidential assertions of statutory authority.67

This immunization from the APA needs to be qualified in two respects. If a statute grants the president authority only following a determination by an administrative agency, the agency’s determination may be final agency action reviewable under the APA even if the president’s subsequent decision is not.68 Where the agency’s action is a necessary step before the president may act under a statute—instead of a recommendation or merely the transmission of information— the president’s decision can be, in effect, collaterally attacked under the APA by challenging the agency’s initial determination.69 Even here, though, courts have sometimes weakened the impact of the APA. For example, in *USP Holdings v. United States*, the Federal Circuit held that APA review was available to challenge the Secretary of Commerce’s determination (under Section 232 of the Trade Expansion Act) that imports of steel represented a threat to national security, thereby engaging the president’s discretionary authority to take virtually any action he wished to “adjust the imports” of steel products. But since the president was the final decisionmaker, the court held that the agency’s determination should be reviewed under the same standard as the president’s decision—compliance with the statute—rather than for arbitrariness and capriciousness as would be normal under the APA.70

Additionally, nonstatutory forms of review based on the common law and/or APA review may be available for agency actions taken to implement the president’s directives.71 Where the president grants discretion to the agency on how to carry out a directive, such review may be ordinary arbitrary and capricious review.72 But where the agency lacks discretion, courts again often apply the same lenient standard they would apply to a suit against the president himself.73

As a result, the president can effectively choose the degree to which APA review of agency action taken to implement his decisions is available. By making decisions himself, he reduces APA review. Since the president can consult with agencies before making a decision, he can still get the benefit of their expertise (if he wants) while insulating the result from APA review. On the other hand, by delegating discretion to agencies and allowing regulations to issue in their names, he creates the possibility of APA review. This ability to control the scope of judicial review of executive branch action is, of course, a power normally associated with Congress.

Second, beyond immunization from APA review, foreign affairs exceptionalism—under which courts apply more lenient or deferential standards when reviewing executive action that touches foreign affairs—may shield domestic regulation that is based in part on a foreign affairs power, whether statutory or constitutional. 74 Modern courts apply the *Youngstown* framework in a manner that is highly deferential to the executive branch.75 Since at least 1981’s *Dames & Moore v. Regan*, courts have tended to interpret the absence of congressional disapproval as congressional acquiescence.76 Courts are thus both more likely to find the absence of a statute to be evidence that a particular case falls within *Youngstown*’s Category 2 (as opposed to Category 3) and then to uphold the presidential action. As a result, in the face of consistent presidential claims of authority courts tend to uphold executive action except where Congress has explicitly passed a statute to the contrary.77 Moreover, because the president can act more easily than Congress, the president has more opportunities to establish the kind of consistent practice that courts use as a basis for upholding presidential power. 78 Any survey of historical practice is thus likely to be biased toward presidential power.

The ghost of *Curtiss-Wright* also tends to haunt *Youngstown* analyses in both the executive branch and courts. In *Youngstown*, Justice Jackson wrote that Category 2 consists of “a zone of twilight in which [the president] and Congress may have concurrent authority, or in which its distribution is uncertain.” 79 *Curtiss-Wright* says that the president enjoys “plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations.”80 Taken together, these two seminal cases give the president the ability to argue that *any* case involving foreign relations involves at least concurrent executive authority— even when the action involves economic powers and the aim and effect of the president’s action is domestic. Indeed, in recent cases challenging President Trump’s and President Biden’s expansive use of international economic authorities to control imports into and foreign investment in the United States, the executive branch has regularly deployed the most expansive versions of these arguments to defend the president’s authority.81

3. Streamlined Process

Finally, presidential regulation involves a streamlined process as compared to ordinary administrative process. Once again, the fact that the APA does not apply to the president, even when he acts pursuant to statutory authority, means that APA rulemaking procedures do not apply to presidential regulation.82 To be sure, the APA also contains an exception for foreign affairs, which may insulate some agency action from the APA. 83 But the exception’s application depends on the action, not the agency.84 Foreign affairs agencies like the Defense Department and the U.S. Trade Representative’s Office may thus find some of their actions subject to APA rules.85 By contrast, the president is categorically exempt from the APA.

Presidential regulation can also be more streamlined than agency regulation, precisely because it does not involve the need to supervise agencies in the manner of presidential administration.86 Agencies face internal hurdles to regulating beyond the need to comply with APA rules. They must, for example, go through an interagency process and submit their proposed regulations for White House review by the Office of Management and Budget87 and, if the matter touches on international trade, by the U.S. Trade Representative’s Office.88 The reverse is not true. While the White House may and often does consult with agencies, when exercising presidential powers it only has to do so to the extent that a particular statute so requires.89 Moreover, when it wishes to act, as a matter of interagency protocol the White House enjoys the ability to simply overrule agency objections. That same power is not necessarily available to agencies.

Finally, the fact that the president can also rely on constitutional powers that agencies lack can insulate his exercise of power from attempts at congressional control. In addition to the president’s use of executive privilege to resist oversight,90 the last several decades have seen an explosion in the use of presidential signing statements.91 Such statements typically state the president’s view that restrictions on his use of authority contained in legislation interfere with his constitutional prerogatives and thus that he will treat those restrictions as non-binding. For example, as noted above, in signing legislation approving a U.S.-Taiwan trade agreement, President Biden indicated that he would treat procedural requirements for future negotiations contained in the legislation as non-binding on the grounds that they interfered with his constitutional authority to negotiate with foreign countries.92

*B. The Progenitors of Presidential Regulation*

Until recently, presidents only sparingly used their own powers for the purpose of regulating the domestic economy. Nevertheless, presidential action affecting the domestic economy has been a feature of our nation’s legal system since the Founding. In this Section, we briefly lay out three progenitors of modern presidential regulation: 1) 18th and 19th century presidential regulation of commerce with combatants during times of war; 2) presidential exercises of delegated authority to set tariffs or otherwise regulate imports in the late 19th and 20th centuries; and 3) the exercise of emergency economic powers during the 20th century. These issue areas share much in common with contemporary presidential regulation. In these examples, the president often relies on his constitutional authority, or a mix of statutory and constitutional authority (although again, presidential regulation can rest solely on statutory authority). Judicial review of these actions has often been deferential. And these regulations do not involve modern administrative process, although in most cases that is because these actions predate that process. Indeed, as we explain with respect to tariff and emergency powers, after the emergence of the administrative state, Congress subjected some of these powers to administrative law, while leaving others in the president’s hands.93 At the same time, these presidential actions usually lacked the scope and permanence of modern presidential regulation. They usually aimed to address specific and temporary circumstances, and thus differed significantly from the policy challenges that are the subjects of modern presidential regulation.

Since the earliest days of the Republic, presidents have relied on their constitutional war powers to regulate commerce with combatants and enemies during times of military conflict, including in circumstances in which Congress had not legislated. In that vein, President Washington’s Neutrality Proclamation of 1793 is the earliest significant example of presidential measures affecting the domestic economy.94 In the late 18th century, revolutionary France was at war with Great Britain and most of the military powers of continental Europe. The French ambassador to the United States, Genet, sought to raise money and support for France in the United States, including by commissioning privateers to operate from U.S. ports and in U.S. waters against British shipping. To preserve the young Republic’s neutrality in that conflict, President Washington proclaimed that U.S. citizens that offered aid to any of the combatants, including “by carrying to any of them those articles” inconsistent with a neutral’s obligations under international law, would be prosecuted.95 Congress was not in session at the time, however, so President Washington issued the Proclamation on his own authority. When it returned to session, both houses of Congress separately applauded President Washington’s actions and then substantially codified his decision in the Neutrality Act of 1794. 96 The Neutrality Proclamation’s purpose was, as the name suggests, to avoid becoming a combatant in the European conflict by extending commercial privileges to England and France. But by effectively closing ports to English and French ships, President Washington regulated the ability of U.S. commercial interests to trade with the rest of the world.

Similarly, at the outset of the Civil War, President Lincoln declared a blockade of Confederate ports.97 Like Washington, Lincoln lacked congressional authority when he initially issued the order, and like the Neutrality Proclamation, the order had the effect of regulating economic affairs within the borders of the United States as part of an ongoing military conflict. The Supreme Court addressed the legality of President Lincoln’s orders in the *Prize Cases*, ultimately upholding them, in relevant part, on the grounds that “[m]oney and wealth, the products of agriculture and commerce, are said to be the sinews of war . . . .” 98 The president thus had the authority to enforce the blockade by ordering the seizure of private property belonging to U.S. citizens in the United States as incident to his power to conduct the war.99

2. The Power to Set Tariffs

In the late 19th century, Congress began delegating authority to adjust tariff rates in limited circumstances directly to the president. 100 Although tariffs are charged on imports, they are otherwise just domestic taxes assessed within the United States’ borders. At the time, Congress itself still directly sets most tariff rates pursuant to its constitutional authority to tax.101 However, the increasing globalization that accompanied the industrial revolution meant that Congress wished to adjust tariffs to protect certain sectors of the U.S. economy from foreign competition. Rather than pass legislation each time a sector was exposed to what Congress felt to be unfair competition, Congress delegated to the president the authority to make factual findings that would trigger his authority to raise tariff rates.102

In the absence of a robust administrative state, it might well have made sense to delegate authority directly to the president. Over the course of the 20th century, though, Congress would establish a more complicated scheme, with some authority delegated to the president with no checks, some authority delegated to the president but requiring congressional approval, and other authority delegated to the administrative state. 103 For example, in the Reciprocal Trade Agreements Act (RTAA) of 1934, Congress gave the president the authority to *reduce* tariffs unilaterally.104 The RTAA and its successor statutes gave the president the authority to enter into international agreements requiring tariff reductions and to directly proclaim the resulting tariff reductions as a matter of U.S. law, all without any subsequent congressional approval.105 The Trade Act of 1974 created fast-track authority (now called Trade Promotion Authority) which, when in effect, allows the president to negotiate agreements reducing both tariff and regulatory barriers to trade, subject to congressional consultation and approval.106

The authority to *raise* tariffs and other kinds of trade barriers, however, was divided between the administrative state and the president. This division largely tracked the degree of discretion and oversight Congress wanted the executive branch to have. Delegations to the administrative state were often relatively tightly drawn in substantive terms, subject to administrative procedures, and given meaningful review in court. For example, antidumping and countervailing duties are essentially additional charges imposed on imports that benefit from “unfair” trade practices. To impose either one, both the Commerce Department and the independent International Trade Commission must make positive findings in investigations regarding, respectively, the existence of the unfair trade practice and injury to a domestic industry.107 Those investigations are subject to the APA and reviewable in the Court of International Trade, a specialized Article III court with exclusive jurisdiction over tariff matters.108

By contrast, a number of statutes grant the president the authority to directly raise tariffs or impose other forms of trade restrictions. These statutes include Section 232 of the Trade Expansion Act of 1932 and Section 301 of the Trade Act of 1974 (in its original form). 109 As Kathleen Claussen has argued, these statutes “allow[] the President to act without any supervision when he wishes to set higher tariffs on certain goods or on goods coming from certain countries.” 110

These authorities are drawn in extremely broad terms. Section 232, for example, allows the president to “adjust the imports” of any product that he and the Secretary of Commerce agree threatens to impair the national security.111 Congress imposed no limits on “the nature and duration of the action” the president may take and “national security” is defined to include virtually any domestic economic factor the president thinks relevant, including the “economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, [and] loss of skills or investment . . . .”112 As originally enacted, Section 301 gave the president the authority to impose a wide range of trade sanctions on nations if he determined that nation in question had imposed “unjustifiable or unreasonable” trade restrictions.113 A 1988 amendment transferred the authority for making the initial determination and choosing the response to the U.S. Trade Representative (USTR), although USTR’s response continues to be “subject to the specific direction, if any, of the President regarding any such action.”114

Section 301 was used more actively during its first two decades as a tool to pressure other nations to remove trade barriers.118 During this time, though, Section 301 operated primarily as a means of resolving trade disputes in the absence of automatically binding dispute resolution under the General Agreement on Tariffs and Trade (GATT). Partially in response to U.S. use of Section 301, the WTO Agreement, which came into force on January 1, 1995, included binding dispute resolution. From 1995 to 2017, “the United States used Section 301 authorities primarily to build cases and pursue dispute settlement at the WTO.”119

The third trend in the march toward modern presidential regulation is the growth of economic emergency powers during the twentieth century. The Brennan Center has identified 148 statutory provisions that are activated upon declaration of a national emergency, including 135 statutory powers that are triggered upon a presidential declaration and an additional 13 upon a congressional declaration.120 Many emergency powers enable potentially sweeping regulation of domestic economic activity. For example, under the Federal Power Act, the president can “take possession” of any licensed energy enterprise for any purpose “involving the safety of the United States.”121 Under telecommunications laws, the president can “suspend or amend . . . the rules and regulations” related to radio or wired communications stations.122 During World War I, President Wilson seized control of radio communications and authorized new rate schedules for communications.123

Perhaps the most famous example of emergency powers at use in the domestic economic context is President Truman’s seizure of the steel mills in 1952 during a work stoppage.124 The seizure kept the mills operating, an action President Truman felt necessary due to the importance of providing steel for the ongoing Korean War.125 As is familiar to all constitutional law students, the Supreme Court ultimately held the seizure unconstitutional by a 6-3 vote in *Youngstown*. Congress had not authorized the seizure, and the majority held that the president’s own constitutional powers could not be the basis for the seizure of private property in the United States merely because that private property was part of a supply chain supporting a war effort on the other side of the world.126 *Youngstown* thus stands out as one of the rare instances in which the courts have not sustained the president’s efforts to regulate the domestic economy when he has relied on his constitutional and statutory foreign affairs powers. As we explain below, presidential regulation of supply chains, similar to the action at issue in *Youngstown*, are a core component of a modern presidential regulation.

Precisely because *Youngstown*’s result—a judicial rejection of presidential power—is an anomaly, the more important developments have been the grant of statutory emergency powers that overlap with, and have been sustained by courts in part on the basis of, the president’s constitutional authority. The most important of these powers was the Trading With the Enemy Act of 1917 (TWEA). Originally passed during World War I, the statute and later its successor, the 1979 International Emergency Economic Powers Act (IEEPA), have remained in force. TWEA contained a number of provisions authorizing the president to regulate commerce with enemies during wartime. For our purposes, though, the more important provision, carried forward into IEEPA, is the emergency provision. The original version of that provision provided that “[d]uring the time of war or during any other national emergency declared by the President, the President may . . . investigate, regulate or prohibit” a wide variety of economic transactions between foreign nationals and U.S. parties or involving U.S. property.127 Like early exercises of economic power during wartime, President Wilson and later President Roosevelt used TWEA to govern economic relations between the United States and Germany and its allies during the two world wars.128

Post-World War II, however, presidents began to rely on TWEA to impose economic regulations even during peacetime.129 The most dramatic of these was President Nixon’s decision in 1971 to impose a ten percent across-the-board tariff on imports.130 The predecessor to the Federal Circuit, the U.S. Court of Customs and Patent Appeals, upheld President Nixon’s authority to impose the tariff, as well as the constitutionality of TWEA, against a nondelegation challenge.131 In so doing, the court cited *Curtiss-Wright* approvingly for the proposition that the delegation of authority to impose taxes on imports into the United States is not subject to the same degree of constitutional scrutiny as the delegation of authority to impose taxes on products already in the United States.132 As the court put it, “[t]he power in peace and in war must be given generous scope to accomplish its purpose.” 133

Presidential use of TWEA, as well as other emergency statutes, was enabled by the fact that the power to declare the predicate “emergency” was entirely left to the president’s discretion. Although statutes like TWEA and later IEEPA delegated to the president powers to use in the event of emergencies, no statute has ever defined “emergency.” Congress did attempt to reform the statutory framework governing emergencies in the 1970s. At the time, a number of decades-old emergencies remained in force, the oldest dating back forty years to Franklin Roosevelt’s time in office.134 The 1976 National Emergencies Act (NEA) ended all of these emergencies and imposed procedural limits on the president’s power to declare emergencies. 135

These procedural limitations were modest, though, and have largely proven an ineffective check against the president’s use of emergency powers to effect sweeping regulation. Most importantly, the NEA continues to leave the definition of an emergency entirely to the president’s discretion. And while it imposes a oneyear limit on the length of an emergency, the president can extend an emergency simply by issuing a new proclamation every year.136 A study by the Brennan Center found that between the act’s passage and the end of 2023, presidents had declared 77 emergencies under the NEA.137 Of those, 42—more than half—remain in force, including the very first such declaration from 1979.138

In many ways, the broad use of these authorities since the 1970s has paved the road to modern presidential regulation. In *Dames & Moore v. Regan*, the Supreme Court famously upheld President Reagan’s suspension of claims by American businesses against the Iranian government. While IEEPA itself did not authorize the suspension of such claims, the Court found that IEEPA was part of a larger historical gloss that indicated, using Justice Jackson’s *Youngstown* framework, that the president enjoyed authority, to which Congress had acquiesced, to settle claims U.S. nationals hold against foreign nations.139

Less frequently featured in the pages of law school casebooks, IEEPA’s authority to prohibit or regulate economic transactions is also the legal basis for much of the modern sanctions regime that the United States deploys against countries, individuals, and non-state actors. Since the 1970s, presidential use of IEEPA has expanded in three critical ways. First, early emergency declarations that enabled invocation of IEEPA were geographically focused, usually on a particular country.140 In recent decades, however, presidents have identified nongeographically limited emergencies, including for cyberattacks and terrorism.141 Second, and relatedly, economic sanctions under IEEPA have shifted from targeting foreign governments—an approach that aligned with the geographicallylimited scope in earlier periods—to targeting individuals and non-state actors.142 Third, presidents have expanded the justifications for declaring emergencies that trigger IEEPA: from geographically-focused incidents and situations to broader issues like “civil rights abuses, slavery, denial of religious freedom, political repression, public corruption, and the undermining of democratic processes.”143 Together, these shifts have transformed IEEPA into a potent source of presidential regulation.

An important, related authority is over export controls. The Export Administration Act of 1979 authorized a system of controls for exports for dualuse technologies (technologies that could be used for military or civilian purposes). The law expired in 2001 but subsequent presidents continued the EAA’s export control regime relying on an emergency declaration and authorities under IEEPA.147 In 2018, Congress passed the Export Control Reform Act, which requires the president to impose the EAA’s regime, pursuant to IEEPA authorities. Under current law, the president has the authority to restrict “the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons.”148 It also gives other authorities to the Secretary of Commerce, related to maintaining a list of “controlled items, foreign persons, and end uses” that are restricted for export.149

In many ways, the regulatory regimes established pursuant to IEEPA are the most direct forebearer to modern presidential regulation. Although their purpose is aimed outside the United States, at those targeted by sanctions or export controls, they also create a significant domestic regulatory burden for everyone from U.S. companies engaged in international trade to American universities engaged in basic research. As we explain in the next section, these same basic authorities are now increasingly used for the purpose of regulating the domestic economy, rather than merely in ways that have the incidental effect of doing so.

*C. Presidential Regulation under Presidents Trump and Biden*

Presidential action regulating the domestic economy has thus been around for years. Moreover, the broad delegations of statutory authority directly to the president that underlie much of presidential regulation are decades old, often dating to emergency or national security authorities granted during the world wars (like TWEA) or the Cold War (like Section 232). Only in the last eight years, however, have presidents normalized the use of their powers as a means of unilaterally regulating the domestic economy. Although these actions often rest on the same kinds of foreign affairs, national security, and emergency powers as the actions describe above, they are generally not responding to temporary emergencies and the connection to foreign affairs provides little more than a jurisdictional hook. Presidents Trump and Biden have made expansive use of the president’s powers to try to move supply chains back to the United States, regulate the production and availability of medical supplies, influence the development artificial intelligence, and write expansive data privacy regulations.

Significantly, as we discuss in further detail below, these actions have, with one exception, survived judicial review, where such review has even been available in a meaningful form.150 That distinguishes these exercises of presidential power from the Trump and Biden administration’s efforts to wield authority delegated to administrative agencies. Both administrations have encountered a skeptical judiciary in the latter context, while the absence of administrative safeguards on presidential power have enabled the creation of expansive economic programs.

1. Section 232 and U.S. Manufacturing

In 2016, President Trump campaigned on the idea that free-trade agreements entered into by administrations of both parties had caused good manufacturing jobs to leave the United States for foreign shores.174

His victory in the Electoral College owed in large part to winning states that had been victimized by those job losses but that had voted for President Obama in the 2012 election—Michigan, Pennsylvania, Ohio, and Wisconsin.175 Eager to honor a promise to blue-collar workers in those states, Trump directed the Secretary of Commerce to open an investigation under section 232 of the Trade Expansion Act of 1962176 into whether imports of steel and aluminum products threatened to impair national security.177 Following an affirmative determination by the Secretary, in 2018 Trump imposed twenty-five percent tariffs on steel imports178 and ten percent tariffs on aluminum imports.179 Although the tariffs were ostensibly authorized by a law on national security, Trump made plain that his motives had little to do with national security as that term is conventionally understood. Instead, he and his administration argued that the tariffs were necessary to revive the domestic steel and aluminum industries.180

Although scholars have found that the tariffs had a net cost for the U.S. economy, there is also evidence that they did indeed work as a jobs program for the specific workers and industries that President Trump was trying to help.181 Indeed, using tariffs as a form of domestic redistribution avoids the need to obtain legislation for more direct aid to workers.182 It also fits comfortably within section 232’s grant of authority, which permits the President to favor “the economic welfare of individual domestic industries.”183 Because of the breadth of the President’s authority and the unavailability of the APA to challenge his decisions, the courts turned aside statutory challenges to Trump’s decisions.184 In rejecting a constitutional nondelegation challenge, the Federal Circuit noted that the President’s ability to regulate foreign commerce—a constitutional issue committed to Congress by Article I, Section 8 of the Constitution—pursuant to an overly broad statute could be strengthened by his independent constitutional authority over national security and foreign affairs.185

President Trump’s use of section 232 has touched off a revival of interest in how the authority could be used to achieve a variety of types of economic regulation. The first Trump administration launched six more investigations and the Biden administration one.186 The most controversial was the Trump administration’s conclusion that importing automobiles and auto parts “posed a national security threat” within the meaning of section 232.187 Although Trump left office before taking any action on automobiles, the disconnect between automobiles and national security left little doubt that the Trump administration viewed section 232 as a basis for engaging in ordinary economic regulation. As an industry group put it, “America does not go to war in a Ford Fiesta.”188 Not to be outdone, in 2024 President Biden directed the Secretary of Commerce to initiate an investigation into whether “connected” cars—automobiles that contain navigational systems or other technology that communicates with third parties—pose a threat to U.S. national security.189

2. Section 301 and Global Supply Chains

President Trump also imposed sweeping tariffs on virtually all imports from China under section 301 of the Trade Act of 1974. 190 In August 2017, Trump directed USTR to investigate whether China’s trade practices were unreasonable or discriminatory under section 301.191 In March 2018, USTR issued a report finding that four Chinese practices—(1) forced technology transfer requirements; (2) cyber-enabled actions to acquire U.S. intellectual property and trade secrets illegally; (3) discriminatory and nonmarket licensing practices; and (4) state-funded strategic acquisition of U.S. assets—warranted action under section 301.192 USTR initially imposed tariffs of 25% on approximately $50 billion worth of imports from China.193 Almost immediately, in response to Chinese retaliation on U.S. exports, Trump ordered USTR to impose tariffs of 10%, increasing to 25%, on an additional $200 billion worth of Chinese imports.194 Ultimately, the tariffs would end up covering almost $370 billion worth of annual imports at rates from 7.5% to 25%.195 In 2024, after a mandated four-year review of the tariffs, President Biden expanded the tariffs further, both adding new products like critical minerals and increasing the tariffs on other products such as electric vehicles and semiconductors.196

It might be tempting to view the section 301 tariffs on Chinese imports as just an example of an ordinary trade dispute. They are not. The scale of the tariffs, both in terms of the number of products covered and the amounts, reflects a strategic decision to “decoupl[e]” the U.S. economy from China.197 The tariffs do not so much try to change Chinese practices— the purpose for which section 301 has historically been used—as attempt to give multinational enterprises an incentive to restructure their supply chains away from China.198 They do so by imposing extraordinary taxes on imports from China, making them less cost-effective compared with either domestically produced products or products from third countries. Significantly, the tariffs apply to goods produced in China even if they are produced there by U.S. companies.199 U.S. companies thus have an incentive to manufacture their products in countries other than China and also to acquire needed inputs for products manufactured in the United States from alternative sources. In other words, because so many U.S. companies run their supply chains through China, the section 301 tariffs encourage changes to U.S. business practices as much as to Chinese firms’ practices.

Moreover, due to entirely predictable Chinese retaliation, the section 301 tariffs also limit U.S. exports to Chinese markets, especially for agricultural products.200 In his successful 2024 campaign to reclaim the White House, President Trump promised to impose tariffs on Chinese imports of up to sixty percent, a move that would essentially force global companies wanting to sell products in the United States to shift their supply chains to run through other countries.201 Needless to say, Congress has authorized neither the tariffs themselves nor the underlying policy of decoupling from one of the United States’s largest trading partners.202

3. Emergency Powers as a Basis for Across-the-Board Tariffs

During his first term in office, President Trump threatened to (but did not actually) impose tariffs on Mexican imports if Mexico did not stem the flow of unlawful immigration across the United States’ssouthern border.203 In his 2024 campaign, Trump renewed that threat, calling on Mexico and Canada to stop the flow not only of people but also of fentanyl if they wish to avoid tariffs.204 He also promised an across-the-board ten percent tariff on imports.205

During the first five months after retaking office, President Trump made good on those threats. Acting pursuant to IEEPA, on April 2, 2025, he declared the trade deficit an emergency and imposed an across-theboard ten percent tariff on imports, as well as higher duties at individualized rates on many countries.206 He had earlier imposed tariffs on Canada, Mexico, and China after declaring emergencies with respect to fentanyl and opioids from those countries. 207 President Trump also frequently amended these tariff regimes by delaying the imposition of some extremely high rates or—as for instance in the case of China, which saw cumulative tariffs of 145%—by reducing or suspending tariffs that had already come into effect. 208 IEEPA’s lack of process—it requires no findings with respect to individual products (as section 232 does) or individual countries (as section 301 does)—is a feature in the administration’s eyes because it facilitates the President’s ability to immediately give effect to changes in the tariff schedule. As of the time of writing, the Court of International Trade and the District for the District of Columbia have declared these tariffs unlawful, but the government has appealed those rulings.209

4. Emergency Powers and the Bulk-Power System

In 2020, President Trump issued his Executive Order on Securing the United States Bulk-Power System (Bulk-Power Order). 210 The BulkPower Order prohibited the “acquisition, importation, transfer, or installation” of electrical equipment used in the bulk-power system if “the transaction involve[d] any property in which any foreign country or a national thereof ha[d] any interest” and the equipment was developed or supplied by a foreign entity and posed a risk of sabotage or subversion. 211 The bulkpower system consists of power-generation and -transmission facilities in the United States and is a critical piece of infrastructure for ensuring energy to the country.212 The concern underlying the Order was that foreign adversaries might use foreign-produced equipment to sabotage or otherwise damage the U.S. electrical grid.213

In 2021, the Biden administration’s Department of Energy revoked its predecessor’s implementation order in April,217 and President Biden allowed President Trump’s emergency declaration to lapse in May.218 The Biden administration instead announced a request for information to identify alternative ways to secure the energy grid.219

5. The Defense Production Act, COVID-19, and Climate

Some of these orders might seem rather ordinary responses to the initial outbreak of COVID-19 and the ensuing shortfall in medical equipment in the United States. President Trump, for instance, ordered General Motors to produce ventilators and 3M to produce N95 masks, both of which were in short supply when exports from China fell in the early days of the pandemic.222 But other actions the administrations took went considerably beyond responding to the immediate emergency. Trump, for example, declared meat-processing plants to be “critical infrastructure,” which allowed the administration to direct the meat-processing plants to remain open despite COVID-related work stoppages.223 Such an order bears more than a passing resemblance to President Truman’s efforts to keep steel mills open during the Korean War.

After taking office, President Biden used the DPA to enact a series of more proactive public-health regulations. He ordered agencies to take “immediate actions to secure supplies necessary for responding to the pandemic, so that those supplies are available, and remain available.”224 To that end, he directed agencies to identify shortfalls in access to materials and supplies and delegated to them his authority under the DPA to remedy those shortcomings.225 The order included instructions not only to respond to the immediate situation but also to secure supplies “on an ongoing or emergency basis.”226 Pursuant to that order, the DPA was then used to secure materials and supplies for companies like Merck and Johnson & Johnson to accelerate the delivery of COVID vaccines and tests.227

6. IEEPA and Telecommunications Regulation

More expansive still are President Trump’s executive order on ICTS and President Biden’s executive order banning the sale of bulk personal data.

In May 2019, President Trump issued his Executive Order on Securing the Information and Communications Technology and Services Supply Chain (ICTS Order).230 Using the barest hint of foreign involvement in a transaction as a basis for invoking the President’s delegated authority under IEEPA, the ICTS Order offers a basis to regulate expansively the kinds of technologies and services that the U.S. telecommunications industry relies on. The ICTS Order declares that “foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology and services . . . to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its people.”231 As a result, the “acquisition or use” of information and communications technologies and services “designed, developed, manufac tured, or supplied” by persons controlled or directed by “foreign adversaries” poses a national security risk.232 The Order was understood to set the stage for banning Chinese telecommunications company Huawei from selling hardware and other equipment in the United States, including its 5G wireless network systems.233

The ICTS Order, however, reaches far more than a single company, technology, or transaction. It applies broadly to

any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service (transaction) by any person, or with respect to any property, subject to the jurisdiction of the United States, where the transaction involves any property in which any foreign country or a national thereof has any interest (including through an interest in a contract for the provision of the technology or service).234

If the Secretary of Commerce, in conjunction with other executive-branch officials,235 finds that the technology or service was “designed, developed, manufactured, or supplied” by a person “owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” and that the transaction poses “undue risk[s]” to the United States, then the transaction is banned.236 A person is subject to the jurisdiction of a foreign country if they are located in that country or, under ordinary international law principles, if they are a citizen of that country no matter where they may be in the world.237 For instance, Zoom and any technology or services it provides would seem to meet this requirement. Its founder and CEO, Eric Yuan, was born, raised, and educated in China before coming to the United States.238

A closer reading of the ICTS Order also makes clear that, on its face, it covers virtually the entire domestic telecommunications industry. The Order defines a covered transaction to include, among other things, the “installation” and even the “use” of covered technologies or services.239 In other words, no “transaction” in the conventional sense of the sale of a good or service is necessary to trigger the Order’s application. The Order applies to “any person, or with respect to any property, subject to the jurisdiction of the United States”240—meaning any person or property located within the United States, as well as U.S. citizens anywhere in the world. The only condition necessary to trigger domestic application of the Order is that a foreign country or national has “any interest” in “any property” “*involve[d]*” in the transaction.241 Notably, that does not require complete ownership, or even controlling ownership: “[A]ny interest,” no matter how small, qualifies.242 As the Order explicitly states, even an interest in a services contract is sufficient.243 Furthermore, the property in which a foreign national has “any interest” does not have to be the same as the property at which the covered service or technology is used, installed, etc. It is enough that *some* property in which a foreign national has some interest, no matter how small, is “involve[d]” in the use of a covered technology or service at a property in the United States.244 In a globalized economy, the result is that this Order effectively governs much, if not most, of the domestic economy.

Moreover, the Order gives the Secretary of Commerce the power to set up an extensive regulatory scheme to implement this directive. The Secretary must develop “rules and regulations” that identify which persons and technologies are subject to the order, specify criteria to identify which persons and technologies should be categorically included or excluded from the prohibitions, establish a licensing system to permit transactions otherwise prohibited by the Order, and set out a system for “the negotiation of agreements to mitigate concerns” with transactions.245 In short, the Order authorizes the Secretary of Commerce to develop an entire framework for trade in telecommunications technology and services. The framework potentially applies to any company or transaction in the world—depending on if it is “subject to the jurisdiction or direction of a foreign adversary.”246

Indeed, in the process of promulgating regulations, the Department of Commerce announced that it would establish a preapproval licensing process for entities to apply to the Department for review before acquiring foreign technologies or services.247 This would, in the words of one commentator, allow firms to “engage in nonrisky, commercially beneficial ICTS transactions without fear that the government will seek to unwind or ban the transactions in the future.”248 According to the Department’s own regulatory impact analysis, between 268,000 and 4.5 million firms potentially engage in covered transactions.249 The Department estimated that total compliance costs for these firms—in learning about the rule, developing a compliance plan, and responding to investigations—would amount to nearly ten billion dollars. 250

While this preclearance regime has yet to be implemented, the Biden administration continued and even expanded on the ICTS Order. In 2023, it issued regulations pursuant to the Order.251 And in February 2024, President Biden issued his Executive Order on Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern (Bulk Data Order). 252 The Bulk Data Order invokes the ICTS Order and the emergency declared therein and bans any transaction involving U.S. citizens’ bulk personal data if a covered foreign entity has any interest in the transaction.253 Two things are notable about the Bulk Data Order. First, the Order explicitly regulates the U.S. economy. The prohibition applies to transactions by “United States persons.”254 The involvement of a foreign entity provides a jurisdictional basis for the law’s prohibition to apply.

Second, the Bulk Data Order reads quite similarly to a statute. Section 1 sets out the general policy and section 2 then delegates to the Attorney General and the Secretary of Homeland Security authority to define specifically the categories in the regulation pursuant to principles set forth in the Order.255 Consistent with the President’s ability to control the degree of administrative procedure associated with the delegation, the Order instructs the Attorney General and the Secretary to adhere to notice-andcomment procedures. 256 Agency actions taken under the Order are also reviewable under the APA, given the discretion the President has given the agencies. But because the delegation is from the President rather than Congress, judicial review for compliance with the terms of the delegation may be difficult to obtain.257

The ICTS Order’s regulatory system—which could end up offering preclearance review for millions of firms engaged in telecommunications— is possible because information and communications technologies are services and infrastructures that are essential to modern society and thus critical to national security, and they are now traded and offered globally. The Bulk Data Order is possible because the sale of personal data has also become a major global business of which governments are increasingly leery. A purely domestic communications device or service might be composed of parts from foreign countries. Because that device or service could include surveillance mechanisms or other nefarious components, or because acquiring personal data on the open market could amount to surveillance, it raises national security concerns. And because the product or service has an international aspect, the President has authority under IEEPA to regulate it. The blurry boundaries of foreign and domestic in a globalized economy thus expand presidential authority to impose regulatory requirements with potentially significant domestic effects.

7. The Defense Production Act and Data Privacy

Finally, President Biden’s Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence258 (AI Order) establishes a comprehensive regime governing the development of this revolutionary and also potentially dangerous technology. The Order has a number of standard provisions: for example, it directs agencies to use their legal authorities to develop standards for AI259 and to write reports on possible dangers.260 But it also includes a section that invokes the Defense Production Act to regulate AI-model providers (i.e., the designers of AI technology). 261 The White House has explicitly touted the Order as “protect[ing] Americans’ privacy, advanc[ing] equity and civil rights, stand[ing] up for consumers and workers, [and] promot[ing] innovation and competition,” among other benefits.262 Such objectives are associated with traditional domestic economic and social regulation, not the mainte nance of a defense industrial base. Yet the broad terms in which the delegation of authority to the President is crafted, and the fact that AI technologies useful for civilian purposes can also be used for military purposes, allow the President to rely on the DPA to regulate the development of cutting-edge technologies by domestic firms without any congressional involvement.

Section 4.2 of the Order directs the Secretary of Commerce to require companies producing foundation models with dual-use capabilities (that is, both military and civilian uses, which in effect means any large model)263 to provide the federal government information and records related to their development and training of models, any planned training or development of models, cybersecurity protections in the training process, model weights, the results of model testing, and actions taken to achieve model safety.264 Cloud computing firms must report how much compute power they have at every location, where their cloud infrastructure is located, and when they acquire additional compute power.265

Earlier in 2023, AI companies agreed to adopt AI safety practices voluntarily. 266 But the AI Order’s invocation of the DPA makes the reporting requirements mandatory. While the Order does not specify the exact provision of the DPA that provides authority for the action,267 the most likely candidate is the DPA’s “priorities and allocations” authority. In general, that authority allows the federal government to take first priority for goods and services and to (re)allocate materials within the economy to firms to address national security needs.268 But it also contains broad delegations of authority to “provide appropriate incentives to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components[ and] critical technology items.”269 And it also empowers the President to “take appropriate actions to assure that critical components[ and] critical technology items . . . are available from reliable sources when needed.”270 Again, these powers are delegated to the President directly.271

As with the ICTS Order, the AI Order’s provisions depend on the blurry boundary between national security and the domestic economy— thereby enabling a more robust regulatory system than one might expect, given the absence of a specific congressional authorization or delegated agency authorities. All large AI models invariably have dual uses and thus raise national security concerns. Because the President has sweeping powers under the DPA for issues related to national defense or emergencies, the President has authority to impose significant reporting requirements— and thus, indirectly, regulatory mandates—on AI companies to ensure that their AI models are safe and secure.

\* \* \*

In isolation, these actions might seem like ordinary exercises of delegated presidential authority. COVID-19 was a real crisis. The geoeconomic and geopolitical rivalry between the United States and China has been the subject of bipartisan concern in the United States for a number of years.

But taken together, these actions show the emergence of a new paradigm: the normalization of presidential power as a means of ordering the U.S. economy. While presidents have long exercised constitutional and delegated authority over the U.S. economy during times of foreign conflict, statutory authorities designed with those conflicts in mind have been repurposed. Rather than intervening only to solve particular crises, both President Trump and President Biden have relied on presidential authority to regulate enormous swaths of the U.S. economy, from manufacturing to public health to technology and telecommunications. These regulatory regimes are crafted largely without congressional participation and are subject to normal administrative rules only to the extent that the President delegates [their] ~~his~~ power to administrative agencies. Even then, review of agency action for compliance with the delegation is abnormal, since the President—not Congress—is the delegator.

Notably, the measures we describe above—and with one exception actions taken pursuant to those measures—have all survived judicial review where such review has even been sought and available.272 That distinguishes them from many of the ordinary regulatory actions that both administrations have taken, including actions closely related to the subjects of the presidential regulation. The first Trump administration’s efforts to roll back regulations regularly met a chilly reception in the courts for their failure to comply with administrative procedures and standards.273 The Biden administration’s COVID-related rules on eviction moratoriums and student-loan repayment—programs that came out of authority delegated to administrative agencies—were set aside under the so-called major-questions doctrine.274 Put differently, presidential administration has encountered significant roadblocks in the last decade. Presidential regulation has emerged and is thriving in its place.

II.Why Presidential Regulation

The emergence of presidential regulation is a function of four phenomena—congressional inaction and polarization, the rise of expansive theories of presidential power, the decline of deference to administrative agencies, and a resurgence in judicial deference to presidential actions in foreign affairs coupled with the blurry boundary between foreign and domestic affairs. The first two trends explain why the executive branch has increasingly sought to regulate without Congress. The latter two trends explain how and why presidents increasingly opt for presidential regulation over presidential administration as the means of achieving those goals.

*A. Congressional Inaction and Political Polarization*

It may be a cliché to say that political polarization has increased in recent years, that Congress has failed to pass significant legislation during periods of divided government, and that Congress has limited ability to pass significant legislation even during periods of unified government. But that does not make it any less true.275 Data measuring the ideology of members of Congress show that both parties have become ideologically purer. 276 And polarization in Congress is asymmetric: Republicans have become significantly more conservative than Democrats have become liberal.277 Other data show that Congress is the most polarized it has ever been.278 More troubling is affective polarization, a phenomenon in which “[o]rdinary Americans increasingly dislike and distrust those from the other party.”279 Polarization may be intensifying because of changes to parties, media, and interest groups as well.280

The consequence of polarization in Congress—and perhaps in the general public as well—is that legislative action may be less able to address a variety of policy problems. While Congress still does pass legislation, active legislative sessions are more likely under unified government than under divided government,281 meaning that there may be years in which significant legislation is not viable absent a major crisis.282 But even under unified government, the passage of regulatory legislation is difficult because the filibuster in the Senate functionally means that sixty votes are necessary for legislative changes.283 In light of this procedural hurdle, major legislation in recent years has passed through the budget-reconciliation process, with the notable downside that this process allows for changes to taxation and spending programs but not to regulatory policy.284

The consequence of an asymmetrically polarized Congress, divided government, and the filibuster’s supermajority requirement for regulatory legislation is that important policy issues may go unaddressed or underaddressed by Congress. Congress, for instance, has notably failed to pass comprehensive legislation to address the power and practices of technology platforms, despite bipartisan interest in the topic.285 And, in spite of the increased attention to AI, legislation regulating AI companies is unlikely under divided government—and may even be unlikely under unified government. It is not surprising, then, that some of the most notable examples of presidential regulation are in technology sectors.

For presidents who want to act to address policy issues they believe are important, the low likelihood of legislative action may push them to explore all avenues—including creative ones—for wielding executive power.286

*B. The Rise and Rise of Presidential Power*

Theories of expansive presidential power have also enabled the rise of presidential regulation. Over the course of the late twentieth century, on both the right and the left, ideas about the scope of presidential authority have expanded. On the right, conservative lawyers and academics advanced the unitary-executive theory beginning in the 1980s.287 The theory emerged first as a “weak form” theory, designed to help the Reagan administration control what it saw as New Deal–era departments and agencies, largely through personnel decisions.288 Only later did it expand into its “strong” and “very strong” forms, which argue for exclusive areas of presidential authority and inherent executive powers, including through the Commander in Chief Clause and the Take Care Clause.289 On the left, the framework for expanded presidential authority got canonical treatment in then-Professor Elena Kagan’s Presidential Administration. 290 Kagan argued that the Clinton administration both directed agency actions and took credit for those actions—strategies that enabled policy victories during a period of divided government.291 And later, under the Obama administration, the creative use of waiver provisions allowed federal agencies to devise entire programs and policy regimes with little congressional direction.292

Both visions of expansive presidential power run contrary, as Ashraf Ahmed, Lev Menand, and Noah A. Rosenblum have argued, to the twentieth-century baseline of “administration under law,”293 on which regulation was a function of positivist directives from Congress rather than of executive policy discretion checked merely by reasoned decision-making and process.294 Under this earlier approach, delegations from Congress kept power with federal agencies, which had to act in accordance with those directives.295 So strong was the shift in views on presidential power that by the end of the 2000s, scholars felt the need to argue that the President does not have the authority to direct policies when legislation specifically gives policy authority to lower federal officials.296 Such a position would have been obvious under the administration-under-law approach that had once predominated.

Importantly, the rise and rise of presidential power was partly a function of political dynamics. For the Reagan administration, the aim was to wield authority in a context of New Deal bureaucracies whose missions countered President Reagan’s deregulatory agenda.297 For the Clinton administration, presidential administration was a way to make progress amid divided government.298 For the George W. Bush administration, expansive presidential powers enabled action in the fog of the war on terror—and in a manner that could galvanize conservatives.299 For President Obama, a hostile Congress also counseled executive actions.300

Legal dynamics were also at play in this shift. While *Chevron* deference gave agencies discretion to interpret statues in line with an administration’s policy preferences, 301 arbitrariness review forced agencies to create increasingly thorough and expansive rulemaking records.302 This, along with other growing burdens in the rulemaking process, further encouraged presidents to act directly, rather than work through ordinary agency processes.303 Executive-branch lawyers also jealously guarded presidential powers: as each political maneuver led to policy precedent, lawyers were quick not only to entrench presidential prerogatives but also to develop legal processes that advanced presidential aims.304 In some cases, such as the President’s independent ability to engage in military conflicts abroad, conditions and checks on these prerogatives withered away over time.305 A multimember, multiparty, polarized Congress had (or had given itself) few tools to push back on this accretion of presidential power.306

The judiciary has also increasingly embraced expansive theories of presidential power in a wide range of contexts. Most recently, in *Trump v. United States*, the Supreme Court held that the President enjoys absolute immunity from criminal liability for acts taken pursuant to his preclusive constitutional powers and presumptive immunity for all other official acts.307 Congress may not, in other words, use criminal law to constrain how the President exercises his authority. In three recent cases, the Supreme Court has struck down congressionally imposed limitations on the President’s ability to remove executive-branch officials.308 These opinions often relied on Article II’s Vesting Clause as a source of expansive, unenumerated executive powers,309 despite significant debate about whether such an understanding of the Vesting Clause comports with the original understanding of that clause.310 For their part, the lower courts have been equally willing to uphold executive actions based on expansive theories of executive power, especially in areas touching on foreign commerce.311

By the late 2010s and early 2020s, scholars increasingly feared what the rise of presidential administration—and presidential power more broadly—meant for republican government. Some focused on the dangers of structural deregulation and the dismantling of the administrative state.312 Others suggested that recent changes had transformed presidential administration into “bureaucratic dictatorship.”313 And to some, expansive presidential powers had even become a threat to national security, in part because of the blurring of foreign and domestic affairs.314

Political and legal dynamics thus drove both parties’ leadership to increasingly assert more expansive presidential powers. The result is not only that the President’s statutory powers are of growing interest and noteworthy use—but also that, in some cases, these powers have been supercharged by theories and practices of the President’s constitutional powers. The legitimacy of presidential regulation thus draws from Article II powers to a greater extent today than it did before or even during these transformations.315

*C. The Administrative Law Revolution*

Presidential regulation—rather than merely presidential direction of how administrative agencies use their powers—has also become more attractive in recent years due to a growing gulf between how courts review presidential power and how they review administrative agencies’ powers. The discrepancy is the result of two trends. The first, which we discuss in this Section, is the Roberts Court’s administrative law revolution. Because the Court has limited agency discretion to make policy (including at the President’s direction), delegations to administrative agencies have become comparatively less attractive as a means of executive-branch regulation. The second trend, which we discuss in Section II.D, is the increasing difficulty of applying foreign affairs exceptionalism in a globalized world.

Just last year, after years of cutting back on the deference courts owe to agencies in the interpretation of statutes under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 316 the Supreme Court did away with *Chevron* deference entirely.317 Discarding the old regime of deference to an agency’s reasonable interpretation of an ambiguous statute, the Court held that the judiciary’s interpretation of a statute always prevails over a conflicting agency interpretation.318 The emergence of the new major-questions doctrine—under which an agency lacks authority to regulate a question that the courts feel is economically or politically significant unless Congress has clearly granted the agency such authority—has further eroded agencies’ scope to regulate.319 Even powers that concededly fall within the scope of the language of a statute may nevertheless be set aside if courts are not satisfied with the clarity of the delegation. Finally, a majority of Justices (albeit not in a single opinion in a single case) have expressed openness to revitalizing the nondelegation doctrine, under which statutory delegations that are overly broad are unconstitutional.320

If judicial review of agency action increased the rulemaking burden on agencies, thus increasing the costs of relying on delegations to agencies, the decline of deference to agencies has substantially reduced the benefits. Agencies are no longer certain whether they can rely on their delegated powers either to enact or to roll back significant regulatory programs. Presidential administration has been no safeguard against this judicial review. President Trump came into office in his first term directing agencies to undo a range of Obama-era policies. But by one count, the first Trump administration lost seventy-nine out of eighty-five cases involving efforts to roll back administrative regulations.321

The Biden administration encountered similar judicial resistance in the other direction. The courts set aside a number of major initiatives pursued under the auspices of agency authority. These include the Occupational Safety and Health Administration’s shot-or-test rule,322 the Centers for Disease Control and Prevention’s moratorium on evictions during the pandemic,323 the Secretary of Education’s proposal to forgive student-loan debt,324 and the Environmental Protection Agency’s authority to impose requirements that energy companies shift toward cleaner methods of generating electricity.325 Review of the agency authority in these cases did not benefit from the presidential directive to implement the plans. Indeed, both President Biden and those challenging his actions were eager to cast Biden as the impetus for the student-loan plan challenged in *Biden v. Nebraska*, even though the relevant statutory authority belonged to an administrative agency.326 The Clean Power Plan containing the generationshifting requirement for power plants, although defended by the Biden administration, was personally introduced by President Obama in 2015 and was part of his effort to implement commitments made by the United States in the Paris Agreement.327

In short, judicial review of agency action—even when directed by the President—has tightened in recent years. The result is that the use of presidential powers has become more attractive. As noted in Section I.A, such powers are not subject to the same kinds of administrative rules and doctrines as delegations to administrative agencies. And while agency action pursuant to a presidential delegation is still subject to the APA, and hence to arbitrariness review, questions about whether an agency’s actions are within the scope of the delegation are less likely to emerge. Intrabranch delegations, such as from the President to an agency, do not generally raise the claim that the agency has strayed from the President’s instructions. The President can himself enforce fidelity to his instructions. Instead, delegation-related challenges to presidential regulation (including derivative agency action) have to focus on the limits on statutory delegations to the President. Those limits are so broad, however, that challenging the President’s actions as exceeding them is very difficult.

*D. Foreign Affairs Exceptionalism and the Blurry Boundary Between Foreign and Domestic Economic Affairs*

Unlike judicial review of administrative action, judicial review of presidential action has remained highly deferential. This is especially true in the area of foreign affairs, where the bulk of the President’s constitutional authority, as well as the broadest statutory delegations, lies. Foreign affairs exceptionalism—“the belief that legal issues arising from foreign relations are functionally, doctrinally, and even methodologically distinct from those arising in domestic policy”328—provides presidents with broad leeway to take action related to foreign affairs without the stricter judicial oversight that applies to administrative agencies. It thus has the ability to supercharge presidential regulation above and beyond what the President might hope to accomplish regulating pursuant to only his statutory authority.

As discussed in Section I.A.1, the President’s constitutional powers over foreign affairs are extensive, in part because they are vague. Less often remarked upon, though, is the breadth of the President’s statutory foreign affairs powers.329 Many of these authorities date to the Cold War and are deliberately expansive, especially as compared with similar authorities given to the administrative state, precisely because Congress anticipated that they would be used only in situations of international conflict. By way of example, consider again the comparison between the Department of Commerce’s authority to impose additional duties on imports and the President’s. The Department’s ability to impose antidumping and countervailing duties is conducted under rules adopted and investigations conducted pursuant to the APA, requires a second investigation from the independent International Trade Commission, and is subject to judicial review in federal court—review that frequently results in rulings against the government.330

By contrast, the statutes delegating the authority to raise tariffs to the President lack these basic constraints.331 Presidential decision-making is not subject to the APA, and the statutes themselves are drawn considerably more broadly. Section 232 and IEEPA, for example, both grant the President almost unfettered discretion to choose what to regulate, how to regulate it, and for how long to regulate it.332

The breadth of these statutes exacerbates the effects of foreign affairs exceptionalism. At its fullest expression, exceptionalism rests on the view that, as a constitutional and doctrinal matter, the President possesses an unenumerated, general foreign affairs power that extends beyond his specific enumerated powers. That constitutional role is said to preclude Congress’s ability to regulate, even when acting pursuant to its own constitutional authorities, as well as the judiciary’s power to set aside presidential action.333 Functionally, foreign affairs exceptionalism hinges on the President’s advantages as a (unitary) decisionmaker—speed, secrecy, and expertise in foreign matters, to name a few.334

*Curtiss-Wright* is the seminal exceptionalist decision. That case presented a nondelegation challenge at a time when the Supreme Court considered such challenges viable. But Justice Sutherland, speaking for a seven-Justice majority,rejected the challenge on the ground that the standards applicable to domestic delegations do not apply to delegations implicating foreign affairs.335 Subsequent cases dealing with foreign affairs used the political-question doctrine to turn aside a range of challenges,336 denied states authority they unquestionably would have had in the ordinary domestic context,337 deferred to the executive branch on the resolution of matters raising military and diplomatic issues,338 and carved out foreign affairs doctrines from the application of cases like *Erie Railroad Co. v. Tompkins*. 339

A series of cases during the 1990s and 2000s led several scholars to suggest that foreign affairs exceptionalism was on the wane.340 More recently, though, the Supreme Court seems to have embraced the doctrine again, both as applied to Congress’s (in)ability to limit the President’s foreign affairs actions341 and as applied to the courts’ own constitutional review of statutes.342 And the application of the Court’s new major-questions doctrine to foreign affairs statutes is uncertain at best.343 As a result, domestic regulation can be insulated from judicial review through the use of foreign affairs powers.344

Moreover, two trends have expanded this type of deference to presidential regulation of the economy. The first is globalization. As the U.S. economy has become more integrated with those of other countries, the boundary between foreign and domestic economic activity has blurred.345 Second, globalization has made economic weapons a central tool of international conflict.346 That, in turn, has blurred the limits of the President’s constitutional authority over foreign affairs and Congress’s constitutional authority over the economy.

Beginning in the 1930s and accelerating after the end of World War II, the United States negotiated a number of trade agreements that reduced both tariffs and nontariff (i.e., regulatory) barriers to trade with foreign nations. The regulation of nontariff barriers by trade agreements was a seminal moment, because much ordinary domestic economic regulation (such as the granting or denial of licenses) became subject to international rules and, within the executive branch, the direct control of the Executive Office of the President (via USTR). 347 The effect has been that the ratio of U.S. trade to GDP has gone from five to seven percent in the 1930s to well over twenty percent in the twenty-first century.348

As a result, regulating foreign commerce can be a substitute means of regulating the domestic economy.349 President Trump’s section 232 tariffs, for example, were not motivated by any foreign affairs considerations. They were designed as what amounts to a subsidy for U.S. steel companies and workers.350 President Carter likewise used a licensing scheme resting on section 232 to try to spur domestic energy production.351 In short, the increased dependence of the United States on the global economy, and the President’s authority to manage that dependence, gives him a broader scope to manage the domestic economy using foreign authorities.

The opposite is also true. The greater dependence of the world on the United States, especially the U.S. financial system, means that the President can use U.S. economic power as a tool to fight a variety of global conflicts. The Financial Action Task Force and its actions during the war on terror, efforts to slow and deter Iranian nuclear ambitions, and a broad swath of economic sanctions against Russia for its invasion of Ukraine all illustrate how the United States uses economic tools alongside or even in place of traditional military tools.352 The use of economic interdependence as a weapon, in turn, makes the normalization of foreign relations even more difficult to achieve. Courts may be leery of limiting the President’s ability to fight foreign conflicts, even when he does so by weaponizing the domestic economy.353 This reluctance gives the President even more reason to turn to foreign affairs authorities as a means of regulating the domestic economy. A gridlocked Congress and the less deferential judicial doctrines that clearly apply to domestic affairs mean that statutory foreign affairs authorities coupled with expansive theories of Article II powers place the President at the apex of *Youngstown* Category 1.

In short, the decline of administrative deference in the last decade has coincided with the resurgence of foreign affairs exceptionalism. As a result, presidential regulation has become a more attractive option for an executive branch looking to regulate free from congressional and judicial constraints.

III. The Consequences of Presidential Regulation

Presidential regulation brings both lessons and dangers. Power, like water, looks for cracks.354 Sealing off one avenue for regulation pushes government officials to look for other paths. In this case, presidential regulation suggests that the administrative law revolution may be failing on its own terms. Instead of promoting democratic accountability, modern regulatory systems are less transparent and accountable than either congressional legislation or the ordinary administrative processes that they replace. Moreover, on top of reducing accountability and transparency, presidential regulation is likely to increase regulatory instability. Without the procedural obstacles to changing laws and regulations associated with passing legislation and agency rulemaking, presidents can repeal or dramatically change regimes adopted through presidential regulation without notice or public input.

*A. Legitimacy, Accountability, and Presidential Regulation*

In both international law and the literature defending presidential administration, scholars have often argued that presidential control is justifiable on the ground that the President is elected by a national constituency.355 Congress, by contrast, is often characterized as parochial and riven by factional interests, while administrative agencies are unelected and too far removed from the democratic process to be accountable.356 On this view, any instability that flows from presidential control is offset by the normative benefits of policymaking by a legitimate and nationally elected president.

The reality is quite different. While legislation reflects compromise among representatives from all over the country, and agency rulemaking is subject to procedures that ensure affected parties have an opportunity to participate, presidential regulation (like presidential control of foreign affairs) has none of these features. Indeed, when engaged in international lawmaking, the President must at least negotiate with foreign countries. But when engaged in presidential regulation, the President decides which outside interest groups to consult, which experts within or without the government to seek advice from, and which domestic constituencies to favor. Presidential regulation is, in other words, free from the procedural safeguards that ensure broad-based democratic participation or the involvement of affected parties.

Nor does the democratic election of the President cure this problem. Most obviously, presidents are not elected by majority rule, especially in recent decades. Presidents Clinton (1992 and 1996), Bush (2000), and Trump (2016 and 2024) were all elected by less than half of the votes cast. 357 And Bush (2000) and Trump (2016) outright lost the popular vote.358 Indeed, in only one presidential election since (and including) 1976 has a candidate received more than fifty-four percent of the popular vote, and that was in 1984—more than forty years ago.359 Majoritarian control of the presidency is thus a tenuous thread on which to justify presidential regulation.

Voters also rarely choose their preferred presidential candidate because of their views on regulatory issues. Political scientists have consistently found that the overall state of the economy is highly correlated with the outcome of presidential elections. 360 One or two other major issues may also play a role, such as wars or abortion politics, but issues like the regulation of telecommunications or AI are not usually important enough to a large enough number of voters to influence electoral outcomes. (President Trump’s campaigning in 2016 on revitalizing the U.S. industrial base is a possible exception.)

Nor are presidents disciplined by incumbency in the same manner as other elected officials. The Constitution only permits presidents to be reelected once.361 As a result, presidents are widely understood to have a free hand to deploy presidential power as they see fit in their second term. Even in their one opportunity for reelection, presidents are enormously successful. No president who has sought his party’s nomination has failed to be renominated since the emergence of popular primaries, and the incumbency advantage presidents enjoy in general elections has also been robust.362

As a result, presidents are considerably less democratically accountable—especially on the kinds of issues that are the subjects of presidential regulation—than other institutions of government. The President lacks substantive constitutional authority over economic affairs, is not elected by majorities thinking about his regulatory preferences, and does not have to consider the views of affected parties.363

Presidential regulation may also reduce the quality of regulation. Eliminating public input via legislative or administrative processes may, of course, result in regulation that fails to account for problems or interests that would have surfaced through public comment. Indeed, these kinds of critiques are common ones of the process through which international trade agreements are made.364 And presidential regulation can diminish the role of experts working in administrative agencies. As discussed above, presidential regulation does not foreclose administrative involvement, either through consultation with the White House before a presidential order is issued or after the fact via the exercise of delegated authority. Responsible administrations may therefore incorporate administrative expertise into the exercise of presidential power.

But one does not have to look back too far into the past to find presidents who did not make use of the expertise in administrative agencies. President Trump and his allies frequently complained of a “deep state” that was hostile to his policy goals.365 Many of the policies announced by the Trump White House during his first term seemed not to have been vetted through the relevant agencies first.366 And Trump has promised to fire thousands of civil servants in his second term. Gutting administrative agencies in that fashion might seem like shooting oneself in the foot. After all, if no one is home at the agencies to (de)regulate, then presidential administration will not be an effective governance tactic. But presidential regulation lets presidents who distrust expertise have their cake and eat it too. They can [impairs] ~~handicap~~ agencies and their work, reduce the role of expertise, and still achieve their policy goals through presidential regulation.

*B. The Hydraulics of Regulation*

In the face of pandemics, wars, financial crises, supply-chain or labormarket disruptions, energy shocks, or even more mundane-seeming challenges like inflation or abusive marketing practices by large corporations, people will demand action from the government. As traditional avenues for law- and policymaking actions are foreclosed, presidents will find creative, unconventional ways to act in order to address those problems. In other arenas, this phenomenon is referred to as hydraulics, because the action, “like water, has to go somewhere.”367

The rise of presidential regulation is in part a function of the hydraulics of regulation. It highlights the relationship between different modes of regulation and the unintended consequences of reforming one mode without considering the incentives it may create for using other modes. The closing of the legislative pathway for accomplishing policy goals, due to polarization, divided government, and the filibuster, has pushed presidents of both parties to embrace presidential administration, whether through direction, supervision, waiver programs, or merely taking credit, as a way to accomplish regulatory goals. The increasingly common view that deference to administrative agencies in their ordinary rulemaking functions is over—based on the overruling of the *Chevron* doctrine368 and the rise of the major-questions doctrine369—suggests that another avenue for regulatory policymaking will become unavailable. But foreign affairs deference to presidential power coupled with the President’s broad statutory authority creates a wide-open channel for action.

In light of these dynamics, it is not surprising that presidential regulation has emerged in recent years—or that some of the most notable (and expansive) examples of it are focused on regulating new technologies. While existing laws and regulations apply to new technologies, technological change can outstrip the laws that govern it, sometimes by design.370 New regulations are therefore necessary. Regulation might also be urgent, because the failure to regulate during the development of a new technology can make it harder to regulate in the future. As use of the technology spreads, the industry becomes entrenched into existing practices, and it gains political and lobbying power.371 In the cases of both 5G communications technologies and AI, these dynamics seem to be at play. Once U.S. firms adopted foreign 5G technology, it became costly and difficult for them to roll back that adoption. And if AI is deployed without safety and security measures, it may be too late to bring it back under control. Waiting years for congressional supermajorities to pass legislation or for the courts to become more receptive to aggressive action by administrative agencies risks missing the opportunity to address these very real policy problems.

The hydraulics of regulation serve as a warning to the judiciary. The Roberts Court’s administrative law revolution and the rise of the unitary executive theory are both in part motivated by a sense that democratic accountability is lost when unelected agency officials can interpret vague statutes in a way that allows them to determine the limits of their own power. But the rise of presidential regulation suggests that the Roberts Court’s revolution is failing on its own terms. Instead of promoting accountability, the Roberts Court has encouraged presidents to rely on ever less accountable means of achieving the same ends.

To be sure, normalizing judicial review could go a long way toward addressing these concerns. Normalization involves reviewing foreign affairs issues, especially economic ones, in the same manner as domestic issues. Reinvigorating the nondelegation doctrine, for example, might offer one avenue.372 But even then, it is unclear, given Curtiss-Wright, whether the Supreme Court would apply it vigorously to delegations related to foreign affairs.373

Functionally, courts could attempt to check presidential regulation by characterizing actions as domestic rather than foreign. But making such distinctions at the level of statutes, statutory provisions, or particular actions is not easy; and in any case, judges who may be afraid to undermine national security might shy away from doing so.374 Normalization might also involve treating the President in the same manner as the rest of the executive branch, including by making presidential action subject to APA review.375 The White House, after all, is as much a “they” as is the executive branch.376

Presidential regulation thus puts those interested in sound constitutional government—judges, executive-branch policymakers, congressional staff, commentators, and activists—in a bind. Curtailing presidential regulation will foreclose yet another avenue for essential policymaking. Perhaps new channels will emerge—such as expansive regulatory efforts at the state level—but new channels for regulatory action tend to be less stable. Regulations are more subject to change than legislation. A patchwork of state actions would be less uniform and viable than a single federal rule. Curtailing presidential regulation could therefore mean that important policy problems do not get solved at all, or at least not until there are severe crises. In some cases, including where foreign influence or dependence is at issue, not addressing the underlying problems in a timely fashion might be disastrous. At the same time, embracing presidential regulation accelerates policymaking through a channel with comparatively little legislative pedigree and limited processes and checks.

*C. Regulatory Instability*

A final consequence of presidential regulation is regulatory instability, which could be costly to regulated parties and problematic on policy grounds. Both the legislative and the administrative processes have built-in checks that promote stability by slowing down the pace of lawmaking and regulation. They, in effect, use process to create a status-quo bias. Presidential regulation, by contrast, has far fewer checks and thus is subject to considerably easier and more frequent change, with the attendant consequences for those subject to presidential rule.

# Michigan State

## 1AC---Northwestern---Round 2

### 1AC---Expertise

#### Contention 1 is Expertise:

#### Trump’s trying to strip civil servants of collective bargaining rights through a bevy of executive actions, especially rescheduling.

Fisk 25 [Catherine L. Fisk, Professor of Law and Faculty Director of the Berkeley Center for Law and Work and the Berkeley Center for Law & Technology at the University of California, Berkeley, LLM University of Wisconsin, JD University of California, Berkeley, “Democracy and a Nonpartisan Civil Service,” Arizona Law Review, 67, forthcoming 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=5124299]

While campaigning for a second term, President Trump threatened to end the nonpartisan civil service and all job protections for 2.2 million civilian executive branch employees. Saying the “deep state must and will be brought to heel,” Trump promised to make “every executive branch employee fireable at will.”2 Vice President Vance concurred, saying the President should fire “every mid-level civil servant,” and “replace them with our people.”3 In an Executive Order of January 20, 2025, the new administration took the first step in that direction, purporting to abandon the nonpartisan and merit-based hiring, along with the collective bargaining rights and whistleblower protections that are part of the civil service law, for a large swath of the two million-plus federal civilian workforce.4 The administration has written to the entire federal civilian workforce (except those in immigration enforcement, national security, or the postal service) stating they face a “fork in the road,” where they must either cease remote work and may quit and take three months’ severance, or they will face the possibility of being treated as at-will employees and fired under plans to downsize or eliminate agencies and will face “enhanced standards of suitability.”5 The events since January 20, 2025 leave no doubt the new administration intends to exert the power to fire civil servants whom the White House perceives to be disloyal to Trump.

Although a union representing civil service workers has sued to enjoin the Executive Order and Democrats in Congress have introduced legislation seeking to reaffirm the commitment to civil service protections, some in the Administration have already been removed from their positions. Those include several career lawyers at the Department of Justice, who were informed in a letter from the acting attorney general that they were being fired, effective immediately, because their work on the special counsel’s team that investigated the effort to overturn the 2020 election meant “I do not believe that the leadership of the Department can trust you to assist in implementing the President’s agenda faithfully.”6 Others who have been fired include roughly 18 Inspectors General across cabinet departments and agencies who are supposed to be watchdogs to prevent misconduct and abuse of power.7

Since 1883, the federal government has, by statute, had a nonpartisan and merit-based civil service for federal employment. Civil service law is based on the belief that Americans of all political views are best served if the federal workforce–other than the roughly four thousand political appointees who come and go every four years–are hired and promoted based on merit rather than affiliation with or sympathy to the party in the White House. No one doubts the power of the President to replace people in high-level policymaking positions that are subject to Senate confirmation or that are otherwise excepted from civil service protections because of the especially sensitive nature of the job responsibilities. Moreover, federal employees, political appointees or not, are obligated by law and by the norms of public service to work with dedication and competence for the current administration to implement all federal legislation and regulations. Civil servants implement policies of the new administration along with those adopted by past governments. The duty to faithfully administer the law applies even where law reflects different policy priorities than those held by the current administration because those laws remain in effect until they are repealed.

The 2025 Executive Order announces its purpose is to make federal employees “accountable to the President, who is the only member of the executive branch, other than the Vice President, elected and directly accountable to the American people.”8 It does not define the meaning of “directly accountable,” but inasmuch as this President cannot run for a third term and faces no realistic prospect of removal from office for misfeasance, accountability for employees presumably means doing whatever the President or his deputies want. The Executive Order’s principal architect, who was appointed in January 2025 to administer its implementation as special assistant for domestic policy,9 has described accountability in partisan terms, stating plainly that the purpose of the executive order is to address the predominance of “liberals” among the civil service,10 and that all federal employees should therefore be fireable at will.11 Little wonder, then, that the Executive Order not only seeks to remove the merit based personnel rules associated with civil service law, but also seeks to strip whistleblower protections and collective bargaining rights from public employees.

Making executive branch employees “accountable” to the President may seem appealing to members of the newly-elected President’s party. But if accountability means firing civil servants at will, silencing whistleblowers, and eliminating collective bargaining, history should give pause to Republicans and Democrats alike. First, it is a significant departure from tradition. For most of American history, with the exception of a period from the administration of Andrew Jackson in 1829 through the administration of James Garfield in 1881, presidential administrations generally did not replace most government workers even when the presidency switched parties.12 But even if one were not inclined to adhere to tradition, one might hesitate to revert to the way things were for those 50 years when the winning party used federal jobs as political spoils. It was an era notorious for government corruption and incompetence.13 Empirical studies of the effect of the adoption of civil service protections in the United States and elsewhere show civil service protections tend to promote efficiency, productivity, and the quality of government services.14

Reasonable minds can of course differ about the proper balance of political independence and political control in government employment. Scholars of public administration and political science, as well as executive branch officials and Congress, have long debated reforms to the existing system to make government work better, to enable government employees to develop their skills and to maximize their potential, and to allow managers to fire incompetent or lazy employees or those who willfully refuse to implement lawful government policy.15 But almost no one until Trump has advocated a wholesale abandonment of the principles of merit and nonpartisanship in federal employment.16

The potential impact of the new Executive Order is unclear. Both Trump’s first term and his public statements suggest it could be substantial. This EO revives a 2020 Executive Order that directed widespread conversion of civil service jobs to political appointments under a new classification then known as Schedule F. (The 2020 EO was never implemented because President Biden rescinded it shortly after he took office and the government adopted regulations restricting its revival.17) The 2025 version uses the term “Policy/Career” rather than Schedule F to describe the same category of jobs excepted from civil service protection, but is otherwise similar. It defines positions excepted from civil service to include those of “a confidential, policy-determining, policy-making, or policy advocating character.”18 The definition proposed for these terms is very broad, covering a wide swath of federal employees engaged in “policy-related work,” or who have access to proposed policies or regulations, or supervise lawyers, or who are involved in labor relations.19 While the number of affected positions remains unclear, when the Office of Management and Budget began to implement it in 2020, it identified 88 percent of OMB’s staff (of 500) as being covered by the new schedule.20 And, the statements of both President Trump and those who would implement the EO quoted above have made clear they intend it as a first step toward making every federal employee subject to being fired at will.

The 2025 EO would violate several statutes, including the civil service law making federal employment nonpartisan and merit-based (a law in effect since 1883 and substantially revised in 1978). It may violate the Hatch Act of 1939, which prohibits political discrimination in employment and compulsory political contributions and restricts on-duty partisan political activity by government employees. The EO also eliminates, for affected employees, collective bargaining rights and statutory protections for whistleblowers and protections against discrimination on the basis of race, religion, gender, and other protected statuses.21 Although the President by executive order cannot abrogate statutes enacted by Congress or repeal regulations adopted pursuant to the APA, the EO appears to be an effort to do just that.

The EO is part of a broad effort in the conservative legal movement to strip all federal government employees of protection against retaliation based on their beliefs or political affiliation and to strip public employees (sometimes with the exception of police) of collective bargaining rights. Professor Kate Shaw has aptly labeled this “partisanship creep.”22 In this Essay, I explain that the constitutional vision of an all-powerful President goes against 150 years of legal efforts to make civil servants independent of the party in power. While the Supreme Court has embraced some constitutional limits on Congress’ ability to protect high-level appointees and administrative law judges from removal without cause, nothing in its Article II decisions authorize such a huge expansion of White House authority over Congress or independent agencies and the civil service. Moreover, the effort to make loyalty to the president or his party a criterion for hiring, continued employment, or advancement is contrary to well-settled First Amendment law. For decades, and as recently as 25 years ago, the Supreme Court has held that governments cannot hire, promote, or fire public employees, except the very highest level of political appointees, on the basis of their political affiliation.23

This essay has four parts. First, I illuminate the historical background to Congress’ enactment of laws creating rights to be hired and promoted based on merit, rather than politics, race, gender, religion, or campaign contributions. I examine the history of the civil service laws and the long practice of a nonpartisan, merit-based civil service, the dismal episodes when we departed from it, and the long trend of increasing protections for government employees against arbitrary or discriminatory firings. Second, I canvass arguments and evidence on the benefits and costs of job protections for government employees. Third, I explain the nature and basis of the conservative assault on the legal architecture of government employee job protections. Finally, I explain the flaws in their arguments about the constitutional and policy groundings for the notion that government service should be “at will,” focusing particularly on its inconsistency with the Civil Service Reform Act of 1978, its flawed interpretation of Article II, and the several Supreme Court cases on the First Amendment to the Constitution that stand against this effort.

I. The Purpose of a Nonpartisan Civil Service – Lessons from History

Histories of federal sector employment note that before the presidency of Andrew Jackson (1829-1837), incoming administrations did not tend to treat government employees as fireable at will.24 Scholars debate whether Congress decided in 1789, just after ratification of the Constitution, whether Article II’s silence about whether the power of presidential appointment connotes a presidential right of removal without concurrence of the Senate.25 Congress and various Presidents sparred over the course of the nineteenth century whether the President could remove an officer who had been confirmed by the Senate without Senate approval.26 But, whether or not Article II conferred on Presidents the power to remove anyone the President could nominate or appoint, historians of government employment have observed that the first six Presidents (with some exceptions during the Jefferson administration), did not generally treat government employee tenure in office as limited to the term of a president.27

Andrew Jackson, the first President elected against an incumbent since Jefferson, believed that replacing government workers was necessary to achieve his goals of reforming and democratizing government. He sought to reduce the influence of elites who had dominated public service and to make his government more representative of the white male population and more aligned with his party. A leading history of the U.S. civil service said, “Jackson was the first President to provide an ideological justification of the spoils system and attempt to establish it in the federal government.”28 Besides reducing the political influence of elites, and dismissing some elderly and incompetent workers, firing government employees gave him the chance to get rid of those whom he suspected of being insufficiently devoted to his agenda.29

As is well known, however, the Jackson Administration did less to democratize government service (it remained, to some extent, a province of elites) than to create all the problems that patronage or spoils systems of political appointments are known for. Recruitment and retention in government service during and after the Jackson Administration were based on partisan affiliation, past party work, and the expectation of future partisan service.30 Criticisms of the practice of firing government employees abounded. Joseph Story wrote, in his 1833 Commentaries on the Constitution, that “if this unlimited power of removal does exist, it may be made, in the hands of a bold and designing man, of high ambition, and feeble principles, an instrument of the worst oppression, and most vindictive vengeance.”31 In short, Story warned, an unlimited power to fire public employees would corrupt government and deprive officials of their freedoms:

“[I]n a republic, where freedom of opinion and action are guaranteed by the very first principles of the government, if a successful party may first elevate their candidate to office, and then make him the instrument of their resentments, or their mercenary bargains; if men may be made spies upon the actions of their neighbours, to displace them from office; or if fawning sycophants upon the popular leader of the day may gain his patronage, to the exclusion of worthier and abler men, it is most manifest, that elections will be corrupted at their very source.”32

Scholars estimate that during the years when the spoils system prevailed, federal employees were compelled to contribute between 1 and 6 percent of their annual salary to the party in power. As one employee in the New York customhouse put it in the 1830s, when at first he declined to pay fifteen dollars to the party, “the deputy surveyor observed that I ought to consider whether my $1,500 per annum was not worth paying fifteen dollars for.”33

A large number of nineteenth century political leaders complained bitterly about the spoils system. In the 1830s, the criticism came both from those of the founding era who were alarmed by the new system (such as Joseph Story) and by Jackson’s contemporary political opponents, especially in the Senate. Calhoun complained “the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power.”34 Daniel Webster allegedly said that patronage “tends to turn the whole body of public officers into partisans, dependents, favorites, sycophants, and manworshippers.”35 But criticism persisted long after the political fights between Jackson and the Whigs ended, and especially after the harms of frequent turnover and incompetence were revealed during the Civil War and Reconstruction.36 Seventy years later, Theodore Roosevelt, who served on the Civil Service Commission before becoming Vice President and then President, said the spoils system was “more fruitful of degradation in our political life than any other that could possibly have been invented. The spoilsmonger, the man who peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.”37

As evidence of incompetence and corruption in the appointment of federal employees mounted after the Civil War, the political will to enact legislation emulating Britain’s 1854 examination-based civil service reform grew. The Bush-era federal Office of Personnel Administration’s history of civil service described the reformers’ lofty goal: “to transform the federal service from an arm of the political party in power into a body of politically neutral, technically qualified civil servants shielded from partisan political pressures and dedicated to promotion of the public interest as embodied in law.”38 Legislation suddenly got political traction in 1881 when a disappointed office seeker, resentful that his political work was not rewarded by a federal job, assassinated President James Garfield a few months after his inauguration.

The Pendleton Act of 1883 created a merit-based process for hiring civil servants, forbade removals on political or religious grounds, and created a new federal agency, the Civil Service Commission, to administer the new system.39 Although the statute did not originally restrict dismissals except on political or religious grounds and had no procedural safeguards for those facing dismissal, in 1897 President McKinley issued an executive order, which Congress incorporated into the law in 1912, requiring just cause for dismissal of any employee covered by the civil service law. It also required that the employee be given written notice of the charges and an opportunity to respond.40

The number and percentage of federal workers covered by civil service protection grew over the years, such that by 1900 slightly less than half of the federal workforce were in competitive service positions.41 Today, the vast majority of civilian employees have some job rights, although the discretion available to managers in hiring and the degree of protection against dismissal is weaker for certain senior executives and several categories of excepted positions. It is not coincidence that the growth of civil service occurred as Congress also created the first independent federal regulatory commission, the Interstate Commerce Commission, in 1887. The task of regulating railroads and the increasingly large and complex economic institutions required expertise and independence from politicians who were lobbied intensely by affected businesses. An historian of the civil service observed that “[b]usinessmen, not politicians, profited most from the merit system” because the service of government agencies that mattered to them–such as the postal service and the customs houses control imports and exports–made fewer errors and handled their tasks more efficiently.42

The narrow goals of the Pendleton Act were to prevent paying and extorting bribes to secure favorable government action and to prevent incumbent politicians from funding and staffing their re-election campaigns through mandatory contributions and labor from government employees. The broader goal was to improve the quality of government policymaking and implementation by professionalizing government service. Under the spoils system that prevailed from 1839 to 1883, tenure in government service was short, there was no opportunity for advancement, and people were chosen for their loyalty to the elected official rather than for knowledge or skill relevant to their job. But after 1883, the number of college graduates in government service grew significantly, which was noteworthy at a time when less than 15 percent of the population graduated from college. It was not, however, because the merit selection process discriminated in their favor or required technical training or knowledge irrelevant to the job, but because a greater percentage of college graduates took the civil service exam believing that government service was a good career.43

To be sure, presidential administrations have long used expansions and reductions in the positions covered by the merit-based civil service for political reasons. President McKinley, a Republican who defeated the Democratic candidate in 1896 and thus ended a relatively long period of Democratic control of the White House, promptly withdrew 10,000 offices from the classified (merit-based) service. And some Presidents, including Grover Cleveland in 1888, having appointed people sympathetic to their policies to excepted positions, classified them as they were leaving office to entrench their policies against anticipated change by a successor of the opposite party.44

While some Presidents were highly political about withdrawing or adding civil service protection to speed up or slow down policy change, Trump is certainly the most extreme in his effort to undermine predecessors’ policies by firing government employees. If history is any guide, we should not be surprised in 2027 to see this administration add jobs to the classified (merit-based) service to entrench his policies at the end of his term.

It is also clear that both before the widespread adoption of the spoils system and after the enactment of the Pendleton Act seeking to eliminate it, racism and sexism operated in hiring, promotion, compensation, and dismissal. In 1810, Congress enacted a law prohibiting employment of nonwhite persons as mail carriers, apparently prompted by the U.S. Postmaster General warning that Black mail carriers might foment or coordinate a rebellion of enslaved persons.45 Although that law was repealed in 1865, in 1913 President Wilson segregated the civil service on the basis of race, allegedly to reduce “friction” between races or “discontent” of white civil servants who worked with Black civil servants.46

The racial segregation of the civil service began to be attacked by the Hatch Act of 1939 (discussed below), with both attempted to mandate political neutrality of civil servants and had a limited prohibition on discrimination on the basis of race or religion. The Ramspeck Act of 1940, ineffectually prohibited race and religious discrimination in compensation, promotions, and other personnel decisions.47 Although an 1870 statute authorized the appointment of women to federal jobs “upon the same requisites and conditions, and with the same compensations, as are prescribed by men,” it was interpreted to allow department heads discretion about whether to hire women at all, and it was not until the 1960s that women began to gain equal employment opportunities and conditions in the federal government.48 Finally, in 1972, Congress extended the antidiscrimination provisions of Title VII of the Civil Rights Act of 1964 to the federal government, thus expanding the use of merit (or something) rather than status in hiring, promotion, compensation, and firing.49

As noted, the Hatch Act was a further effort to separate politics from government service. It was motivated by Republican reaction to the perceived consolidation of power of Democrats by the appointment of college-educated liberals to the many New Deal agencies.50 To ensure that government service below the level of political appointees and their deputies remains nonpartisan, and to prevent coercion of political activity, the Hatch Act restricts the ability of government employees to engage in partisan political activity on paid time as well as during their off hours.51 It excepts several agencies, as well as military personnel.52

In twice upholding the constitutionality of the Hatch Act against the claim that it infringed public employees’ First Amendment rights, the Supreme Court emphasized the importance of a politically neutral civil service in a government where party control of the executive and the legislature is expected to switch every several years. In United Public Workers v. Mitchell, the Court reasoned that the restriction on political activity was justified to prevent government officials from using employees in political activities and from pressuring them to participate in campaigns.53 The Court said: “Congress may reasonably desire to limit party activity of federal employees so as to avoid a tendency toward a one-party system. It may have considered that parties would be more truly devoted to the public welfare if public servants were not over active politically.”54 And the Court also recognized that Congress could legitimately conclude that reducing political activity by civil servants would prevent distortions in the political process and improve the efficient operation of government.55 The Court reaffirmed this holding in United States Civil Service Commission v. National Association of Letter Carriers. 56 The Court found that the prohibition on political activities by government employees was justified to ensure that “meritorious performance rather than political service” be the basis for hiring and promotions.57

The Hatch Act was not the only result of backlash against the growth of the New Deal agencies and the GOP fear that the Roosevelt Administration and the Democratic majority in Congress were using the growing staff of agencies to stack the government with Democrats. The so-called loyalty-security programs that had been enacted during the World Wars to address specific wartime threats were dramatically expanded and institutionalized during the Cold War, first by executive order and then by the Republican Congress that came to power in 1946. In 1947, President Truman issued a “Loyalty Order,” Executive Order 9835, requiring “a loyalty investigation of every person entering the civilian employment of any department or agency in the executive branch of the Federal government,” and created a Loyalty Review Board within the Civil Service Commission to review cases and oversee the process.

The original standard for dismissal or refusal to hire under the loyalty-security programs was that “reasonable grounds exist for belief that the person involved is disloyal to the government of the United States,” but in 1951 the burden of proof was shifted to the individual and the standard because “a reasonable doubt as to the loyalty of the person involved.” Among the obvious grounds for finding disloyalty (such as engaging in treason or sabotage) was a pernicious political test. For the first time, “membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons designated by the Attorney General as totalitarian, fascist, communist, or subversive” disqualified an employee from federal employment.58 The system was modified and codified by statute in 1950, and was extended by executive order in 1953 to all government departments and agencies.59 And then, in 1955, Congress prohibited membership in organizations advocating overthrow of the Constitution and required federal employees to sign affidavits of noncommunist affiliation, although the Supreme Court declared the statute unconstitutional in part.60

The abuses of the loyalty-security investigations are notorious, ranging from inquiries about whether people had “communist literature” or “communist art” in their homes to intrusive questions about government workers’ views on interracial marriage and “female chastity.”61 About 600 federal employees were fired for “loyalty-security” reasons in 1950-53 and about 1,500 more were fired between 1953 and 1956, but many thousands more left government employment after receiving interrogatories or charges.62 My mother was one who was fire. She was a Phi Beta Kappa graduate of Berkeley who spoke four languages and was recruited into government in 1949 with the promise that her abilities would be put to use to help her country– was one of those fired based on unfounded suspicion that she was a Communist. She was a registered Democrat and a patriot who perfected colloquial Russian by speaking with emigres who fled the Soviet Union before 1921. But the person who accused her knew too little Russian history to know that the emigres fled because they were not Communists, and in the hysteria of the early 1950s, being a progressive Democrat who spoke Russian could render anyone suspect. Being fired from a job she loved on a baseless allegation of treasonous disloyalty was a devastating blow from which she never recovered before her death at age 50.

Ultimately the Supreme Court concluded that making current or past membership in a political party or organization grounds for dismissal from employment violated the First Amendment rights of current and prospective government employees. In Wieman v. Updegraff, the Court held that states cannot command oaths of noncommunist affiliation under penalty of firing.63 In Cafeteria Workers v. McElroy and Keyshian v. Board of Regents, the Court held that the government cannot deny employment solely because of past affiliation with the Communist Party or “subversive” organizations.64

Alarm about the corruption revealed by the Watergate scandal prompted calls for reforms to strengthen the civil service laws. A galvanizing event was when a witness at the Watergate hearings testified about the Nixon Administration’s plans to replace civil service with a hiring plan that would allow the President to purge all Democrats from government employment. At the same time, however, Congress and President Carter wanted reforms to increase the efficiency of government.65 With these twin aims, Congress enacted the Civil Service Reform Act of 1978, which substantially overhauled the system created by the Pendleton Act and remains in force today.

The CSRA clarified that recruitment, promotion, discipline, and removal, along with pay, should be based on merit and on “fair and equitable treatment” “without regard to” political affiliation, race, color, religion, national origin, sex, marital status, age, or disability, “and with proper regard for their privacy and constitutional rights.”66 It broadly prohibits any “personnel action” (including a hire, assignment, transfer, pay, promotion, or dismissal) on the basis of race, color, religion, sex, national origin, age, disability, marital status, or “political affiliation.”67 It prohibits efforts to coerce or to retaliate against an employee because of political activity or lack of it.68 It also protects whistleblowers by prohibiting personnel actions taken because the employee disclosed information the employee “reasonably believes evidences any violation of any law, rule, or regulation” or “gross mismanagement” or “abuse of authority.”69

The CSRA balanced the job protections with a variety of measures to make the civil service more responsive to political appointees and to increase efficiency and flexibility. It created the Senior Executive Service, a category of senior managerial positions covered by a different set of rules regarding promotion and removal that make them career employees but more subject to control by political appointees than lower level civil servants.70 The purpose of the SES was to create a corps of competent, experienced generalists just below the level of political appointee to manage lower level civil servants. Thus, under the CSRA, there are three categories of government employees (other than those in the uniformed or armed services71): the competitive service (comprising the majority of employees who are covered by civil service rules for hiring, promotion, and removal72), the excepted service (comprising about a third of employees who are not73), and the SES. To increase the efficiency and consistency in managing the government workforce and the hiring, promotion, and firing process, the CSRA replaced the Civil Service Commission with the Office of Personnel Management (to manage the bureaucracy) and the Merit Systems Protection Board (to handle appeals of adverse employment actions.74)

Like any other major reform law, the CSRA failed to achieve its most ambitious goals of efficiency, flexibility, and invariably high levels of competence. Many subsequent small-scale reform laws have addressed particular problems. But, with various amendments, the CSRA remains in force.75

According to the federal Office of Personnel Management, of the roughly 2.2 million civilian executive branch employees, two-thirds are in the “competitive service,” meaning they are hired based on an open search and objective criteria and cannot be fired without cause after a one-year probationary period. Just under one-half of one percent (about 8,700 people) are in the Senior Executive Service. Employees in the SES can be removed for unsatisfactory job performance or malfeasance or neglect of duty. The remaining third are “excepted service,” such as lawyers or engineers or scientists, who are not subject to the usual civil service hiring rules because they have special skills that cannot feasibly be measured on an examination or other objective measures used to hire the competitive service. After a two-year probationary period, those in excepted service positions generally have the same rights against removal without cause that employees in the competitive service have.76 About 4,000 federal employees are political appointees who are either confirmed by the Senate (about 1,200), or appointed without the requirement of Senate confirmation (about 450), or are noncareer SES or are otherwise excepted from civil service protections.77

Applicants for employment in the competitive service must go through a competitive hiring process.78 Those who are excepted under the statutory provision for policy-making appointments are noncareer, political appointees who have a “close working relationship with the President, head of an agency, or other key appointed officials who are responsible for furthering the goals and policies of the President,” and have “no expectation of continued employment beyond the [relevant] presidential administration.”79 The terms “confidential, policymaking” position, the Merit Systems Protection Board has said, is “a shorthand way of describing positions to be filled by ‘political appointees.’”80

The CSRA created a process for designating positions as either in the competitive service or in the excepted service. It does so by authorizing the President to except some positions from the competitive service if “conditions of good administration warrant.”81 The President, in turn, delegated to OPM the task of defining such positions.82 OPM has issued regulations that include five “schedules” to define and categorize the one-third of federal employees who are in the excepted service.83 Schedule A are non-confidential and non-policy-determining employees for whom it is not practical to examine applicants, “such as attorneys, chaplains, and short-term positions for which there is a critical hiring need.” Schedule B are like schedule A but require the applicant to satisfy basic qualification standards, and are those who engage in scientific, professional, and technical activities. Schedule C are confidential and policy-determining positions and include most political appointees below the cabinet and sub-cabinet levels. Schedule D are non-confidential and non-policy-determining positions for which the usual competitive hiring process makes it difficult to recruit students or recent graduates. Schedule E are administrative law judges.84

Both the 2020 and the 2025 Executive Orders propose to create a new Schedule of excepted positions. In 2020 it was called Schedule F and in 2025 it is called Schedule Policy/Career. In both EOs, the category is for “positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a presidential transition.”85 Positions occupied by employees with civil service rights could be involuntarily transferred into Schedule F, which would strip the employee of their rights to appeal an adverse employment action. Agencies were directed to review their workforce to identify all positions fitting this description and to petition OPM to transfer them to the Schedule F excepted service, and also to make all new hires for positions that fit the description without reliance on the civil service procedures.86 The result would be that employees would lose civil service protections. The definition and intended size of the group who would be assigned to the new exempt Schedule F were unclear; the program’s architect said it would be about 50,000 people, but other estimates ranged into the hundreds of thousands. The Government Accountability Office reported that the Office of Management and Budget petitioned to place a full 68 percent of OMB workers in Schedule F.87

One final feature of the CSRA deserves mention because it also limits the discretionary authority of the President over federal employees. Several sections of the statute known collectively as the Federal Labor Relations Act codify a practice first authorized by Executive Order in 1962 creating the right of many federal employees to unionize and bargain collectively.88 The FLRA is patterned on the National Labor Relations Act of 1935, as amended in 1947 and 1959, which protects rights to unionize and bargain collectively in private sector employment. Like the NLRA, the FLRA grants employees the right to unionize and obligates federal agency employers to recognize the union chosen by the employees and to bargain in good faith with it. Like the NLRA, the FLRA makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter,” “to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment,” and to retaliate against employees for participating in the enforcement of the statute.89 It also prohibits unions from coercing and discriminating against workers and grants workers rights to fair treatment by their union.90

The CSRA also protected federal employees who blew the whistle on wrongful government conduct. Those protections were strengthened with the enactment of the Whistleblower Protection Act of 1989.91 Federal employees are protected in the right to disclose information that the employee “reasonably believes evidences a violation of any law, rule or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety” unless the “disclosure is specifically prohibited by law” and is not “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”92 One of the comments cited by OPM in its 2024 regulations protecting the job rights of employees whose positions might have been reclassified as excepted from civil service by Schedule F stated that the whistleblower protections might have been jeopardized by reclassification of the positions of employees suspected of being disloyal.93

The experience of Alexander Vindman bears out the concern that attempts to revive Schedule F may be prompted by the desire to child whistleblowing. Vindman was an NSC staff member who was assigned to listen in on calls between the President and certain foreign leaders. While doing that, he heard Donald Trump threaten to withhold funds to Ukraine unless President Zelinsky produced damning information on Hunter Biden. Concerned that this was illegal, Vindman reported what he heard. His disclosure led to the first Trump impeachment.

The history shows that over the last 150 years, Congress has steadily expanded the job protections for federal employees. Its goals included ensuring that hiring, assignment, and promotion are based on merit rather than political service, race, gender, or other irrelevant considerations. Both the legislation and the regulations OPM adopted pursuant to the regulation have tried to balance efficiency and flexibility with fairness, to enable government to recruit and retain employees with the knowledge and skill needed. The legislation and regulations also insist that adverse job actions be based on failure to perform the job rather than retaliation for whistleblowing, or belonging to the “wrong” political party, whether that party is the Democrats, the Republicans, the Socialists, or the Communists.

II. The Arguments About Job Protections for Public Employees

Having examined what the history suggests about the value of job protections and merit selection for government employees, I now turn to contemporary thinking about the justifications for job protections for government employees. As political scientists Stephen Skowronek, John Dearborn, and Desmond King said in a 2021 book, the attack on the federal bureaucracy staffed by civil service pits two unduly simplistic ideas against one another. On the one hand, Trump and the so-called unitary executive doctrine present a simplified notion that unbridled executive power is good and democratic because the President was elected by the people, which justifies direct, exclusive, and hierarchical control by the White House over the entire administrative apparatus of government. This is a vision that pits the chief executive against the rest of the executive branch.

On the other hand, defenders of the administrative state often present a simplified notion that the many administrators throughout government use their substantive expertise, experience, judgment, institutional memory, and commitment to the common good without regard to their own views of policy. They exercise fidelity to legislation enacted by Congress to save government from the whims of an ill-informed, self-interested President and his cadre of self regarding enablers.94 This view reads the civil service law as evidence that Congress was more concerned with separating politics from administration than from separating the legislative branch from the executive. Indeed, although Congress recognized that governance of the complex modern state necessarily required expansion of the executive branch, they saw overweening executive power as a threat to good government. As Skorownek put it, when Congress created administrative agencies to enforce complex laws, and thereby “raised the President’s political profile, transforming him into a policy entrepreneur and national agenda setter, they took care to instill administration with an organizational integrity of its own and to set the everyday operations of the executive branch at some distance from the chief executive officer.”95

In this section, I explore the empirical evidence supporting each side of these competing visions of the desirable balance between administrative agency independence and top-down White House control. Ultimately, the choice between these two simplistic visions turns on factual questions about the positive and negative effects of job security. These studies complicate the intuitive appeal of the argument that the new “Policy/Career” schedule of exceptions from the civil service makes government responsive to the leaders the voters elected. The evidence shows how difficult it is to determine whether job protections do indeed thwart responsiveness to executive or legislative policies.

Empirical study of turnover in the federal bureaucracy below the level of political appointees after an election shows, in the period between 1973 and 2014, a fair amount of turnover, especially at the higher levels of the civil service ladder and at agencies that are ideologically distant from the new administration.96 Thus, there already exists some degree of voluntary staff change that aligns the bureaucracy with the elected leaders’ views. This should come as no surprise. It is to be expected that those committed to strong environmental regulation or workers’ rights may want to leave the EPA or the DOL or NLRB when there is a new administration that does not share their values. And when the new administration’s policies are a more extreme departure from the past, we might expect more departures.

On the other hand, this study does not say all civil servants opposed to the new administration will leave. The chief advocate of shrinking the civil service cites examples from the first Trump term where civil servants refused to work on certain matters or, according to political appointees, produced work slowly or not well. What cannot be discerned from these anecdotes, however, is whether the resistance was because civil servants believed what they were told to do was unconstitutional or contrary to the statute. To take a current example, if a civil servant in the State Department declined to implement a direction to deny passports to applicants who could not demonstrate at least one parent was a U.S. citizen at the time of of their birth, is that misfeasance or is that acting on the civil servant’s oath to uphold the Constitution?97 In sum, it is difficult to know when resistance or poor work by civil servants is in service of or defiance of the law.

Empirical studies of the effects of two dozen states’ adoption of “radical civil service reform” that, to varying degrees, made state government jobs at-will offer weak support for the idea that at-will employment leads to responsiveness and efficiency. In Georgia, less than half of state HR managers surveyed ten years after adoption of at-will employment (by which time three-quarters of state employees were employed at-will) said that at-will employment had made employees “responsive to the goals and priorities of of agency administrators” and just over a third said it provided “the needed motivation for employee performance.”98 OPM cited one study of the effect of Georgia’s transition to at-will employment which found that over 75% of Georgia state employees disagreed with the proposition that at-will employment made Georgia’s government workforce “more productive and responsive to the public.”99

Scholars have reviewed the considerable empirical literature on civil service reform and developed models to explain whether or under what conditions reducing job protections increases the quality and responsiveness of government employee work. One model shows that “bureaucratic performance is greater in any equilibrium in which motivated bureaucrats choose government than in which all equilibria in which they do not.”100 The idea, translated into English, is that some degree of job security improves governance by recruiting and retaining motivated and skilled employees to government, but that too much job security reduces government performance by disincentivizing good work and by making it unduly difficult to dismiss bad employees. Of course, the difficulty is defining and achieving that equilibrium.

Another paper studied and modeled the incentives of populist leaders on whether to replace bureaucrats with loyalists. They find that bureaucrats faced with populist leaders determined to undermine existing policy have incentives to feign loyalty to the leader in the hopes of keeping their job and waiting for a future administration, and that strong civil service protections lessen the need for feigning loyalty. But they also find that when a populist hires a loyalist, strong civil service protections enable the loyalist to stay in office in a future administration. Ultimately, they conclude that “even short-term populism can lower the expertise of the bureaucracy and create poor policy implementation.”101

Some scholars have studied the effect of civil service laws by comparing measures of performance before and after a civil service law was implemented or by comparing the performance of government agencies where staff are subject to replacement to agencies where staff are protected from political replacement.102 One large study measured the effect of the adoption and expansion of the Pendleton Act in 1883 and 1893 on the efficiency and productivity of the U.S. postal service. The study found, while controlling for many possibly confounding variables, that civil service protections improved the efficiency, the accuracy, and the productivity of the postal service.103 Another study approached the similar problem from a different methodological point of view focusing on the effect of politically-mandated turnover of school staff on student test scores in Brazil. Students at schools where staff were subject to replacement after a mayoral election had lower test scores after the election than did students at schools where school staff were insulated from replacement following an election.104

The empirical and theoretical literature on reforming the civil service is too vast to survey here. In general, the consensus of the literature is that some reforms are desirable, some have been tried and have produced good results, and completely abolishing legal rights to job tenure during good behavior is an extremely risky proposition because of the dissensus about whether it produces more harm than good.105 Perhaps the change that bears the closest to what the Trump Administration is trying is known to scholars of public administration as “radical civil service reform.” Some states, beginning with Georgia as noted above, have experimented with “radical civil service reform” by abolishing civil service protections for numerous categories of jobs. Few of the studies of these state experiments clearly disentangled whether the states that repealed civil service protections (which are often characterized by nonlawyers as making government employment at-will) also abolished other job protections, including collective bargaining agreements with just cause protections. And of course no state could deprive its workforce from federal laws prohibiting discrimination on the basis of race, religion, sex, national origin, age, disability, or veteran status. Nor could they insulate personnel decisions from scrutiny for political discrimination under the First Amendment. Thus, studies of state experiences with repealing civil service laws are not a reliable predictor of what will happen if the 2025 Executive Order is upheld and enforced.

Nevertheless, two authors of who hold divergent views about the desirability of eliminating civil service published a book surveying studies on radical civil service reform. They conclude, “increased managerial flexibility coupled with less accountability to civil service authorities may spawn bureaucratic fiefdoms controlled by skilled bureaucratic entrepreneurs. … At a minimum, particularly in large organizations, the result of arbitrary personnel rulings with little opportunity for impartial recourse may lead to an exodus of government’s more skilled and mobile employees and discourage persons at the start of their careers from seeking government employment.”106

In sum, the empirical evidence on abolishing job protections for government employees does not sustain the robust claims made by the supporters of the 2025 EO that it will improve government. But the tone and content of the EO suggests that the real justification is not to improve the quality of government, but rather to allow the President and his trusted deputies unfettered power to remake it. It is to that argument I now turn.

III. The Conservative Assault on Politically Independent Civil Service

The effort to make some, and perhaps eventually all, federal employees fireable by the President, is part of a larger right-wing effort to increase the power of the White House relative to Congress and the rest of the executive branch that has been going on for 50 years. The EO creating the exemption from job protection for “policy/career” positions is part of this campaign. Both the Nixon and the Reagan White Houses adopted strategies to identify and sideline civil servants whom they perceived as disloyal, and the Reagan Administration effort tapped the conservative Heritage Foundation in an effort to elevate loyalists and impose their policy on the bureaucracy through centralized control.107

The project of seizing control of the federal civil service may have started out as just a power move in the paranoia of the Nixon White House, but it acquired a constitutional theory to justify it in the Reagan years. In the early 1980s, frustrated by decades of Democratic control of Congress, the Reagan Administration Attorney General Edwin Meese, working with a group of young lawyers, including future Supreme Court justices John Roberts and Samuel Alito, developed the idea that Article II of the Constitution confers unilateral power on the President to control the entire executive branch. This became known as the theory of the unitary executive.108 As Attorney General Meese explained in a 1985 speech, the theory justified challenges to the independence of agencies created in the Progressive and New Deal eras. Proponents of the unitary executive idea justified it in terms of transparency and accountability, although critics insist it would hamper transparency and accountability.109 As Professor Skowronek said, the conservatives who advocated the unitary executive tied the fact that the President the one officer voted on by the entire nation “to the notion that the selection of the President had become, in effect, the only credible expression of the public’s will.” Having “fused” the “public voice” to the will of the President, “extra-constitutional controls could be rejected as inconsistent with democratic accountability, and the vast repository of discretionary authority over policy accumulated in the executive branch could be made the exclusive province of the incumbent.”110 The history and constitutional debates around the unitary executive have been carefully studied by others. Less well known is that it also has been mobilized by conservative activists as the basis for attacking the political independence of the entire federal civilian workforce and the civil service and collective bargaining rights that flow from it.

To understand the breadth of the assault on the merit-based government employment system, it is important to understand that the Supreme Court has lately ruled that the constitution imagines there are three broad categories of federal government employees (other than those who are elected officials): “principal officers,” “inferior officers,” and “employees.”111 Principal officers are those who are nominated by the President and confirmed by the Senate. Inferior officers are those who are appointed by the President, by a court, or by heads of departments.

These two categories are defined in the Appointments Clause of Article II, § 2. It provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”112 A great deal of writing–more than could be cited here–explores the question of what is meant by this language. Who is an “inferior Officer”? Which government workers are not officers at all? And, importantly, although the Appointments Clause spells out the power to appoint, it says nothing about the power to remove.

A branch of the conservative legal movement seized on the Appointments Clause as a tool to reduce the number of federal employees who can be appointed by any method other than by the President, a court, or a department head. And they embraced the notion that the power of appointment includes the power to remove, except they insist that although the Senate is involved in appointing, nobody but the President or his designee has the power to decide on removal. Both the 2020 and the 2025 Executive Orders claim to expand the President’s unfettered power from officers to all government employees.113 Both the Executive Orders and an issue brief written by its architect insist that exempting federal employees from the civil service to address “poor performance by career employees”114 and the difficulty of firing employees after the one-year or two-year probationary period.115 The EO’s critics point out that poor performance or failure to follow instructions from a supervisor or to enforce law or policy have always been a basis for firing. Streamlining the process for firing poor performers, however, has never been on the Trump agenda. Rather, as noted above, the real justification for the new exception, its architect candidly admitted, is that civil service rules “empower ideological activists in the bureaucracy to pursue their own agendas regardless of who the American people elect to run the government,”116 because civil servants “are disproportionately liberal,” their alleged resistance to presidential policy disproportionately afflicts conservative administrations.117

The 2025 Executive Order directs agency heads to review existing positions to determine which positions should be excepted from merit appointment and for cause firing by identifying “positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition.”118 It further states that such people fall into five categories of job responsibilities:

(i) substantive participation in the advocacy for or development or formulation of policy, especially:

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an agency or agency component that primarily focuses on policy;

(ii) the supervision of attorneys;

(iii) substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

(iv) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either:

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or

(B) working in the agency or agency component executive secretariat (or equivalent); or

(v) conducting, on the agency's behalf, collective bargaining negotiations.

(vi) directly or indirectly supervising employees in Schedule Policy/Career positions; or

(vii) duties that the Director otherwise indicates may be appropriate for Schedule Policy/Career. 119

It is worth noting the specific positions that the EO seeks to make subject to presidential fiat. Most of the attention has focused on policymaking, perhaps because those jobs seem most closely related to presidential control over policy, which has intuitive appeal. (Unless one focuses on the fact that Congress is also the constitutionally-designated policymaker.) But making anyone who even views or circulates proposed regulations or guidance an at will employee seems aimed not only at policymakers, but at low-level employees who might be inclined to blow the whistle on (or, as the administration would put it, leak) administrative actions they fear are unlawful or an abuse of power. It thus seemed to be aimed squarely at the threat of whistleblowing, a practice explicitly protected by the whistleblower protections written into the civil service laws.

And what of those who bargain collectively? The EO speaks to that too. It excludes from civil service protection both those who bargain for the government with unions and union representation for anyone who “views” policy. In other words, both union members and labor relations managers are in the group whose civil service and labor rights the EO seeks to eliminate.

In particular, the EO identifies as policy employees those who “conduct[], on the agency’s behalf, collective bargaining negotiations.”120 This is clearly aimed at allowing the White House to directly control the content and enforcement of the collective bargaining agreements that agencies negotiate with public employee unions representing the rank-and-file of government employees.

But the EO goes further. It directs each agency head to “expeditiously petition the Federal Labor Relations Authority to determine whether any Schedule Policy/Career position must be excluded from a collective bargaining unit.”121 Because the EO defines positions subject to reclassification so broadly (to include not just those empowered to make policy but those who may “view” or be involved with the “circulation” of policies or regulations, it may sweep broadly in limiting union rights.

Nothing in the EO itself or in the defenses of it have explained why collective bargaining poses a threat to the efficiency, competence, or accountability of government workers. Rather, the EO and its defender have focused on whether the workers are “required or authorized to formulate, determine, or influence the policies of the agency.”122 But Congress’ decision to allow government workers to unionize reflects the view that one can be authorized to influence agency policy and still have an interest in collective representation on compensation, conditions of employment, and just treatment. To override this legislative determination (one that was enacted by Congress and signed into law by a prior President) is a startling overreach.

These exception to civil service and other labor rights seem aimed at controlling, perhaps without regard to what the law requires, those who might be more inclined to follow the statutes and regulations they believe they are charged to enforce than to follow the unorthodox views of political appointees. Stripping labor rights is the first step toward asserting unfettered power. If you control the lawyers and the unions, you can, as Trump said he wants to do, bring the administrators to heel. Here, too, the focus seems not to be on increasing the competence or efficiency of government work, but rather on controlling those who the new administration fear might have the ability to protect workers or the public from unlawful actions or abuse of power.

The EO’s chief proponent said it would affect 2 to 4 percent of the federal civilian workforce of more than 2.27 million,123 or 45,000 to 90,000 workers.124 But, when the Office of Management and Budget proposed to reclassify its workforce in late 2020, it proposed to strip civil service protections from 88% of its staff.125 Moreover, the 2025 EO directs the Director of OPM to consult with the Executive Office of the President and then to issue guidance about additional categories of positions to include in the excepted Policy/Career Schedule, thus paving the way for the civil service to be narrowed further.

Finally, the 2025 EO contains a provision absent from the 2020 version. It states that “Employees in or applicants for Schedule Policy/Career positions are not required to personally or politically support the current President or the policies of the current administration. They are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal.”126 This provision is obviously directed at avoiding a First Amendment or Hatch Act challenge. But the question is how it will be interpreted and enforced.

As a cautionary example, the news reports of the Trump Transition in January 2025 indicate that officials at the National Security Council interrogated all civil servants above a certain level about whether they voted for or contributed to Trump and examined their social media to determine whether they support him, aiming to have the entire agency be “100% aligned with the President’s agenda.”127 They dismissed a large number on January 24. The point is probably not that the new administration will actually fire all or most civil services. Rather, the point of the loyalty review is to make government employees fear they will be fired if they fail to demonstrate sufficient loyalty to Trump or to the administration’s policy initiatives or actions, no matter how unlawful those actions may be.128 The NSC may be a particularly sensitive agency for Trump, as it was two civil servants at the NSC who blew the whistle on Trump’s 2019 efforts to pressure Ukraine to provide information to undermine Biden, which led to Trump’s first impeachment.129

A second cautionary example is the firing of civil service Justice Department lawyers because of their work with the special counsel, Jack Smith, whom the Attorney General appointed to investigate the efforts to overturn the 2020 election and the January 6 violent assault on the Capitol. In an ominous “Notice of Removal from Federal Service,” the new Acting Attorney General asserted an unqualified Article II power to fire, without notice and with immediate effect, civil servants who worked on an investigation that was authorized by the Attorney General and by the federal courts that issued search warrants, simply because the new DOJ leadership does not “trust” them to “assist in implementing the President’s agenda faithfully.”130 This suggests that, whatever the EO says about personal or political support of the current administration, it will be implemented to root out perceived political enemies.

Although this is not the first Republican President to try and reduce civil service and labor rights and protections, the current President seeks to go further than any predecessor.

#### Versions of them could be tolerable---BUT Trump’s purposely violate bargaining rights to force courts to articulate a maximal interpretation of unitary executive theory---that’s what most concerns careerist holdouts.

Rozenshtein et al. 25 [Alan Z. **Rozenshtein**, Associate Professor of Law at the University of Minnesota Law School, Research Director and Senior Editor at Lawfare, Nonresident Senior Fellow at the Brookings Institution, former Attorney Advisor with the Office of Law and Policy in the National Security Division of the U.S. Department of Justice; Nicholas R. **Bednar**, Nick Bednar, Associate Professor of Law at the University of Minnesota Law School, PhD political science, Vanderbilt University, JD University of Minnesota Law School; and Jen **Patja**, editor of the Lawfare Podcast; “Lawfare Daily: Nick Bednar on Trump's Civil Service Executive Orders,” Lawfare Podcast, 1-28-2025, https://www.lawfaremedia.org/article/lawfare-daily--nick-bednar-on-trump's-civil-service-executive-orders]

Alan Rozenshtein: Today, I'm talking to my colleague Nick Bednar, an associate professor of law at the University of Minnesota, about a recent article he wrote for Lawfare about Donald Trump's numerous day one executive orders affecting the civil service. We discuss what the orders say, how they might be challenged in court, and what this means for the next four years, and beyond.

[Main podcast]

So Nick, let's start with an overview. So what in your mind were the most significant of these civil service actions that Trump took on day one?

Nick Bednar: Yeah, so I, I think the biggest one and the one everyone sort of anticipated would be taken–which we can walk through in greater depth–was the reinstatement of Schedule F, which exempted a class of policymaking employees from the competitive service and put them in the excepted service. So I think that's the biggest one.

There's some other orders that are similar affecting different groups of employees, which we don't have to get into, they're really wonky, but like there are a lot of similar orders.

Next biggest one I think is probably the creation of DOGE, which we don't really know a lot about. but, you know, it was highly anticipated. We can talk about what that looks like.

And then the other two I would highlight—mostly because they've had a lot of fallout, less because of what the orders actually said—the hiring freeze order. And the DEIA orders banned a lot of those programs.

Alan Rozenshtein: So we'll go through all those in our conversation, but I kind of want to stay high level for a little bit first.

How does this compare to the sort of typical personnel changes that we often see in presidential transitions? Or, you know, maybe start with what are the typical such actions that we see?

Nick Bednar: Yeah, so like, let me set it out even a little broader than that, which is like, what authority does the president even have to do a lot of this, right? And the answer is quite a bit. So the Civil Service Reform Act of 1978 was passed with the idea of giving the president more control over federal hiring and even before that the Pendleton Act and the other acts that kind of fall between the Pendleton Act. The Pendleton Act is the act that creates the civil service, gave the president a lot of authority.

So presidents have always been pretty involved in personnel policy and while we typically ignore it because for a long time scholars didn't see personnel policy or the civil service as particularly sexy. It was just kind of a, you know, managerial thing that was less interesting than other forms of policy.

Alan Rozenshtein: Trump is bringing the sexy back for this.

Nick Bednar: Trump, Trump is—I don't even, I'm not even going to repeat that. I don't want to say that. But the civil service is having its heyday. So, you know, presidents have always been involved in this is point one, and they have a lot of legal authority to do so.

So what do we typically see, right? Well, a lot of what we see and is reported in the news in every administration is you see a lot of high level appointees forced to resign, right? Usually the new administration comes in, they send a letter saying, hey, we would like your resignation. If we don't get your resignation, we'd have to remove you.

Usually, as a matter of course, those people resign, acting officials step in, or new leaders are appointed, right? So a lot of what we typically see is at that high political level.

Alan Rozenshtein: And just to be clear, so when we talk about political, we're talking about people who are basically hired by the president, they can be fired by the president sort of for any reason. They are not part of the sort of civil service with the bureaucratic protections of that.

Nick Bednar: Correct, yeah. And some of them are, you know, the traditional officers of the United States who are appointed by the president and confirmed by the Senate. A bunch of others, right, are kind of low level political appointees who for various reasons are exempt from civil service protections. So, the removal of those appointees is pretty standard.

We've also seen throughout history a variety of other actions taken. So like hiring freezes are relatively common during the course of a presidential administration. The George W. Bush administration had a soft hiring freeze President Clinton had an executive order that wanted to reduce the size of the federal workforce. It ordered every agency to cut the number of career civilian personnel by 4%. Reagan had a hiring freeze and revoked a bunch of job offers.

So a lot of this, what we're seeing, is pretty standard sort of fare. Some of what we, things we're seeing, like schedule F, however, are really expanding what happens during the transition and greatly politicizing a lot of positions that haven't been politicized in the past.

And so I think that's the big change here is that the sheer level of change at the start of the administration is raising concerns about how deep into the career civil service are we going to go, and how much political influence is the president going to exercise relative to those past administrations.

Alan Rozenshtein: All right. So let's just, let's just jump in then to the specific things. And let's start with the big one, which is Schedule F. So just, just, just riff on that. What, what is, what is Schedule F? How is it back? It's under a new name. What, what is going on here? I'm still not entirely sure I understand what's happening here.

Nick Bednar: Yeah. So, okay. So Schedule F was first introduced toward the end of the Trump administration and it was never fully implemented. So there's a new executive order reinstating Schedule F. So the first question we have to ask is, well, what is Schedule F?

So most federal employees are classified in what is known as the competitive service. So the competitive service is this branch of the civil service. It's the predominant branch that requires all individuals to undergo competitive hiring requirements.

Alan Rozenshtein: And sorry, what are competitive hiring requirements?

Nick Bednar: So the competitive hiring requirements basically, so traditionally, the way this worked historically is you had to take a test and then OPM administered this test, at the time it was the Civil Service Commission. They'd administer this test, and then they would tell the agency who the top three qualified people were. Now that's been, like, incredibly relaxed over time.

Alan Rozenshtein: I did not take a test when I joined the Department of Justice.

Nick Bednar: Right. And we could talk about why you may not have taken a test, which is most attorneys are exempted under something called Schedule A.

So what are all these schedules, right? We're on Schedule F. That implies there's a Schedule A through E as well. So, the schedules are exemptions from these competitive hiring requirements. I don't know if you were Schedule A or not. But, like, most attorneys end up being in one of these schedules.

So, how do you end up in one of these schedules? How does a position end up in one of these schedules? Well, the president makes the decision. So, 5 U.S.C. Section 3302 authorizes the president to exempt positions from the competitive service as nearly as good administration warrants. Very broad discretion, right? I have no clue what that phrase is supposed to mean, right? Just, if there's a good administrative reason for exempting people from this, the president can do so.

Alan Rozenshtein: And just to back up, just so I can, I understand what the purpose of all this is, right? So if you go like—my, my understanding of the history here is that if you go back before the competitive service, everything was done sort of just pure, pure cronyism spoil system, basically your guy got into office and he just like doled out jobs. And that was bad for kind of obvious reasons.

And so you have all these civil service, good governance reforms. We're trying to get quote unquote, the best people, we use tests, whatever. But the problem is that becomes sort of overly rigid, because not everything is like super amenable to this kind of test system. And so you have to create these exemptions.

And then so you're trying to balance like on the one hand, having a system by which actually good people who picked whose loyalty is to the country, not to necessarily, purely to the president, but also giving the president some flexibility. That's the good faith trade off and balancing that has to happen here, putting aside what Schedule F is about to do.

Nick Bednar: Right. And so like, to give an example as to why we have these exceptions. There are certain jobs that are really hard to hire for, either because there aren't a lot of people or because the competitive market is so, the, the like job market is so competitive that we just need exemptions to be able to hire people faster before they get picked off by the private market.

STEM positions are a great example of this, right? Like the government needs a lot of engineers. It needs a lot of tech folk. All of those folk have great opportunities on the private market. So, like, we need some flexibility in how we choose to hire those people to ensure that we can get the best people for government, right?

So, broad takeaway is, yes, the civil service exists to ensure we have this, like, expert and experienced workforce. It's designed to protect that workforce during political transitions. The president has the ability to exempt people from the hiring process.

Traditionally—this is going to be a key part of Schedule F—even people who are exempted from the hiring process are not exempted from the 10-year protections afforded by the civil service.

So one way that we try to build a strong workforce and keep it expert and experienced, and in response to what you described as like, you know, kind of the cronyism and the I'll put my guys in, we gave civil servants due process protection, right? And so to fire a civil servant, you have to go through quite a bit of procedure to do so. And you can only fire them for certain reasons,

Alan Rozenshtein: Including me as the lawyer at DOJ who didn't take a test.

Nick Bednar: Right.

Alan Rozenshtein: I still needed, they still have a good reason to fire me.

Nick Bednar: Right. So just because you weren't hired through the traditional process doesn't mean you're not protected. But Schedule F is doing something a little weird. And so we got to talk about all of that, okay. And it all turns on this phrase, a confidential policy determining, policy making, or policy advocating character.

Okay, so what Schedule F is doing is saying, if an employee is in a position of a confidential policy determining, policy making, or policy advocating character, let's just call those policy making positions for the remainder of this to keep it short and sweet. Then we're going to exempt them from those competitive hiring processes. This is a new branch of the excepted service.

The key with that phrase is it also appears elsewhere in the civil service laws. And specifically, it appears in two other spots. The first is in the chapter related to those due process requirements that you have to undergo to fire a civil service, okay. And in that chapter, it says this chapter, these due process protections don't apply to this group of policymaking positions.

So Schedule F is echoing that language to try and make these individuals exempt, not only from the hiring procedures, but the firing procedures as well. The other place it appears is in—there's a section of the code that describes prohibited personnel actions, things you can't fire a person for, and that includes things like partisanship and political activity. And these policymaking positions, that phrase, also exempted under there.

So, in theory, right, President Trump has made it a lot easier to fire people who are designated as policymaking employees, and a lot easier to fire them too, okay? And so our concern here is, this is going to politicize a lot of personnel, depending on the reach of who is a policymaking employee.

Alan Rozenshtein: And that has not yet been determined.

Nick Bednar: So it hasn't. Not this time around, right? But there is a definition in Schedule F. And I should say, I'm going to keep calling it Schedule F just because like, I think that's the term familiar with. They did technically change the name of it to Schedule Policy Career, which I think is one, a far worse name. And two, I have no clue why they changed the name. And I don't, I don't think it affects anything other than effectively obscuring that they're doing the same thing they did the first time.

So who is a policymaking position is effectively the question, right? And they do provide a definition, and the definition is like a long list of things, the broadest of which is, it includes viewing and circulating policy documents, which if you think about, is very, very broad, okay?

And we have some evidence from the first administration as to how they sought to apply this. So, the National Treasury Employees Union, shortly after the Trump administration, sent a Freedom of Information Act request to the Office of Management and Budget and Office of Personnel Management saying, hey, how are you implementing this, right?

And what we saw is that the Office of Management and Budget, in terms of their own employees, was classifying all sorts of people as policymaking employees. So you had executive office assistants being classified. You had IT professionals.

Alan Rozenshtein: They're viewing and circulating, right?

Nick Bednar: Exactly. I mean, and you had, you know, economists, toxicologists were classified. So, when you look at that group of people, it's really hard to know who's not going to be affected by this, right?

Like, we can come up with some obvious positions, where it's like–

Alan Rozenshtein: The janitor, as long as he throws the paper away without looking at it first, because then he's viewed it.

Nick Bednar: Right, and like, maybe, you know, even less nefarious, like law enforcement officers probably aren't going to be seen as viewing and circulating, but like, once you have the word viewing policy, it's like, who isn't included in that other than, you know, the janitor and, you know, the cafeteria workers at the Department of Education.

And so it was super expansive, right? Initially, the Trump administration was like, oh, we think this hits 50,000 employees. No one really knows how many employees it hits. Based on what we saw from OMB, a lot of people think this is somewhere in the 100,000 or beyond range, easily. It's all going to turn on implementation.

Alan Rozenshtein: And who makes this decision? Is this, is this OMB ultimately?

Nick Bednar: So each agency –

Alan Rozenshtein: Or is it OPM or?

Nick Bednar: It's OPM, the agency we know that classified the most positions was OMB. They just like managed to finish the process, which is how we know how it was implemented. OPM is like actually the determiner. So OPM is the Office of Personnel Management. It's like the central human resources. department for the government. Each agency is asked to submit a list of occupations they think qualify under this, and then OPM will approve or reject those classifications.

Alan Rozenshtein: What to you is more important here? The, the exemption from hiring or the exemption from firing restrictions? I assume the latter, but I kind of want to gut check.

Nick Bednar: I think it's the latter, but I want to like hedge a little bit and say, I think they're both really important, right. And they work together. Because if you don't have to hire through the competitive service, right, and you can consider politics and political leanings in choosing to hire, when you have fired all those individuals, you can now fill them with people who agree with the president's agenda, right? So they are working in tandem.

Alan Rozenshtein: I want to steelman this just for a second. I think it's pretty clear given everything we know about Trump and the people around him that like this is not, I think, a particularly good faith attempt at government efficiency. Like this is about politicization.

But, but I do just want to take a moment to consider maybe in abstraction, the potential benefits of something like this, because like one problem, right with government hiring is it is very often very hard to hire people. It is also very, very hard to fire people, right.

And like, I don't think the government should quote unquote run like a business that doesn't make sense for all sorts of reasons, right, but I will say this from experience—and I do think there's probably some scholarship to bear this out— like the, the inability for the government to be nimble, right, is a real problem.

And so I'm just curious, like, do you think there's a version of this that could be defensible on efficiency grounds? Or is this just one of these things where you kind of have to, you have to pick a basket of pros and cons and just commit to them that like, you know, there's, there's no optimizing here, right? Like, if you want a professionalized civil service, you have to just like a little bit like, you know—we're both academics. And so like, this is our, our version of this is tenure. Right. And like, you have to just commit to tenure or you don't have tenure, but you can't have like just enough tenure so that it's perfectly efficient.

Nick Bednar: So if we're going to talk in abstraction, right, set aside, like the current context–

Alan Rozenshtein: We will come back to the current context in a second,

Nick Bednar: Like everything I'm about to say, right, I can recolor based on what is happening.

Alan Rozenshtein: Exactly, we're going to clip this out and just have you talk about how amazing schedule F is without any context.

Nick Bednar: Okay, there is no doubt that reforming the civil service should be a priority, okay? I agree with you. Like, there are a lot of things about government that make it very hard to hire people and very hard to fire people, right? The question is, how far do you want to take it?

So, like, in the abstract, if we're just talking about excepting certain employees, I definitely think there's a case that, like, sometimes we have to move out of the traditional hiring process, right? I think there are probably ways to reform the firing process to make it more efficient, right?

The problem is that there's a lot of literature showing that what makes people comfortable working for government is those tenure protections and you could take that as a good or a bad thing, depending on how you want to look at it, right?

So one side is going to try and frame this as these are people burrowing into government to try and influence policy and undermine democracy. I personally don't think that's what the average civil servant is doing. I think most of these people do care about what they do, but they are motivated by a desire to serve the public. And they have certain policy areas they care a lot about–the environment, immigration, immigration enforcement, you know, law enforcement, right? There are a bunch of civil servants who just want to do the job and help the people.

The other thing to realize is that a lot of these people are taking a pay cut because you can make a ton of money in the private sector if you are some sort of STEM worker or you're an attorney, right? Like DOJ pays well, but if you want to be a partner at a white shoe law firm, you will make a lot more money, right? And so if you are going to be put in the situation where your entire career trajectory could be dismantled every four years, that is not an attractive job offer, right?

And government works hard, everyone beats up the civil servants, right? Both Democrats and Republicans complain about, like, the slowness of bureaucracy and the inability to get these, you know, employees to do what they want. The public doesn't like you very much. You know, you go to the DMV and you're told, oh, you don't have this document. Like you're not very happy with that person.

And so like, it's not a very, you know, rewarding position in terms of the public. It's all driven by your intrinsic motivations and you have to know you're going to be allowed to exercise what's best for the American public across multiple administrations.

Alan Rozenshtein: Okay, let's now go back to reality and the context of all that has been and all that will be. Is any of this legal? Like, can he do any of this?

Nick Bednar: I think a version of it's legal. I think a version of it is legal. What has happened here is not legal.

So the version of it that would be legal, right; I think the president, given the broad authority they have, could exempt policymaking positions. Okay? Fine. Here's what makes this dubious in how, like, it's implemented and what that order says.

I think there are three issues. The first is the breadth of the interpretation of policymaking employee. So traditionally, like if you read the legislative history about this phrase, right, the phrase of a confidential policy determining policymaking or policy advocating character–it was traditionally meant to be non-career political appointees. It's pretty clear throughout the legislative history it is how every other president has treated that phrase. And so it might be extending far beyond the traditional meaning of that text, right?

This is a precarious position if you are OPM or the president implementing this, right? Because although agencies used to receive Chevron deference for their interpretations, they no longer do, right? And so to the extent we have a president who's suddenly claiming that this phrase means this broad thing that is never meant before, right? That's questionable.

Alan Rozenshtein: And, and, and this just for, for the audience is, this is the Loper Bright decision from–

Nick Bednar: Yes.

Alan Rozenshtein: Is it last year? Time has lost all meaning at this point.

Nick Bednar: Yeah. June 28th, 2024.

Alan Rozenshtein: Excellent. And for those who are interested, we have a great podcast with Nick and some other folks unpacking that.

But yeah, I will say there is something–and we'll get to this probably more later in the conversation—there is something of a bit of an irony of this sort of very conservative, unitary executive court having issued this decision now that makes life much more difficult for the executive in trying to, implement the unitary executive theory, but you know, choices have consequences.

Nick Bednar: Maybe we will talk a bit about that and whether this is actually an impediment on the unitary executive theory or not.

I mean, I will say right just because no one's ever adopted this interpretation, it's plausible the court could go along with this interpretation. Be like, look, policymaking means involvement in any aspect of the policymaking process and the phrase includes policy determining. And in order to distinguish those two phrases, we have to give policymaking a broader breadth, right? I think that renders the phrase policy determining probably redundant and superfluous, but perhaps a court goes along with it, right?

Challenge two, right? Why is this illegal, part two. During the Biden administration. Okay. So the Biden administration, right? Schedule F first gets introduced at the end of the Trump administration. The Biden administration knows that the next Republican administration is going to try to do the same thing. And so they want to prevent it.

So how do they prevent it? Well, OPM issues a set of regulations that really do two things. Okay. First, they say policymaking employees, that phrase means non career political appointments. So they adopt the traditional meaning of that phrase to try and narrow the scope so that if Schedule F were to be implemented again, then they can't kind of take all the career officials who just have ever glanced at a policy document and put them in Schedule F. So that's part one.

Part two says individuals involuntarily removed from the competitive service to Schedule F or any other branch of the accepted service are afforded the same protections they enjoyed while in the competitive service. So you can't just get rid of those tenure and due process requirements by involuntarily moving people to positions where you know they wouldn't have.

So this poses a problem for the Trump administration, because now you have an OPM regulation and traditionally, the Administrative Procedure Act governs how we have to handle the repeal of regulations. And you have to go through the same process you have to go through to promulgate regulations. That means you have to go through notice and comment. So you have to submit to the Federal Register a proposed rule. You have to collect a bunch of comments from the public that say, is this a good idea, a bad idea? You have to respond to all those comments. And then you have to issue the final rule. Okay. It's a long and burdensome process.

The Trump administration doesn't seem to think that's what it has to do because the executive order just says the Biden era regulations are quote, inoperative and without effect and it orders the repeal of them. And the president can't just say regulations are inoperative and without effect. So there's clearly, in my mind, a challenge under the Administrative Procedure Act here.

Alan Rozenshtein: And who brings that challenge? Presumably someone who has been reclassified as a Schedule F-er?

Nick Bednar: Presumably, right? Yeah, I, I think someone who's been reclassified, I suspect there'll be a class action brought by one of the unions. That's often how a lot of this personnel policy gets challenged is like one of the unions sets a class and just, you know, goes after it. But yeah, I think it's most likely to be people who are reclassified in these positions or removed.

Alan Rozenshtein: Okay so obviously we will have you back on in audio and video format when the inevitable litigation strikes.

Nick Bednar: I will say, people have sued.

Alan Rozenshtein: You mean, already?

Nick Bednar: Yeah, yeah.

Alan Rozenshtein: Okay so we will obviously track that. There, we could talk more about Schedule F, but there's actually a bunch more stuff in this, in this EO that I want to talk about and I want to move to the next thing.

I can't believe we have to spend the next four years actually saying this with a straight face: DOGE. So we're colleagues, you're three doors down the hall from me. And I distinctly remember walking over to your office, You know, while, you know, after I'd asked you to write this, this piece for, for Lawfare, and I saw you there with this, like, stack of executive orders printed on your desk, and your, your head in your hands, I think, I think vaguely groaning. And I asked you what was going on, and you said, I'm trying to figure out DOGE, and I cannot figure this out.

Well, you figured it out, so congratulations. What is happening here?

Nick Bednar: Oh, okay, so, like, let, let me add a slight caveat to there. I have a theory about what's happening, and I don't know that everyone agrees with my theory of what's happening, but I have pieced it together the best that I can. Okay, so for those of you who, like, are not following this whole odyssey of DOGE—

Alan Rozenshtein: You are blessed and you should continue.

Nick Bednar: Yeah, so DOGE; one, like, let me first say, what is this name? So DOGE is an acronym, allegedly, for Department of Government Efficiency. What you need to know, and what I have realized a lot of legal scholars have not figured out, but maybe I am just of a certain generation, DOGE is also a meme. It is a meme of a Shiba Inu.

Alan Rozenshtein: A very cute Shiba Inu.

Nick Bednar: Yeah, it's very cute. It looks very surprised. It is also a cryptocurrency based on the meme that Elon Musk touted for a very long time.

Alan Rozenshtein: Purely for fun, for the ‘lolz’, as the kids say. This is maybe, honestly, DOGE might be the greatest backronym in the history of the U.S. government, probably.

Nick Bednar: And like, just to like, make it clear that this is not some sort of fluke, that like, oh, DOGE just happened to be like, it's related. They put the DOGE website online, like the doge.gov website, and put a picture of a Shiba Inu, like it's a cartoon drawing of this cute dog. So that's what this is. It started as a meme.

And originally it had Vivek Ramaswamy and Elon Musk leading it. They published this long op-ed in the Wall Street Journal saying we're gonna fire every civil servant to reduce the federal government by $2 trillion. I'd like to point out it wouldn't reduce the deficit of the government by $2 trillion. We don't pay that much in salaries every year.

Alan Rozenshtein: Yeah, if you want to reduce 2 trillion, you have to go after entitlements and the military, which is just a totally separate conversation and something Donald Trump will never, ever, ever do.

Nick Bednar: Exactly. You know, some of the other things they were going to do is like, we're going to end telework. They have this like, bunch of things they're going to do for federal personnel policy.

Okay, so there are a couple different orders that matter for understanding DOGE here. I think most people have been focused on one of the orders, which is the creation of DOGE; I think you actually have to look at the other orders to understand what DOGE is actually doing.

So let's start with the creation of DOGE and what DOGE is, and then I'll talk about what DOGE is supposed to do.

So prior to the inauguration, everyone thought DOGE was going to be a federal advisory committee. So there's this act, the Federal Advisory Committees Act, that regulates the use of advisory committees by the president. It requires public meetings. It has a bunch of transparency requirements. It also requires viewpoint balancing. So an advisory committee has to have a you know, balanced group of commissioners who informed the president about this issue. So it actually has like a lot of really nice, good government requirements.

And everyone was basically writing op-eds saying, DOGE, meet FACA, which is the Federal Advisory Committee Act. And regardless of what the president does, it's going to be subject to FACA. Even before we get this order, three groups sued under the Federal Advisory Committee Act to try and invalidate DOGE as a violation of FACA.

But that's not what the Trump administration did. Instead, they did this really interesting thing, which is they just renamed an existing agency. So the agency they renamed was the United States Digital Service. It's a bureau office within the Executive Office of the President. It was originally created by executive action by President Obama and it was designed to modernize federal technology within agencies and how they use it.

And so all they did to create DOGE was they just renamed this agency to the DOGE service, and that gets out of a lot of the FACA requirements because now it's just an entity within the Executive Office of the President. They also do some like other weird things here. They create like a temporary 18-month office within the United States DOGE Service and that temporary agency is supposed to carry out what is called the DOGE Agenda. And I think that is where Musk is going. But that's like the creation of this agency.

I think where people might be getting tripped up is on what the DOGE Agenda is. Because I've seen a lot that focuses on like one portion of this executive order that talks about like, USDS—the Digital Service, now the DOGE service—continuing like its implementation of technology.

Alan Rozenshtein: We're going to upgrade fax machines and get Windows XP installed on all the computers.

Nick Bednar: Yeah. So like, I think a lot of people are tripped up because they're like, okay, so all DOGE is—all Elon Musk can do is modernize computers. Which would be a great thing to be clear. Like the IRS is operating on computers that are decades old and should be upgraded. Like there's a lot of free points to whoever chooses to modernize technology in the federal government. The federal government is single handedly keeping data deck companies afloat.

But if you read the executive orders, it's very clear that's not all DOGE is tasked with doing, right. There is a broader executive order that requires every agency to create a federal hiring plan. DOGE is to review those. Or like every agency is supposed to like appoint, a DOGE working group of four people. It has to include like a manager, an engineer, an attorney, I think a human resource officer—I don't quite remember what the four are. But it's very clear that DOGE's mission is much more to do with personnel policy than technology policy.

So I think they are purposely keeping that modernization of computing stuff in there, because that is what the agency was initially tasked with, but I think the mission is expanded if we look at the other orders.

Alan Rozenshtein: In terms of legality of all of this, am I right to say we'll just have to see that, like, you can set up, you can rename the Digital Service and change its mandate; the real question is, okay, what actual things does the DOGE do substantively, and are those things okay?

Nick Bednar: I think that's right. You know, the president definitely has authority to set up temporary agencies. There's broad hiring authority for those temporary agencies.

I haven't seen anything that immediately raises red flags in terms of legality. That doesn't mean there isn't anything there, but I think we're going to have to wait for implementation.

Alan Rozenshtein: Okay, I, I want to talk about sort of the broader–some broader issues. But before I do that, I want to hit, if you wouldn't mind kind of rapid firing through sort of a couple other things you mentioned, just kind of very briefly describe sort of what's going on there and if there's sort of any kind of obvious legal or bureaucratic red flags.

And so you have remote, remote work; we're all going back to the office. You have–and I think this has been the most public thing cause you're seeing a really, really quite heavy handed purge of anything DEI related throughout the government and then a hiring freeze—which I don't know about you, Nick, but it certainly has affected some of my students quite directly.

Nick Bednar: Yeah. So let me rapid fire through all of them.

We're going back. I want to make two points with this. So like, first clarify, there's an executive order that says agencies should strive to bring all of their workforce back. For some reason, the White House posted this thing on its website that said only 6 percent of federal employees work in the office. That's nowhere near true. I don't know where that statistic comes from.

Only about half of federal employees are even telework eligible. Most federal employees are required to be in the office. 60 percent of the work hours spent by telework eligible employees are still in the office. So this isn't as big of a problem as the administration thinks it is, I don't think. The Biden administration also tried to tackle it. Gives broad authority to exempt positions from this. So I don't think it's going to be a lot of change.

The big hiccup here for the Trump administration is the Biden administration negotiated with a lot of labor unions to include telework promises. And so it is looking like they are going to end up violating a lot of those collective bargaining agreements. I mean, theoretically the agency heads could do the right thing and exempt all those employees. I suspect some will do that and there will be at least one agency that doesn't and that's going to set up review of the collective bargaining. Okay. So that's I think all I'm going to say about remote work.

The DEI stuff. So the Trump administration, I mean, this has a much broader impact than just the federal workforce. I'm just going to hit the federal workforce stuff, but there's a lot out there on what the Trump administration is doing with DEI and you know, setting a federal definition of gender and sex–

Alan Rozenshtein: And repealing the famous LBJ affirmative action EO and all this federal contractor stuff. Yeah, this is a much broader conversation, but let's just focus on the, within the agencies.

Nick Bednar: Yeah, so, the big thing is the EO tells, tells agencies to wind down all their DEI programs and gives a pretty hard stop right away.

What happened almost immediately after this order was issued is every agency was instructed by OPM to basically dismiss all of their employees in these DEI offices and work on terminating their employment. So that's what's going on there. We saw that almost immediately.

I got a lot of reports right away from civil servants that a lot of people had been laid off effective immediately, or, you know, placed on leave pending termination was a probably the more legally correct way to do it. But I've heard mixed reports as to how this went down.

Alan Rozenshtein: And to be clear, like this is a, this is a message that they're sending because like they could have reassigned people and they appear to be just like lopping heads off instead.

Nick Bednar: Absolutely, and I mean, a great example of this is—so the rear admiral of the Coast Guard, like the head of the Coast Guard, was the first woman ever appointed to the role and was fired explicitly for engaging too much with DEI.

And so like, it's a pretty clear messaging thing about the administration's priorities and, you know, this happens a lot with the federal workforce where the president uses personnel policy as a signaling device about their other priorities. During the Obama administration, Obama issued an executive order requiring all federal employees to wear seat belts.

Alan Rozenshtein: Presumably in government vehicles, not like at home.

Nick Bednar: I think it's in government—I would have to reread the order. It's a long order. It is much longer than you would think for an order that's just like, please wear your seat belt. But you know, this sort of signaling is pretty common with federal personnel policy.

So I think we have a, like, we have to wait to see what happens with a lot of that. I, I don't—like the federal personnel stuff's really important there, but there's also just like so much of the DEI stuff. We're going to see all sorts of challenges brought with respect to a lot of that.

The final thing we were going to talk about right in rapid succession, hiring freeze. Lots of presidents use hiring freezes, okay? This isn't new. Carter had three of them. Reagan had one. The Bush administration had a soft one. The Obama administration froze hiring of certain senior executive service employees, okay? The Trump administration, start of its first administration, also had a hiring freeze. The memo's almost verbatim the same memo, okay? So hiring freezes themselves, not that common.

I think where this is a big deal is they also revoked a lot of job offers. And that's upsetting a lot of people. So, if you are not an attorney, you probably are not aware of the Department of Justice Honors Program. The Honors Program is the, is a primary way that law students find their way into federal government service.

Alan Rozenshtein: It is, I should say, how I started my career, and was like absolutely central to my entire life since then.

Nick Bednar: Yeah, and like, it's a very prestigious position, like, I think. And, you know, a lot of really talented law students end up in this program. And like, you have to work hard, I think—I won't say how hard Alan worked in law school, to end up in this program. Okay. And they revoked all the offers for the honors program. I'm also hearing they revoked all the unpaid summer internships, which is just baffling in some ways.

So the question is, is that legal? And the answer is yes. There's pretty strong precedent that you do not become an employee who enjoys civil service protections until you actually start your job. That is, you are in the office, like, implementing federal programs or, you know, engaged with federal work. The mere fact that you are hired for a future start date is not enough to afford you those guarantees.

The reason we know this is that the same thing happened in the Reagan administration. Now, in the Reagan administration, the Department of Justice sought to exempt its Honors Program people. Some of them ultimately got hired, some did not. We're not seeing that here. If you want, like, a case study of everything that's going on, just do a search for the Department of Justice and, like, federal employees.

There's a lot that we don't have time to talk about that is like reverberating through DOJ. And it is just a case study in the havoc that is currently going on among federal employees.

Alan Rozenshtein: Okay. So we've now discussed the sort of the substance of all of these executive orders. And again, to be clear, right, there's a lot more of them, and I think for folks who want a deeper dive, like we've actually only sort of scratched the surface. Nick's piece on this is really excellent and goes into much more detail.

I want to talk about implementation and sort of constitutional issues and all this sort of stuff. So let me start with an implementation question. How much do we expect any of this actually be instantiated immediately? And how much of this do we expect to be immediately totally snarled up in litigation for months, if not years, right?

Like presumably some stuff is like, the president can order the CIA to like stop having a pride month for like DEI reasons, presumably that the president can do and that's like been done. Is most of this like that or is a lot of this just gonna be immediately like, is gonna run straight into like the federal court, federal court's own bureaucracy?

Nick Bednar: Yeah. I'm gonna be honest. I don't know. Traditionally what I would tell you is like someone's gonna file for an injunction. An injunction will be granted, all this will be paused. In year three, maybe the policy gets implemented, right?

This is kind of how litigation against the federal government often works, right? You saw this in the Trump administration with things like the travel ban, right? Things that were like supposed to be implemented on day one took years, or, you know, were completely struck down by the courts for various reasons. So the answer is, I don't really know.

And it's kind of complicated for two reasons. One, there's already litigation ongoing, right? So people are already suing. We knew a lot of this was going to happen. Everyone knew schedule F was going to be reinstated day one. They said schedule F was going to be reinstated day one. People had already written the briefs and the complaints. Right? They're already filed.

Same thing with DOGE. I think the challenges that have been filed against DOGE are going to need amended complaints. If they're going to be sustained, like they're under the wrong statute at this point, I think. So some of this is already being challenged.

But there's some of it that was implemented right away, right? The firing of the DEI officers, the revocations of the job officers, the hiring freeze. Some of this isn't going to have strong legal grounds and those will probably be implemented almost immediately.

The other thing is like an unintended consequence of all of this, which is it might not matter if any of it's legal or if it gets tied up, people will leave anyway. So there's like pretty strong research in political science, Mark Richardson has a wonderful paper on this, that says, when you politicize the federal workforce, it encourages people to leave sooner. And I know people who are considering leaving. I know people who have left.

And so to some degree, right, maybe it's not legal. I don't know. I have a hard time predicting what the courts are going to do anymore. I was wrong about Chevron, and I could be very well wrong about a lot of this, right? It might not matter because people might just leave, and the Trump administration might get what it wants anyway, which is to just diminish the federal workforce until it's ineffective.

Alan Rozenshtein: And, and destroying is easier than building, right? Like what, what can take literal generations of hiring and training and acculturation and norms and institutional knowledge can be destroyed—if you're willing to bring a big enough wrecking ball in a year or two.

Nick Bednar: So, if I can riff on that for a second, like, two things here. One, I don't know very many people who are interested in working for the federal government right now. There are some! Like, to be very clear, I do know some people who are actively applying for positions in the federal government, and they're very excited to go work for the Trump administration.

But the, like the traditional kind of career employees, like people I know who would go work for the federal government for the duration of their career, I'm not seeing them file applications. I see a lot of law students who are very hesitant about going to apply for attorney positions in the federal government, where traditionally it didn't really matter who was president. You kind of just thought like, I'm going to go work as a attorney in the federal government. I want to be in a U.S. Attorney's office. I want to be in DOJ. And yeah, sure. There's a Republican president today. I'd prefer a Democratic president or there's a Democratic president today. And I'd prefer, prefer a Republican president, but there'll be another one tomorrow, right?

And federal employees by and large are driven by their mission, not by who's president. That's why the average tenure of a federal employee is 12 years, okay? It spans multiple presidential administrations. Okay. So, one thing is like, I don't think people want to apply, and so as soon as it's gone, right, it's gone.

The second thing is, we have to talk about what the implication for this is for implementation of federal programs. Like, I think part of the reason the civil service often gets neglected by scholars is because we don't draw the line between how well programs get implemented depends on how strong, expert, and experienced the federal workforce is.

Alan Rozenshtein: Yeah, everyone needs to go immediately reread Michael Lewis's “Fifth Risk,” right, which is this book he published, I think, during the first Trump administration. If you haven't, I see, I see Nick—oh, yes, excellent. This is great for, for our YouTube for our YouTube audience. Nick had it literally next to him.

Yeah, and this is, you know, Michael Lewis, the famous journalist here with this amazing book. I think during the first Trump administration, or maybe I don't remember what it was, definitely after, you know, after Trump was elected the first time, just going through and visiting all these, like, incredibly competent, uber niche nerds in just like the weirdest bowels of the federal government and being like, you have no idea who this person is. But he makes sure that like, when you eat corn, you don't get poisoned. And like, it'd be a real problem if he left.

Nick Bednar: Right? I mean, one example, just to like give the most mundane possible example of government work, right? Like, most people have some sort of weather app on their phone. Right? And they think, oh, Google or Apple has their own meteorologists who are figuring this stuff out. That's not true.

Alan Rozenshtein: The biggest scam the Weather Channel ever, ever did was convincing Americans that it's not just free NOAA data that they then resell.

Nick Bednar: Right. Like, all weather prediction and all weather data comes from the federal government. And that's a problem if those people leave. Like, it's a problem not only for, you know, the people who left, they don't have jobs anymore—I'm sure they will find jobs. But it's a problem for farmers, who depend on those sort of predictions to know when to plant. It's a problem for me, who has to drive to the office, often in blizzard conditions, to know whether there's a blizzard outside. You know, it's a problem for people in New Orleans, who want to know if they need to buy a heavier winter coat.

So, these people do a lot of work, and there's a bunch of other work in political science that says, we, the public, don't appreciate that work. It's kind of unseen. So Susan Mettler has this book that's phenomenal called “The Submerged State.” It talks about how people love government programs. Like if you ask them about the like thing broadly, like roads, they love it. And then if you ask whether the government should be involved in it, they're like, absolutely not, that's a terrible idea.

Dan Walters and Gabriel Scheffler have an article riffing on this from the administrative law side that came out recently in I think Wisconsin Law Review, but the point is people don't appreciate what civil servants do.

The other point is the Trump administration doesn't appreciate what civil servants do and it doesn't understand that what it's about to do is going to hurt its ability to implement its own agenda. And maybe it doesn't care. Maybe it's decided this is fine, but two examples of this.

Number one, the Trump administration wants to deregulate. Although the Trump administration seems to think that they can just issue executive orders that say certain regulations are inoperative, they cannot do that. And the federal courts last time constantly swatted the Trump administration down for failing to follow the Administrative Procedure Act. There is no reason to think they're not going to continue to swat stuff down. I have a paper that is forthcoming in Stanford Law Review that shows agencies that lack that workforce to do that work take a lot longer to repeal regulations or implement regulations, and they don't do so very well.

Point two, there's a hiring freeze, but not for every agency. There is another executive order that says that the Department of Homeland Security needs to hire a bunch of border protection officers. We've known this for a long time. It has been a long issue. Okay. The Biden administration got authorization to hire more CBP officers. The first Trump administration got the same authorization.

We've known for a long time we need more CBP officers, or at least people perceive we need more CBP officers. They're not coming. And the applications are down. The retention is down and the Government Accountability Office has tried to figure out why it's a morale problem.

And if your entire agenda is I'm going to attack civil servants, people aren't very interested in applying for the government in almost any agency. And there's no indication that they're going to fix the morale problem in Customs and Border Protection. And they're certainly not helping by attacking government workers broadly.

And so I think the Trump administration got in week one, what it wanted, which was to frustrate the federal workforce, and I'm not sure it's going to get what it wants in years two, three, and four, but we'll see.

Alan Rozenshtein: I want to close by sort of getting at, I think, maybe what was the most provocative point in your piece, and one that I do agree with, and I think recent events, and it's crazy to talk about recent events, given that this has all been a matter of days, but history is moving quickly, has borne out, and this is the kind of higher stakes, read between the lines constitutional game that the Trump administration is playing.

So just describe the sort of constitutional rhetoric in these executive orders, and what do you think is happening here? And, and if you want to also bring in—obviously this happened after you published your piece, but I think it's extremely relevant, which was Trump firing some, I think 17 or 18 inspectors general in violation of the congressionally mandated 30 day waiting period, which I suspect is, is a similar constitutional play to the one that you sort of hinted at in your in your piece, but riff on that.

Nick Bednar: Okay, so a fundamental contextual point that I think you have to understand to understand where I'm going, which is what is the unitary executive theory? So unitary executive theory is a theory of executive power that is founded in Article 2 of the Constitution.

I won't get into like the nuances of which provisions mean what or exactly what powers the president has, but the Constitution broadly says that the executive power is vested in the president and the president has to take care to ensure that the laws are faithfully executed. And from that, a lot of scholars have drawn the proposition that the president has significant authority to manage subordinates. Because if the president is the executive power, all executive power must be derived from the president himself, or herself, and therefore the president has to be able to control the subordinates. Okay, that's like the broad principle.

So, I've already talked about how a lot of these orders seem to violate statutes or regulations or other things. There's a loophole here, right? Which is, if for some reason, the entire civil service is unconstitutional, then it doesn't really matter.

Alan Rozenshtein: And when you say civil service, you mean the, the limitations on the president's power to do things to the civil service.

Nick Bednar: Correct. Right. Right. If this tenure system that we have built and the due process protections that are afforded to federal employees are unconstitutional, then a lot of this is moot. Right? It doesn't matter if the president violates the Civil Service Reform Act all that much, if huge portions of it are unconstitutional anyway.

And my opinion is that they are purposely doing a lot of this to invite that challenge. So if you read a couple of the orders, and I'll talk about a lot of the language, you see the like language that evokes unitary executive theory throughout.

So the order reinstating Schedule F begins: Article 2 of the United States Constitution vests the president with the sole and exclusive authority over the executive branch, including the authority to manage the federal workforce to ensure effective execution of federal law.

There is a separate order that we didn't really talk about because it's like more wonky. If you want to read my piece, I get into this really wonky order, but it's about, it makes, or it seems to make certain folks removable at will, a different group than the Schedule F folks. And it really pounds on executive, unitary executive theory.

So it begins by quoting this case, Seila Law v. Consumer Financial Protection Bureau. That case—and where a lot of this litigation and this like theory have been involved—concerned the four cause removal protections of the director of the Consumer Financial Protection Bureau.

So there are a bunch of independent agencies in government that have these provisions that say the heads of the agencies or their commissioners cannot be fired except for cause. And the Seila Law case struck that down with respect to the head of the Consumer Financial Protection Bureau. There's some other cases that have done similar. But Seila Law stated in the executive order quoted, the executive power, all of it, is vested in a president who must take care that the laws be faithfully executed. Because senior executive service officials wield significant governmental authority, they must serve at the pleasure of the president.

So this seems to be the play. They think there's a constitutional hook to all of this, and—

Alan Rozenshtein: And a receptive Supreme Court, which they might be right about.

Nick Bednar: Right, and they think there's a receptive Supreme Court, and there's, you know, it's unclear how far the Supreme Court will take this, and I don't, I'm, I'm not gonna make a prediction as to, like, who's on what side here.

I will say this: we do know that there are lower court judges who are in favor of this theory. So Judge Ho on the Fifth Circuit has a concurrence from last year, stating that it's time for us to reconsider the constitutionality of the civil service. That's not really a neutral point. If you read the concurrence, it's pretty clear what he thinks the answer to that question is.

Most people don't raise that question unless they have a fairly firm understanding of—

Alan Rozenshtein: You don't think he's just asking questions, just a guy asking questions?

Nick Bednar: You know, sometimes judges do, right? They say like, we don't need to consider this, but people should ponder it. And I don't think—I think Judge Ho has done all the pondering he's going to do.

Another piece of evidence that this is going on. So four officials in the Executive Office of Immigration Review—which are the immigration courts, they're actually part of the Department of Justice—they were fired in the first two days. One of them received an email, and they were all career officials, who could not simply be fired. Okay, it's pretty clear to me that the firing was illegal.

The justification listed for one of the officials—I don't know about the other three—was Title II of the U.S. Constitution, which I would like to point out is not a thing.

Alan Rozenshtein: Wait, wait, wait, I'm sorry. Title II of the U.S. Constitution. That's good.

Nick Bednar: That's correct.

Alan Rozenshtein: That's good. That's, that's almost, that's almost as good as the recent White House press release imposing sanctions on Columbia with a U, which is the university, not the country. But this is—I mean, this would be funny if it was not quite so horrifying.

Nick Bednar: Right. So, if they don't know which section of the Constitution they think they're operating under, they probably don't know all the obscure text of the civil service laws, and the answer is, I don't think they care.

I think they really want the constitutional hook, and they view this as the most opportune moment, given the composition of the Supreme Court, given the composition of the lower courts, to really press unitary executive theory and argue that a large swath of civil service laws that have existed are unconstitutional.

And the consequence of that would be—I mean it would depend on what exactly the court does. But it's very clear what the Trump administration wants to be able to do is hire and fire people at will and that would result in significant politicization. And we would effectively be back to where we were before the Pendleton Act.

#### Those concerns will hollow state expertise, rendering agencies broadly incapable of effective policy implementation.

Bednar 25 [Nick Bednar, Associate Professor of Law at the University of Minnesota Law School, PhD political science, Vanderbilt University, JD University of Minnesota Law School, “The Return of Schedule F,” Lawfare, 5-19-2025, https://www.lawfaremedia.org/article/the-return-of-schedule-f]

One of the most anticipated actions of the Trump administration was the return of Schedule F (now Schedule Policy/Career). Schedule Policy/Career reclassifies positions of a “confidential, policy-determining, policy-making, or policy-advocating” (often shortened to “policy-influencing” positions) into the excepted service, which is a category of civil service positions that are traditionally exempt from competitive examination and, therefore, easier to hire. Yet the Trump administration does not intend to use Schedule Policy/Career to more easily hire individuals to policy-influencing positions. Rather, individuals in Schedule Policy/Career will be easier to remove, because these individuals will not enjoy the tenure protections ordinarily afforded to federal employees and will not have a right to appeal their removal to the Merit Systems Protection Board.

Although the Biden administration promulgated regulations designed to hinder future presidents from reinstating Schedule F, President Trump declared that the Biden administration’s regulations were “hereby revoked” and unenforceable, likely in violation of the Administrative Procedure Act. He further ordered the Office of Personnel Management (OPM) to propose rules reinstating Schedule Policy/Career on his first day in office. OPM published its proposed rule in the Federal Register on April 23. Comments on OPM’s proposed rule are due May 23.

Schedule Policy/Career threatens to upend the merit principles that have governed personnel policy since the Civil Service Reform Act of 1978. The implementation of Schedule Policy/Career will politicize the federal workforce and erode the capacity of federal agencies to perform the tasks delegated to them by Congress and the president. The Trump administration’s attack on the civil service will continue to frustrate the basic government services that protect American lives.

A Brief History of Schedule F and Schedule Policy/Career

In October 2020, Trump established Schedule F with Executive Order 13957. The order instructed agencies to reclassify policy-influencing positions into the excepted service. The order described five characteristics indicative of policy-influencing positions:

1. Substantive participation in the advocacy for or development or formulation of policy;

2. Supervision of attorneys;

3. Substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

4. Viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege;

5. Conducting, on the agency’s behalf, collective bargaining negotiations.

OPM would approve agencies’ lists of positions that should be transferred to Schedule F. Yet the first effort to implement Schedule F never got very far. By the end of the first Trump administration, only two agencies had submitted plans to OPM, and no agency had actually placed any positions into Schedule F.

Following his inauguration, President Biden repealed Executive Order 13957. Subsequently, OPM finalized a rule narrowly defining policy-influence positions to include only non-career political appointees. Moreover, OPM’s final rule preserved tenure protections for employees involuntarily reclassified into the excepted service. Left in place, this rule would have prevented future presidents from using something like Schedule F to reorganize the federal workforce.

On his first day in office, President Trump reinstated Schedule F with Executive Order 14171. The order made several notable changes. First, it renamed Schedule F as Schedule Policy/Career, emphasizing that the new schedule would apply to career employees—not political appointees. Second, the order expanded the characteristics indicative of policy-influencing positions to include “directly or indirectly supervising employees in Schedule Policy/Career positions” and “duties that the Director otherwise indicates may be appropriate for inclusion in Schedule Policy/Career.” Third, the order transferred the authority to the president—rather than OPM—to classify positions as policy-influencing positions. Fourth, the order added language that, although employees need not support the president’s current agenda, they must nevertheless “faithfully implement administration policies to the best of their ability.” According to the order, “[f]ailure to do so is grounds for dismissal.” In sum, the order created a new classification of employees expected to loyally implement the president’s agenda and made it easier to remove employees who failed to advance that agenda.

On April 23, OPM proposed a rule implementing Schedule Policy/Career. The proposed rule offers a lengthy rationale for Schedule Policy/Career, drawing heavily on theories of unitary executive theory, empirical research, and historical practice. The new rule offers insights into what federal employees, scholars, and other commentators should expect from Schedule Policy/Career.

The Statutory Framework for Schedule/Policy Career

The Civil Service Reform Act of 1978 adopted nine merit principles to guide the development and implementation of personnel policy throughout the executive branch. The principles embrace merit-based hiring, specifying that selection and promotion of employees “should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.” Likewise, merit and accountability guide removal of employees from the civil service. The merit principles state that employees should be “protected against arbitrary action, personal favoritism, or coercion for partisan political purposes,” and the act further protects employees against reprisal for political affiliation and whistleblowing. It is unclear how Schedule Policy/Career furthers these merit principles.

What is the statutory basis for Schedule Policy/Career? Schedule Policy/Career reclassifies certain employees to take advantage of several exceptions within the civil service laws. By default, positions in the federal workforce are placed in the competitive service. Agencies must fill positions in the competitive service through competitive examination. Yet the president may except positions from the competitive service “as nearly as good conditions of good administration warrant.” Positions excepted by the president are classified in the excepted service. Consequently, presidents have the authority to make hiring for certain positions easier by removing the constraints imposed by competitive examination.

Although Schedule Policy/Career places positions in the excepted service, it does not appear to take advantage of the exceptions to the hiring procedures. OPM’s proposed rule envisions that positions in Schedule Policy/Career “will be filled using competitive hiring procedures.” The regulatory text says, “Agencies shall make appointments to positions in Schedule Policy/Career of the excepted service in the same manner as to positions in the competitive service, unless such positions would, but for their placement in Schedule Policy/Career, be listed in another excepted service schedule.” Accordingly, the regulations require agencies to fill these positions using the same procedures (often competitive examination) they would have used if the position was not reclassified into Schedule Policy/Career. Likewise, individuals appointed to Schedule Policy/Career will obtain competitive status after one year of service, meaning they can transfer to positions that would otherwise require competitive examination. On its face, Schedule Policy/Career has less of an influence on the hiring for these positions. (Practically, however, Schedule Policy/Career will discourage individuals from pursuing a career in the federal government. More on this below.)

The greatest risk posed by Schedule Policy/Career comes from the ability to remove federal employees without due process. Ordinarily, employees in both the competitive and excepted services enjoy tenure protections and can be removed only for “such cause as will promote the efficiency of the service.” In many instances, employees removed from the civil service may appeal the agency’s personnel action to the Merit Systems Protection Board and, eventually, the federal courts.

Schedule Policy/Career, however, relies on a clever statutory-interpretation argument. The civil service laws exempt positions of a “confidential, policy-determining, policy-making, or policy-advocating” character from its protections. For example, these employees are not protected against prohibited personnel practices (such as appointment and removal based on partisan affiliation) and are exempted from “for cause” protections enjoyed by other employees. Consequently, individuals occupying positions in Schedule Policy/Career will be removable at will and not entitled to any appeal before the Merit Systems Protection Board. These employees are wholly unprotected from political reprisal. Although OPM’s proposed rule says that employees in Schedule Policy/Career “are not required to personally or politically support the current President or the policies of the current administration,” this statement is meaningless without any mechanism for employees to challenge their removal.

The Biden administration’s rule sought to protect against the reclassification of existing employees by promulgating regulations that would afford tenure protections to employees involuntarily transferred to the excepted service. OPM’s rule removes those protections. Consequently, employees in positions transferred to Schedule Policy/Career will lose the tenure protections they enjoyed in either the competitive service or other schedules of the excepted service.

While much of the attention on Schedule Policy/Career has focused on its effects of removal, it also affects the benefits afforded to employees in these positions. By statute, employees in policy-influencing positions may not receive certain benefits, such as recruitment bonuses, retention bonuses, or student loan repayment. For example, agencies may agree to repay “any student loan” in order to “recruit or retain highly qualified personnel.” In fiscal year 2013, agencies made student loan payments for over 13,000 employees, totaling over $130 million in benefits. Yet the statute specifies that “[a]n employee shall be ineligible for benefits under this section if the employee occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.” (Individuals in Schedule Policy/Career would likely still be able to participate in Public Student Loan Forgiveness, which is the most common way that public servants receive student loan forgiveness.) By law, policy-influencing positions do not enjoy the stability and benefits that attract individuals to public service, making it harder to hire positions in Schedule Policy/Career.

The president undoubtedly has the authority to create some version of Schedule Policy/Career. But whether Schedule Policy/Career poses a new, existential threat to the civil service and the merit principles depends on the meaning of “confidential, policy-determining, policy-making, or policy-advocating.” Congress did not define this phrase in the text of the Civil Service Reform Act. Consequently, the reach of Schedule Policy/Career depends on its implementation by the president and OPM.

Defining Policy-Influencing Positions

OPM does not explicitly define “confidential, policy-determining, policy-making, or policy-advocating” in its proposed rule. Rather, the rule simply amends OPM’s regulations to specify that the president may determine which positions qualify as policy-influencing positions. Curiously, the regulations do not explicitly incorporate the characteristics identified by Executive Order 14171. An OPM memo accompanying that order clarifies that those characteristics “are guideposts; they are not determinative.” Both the president and agencies may consider additional characteristics in deciding whether to reclassify a position under Schedule Policy/Career.

The lack of a meaningful definition or criteria will likely result in inconsistent application of Schedule Policy/Career across agencies. All agencies rely on standardized occupational codes developed by OPM. The same occupation may be treated differently by different agencies. Moreover, presidents and agencies may choose to classify certain positions based on pretextual reasons, such as the perceived partisanship of the current position holders.

Experience illustrates that the threat of inconsistent application is real rather than hypothetical. Following the creation of Schedule F in 2020, agencies varied wildly in their efforts to reclassify positions. The Office of Management and Budget sought to reclassify 415 of its 610 employees, and the Federal Energy Regulatory Commission identified half of its positions as eligible for reclassification. Meanwhile, the Department of the Treasury claimed no position qualified as a policy-influencing position. The threat of inconsistent application is greater now that the president—who has no meaningful training in federal personnel policy—must approve the agency plans rather than OPM.

While OPM does not define policy-influencing position, its proposed rule explicitly rejects one possible definition. The rule adopted during the Biden administration confined “confidential, policy-determining, policy-making, or policy-advocating” to “noncareer political appointment” positions “who are responsible for furthering the goals and policies of the President and the Administration.” OPM’s latest rule rejects the idea that policy-influencing positions are limited to political appointees.

The Biden administration’s definition better comports with the legislative history of the Civil Service Reform Act and other laws enacted by Congress. For context, it is worth considering why the policy-influencing exception appears in the Civil Service Reform Act. In 1953, President Eisenhower used his authority to except positions to create a new class of low-level political appointees (known as Schedule C appointees) within the excepted service. Eisenhower’s executive order defined—and the civil service rules continue to define—Schedule C as “positions of a confidential or policy-determining character.” In passing the Civil Service Reform Act, Congress added the exception for policy-influencing positions to the statute to preserve Schedule C. The Senate Committee Report explained, “[A] new exception for positions of a confidential, policy-determining, policy-making, or policy-advocating character, is an extension of the exception for appointments confirmed by the Senate. These positions are currently placed in Schedule C (positions at GS-15 and below) or filled by Non-Career Executive Assignment (GS-16, -17, and -18).”

The policy-influencing exception was incorporated based on an understanding that a relationship exists between the employee and the incumbent president. The Senate Committee Report explains, “The concept of tenure and protection against dismissal is contrary to the confidential relationship between incumbent and supervising official, and the commitment to Administration policy objectives, required by those filling such positions.” This description of these positions envisions that policy-influencing positions would be temporary and political by their nature—not career positions as proposed by OPM’s latest rule. Likewise, the House Committee Report described these positions as “generally political appointees.” For over half a century, Congress and the president have understood “confidential, policy-determining, policy-making, or policy-advocating character” to mean political appointees who work closely with the administration and depart following the inauguration of a new president. The Trump administration’s rule and guidance departs from this long-standing interpretation.

Definitions in other statutes reflect this long-standing interpretation. Statutes related to employment in the Department of Agriculture, Department of Veterans Affairs, and NASA define “political appointee” to mean “a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.” Consistent with Congress’s original understanding in the Civil Service Reform Act, these definitions suggest that Congress has treated policy-influencing positions and political appointees as synonymous, giving credence to the Biden administration’s more restrictive definition.

OPM’s latest rule rejects the legislative history and these other definitions. In rejecting the legislative history, OPM grounds its rationale in textualism—a theory of statutory interpretation that believes that the plain meaning of the statute should guide interpretation rather than congressional purpose. OPM asserts that “legislative history is not the law” and “Congressional intent is determined by the text of the law Congress passes.” In rejecting the definitions contained in other portions of the U.S. Code, OPM states that these provisions “universally state that their definitions apply on for purposes of that particular law or section of the U.S. Code.”

Nevertheless, the guidance provided by Executive Order 13957 stretches the plain and ordinary meaning of policy-influencing. For example, the executive order seeks to reclassify positions engaged in “viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege.” Thousands of federal employees view proposed policy documents without meaningfully contributing to their development. The plain meaning of “confidential, policy-determining, policy-making, or policy-advocating character” suggests active involvement in the creation of policy—not the mere viewing of policy documents.

The implementation of Schedule F during the first Trump administration illustrates the extent to which the administration seeks to depart from the plain and ordinary meaning of policy-influencing. In its submission to OPM, the Office of Management and Budget sought to reclassify human resource specialists, administrative assistants, and information technology specialists as Schedule F positions. The plain meaning of policy-influencing position does not incorporate positions that perform clerical or administrative functions without a meaningful relationship to policymaking. Yet the lack of a definition within OPM’s proposed rule makes it difficult to know whether these positions will receive similar treatment this time.

There are reasons to believe that Trump and the agencies will again implement Schedule Policy/Career widely. OPM estimates that 50,000 positions would be moved to Schedule Policy Career but acknowledges that the president “may move a greater or smaller number of positions.” That number may be a floor—not a ceiling.

The Justifications and Effects of Schedule Policy/Career

What effects will Schedule Policy/Career have on the federal workforce? At its core, Schedule Policy/Career will politicize the federal workforce by making it easier to remove federal employees perceived as resisting the president or his agenda. The American Federation of Government Employees has described Schedule Policy/Career as a “shameless attempt to politicize the federal workforce.” Shortly after the original inception of Schedule F, Ron Sanders—the chair of the Federal Salary Council in the first Trump administration—submitted a resignation letter, explaining, “[I]t is clear that its stated purpose notwithstanding, the Executive Order is nothing more than a smokescreen for what is clearly an attempt to require the political loyalty of those who advise the President, or failing that, to enable their removal with little if any due process.”

Even if the administration does not exercise its discretion in a political manner, civil servants already perceive Schedule Policy/Career as politicizing the workforce. Comments received by OPM from self-identified civil servants illustrate this perception. One employee of the Social Security Administration described the agency’s intent to reclassify a broad swath of its employees:

As an employee of the Social Security Administration, Acting Commissioner Dudek intends to apply this Schedule Policy/Career classification to a wide swath of SSA employees whose duties are operational or technical — NOT political .... By reclassifying adjudicators, analysts, medical consultants, and support staff under Schedule Policy/Career, the agency undermines civil service protections and allows political influence over decisions that should be impartial and based solely on medical and legal criteria. This politicization risks inconsistent and legally questionable outcomes, damages morale, drives out experienced professionals, and delays critical benefits for disabled Americans.

Another civil servant expressed concern that Schedule Policy/Career would chill federal employees from offering their expert opinions and discourage other experts from entering the federal workforce. A group of federal attorneys expressed concerns that any attorney reclassified as Schedule Policy/Career would violate their duty of candor because, “[i]t is foreseeable, if not inevitable, that offering candidate advice under legal duties will sometimes be seen as intentionally subverting Presidential directives.” Another put it simply: “This whole notice is pretty cringe to be honest.”

To understand the effect of perceived politicization on the federal workforce, we must first understand the motivations of public employees. Individuals pursue careers in the federal government for several reasons. First, civil servants tend to have high levels of public service motivation, meaning they value the opportunity to formulate good public policy and serve societal interests. Second, civil servants value the job security and benefits that come with civil service protections. Third and finally, civil servants value autonomy within their positions. Individuals who are motivated by a desire to influence public policy will forgo higher salaries in the private sector for opportunities to use their expertise within the federal government.

Perceived politicization erodes the values that attract individuals to the civil service. In highly politicized agencies, employees feel pressured to serve the president rather than the public or the laws. Federal employees take an oath to “support and defend the Constitution of the United States” and “faithfully discharge the duties of the office.” Civil servants are tasked with faithfully implementing the laws enacted by Congress—not the president’s agenda. Politicization diminishes the feeling of public service that federal employees receive from their work. Moreover, employees in highly politicized agencies are more likely to express fear of political reprisal when offering expert or scientific advice that conflicts with the president’s priorities.

Heightened politicization threatens retention and chills recruitment. Civil servants who perceive politicization within their agency are more likely to exit public service. These same employees engage in fewer activities designed to build expertise, such as attending trainings or discussing policy with outside experts. My own research has shown that agencies subject to less presidential control have more expert and experienced workforces. Independent agencies like the Securities and Exchange Commission and the Nuclear Regulatory Commission have stronger workforces than cabinet agencies, such as the Department of Agriculture and the Department of Homeland Security. Schedule Policy/Career’s threat of increased politicization will erode capacity within federal agencies by encouraging employees to leave their positions and making it difficult for federal agencies to hire for these positions.

Beyond politicization, Schedule Policy/Career deprives employees of certain benefits enjoyed by other federal employees. The civil service laws have sought to entice people to enter the civil service by offering them rewards for good performance, loan repayment, and other benefits. As discussed above, agencies are prohibited from offering these benefits to individuals in policy-influencing positions. Schedule Policy/Career effectively precludes agencies from offering recruitment benefits to entice experts capable of advancing the president’s policy proposals to federal service. The absence of these benefits makes the federal government less competitive in the labor market.

The irony is that OPM justifies Schedule Policy/Career as necessary to ensure the completion of the president’s agenda. Yet, in a recent law review article, I show that the greatest predictor of the president’s ability to implement their policy agenda is the strength of the agency’s workforce—not the president’s control over the agency. Presidents have already institutionalized the presidency, establishing institutions such as the Office of Information and Regulatory Affairs to ensure that agencies remain responsive to their policy agendas. A survey of federal executives shows that the president and his proxies have a greater influence over rulemaking agendas than civil servants. Consequently, presidents rarely have difficulty advancing their policy agendas through administrative processes—even in independent agencies.

Today, the expertise and experience of an agency’s workforce plays a greater role in determining whether a president succeeds at policymaking. Using an empirical study of rulemaking across three administrations, I find that the greatest predictor of successful implementation of the president’s rulemaking agenda is capacity within the federal workforce. Structural mechanisms of control (e.g., the ability to remove political appointees) and ideological congruence between the president and civil servants play a much smaller—almost insignificant role—in ensuring the president completes the agenda. Schedule Policy/Career’s efforts to increase presidential control will likely have the unintended effect of weakening the president’s ability to pursue his preferred policies by eroding the administrative capacity needed to engage in policymaking. The marginal benefits of increasing presidential control result in diminishing returns.

OPM has used political science and public administration research to justify Schedule Policy/Career, alleging that federal employees regularly resist the president’s policy agenda. Undoubtedly, tensions between the president and the civil service can delay policymaking. Civil servants use a variety of tactics to resist policies that they disagree with and protect their preferred policies from political upheaval.

The prevalence of resistance, however, remains an open question. Interviews during the Reagan administration suggest that career employees generally “accept the authority of politically appointed officials to have the final say” in policymaking. More recent interviews found that political appointees relied on career staff for technical information and “real-time advice.” In turn, careerists recognized that their “job was not to make policy” but to identify feasible policy alternatives for appointees. There is also the risk that the president and their appointees misinterpret disagreements over economic, statistical, or scientific analysis as “resistance” rather than a meaningful effort to ensure that the agency adopts the best policy.

Despite all the discussion of resistance, presidents often succeed at implementing their policy agendas. OPM discusses alleged acts of resistance in the Environmental Protection Agency during the first Trump administration. Yet the Trump administration still managed to repeal the Clean Power Plan implemented by President Obama. The failure to adhere to the Administrative Procedure Act and efforts to sideline experienced civil servants resulted in the first Trump administration losing over 78 percent of court cases challenging its regulations. The administration will need a strong workforce if it intends to implement its deregulatory agenda and survive the inevitable challenges.

Of course, the Trump administration has not simply misunderstood the administrative consequences of implementing Schedule Policy/Career. (I am not naïve.) The Trump administration actively wants to dismantle the civil service, which it perceives as hostile to conservative policies and a waste of taxpayer dollars. Director of Office of Management and Budget Russell Vought—the architect of Trump’s management agenda—has said of federal employees, “When they wake up in the morning, we want them to not want to go to work, because they are increasingly viewed as the villains. We want their funding to be shut down …. We want to put them in trauma.” The administration has already removed thousands of federal employees using unlawful resignation programs and poorly orchestrated reductions in force. Schedule Policy/Career furthers the administration’s objective of deconstructing the administrative state. From the perspective of the Trump administration, many of my concerns are features rather than bugs. Yet it is worth challenging the pretextual reasoning offered by OPM and raising awareness among the public about these concerns.

These changes to the civil service will have a drastic impact on the services that make daily life livable. Staffing shortages at the National Weather Service have made it difficult for the agency to cover forecasting for severe weather. Reports suggest that these staffing shortages delayed tornado warnings last week, leaving 27 dead in Missouri and Kentucky. A lack of air traffic controllers has left Newark Liberty International Airport in disarray for weeks. One may think that reclassifying policy-influencing positions will have no impact on basic government services, like weather prediction and air traffic control. Yet my conversations with civil servants reveal that the administration is wielding Schedule Policy/Career as a stick to induce compliance from federal employees in all positions—not just those we might commonly think of as policy-influencing. Schedule Policy/Career—along with the Trump administration’s other personnel actions—poses a significant threat to the government services that provide safety and protection to the American people.

There are undoubtedly reforms that would improve the civil service. Long hiring times impede the ability of federal agencies to compete with the private sector. The median wage of federal employees in real dollars has remained stagnant for years. The changes offered by Schedule Policy/Career, however, will not address these problems. Presidents are authorized to except positions from the competitive service for purposes of furthering “good administration.” Schedule Policy/Career, however, threatens the administration of public policy.

#### This aggregation of opaque existential risks outweighs more specific scenarios---expertise is what contains impacts across changes in things like regulatory direction and grand strategy.

Schulman 22 [Loren DeJonge Schulman, Vice President of Research, Evaluation and Modernizing Government at the nonpartisan, nonprofit Partnership for Public Service, formerly served in senior staff roles at the National Security Council and the Department of Defense from 2005-2015, Master in Public Policy, Distinguished Fellow for International Peace and Conflict Studies, University of Minnesota, “Schedule F: An Unwelcome Resurgence,” Lawfare, 8-12-2022, https://www.lawfaremedia.org/article/schedule-f-unwelcome-resurgence]

Best-Case Scenario: Weakening the Civil Service Risk Management Role

Over 2 million career civil servants working across dozens of large and small agencies are hired under the competitive service process. More than 70 percent work in national security-oriented agencies, such as the Defense Department, the State Department, the Treasury Department, and the Energy Department. Many more work in technical, administrative, policy, and legal roles. They do work that often results in news that makes headlines—negotiating sanctions policies, advising on the legality of drone strikes overseas, maintaining relationships with allies and partners, preparing procedures and resources for future pandemic response—and a great deal more behind the scenes that may end up on a cabinet secretary’s or president’s desk for consideration.

Author Michael Lewis describes civil servants’ responsibilities in the “The Fifth Risk,” calling the U.S government the manager of “the biggest portfolio of [catastrophic] risks ever managed by a single institution in the history of the world.” Some are obvious—the threat of nuclear attacks, for example—but most are glacial and opaque, demanding a portfolio of reliable and steady risk managers who can prioritize the nation’s security without fearing for their job security.

Thousands of such “risk managers” who work in policy-adjacent roles would be implicated by a Schedule F policy that removes the civil service protections set out for them in the Civil Service Reform Act of 1978. Civil servants today are protected against possible political retaliation, coercion, or removal by presidents and political appointees. They must be hired on the basis of relative ability, knowledge, and skills, using fair evaluation metrics. And they are protected against reprisal for whistleblowing.

These rules are frequently shorthanded derisively in (false) assumptions that civil servants cannot be fired. To the contrary, there are set guidelines for when federal employees can be lawfully terminated and disciplined based on performance or misconduct. The antiquated federal hiring process faces similar—albeit fairer—criticism, but its slowness is intended to screen for those who have “a high standard of integrity and trust to promote the interests of the public” and for good reason. Overall, these critiques misunderstand that the competitive hiring process and subsequent protections are what make it possible for civil servants to perform exceptionally, particularly in high pressure, complex policy areas where the government is managing extreme risk on behalf of the country, such as national security.

By protecting them from political reprisal, these rules give civil servants in policy roles the foundation to offer advice that may be tough for presidents to hear, to execute policies with high stakes, to report illegal activity and misconduct as a part of their duties, and to trust that they and their peers owe their first fealty to protecting and defending the Constitution. They do all of this with the confidence that their integrity will be rewarded and protected.

At best, shifting policy-aligned roles to Schedule F roles would have a chilling effect on such policy experts whom we rely on for their unique expertise, candor, and integrity, potentially making them more cautious about the advice they give, the portfolios they support, the risks they take in defending the Constitution, and their willingness to call out malfeasance or bad news.

Worst-Case Scenario: Harming National Security

At its worst, Schedule F will make it possible for presidents to remove thousands of experts who make U.S. global leadership possible. By shifting protected civil servants to at-will employees, Schedule F makes it possible to fire them without the due process currently owed to civil servants. In other words, civil servants could be fired for any reason at all—for giving unwelcome advice, for prior jobs, for being the subject of unsubstantiated accusations of any type, for perceptions of partisan affiliation, or simply for being in a role the president wishes to open up for a loyalist.

Some Schedule F advocates make clear that large-scale removals are under consideration and that removal, not oversight, is their ultimate goal for Schedule F. “Fire everyone you’re allowed to fire,” one commented, according to the Axios reporting. “And [then] fire a few people you’re not supposed to, so that they have to sue you and you send the message.”

Because the policy would also allow replacement of current civil servants without a competitive process, replacements for nonpartisan civil servants could be made without regard to qualification and suitability, or based on partisan affiliation, creating a new kind of political appointee.

The potential loss of talent could be wide and extremely damaging. Axios also reported that, according to sources close to Trump, the former president intends to “go after” the national security establishment as a matter of “top priority,” including those in the intelligence community and State Department. Policy roles that could be reclassified as Schedule F could cut across many high-import areas: Russian defense strategy, Iranian nuclear programs, or Chinese regional security capabilities, among hundreds of other categories. The harm to national security of removing and replacing civil servants—whose work, as we have established, requires expertise, relationships, and clear understanding of risk—with individuals with no required qualification except loyalty to a single individual is self-evident.

But, should a future president pursue this action, beyond missing an endless list of risk portfolio managers, the United States will miss something more fundamental to its success and security: its reliability. American alliances are valuable because of the steady undercurrent of the nation’s civil servants who maintain networks, expertise, and consistency regardless of who inhabits the Oval Office. Despite its turmoil, the American political system is a strong model and international interlocutor because its civil servants serve expertly and well across presidential administrations of any political affiliation. Schedule F, by stifling or removing long-serving civil servants, would make the United States a weaker, less reliable, and less trusted partner.

Why Shouldn’t the President Get a Say?

A president’s desire to shape a policy team, and to be sure it is filled with strong performers who are closely aligned with their views, is understandable. After all, presidents are elected to implement their chosen policy agenda, and having a team around them who can work in support is critical. But presidents already can wield enormous influence over both their closest policy advisers and the most far-flung agency overseers: through the 4,000 political appointees who are named, or removed, at the pleasure of the president. The Schedule F proposal would be an enormous and unnecessary expansion of this already poorly utilized system.

Most administrations never come close to seeing all those politically appointed policy roles filled despite the tremendous access and leverage such appointments bring them. And some presidential teams still struggle to make best use of political appointee and career civil servant partnerships. Rather than adding more chaos and instability with a Schedule F policy, administrations could be maximizing the opportunity that comes with leveraging their career and political leaders together. As noted in a recent Partnership for Public Service and Boston Consulting Group report:

Career executives bring program and policy expertise from their long familiarity with their agencies which can help them manage programs better and work more effectively with external stakeholders and inside actors. Politically appointed leaders can bring energy, risk-taking and responsiveness into an agency’s decision-making process which can improve performance. When leaders are matched with missions, agendas and teams that align with their distinct approaches and perspectives, they can find success in creating a government that is more efficient, innovative and responsive to the needs of the public.

The civil service system is not perfect. The pay system has its origins in World War II. The hiring process, though well-intended, is glacial. The permeability of the system in an era that requires close understanding and collaboration across sectors is limited. But the fundamentals are powerful, and they serve as a critical ingredient to the success of the United States’ global leadership and the sustainability of its democracy.

The U.S. government is able to take on high-risk, high-cost ventures—nuclear security, pandemic response, environmental clean-up, food safety, and more—because civil servants are hired based on qualifications, not party affiliation; give advice based on data and integrity, not fear of reprisal; and owe allegiance to the Constitution, not the president. It needs to stay that way.

#### Expertise ensures Trump’s foreign policy prevents rather than escalates to nuclear war with Russia, China and middle powers.

---China war terminal impact escalation warrants are actually in Homer-Dixon on ADV2, not this card---although both cards evidence link warrants

Kimmage 25 [Michael Kimmage, Professor of History at the Catholic University of America, Visiting Fellow at the German Marshall Fund, formerly served on the Policy Planning Staff at the U.S. Department of State, where he held the Russia/Ukraine portfolio, from 2014 to 2016, PhD, MA, Harvard University, “The World Trump Wants,” Foreign Affairs, March/April 2025, https://www.foreignaffairs.com/united-states/world-trump-wants-michael-kimmage] \*[language modifications in brackets]

In this kaleidoscopic geopolitical landscape, relationships are protean and complex. Putin and Xi have built a partnership but not quite an alliance. Xi has no reason to imitate Putin’s reckless break with Europe and the United States. Despite being rivals, Russia and Turkey can at least deconflict their actions in the Middle East and in the South Caucasus. India regards China apprehensively. And although some analysts have taken to describing China, Iran, North Korea, and Russia as forming an “axis,” they are four profoundly different countries whose interests and worldviews frequently diverge.

The foreign policies of these countries emphasize history and uniqueness, the notion that charismatic leaders must heroically uphold Russian or Chinese or Indian or Turkish interests. This militates against their convergence and makes it hard for them to form stable axes. An axis requires coordination, whereas the interaction among these countries is fluid, transactional, and personality-driven. Nothing here is black and white, nothing set in stone, nothing nonnegotiable.

This milieu suits Trump perfectly. He is not overly constrained by religiously and culturally defined fault lines. He often prizes individuals over governments and personal relationships over formal alliances. Although Germany is a NATO ally of the United States and Russia a perennial adversary, Trump clashed with German Chancellor Angela Merkel in his first term and treated Putin with respect. The countries Trump wrestles with the most are those that lie within the West. Had Huntington lived to see this, he would have found it baffling.

A VISION OF WAR

In Trump’s first term, the international landscape was fairly calm. There were no major wars. Russia appeared to have been contained in Ukraine. The Middle East appeared to be entering a period of relative stability facilitated in part by the Trump administration’s Abraham Accords, a set of deals intended to enhance regional order. China appeared to be deterrable in Taiwan; it never came close to invading. And in deed if not always in word, Trump conducted himself as a typical Republican president. He increased U.S. defense commitments to Europe, welcoming two new countries into NATO. He struck no deals with Russia. He talked harshly about China, and he maneuvered for advantage in the Middle East.

But today, a major war rages in Europe, the Middle East is in disarray, and the old international system is in tatters. A confluence of factors might lead to disaster: the further erosion of rules and borders, the collision of disparate national-greatness enterprises supercharged by erratic leaders and by rapid-fire communication on social media, and the mounting desperation of medium-sized and smaller states, which resent the unchecked prerogatives of the great powers and feel imperiled by the consequences of international anarchy. A catastrophe is more likely to erupt in Ukraine than in Taiwan or the Middle East because the potential for world war and for nuclear war is greatest in Ukraine.

Even in the rules-based order, the integrity of borders has never been absolute—especially the borders of countries in Russia’s vicinity. But since the end of the Cold War, Europe and the United States have remained committed to the principle of territorial sovereignty. Their enormous investment in Ukraine honors a distinctive vision of European security: if borders can be altered by force, Europe, where borders have so often generated resentment, would descend into all-out war. Peace in Europe is possible only if borders are not easily adjustable. In his first term, Trump underscored the importance of territorial sovereignty, promising to build a “big, beautiful wall” along the U.S. border with Mexico. But in that first term, Trump did not have to contend with a major war in Europe. And it’s clear now that his belief in the sanctity of borders applies primarily to those of the United States.

China and India, meanwhile, have reservations about Russia’s war, but along with Brazil, the Philippines, and many other regional powers, they have made a far-reaching decision to retain their ties with Russia even as Putin labors away at destroying Ukraine. Ukrainian sovereignty is immaterial to these “neutral” countries, unimportant compared with the value of a stable Russia under Putin and with the value of continuing energy and arms deals.

These countries may underestimate the risks of accepting Russian revisionism, which could lead not to stability but to a wider war. The spectacle of a carved-up or defeated Ukraine would terrify Ukraine’s neighbors. Estonia, Latvia, Lithuania, and Poland are NATO members that take comfort in NATO’s Article 5 commitment to mutual defense. Yet Article 5 is underwritten by the United States—and the United States is far away. If Poland and the Baltic republics concluded that Ukraine was on the brink of a defeat that would put their own sovereignty at risk, they might elect to join the fight directly. Russia might respond by taking the war to them. A similar outcome could result from a grand bargain among Washington, western European countries, and Moscow that ends the war on Russian terms but has a radicalizing effect on Ukraine’s neighbors. Fearing Russian aggression on the one hand and the abandonment of their allies on the other, they could go on the offensive. Even if the United States stayed on the sidelines amid a Europe-wide war, France, Germany, and the United Kingdom would probably not remain neutral.

Were the war in Ukraine to widen in that way, its outcome would greatly affect the reputations of Trump and Putin. Vanity would exert itself, as it so often does in international affairs. Just as Putin cannot afford to lose a war to Ukraine, Trump cannot afford to “lose” Europe. To squander the prosperity and power projection that the United States gains from its military presence in Europe would be humiliating for any American president. The psychological incentives for escalation would be strong. And in a highly personalistic international system, especially one agitated by undisciplined digital diplomacy, such a dynamic could take hold elsewhere. It could spark hostilities between China and India, perhaps, or between Russia and Turkey.

A VISION OF PEACE

Alongside such worst-case scenarios, consider how Trump’s second term could also improve a deteriorating international situation. A combination of workman[person]like U.S. relations with Beijing and Moscow, a nimble approach to diplomacy in Washington, and a bit of strategic luck might not necessarily lead to major breakthroughs, but it could produce a better status quo. Not an end to the war in Ukraine, but a reduction in its intensity. Not a resolution of the Taiwan dilemma, but guardrails to prevent a major war in the Indo-Pacific. Not a solution to the Israeli-Palestinian conflict, but some form of U.S. detente with a weakened Iran, and the emergence of a viable government in Syria. Trump might not become an unqualified peacemaker, but he could help usher in a less war-torn world.

Under Biden and his predecessors Barack Obama and George W. Bush, Russia and China had to cope with systemic pressure from Washington. Moscow and Beijing stood outside the liberal international order in part by choice and in part because they were not democracies. Russian and Chinese leaders exaggerated this pressure, as if regime change were actual U.S. policy, but they were not wrong to detect a preference in Washington for political pluralism, civil liberties, and the separation of powers.

With Trump back in office, that pressure has dissipated. The form of the governments in Russia and China does not preoccupy Trump, whose rejection of nation building and regime change is absolute. Even though the sources of tension remain, the overall atmosphere will be less fraught, and more diplomatic exchanges may be possible. There may be more give-and-take within the Beijing-Moscow-Washington triangle, more concessions on small points, and more openness to negotiation and to confidence-building measures in zones of war and contestation.

If Trump and his team can practice it, flexible diplomacy—the deft management of constant tensions and rolling conflicts—could pay big dividends. Trump is the least Wilsonian president since Woodrow Wilson himself. He has no use for overarching structures of international cooperation such as the UN or the Organization for Security and Cooperation in Europe. Instead, he and his advisers, especially those who hail from the tech world, might approach the global stage with the mentality of a start-up, a company just formed and perhaps soon to be dissolved but able to react quickly and creatively to the conditions of the moment.

Ukraine will be an early test. Instead of pursuing a hasty peace, the Trump administration should stay focused on protecting Ukrainian sovereignty, which Putin will never accept. To allow Russia to curtail Ukraine’s sovereignty might provide a veneer of stability but could bring war in its wake. Instead of an illusory peace, Washington should help Ukraine determine the rules of engagement with Russia, and through these rules, the war could gradually be minimized. The United States would then be able to compartmentalize its relations with Russia, as it did with the Soviet Union throughout the Cold War, agreeing to disagree about Ukraine while looking for possible points of agreement on nuclear nonproliferation, arms control, climate change, pandemics, counterterrorism, the Arctic, and space exploration. The compartmentalization of conflict with Russia would serve a core U.S. interest, one that is dear to Trump: the prevention of a nuclear exchange between the United States and Russia.

A spontaneous style of diplomacy can make it easier to act on strategic luck. The revolutions in Europe in 1989 offer a good example. The dissolution of communism and the collapse of the Soviet Union have sometimes been interpreted as a masterstroke of U.S. planning. Yet the fall of the Berlin Wall that year had little to do with American strategy, and the Soviet disintegration was not something the U.S. government expected to happen: it was all accident and luck. President George H. W. Bush’s national security team was superb not at predicting or controlling events but at responding to them, not doing too much (antagonizing the Soviet Union) and not doing too little (letting a united Germany slip out of NATO). In this spirit, the Trump administration should be primed to seize the moment. To make the most of whatever opportunities come its way, it must not get bogged down in system and in structure.

But taking advantage of lucky breaks requires preparation as well as agility. In this regard, the United States has two major assets. The first is its network of alliances, which greatly magnifies Washington’s leverage and room to maneuver. The second is the American practice of economic statecraft, which expands U.S. access to markets and critical resources, attracts outside investment, and maintains the American financial system as a central node of the global economy. Protectionism and coercive economic policies have their place, but they should be subordinate to a broader, more optimistic vision of American prosperity, and one that privileges long-time allies and partners.

None of the usual descriptors of world order apply anymore: the international system is not unipolar or bipolar or multipolar. But even in a world without a stable structure, the Trump administration can still use American power, alliances, and economic statecraft to defuse tension, minimize conflict, and furnish a baseline of cooperation among countries big and small. That could serve Trump’s wish to leave the United States better off at the end of his second term than it was at the beginning.

#### It's NOT about “revisionism” NOR “polarity”---conflict’s likely to emerge from interactions with middle powers whose perceptions of hegemonic competition generate resistance to cooperation.

Sweijs et al. 23 [Tim Sweijs, director of research at the Hague Centre for Strategic Studies, senior research fellow at the Netherlands’ War Studies Research Centre, Research Affiliate at the Center for International Strategy, Technology and Policy in the Sam Nunn School of International Affairs at the Georgia Institute for Technology, PhD, MA War Studies, Msc International Relations and Philosophy, King’s College, London and the University of Amsterdam; and Michael J. **Mazarr**, senior political scientist at the RAND Corporation, PhD public policy, University of Maryland, MA security studies, Georgetown University; “Mind The Middle Powers,” War On The Rocks, 4-4-2023, https://warontherocks.com/2023/04/mind-the-middle-powers/] \*[language modifications in brackets]

Recent months have shown the challenge to the United States of a world in which middle-power activism is a feature rather than a bug in the international system. Saudi Arabia’s defiance of the Biden administration’s efforts to lower oil prices, Turkey’s extended blockade of Sweden’s NATO membership bid, Indonesia’s refusal to bar Russia’s entry to the G20 summit in Bali, and India’s continued cultivation of economic and military equipment ties with Russia all reflect the same trend. This emerging reality is amplifying the uncertainty and the clashes of regional ambitions in world politics, and molding a significant geopolitical space between the great powers.

The rising activism of middle powers can theoretically contribute to stability by providing additional sources of balancing and diplomacy. But an equally likely outcome is that the ambitions of these countries will exacerbate other rising instabilities of the international system.

Previous power transitions show that major powers are by no means doomed to trip into the Thucydides Trap during an era of fluidity. But periods of transition do inflame a whole basket of risks. The uncertainty associated with crumbling hierarchies and the militarization of foreign policies to compensate for perceived weaknesses can heighten the dangers of advertent and inadvertent escalation associated with closing windows of opportunity. These periods are also associated with the tightening of alliances and the accumulation of crises, as well as the spillover of conflicts between political, economic, and ideological domains amid declining ideological agreement between major powers.

All these systemic instabilities increase the probability of war — and they do so in large part through the dynamics unfolding among middle and smaller powers. Worrying about how power shifts drive direct conflict between great powers is not wrong but incomplete. System-shaping wars often grow out of ambitions, aggressions, and miscalculations involving other states, which eventually pull opposing great powers into major wars, crises, and proxy wars. This pattern crops up again and again: Serbia and Austria-Hungary before World War I, the division of the Korean peninsula and the Korean War, the Suez Crisis, the Kosovo War (with the infamous Pristina Airport Incident), the Syrian and Libyan civil wars (with foreign powers vying for influence), and on to the current Russia-Ukraine war (with Western support for Ukraine via money and military equipment). The assortment of “dangerous dyads” scattered over the globe — including in the Caucasus, the Middle East, South Asia, and East Asia — does not bode well for regional stability.

Focusing on great-power relationships alone therefore risks ignoring the ultimate catalysts of system-changing wars. It is also a recipe for forfeiting a significant competitive advantage in great-power competition.

Happy to Hedge

Perhaps the single geopolitical stance most characteristic of middle powers is an allergy to being recruited into a new bipolar stand-off between great powers. Middle powers display many variants of this. Some are pursuing rigid non-alignment, some want to affiliate more with the United States while still pursuing “soft balancing” vis-à-vis China, and some maintain formal alliances with the United States but take a starkly different view [opinion] of key rivalries. As political scientist Hunter Marston has recently argued, all these strategies make hedging not merely a matter of wanting to “balance” or “bandwagon” but instead a comprehensive and essential foreign policy vision.

This is not a 21st century Non-Aligned Movement, where a handful of activist developing nations try to build a coherent, anti-colonial third bloc in word politics. It is a more disaggregated mosaic motivated primarily by nationalism — a collection of self-interested, independent-minded nations, with far more power than their Cold War forebears, who accelerate the arrival of a complex and fluid global pattern of alignments, coalitions, and issue-specific accords.

Examples are legion. India and Indonesia both adhere to formal, longstanding grand strategies of non-alignment. Vietnam also has a formalized policy of non-alignment and a foreign policy that seeks “loose, non-binding and multidimensional” relations with great powers and others. One analyst notes that “[Turkey’s] new foreign policy is best understood not as a drift toward Russia or China” but as a “desire to keep a foot in each camp and to manage great-power rivalry.” Even Israel may become more determinedly independent of U.S. policy under its new hard-right government.

France and Germany, while turning strongly against Russia after the invasion of Ukraine, are carving out less confrontational positions on China. German Chancellor Olaf Scholz has offered a foreign policy vision that rejects the idea of a “new Cold War” with China, suggesting that “China’s rise does not warrant isolating Beijing or curbing cooperation.” France’s 2022 National Strategic Review states that “France, a balanced power, refuses to be locked into bloc geopolitics.”

Michael Singh of the Washington Institute for Near East Policy argues that Middle Eastern states increasingly reflect the same mindset: “A growing number of U.S. partners are seeking to avoid choosing sides altogether and to maintain relations with all the great powers at once.” Saudi Arabia may be the leading example of this increasingly multi-dimensional, multi-partner approach to balancing. Aaron David Miller contends that “[in] today’s Cold War 2.0,” Saudi Arabia will not simply “refuse to choose sides,” but most likely “move closer to Beijing and Moscow as its own interests warrant.” Karen Young adds that bin Salman “believes Riyadh has the right to work with a shifting constellation of partners” in an increasingly “malleable” world order.

These geopolitical strategies are reflected in public attitudes. A recent meta-review of public opinion data in dozens of developing countries concluded that many “have moved closer to China and Russia over the course of the last decade. As a result, China and Russia are now narrowly ahead of the United States in their popularity among developing countries.”

Taking Middle Powers Seriously

The most recent U.S. National Security Strategy envisions a world divided between two camps — the United States and most liberal democracies on one side, Russia and China and their handful of misfit devotees, such as Iran and North Korea, on the other. There is of course an important truth in that dichotomy. But the increasing self-confidence and assertiveness of middle powers suggests a more complex geopolitical map, one with a kaleidoscope of overlapping and conflicting nodes of influence, interests, and goals on dozens of issues rather than a pair of dominant blocs. This pattern is likely to be shifting rather than static, and spectral rather than binary. It will confront the United States with a dilemma-strewn basket of issue-specific shared interests, desires to collaborate, historical baggage, disagreements, and disputes with just about any middle power.

This budding reality poses two challenges to U.S. and allied statecraft. The first is managing the risks to stability from multiple sources. The second is promoting U.S. influence in a world resistant to being recruited into Team America. Some of the implications are reasonably well-appreciated: Such a context will defeat extreme strategies of either primacy or retrenchment, to avoid overextension and power vacuums that rivals could fill. The United States should not count on strong-willed middle powers for more than they are willing to provide, especially in military terms. Washington should focus on establishing a few clear norms of shared behavior and enforcing them credibly. And it should remember that most middle powers consider themselves neither allies nor “faithful” friends: Most will expect U.S. administrations to push them on selected issues, and Washington will have to engage in a competition of coercion from time to time with Russia and/or China. With this in mind, the following four principles can help Washington to engage with middle powers more effectively.

### 1AC---Personalism

#### Contention 2 is Personalism:

#### Application of a maximal interpretation of unitary executive theory to civil servants’ labor rights is what determines institutional ability to resist and recover from Trump appointees.

Moynihan 25 [Don Moynihan, Professor of Public Policy in the Ford School of Public Policy at the University of Michigan, former President of the Association of Public Policy and Management and the Public Management Research Association, PhD/MPA public administration, Maxwell School of Citizenship and Public Affairs at Syracuse University, “Why the Supreme Court decision on firing independent agency heads is a big deal,” Can We Still Govern? Substack, 5-22-2025, https://donmoynihan.substack.com/p/why-the-supreme-court-decision-on]

A question I’ve gotten from reporters is how long it will take the public sector to recover from the damage Trump has done. There is no easy answer to this, but I highlight one variable that will matter a lot: how much the Supreme Court embraces unitary executive theory (i.e., the idea that the President has king-like powers).

Why does this matter? A maximalist interpretation of the unitary executive theory holds that almost any Congressional (or judicial) constraints on presidential power are unconstitutional. In more specific terms, it would hold that the civil service system itself is unconstitutional. If the court adopts that reasoning, then it becomes very hard to rebuild state capacity.

Because with unitary executive theory, there is no actor that can make credible long-term commitments to public servants.

With unitary executive theory, Congress cannot write robust new legislation that modernizes the civil service and stops politicization. A President could just ignore it. Even if Trump leaves office, and a new President looks to restore nonpartisan competence, their promises are only good for four or eight years before another President can come in and rip up the terms of their employment. And over time, why would even a good government President invest effort in restoring capacity if their successor can undermine it?

With unitary executive theory, the public sector becomes permanently viewed as an unstable and chaotic workplace that we are seeing now. The most capable potential employees decide its not worth the bother, and the workforce becomes a mix of people who cannot get a job elsewhere, and short term political appointees. (The irony here is that advocates of unitary executive theory say it is not just constitutional, but will improve the performance of the public sector, notwithstanding the omnishambles we are witnessing now).

So it matters, a lot, how courts decide on questions of presidential power over personnel issues right now. We do not have many tea leaves to read, but this SCOTUS is certainly more on board with any unitary executive theory than any prior version. Decisions like the one on presidential immunity last year suggests a court willing to imbue the President with unprecedented powers.

SCOTUS gave us another hint yesterday. They decided to allow Trump to remove Democratic members of the Merit Systems Protection Board, and the National Labor Relations Board. The decision was 6-3. The court says that the President can move forward with the firing until they rule on the merits of the case, which is unlikely to happen until the next Supreme Court term. It is very hard to see the court deciding that the firings are fine now, if there is a real prospect that they will change their mind in the future. It’s like telling an arsonist to go ahead, that we can figure out if it is legal or not after your house is a charred shell.

This is a big deal, a de facto overturning of Humphrey’s Executor - the precedent that Congress can constrain the President’s removal power. This standard, which held for 90 years, now appears to be on the chopping block. Congress might say that an official can only be removed for cause like poor performance, but the President can ignore them, removing independent agency heads for any reason he deems fit.

Unitary executive theory is relatively novel, nurtured by the Federalist Society and Republican lawyers who worked in government and were frustrated by Congressional oversight. Five of the nine judges were Republican lawyers who worked in government, and all six Republican appointees have ties to the Federalist Society.

Enacting unitary executive theory means, effectively, that current executive branch officials and past executive branch officials who are now on the Supreme Court would conspire to strip Congress of its powers. In constitutional terms, it is a resetting of the separation of powers to fit the beliefs of the contemporary Republican Party.

In writing the dissent, Justice Kagan rightfully asked why things are different now, beyond the fact that conservative majority wants to get on with getting rid of Humphrey’s Executor.

Between Humphrey’s and now, 14 different Presidents have lived with Congress’s restrictions on firing members of independent agencies. No doubt many would have preferred it otherwise. But can it really be said, after all this time, that the President has a crying need to discharge independent agency members right away—before this Court (surely next Term) decides the fate of Humphrey’s on the merits? The impatience to get on with things— to now hand the President the most unitary, meaning also the most subservient, administration since Herbert Hoover (and maybe ever)—must reveal how that eventual decision will go. In valuing so highly—in an emergency posture— the President’s ability to fire without cause Wilcox and Harris and everyone like them, the majority all but declares Humphrey’s itself the emergency.

Kagan also pointed out the blazing hypocrisy of one aspect of the decision. Ending Humphrey’s Executor effectively means we will no longer have truly independent agencies. Except one. The majority rushed to make clear that their decision did not hold for the Federal Reserve!

The majority closes today’s order by stating, out of the blue, that it has no bearing on “the constitutionality of for-cause removal protections” for members of the Federal Reserve Board or Open Market Committee. I am glad to hear it, and do not doubt the majority’s intention to avoid imperiling the Fed. But then, today’s order poses a puzzle. For the Federal Reserve’s independence rests on the same constitutional and analytic foundations as that of the NLRB, MSPB, FTC, FCC, and so on—which is to say it rests largely on Humphrey’s. So the majority has to offer a different story: The Federal Reserve, it submits, is a “uniquely structured” entity with a “distinct historical tradition”…

Kagan justifiably mocks the “bespoke Federal Reserve exception” saying that a simpler way not to spook the markets would just be to not give Trump new powers by overturning precedent. The Federal Reserve carve out is not based on any real legal rationale beyond it’s “distinct historical tradition.” If that phrase rings a bell, it is because it echoes the wording that Alito used ("deeply rooted in [our] history and tradition") to justify overturning precedent with the Dobb’s decision. Anytime SCOTUS starts citing historic traditions, be worried about a court abandoning judicial reasoning and precedent.

In reality, the courts know that undermining Federal Reserve would be a disaster for the economy, but their respect for independent expertise does not seem to flow to any other part of the administrative state. The decision is based on generating headlines like this:

Axios

@axios.com

NEW: Supreme Court says the Federal Reserve is protected from Trump removals

www.axios.com

Supreme Court says Federal Reserve protected from Trump removals

The ruling will come as a significant relief to markets that were concerned about the Fed's independence.

May 22, 2025 at 5:32 PM

132 33 Reply Read 6 replies on Bluesky

For public employees, the removal of MSPB head is especially troubling, since this allows any President to neutralize the body that is supposed to monitor personnel abuses such as politicization. Federal workers unfairly treated by Trump’s appointees have little reason to believe they will get a fair appeal from other Trump appointees.

More broadly, it shows us a SCOTUS more likely to sign with Trump on other issues of executive power. Will they stop at Schedule F, the executive order allowing Trump to turn career officials into appointees? Will it allow Trump to impound funds or dismantle agencies? We cannot say for sure, but the odds of such momentous decisions have risen.

The Supreme Court has again, and after watching Trump in action, decided that he deserves unprecedented power unchecked by Congress. That does not augur well for the public institutions he is bent on destroying.

#### That specific intersection uniquely enables personalist metastasis---whether by Court assent…

Shane 25 [Peter M. Shane, Distinguished Scholar in Residence at the New York University School of Law and Chair in Law Emeritus at Ohio State University’s Moritz College of Law, JD Yale Law School, “The Unbearable Lightness of the Unitary Executive Theory,” The Regulatory Review, 3-3-2025, https://www.theregreview.org/2025/03/03/shane-the-unbearable-lightness-of-the-unitary-executive-theory/] \*[language modifications in brackets]

If President Trump succeeds in neutering [eliminating] the capacity for independent judgment by either individual professionals or agency heads, he will have been enabled by a theory of the constitutional presidency that the Roberts Court has embraced but which ought to be embarrassing in its speciousness. This constitutional reading, now widely known as the “unitary executive theory,” has all but undercut the U.S. Supreme Court’s unanimous 1935 opinion in a case called Humphrey’s Executor v. United States. In that case, the Court upheld the constitutionality of the FTC and held invalid President Franklin D. Roosevelt’s dismissal of an FTC commissioner, William Humphrey, without good cause and in violation of the FTC Act. The Trump Administration has explicitly called for overruling Humphrey’s Executor.

The theory behind Humphrey’s Executor is straightforward. It starts with the recognition that the executive branch of government draws on two streams of legal authority. Some of what it does involves carrying out powers vested directly in the President by the Constitution. Treaty-making and fulfilling the President’s commander-in-chief role are prominent examples. But most of what the executive establishment does—nearly all of what it does in domestic affairs—draws on authority that Congress has given to the executive branch by creating administrative agencies and assigning them missions, such as protecting the environment or enforcing civil rights. The core of independent agencies’ work in this respect involves both rulemaking, which the Humphrey’s Executor Court called “quasi-legislative,” and administrative adjudication, which it called “quasi-judicial.”

What the Court held in Humphrey’s Executor is that if an agency is of the latter kind—that is, the agency’s job description involves a mixture of quasi-legislative and quasi-judicial functions that are not within the President’s explicit Article II powers—then it is up to Congress to determine whether this kind of agency’s heads serve at the President’s pleasure. If such an agency’s role is essentially “to carry into effect legislative policies embodied in statute,” then Congress may protect its members against discharge except for good cause.

Against this entirely commonsense understanding, the unitary executive theory insists on a vision of the Constitution that muddles the text, is weakly grounded in history, and ignores how executive power can easily metastasize into autocracy—a possibility I argued years ago as a hypothetical, but which is now being played out in real time.

The unitary executive theory rests on two foundational premises. The first is that the President, constitutionally speaking, is a one-person executive branch. The President, in the Court’s words, is “the only person who alone composes a branch of government.” The second is that, in vesting “the executive power” in “a president,” the Constitution gave the President the entirety of the government’s executive power— not “some of the executive power, but all of the executive power,” in the words of the late Justice Antonin Scalia, who even italicized the words “some” and “all.”

Beyond these two premises, advocates of the unitary executive theory may differ as to the scope of the precise authorities that Article II confers. But all advocates of the theory share a view that the Supreme Court embraced in a 5-4 decision rendered in 2020, Seila Law v. Consumer Financial Protection Bureau. The idea advanced there was that all executive branch personnel are “subject to the ongoing supervision and control of the elected President.” It follows, according to this theory, that the President must be able, directly or indirectly, to fire anyone in the executive branch. Seila Law extended the President’s removal authority to the principal officer in charge of any single-headed executive agency. The Court held out the possibility, however, that multi-member bodies might remain as an exception to this rule. President Trump wants to overturn the exception, so that he can fire independent board or commission members even without “good cause.”

Given the practical and political implications of the unitary executive theory, it is astonishing to see how little it lines up with the Constitution. First, it cannot be true that Article II gives the President not “some of the executive power, but all of the executive power.” Section 2 of Article II explicitly requires the Senate to participate in the executive powers of treaty-making and appointing so-called principal officers. At most, Article II’s Vesting Clause gives the President whatever executive power is not otherwise constitutionally shared or regulated.

Likewise, the President is not the entirety of the executive branch. One of the President’s Article II authorities is to “require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.” The executive branch is thus foreseen as involving “executive departments.” With regard to those departments, the President has the duty to “take care that the laws be faithfully executed”—that is, executed by others. The text certainly reads as if “departments” are part of the executive branch.

The unitary executive theory retort is that the “departments” are just assistants to the President, not holders of executive power. But that is not what Article II says. The text just mentioned posits that departments have been assigned “duties”—duties presumably assigned by Congress. It would have been weird to spell out a presidential power to make department heads write out their opinions concerning duties that the President has assigned to them. Thus, although the Trump Administration and the Court refer to agencies as working “on behalf of” the President, they are, constitutionally speaking, working on behalf of Congress.

Finally, if one is looking for a comprehensive grant of power with regard to government operations, it will be found not in Article II, which governs the executive branch, but in Article I, which empowers the legislative branch. Article I authorizes Congress “to make all laws which shall be necessary and proper for carrying into execution … all … powers vested by this Constitution in the government of the United States, or in any department or officer thereof.” The most obvious reading of that language is that decisions as to how and by whom administrative functions shall be fulfilled—and whether administrators can be insulated from at-will removal—are subject to Congress’s determination as to what is “necessary and proper.” In short, read most straightforwardly, the constitutional text lines up perfectly with Humphrey’s Executor.

In the face of the text’s most obvious reading, advocates of the unitary executive theory have amassed what they argue is a historical record to substantiate that some clause in Article II—maybe the Vesting Clause, maybe the Take Care Clause—would have been understood in 1787 as embracing a comprehensive power of at-will presidential removability, even though removal is never mentioned. The historical literature is rich and complex, and it will persuade an open-minded reader that there were likely to be some people in 1787 who would have agreed with the unitary executive theory. But the historical record points much more strongly in the opposite direction, as shown in the work, for example, of Christine Chabot, Julian Davis Mortenson, and Jed Handelsman Shugerman, as well as in my own work. And it is hard to credit the idea that the presidential removal power was central to the founders’ interpretation of Article II when the issue went unmentioned at the Constitutional Convention, there is no indication that it played any role in ratification debates, and the First Congress sometimes placed administrative responsibilities in the hands of persons that the President could not fire.

Indeed, the case is so strong for the correctness of Humphrey’s Executor—a decision regarded in 1935 as a conservative reading of presidential power—that one naturally wonders why, beginning with the Reagan Administration, the unitary executive theory became a pet theory of the right. The most succinct and persuasive answer has been suggested by political scientists William Howell and Terry Moe. As they point out, every President wants to make a big mark and to move the country decisively in the directions promised in a presidential campaign. But such ambitions have different implications for progressive as opposed to conservative Presidents.

Once Congress started enacting modern progressive legislation, especially from the 1960s onward, progressive Presidents, usually Democratic, did not need to make bold constitutional arguments to accomplish their domestic goals. Their administrations could argue instead for generous readings of the statutory powers that Congress had already given them. Should progressive agencies overstep, a court might overturn their statutory readings. But such instances would be examples of ordinary legal error, not threats to the Constitution.

If, however, a President’s agenda is to hollow out government—to incapacitate agencies from implementing their legislative duties in a vigorous way—that President cannot rely on statutory power alone. Congress has not authorized the President to undo the administrative establishment it created. Thus, radically disruptive Presidents of a Trumpian sort have to argue that their “executive power” includes more than the duty to take care that the laws be faithfully executed. They have to argue that, as a one-person branch of government, the President possesses the authority to restructure government, to narrow the reach of law, and to resist efforts by the other branches to check presidential initiative.

Before the Trump Administration, however, the main debate, both judicial and academic, over the unitary executive theory was focused entirely on presidential removal power. The question at hand was just whether Presidents could be limited by statute to discharging principal administrative officers only on grounds of neglect of office, malfeasance, or an inability to do the job to which they had been appointed. But President Trump wants to take it further. His February18 executive order would require those agencies to clear their regulatory actions with the Office of Management and Budget, align their program expenditures with the President’s policy priorities, and meet performance standards and management objectives prescribed by the White House. Such compliance, of course, would be the opposite of independence.

The decision that now stands out most conspicuously as potential support for President Trump’s power grab is not any of the removal cases, but the Court’s 2024 decision on the scope of immunity for former Presidents from criminal prosecution for misconduct while in office. What is most startling about the decision, even to those of us who disagree with it, is not the claim that Presidents have some such immunity or that the Constitution vests directly in the President certain comprehensive authorities. What is most startling is the majority’s view that the President’s power of administrative supervision—an authority that must exist to some extent by virtue of the President being the chief executive—is actually within the President’s arsenal of “exclusive and preclusive powers.” These are the powers that neither Congress nor the judiciary may limit. The Court managed to infer from the President’s obligation to take care that the laws be faithfully executed a seemingly comprehensive power to direct all “those who wield executive power on his behalf.” It is thus through an amazing display of interpretive acrobatics that the Court extracted from the President’s obligation of fidelity to law an all-but-absolute power to ignore it.

As radical as this seems, it is easy enough to see how President Trump is connecting the dots between the one-person executive branch idea and his unprecedented claims of entitlement to control every aspect of administrative government. If the President alone is the executive branch, then any delegation of authority by Congress to an administrative agency begins to look advisory. Congress may want the executive branch to do “something.” It may prefer for that “something” to be the task of a particular agency. But if the President is a one-person branch of government, then, constitutionally, it arguably follows that the President is entitled as possessor of all the executive power to take over an agency’s mission or even assign it to another agency. Indeed, at least some unitary executive theory champions explicitly argue something like this. If that is true, then what any administrator does depends not just on what authority Congress has delegated to the executive. It depends on the President’s willingness to leave that delegation in place and not take over personally. As pithily explained by the sociologist Kim Lane Scheppele, an expert on authoritarianism, “under the unitary executive theory, agencies no longer trace their primary constitutional authority to congressional delegation of its legislative powers but instead to presidential delegation of his executive power.”

This is why President Trump thinks he can close agencies he does not like and put their authorities elsewhere. This is why President Trump thinks he can tell agencies not to spend congressionally appropriated dollars. This is why President Trump thinks he can convert all of the executive branch into an army of lickspittles. If Congress cannot regulate his supervisory power and if his conduct, no matter how corrupt, can never be the target of prosecution, why not?

Of course, the Court may not go that far. But President Trump’s apparent hope that the Roberts Court will give him the control he craves over every corner of the administrative state is not without cause. If a conservative majority is willing to be as creative on his behalf as the immunity opinion suggests, why not push it further?

Yet the case for putting independent agencies under the President’s thumb, even for the Roberts Court, is not a slam dunk. It may be that the Court does not want to undermine the independence of the Board of Governors of the Federal Reserve System; such a decision could destabilize both domestic and global markets. Holding that the United States is unable to have an independent agency controlling the money supply would be an extreme move. Because it is difficult to see how Humphrey’s Executor could be overruled without invalidating the Federal Reserve’s independence, the Federal Reserve may prove the most decisive reason for keeping Humphrey’s Executor alive. President Trump’s executive order tries to navigate this difficulty by controlling only the Federal Reserve’s “supervision and regulation of financial institutions,” but not “its conduct of monetary policy.” But that will not solve the removability problem. Members of the Federal Reserve cannot be half-fired, half-empowered.

It is also noteworthy that, as a judge on the U.S. Court of Appeals for the D.C. Circuit, Justice Brett Kavanaugh offered a strong argument for treating multimember agencies differently from single-headed agencies. Indeed, the account of independent agency virtues with which I started this essay is actually drawn from his opinion. One cannot yet know whether he regards his arguments as sufficient when push comes to shove to draw a constitutional line between single-headed and multi-member agencies for removal purposes. But if he should take that view and at least one other conservative Justice unites with the liberals, Humphrey’s Executor could survive.

The Roberts Court has already shown itself to be the most executive-indulgent Court since World War II. It has enabled President Trump’s dreams of control; only time will tell how far it will go. We know where President Trump is placing his bets. Those who would prefer a more pluralist democracy can hope only that his gambles come to naught.

#### …OR because no-one can enforce other checks if implementation’s controlled by loyalists.

Diamond 25 [Larry Diamond, senior fellow at the Hoover Institution and the Center on Democracy, Development, and the Rule of Law, and Professor, by courtesy, of Sociology and of Political Science, at Stanford University, PhD Sociology, Stanford University, “The Crisis of Democracy Is Here,” Persuasion, 2-17-2025, https://www.persuasion.community/p/the-crisis-of-democracy-is-here]

Less than a month into his second term as president, Donald Trump and his loyalists in government are already posing grave risks to the legal, constitutional, and normative foundations of American democracy. The threat Trump poses is much more severe than during his first term (which ended with him and his allies staging an insurrection to nullify the national election outcome and block the peaceful transfer of power). This time, there are no weighty figures in his administration willing to put the Constitution above personal loyalty to him. This time, Trump and his MAGA team have had four years to plan a more concerted assault on democratic checks and balances, and a revolutionary campaign to destroy many core institutions of the federal government. And this time, Trump and his loyalists have a long agenda of revenge against a wide range of actors who they believe have wronged them and who they now want to punish and subdue.

No doubt, extreme partisans of the MAGA cause will view this essay as purely partisan. I hope more open-minded and objective readers will see it for what I believe it is: an articulation of urgent concern for the future of American democracy, shaped by my study over the last half-century of how democracies rise and fall, and my last two decades of tracking and unpacking the global democratic recession. Having won the presidency fair and square, Donald Trump has earned the right to propose, and in many cases to implement, radical new policy directions. But he does not have the right to violate the law, the Constitution, and the civil liberties of Americans in doing so.

My arguments in this essay are as follows. First, the crisis of American democracy is now squarely upon us. Multiple illegal and unconstitutional acts are happening, and the guardrails that check and restrain authoritarian abuse are rapidly falling away.

Second, it is going to get a lot worse. Trump is following an authoritarian playbook for destroying constitutional government that has been widely deployed over the last two decades and that in some respects dates back not only to the political calamities of the 1920s and ‘30s but all the way to Machiavelli, as Jeff Bleich has recently explained in this publication. The pathway to authoritarianism in America lies in subverting our constitutional checks and balances. Trump has moved rapidly on that front and there will be much more to come.

Third, democratic backsliding is moving quickly now in part because of the lack of resistance. Part of this void owes to confusion and division within the opposition (the Democrats), part to opportunism and submission among Congressional Republicans, and part to the tactical decisions of key actors in business, the media, and the bureaucracy to comply in advance, again partly out of opportunism but also heavily out of fear. Fear is the common denominator in all of this—palpable, paralyzing, and quite justifiable fear. Fear now stalks the land. This is the most visceral indication that America has entered an existential era for the future of democracy.

The threats to American democracy in the United States are now immediate, serious, and mounting by the day. However, it is possible to contain them. Doing so will require a national, multifront bipartisan strategy. That will be the subject of my next column, but I stress here: Time is of the essence. Such a strategy must be assembled and activated expeditiously, because the longer and further Trump and his acolytes proceed with their authoritarian ambitions, the harder it will be to resist, and the greater will be the risk not just to our democratic process but to our basic liberties. The key is to unite in defense of our democratic checks and balances, rather than to argue that every one of Trump’s policy initiatives is illegitimate. The markets will take care of stupid and self-harming tariff policies. They will not on their own save American democracy.

The Crisis is Here and Now

Donald Trump was not truthful when he said he just wanted to be a dictator on Day One. He aspires to make it last for four years, and probably well beyond. Some of what his administration has been doing is blatantly illegal or unconstitutional. Many actions and policy directions, legal or not, will severely damage the national security and economic and physical health of the United States. But it is important to separate policy directions that are cruel and heartless, and that undermine even the president’s own stated goals, from actions that are anti-democratic in law or in motive and effect.

It may be cruel to millions of people around the world to terminate U.S. foreign assistance that is providing vital nutritional, health, educational, environmental and governance assistance. But if the decision is taken democratically, then it is not a violation of our democratic constitutional order. It may be shockingly short-sighted to stop flows of aid that are working abroad to prevent or end violent conflicts, make life more liveable, generate economic opportunities, preempt pandemics, fight corruption and tyranny, and so reduce refugee flows, contain China’s imperial ambitions, and improve America’s global power, prestige, and security. It may be specious to claim that this is being done to balance the books when foreign aid is barely one percent of the federal budget. But it is not necessarily unconstitutional, or even undemocratic, for presidents to do cruel, shortsighted, and deceitful things.

All of this becomes illegal, unconstitutional, and undemocratic when it is done unilaterally and arbitrarily, bypassing the Congress and its preeminent authority to appropriate funds. In 1975, the Supreme Court (dominated by Republican-appointed justices, including four appointed by Richard Nixon) ruled unanimously against Nixon’s attempt to impound certain Congressionally-appropriated funds. Subsequent legal interpretations and the Impoundment Control Act of 1974 make clear that presidential impoundment of funds is both unconstitutional and, since the Act was adopted, illegal. The president does not have the authority on his own to suspend all foreign aid flows, much less terminate them, much less eliminate an entire agency established and annually funded by the Congress.

With the assault on the U.S. Agency for International Development (which is just the initial sacrificial lamb, because foreign aid lacks a strong domestic constituency) we are already in a constitutional crisis. It is all made worse and more alarming by the fact that completely unaccountable actors—Elon Musk and his young digital hatchet men (completely unvetted by any government clearance process)—are wreaking much of this havoc. But even if the orders come from a Cabinet officer—Office of Management and Budget Director Russell Vought, one of the key intellectual architects of the “unitary executive” theory that exalts presidential power to a nearly absolute level—these actions are still not legal or constitutional.

The catalogue of Trump’s presidential actions that defy the law and the Constitution is rapidly growing. On the very first day of his new presidential term, Trump ordered an end to birthright citizenship for undocumented immigrants, seeking with the mere stroke of a pen to set aside the 14th Amendment to the Constitution. Two federal judges have blocked that executive order. On Friday, January 24, Trump fired 17 inspectors general in government departments and agencies (including the Departments of Defense, State, and Housing and Urban Development).

These IGs are supposed to be non-partisan watchdogs to look out for precisely the “waste, fraud, and abuse” that Trump and Musk claim to be battling—but who also expose corruption and conflicts of interest that could embarrass any administration. By law they cannot be fired without giving Congress 30 days’ advance notice. Even as loyal a Senate soldier for Trump as Senate Judiciary Chairman Chuck Grassley raised concern and demanded an “explanation” for the firings, as reported by no less than Fox News. An analyst for the Cato Institute was more blunt: “It provides comfort to those hoping their illicit government activities might now be allowed to slide.”

On February 3, Musk and his “DOGE” team gained access to the Treasury Department’s highly guarded computer system for making most federal payments. A lawsuit filed by several citizens’ groups called the intrusion into the personal payments data of individuals and organizations “massive and unprecedented.” The highest-ranking career official at Treasury, the man who ran “the nation’s checkbook,” strenuously objected and subsequently resigned, ending a storied decades-long career. A few days later, citing the danger of “irreparable harm,” a federal judge temporarily blocked Musk’s team from access to the Treasury Department’s payments and data systems.

It is quite possible that before that order was issued, Musk’s young digital wizards had already downloaded payments data, including bank account information, for tens of millions of Americans. The judge ordered the digital interlopers to “destroy any and all copies of material downloaded from the Treasury Department’s records and systems.” But there is no mechanism to enforce this or even scrutinize compliance. The data—along with other government records that Musk’s team has been collecting—would be priceless to Russia, China and other adversaries of the United States. It may well have been downloaded by a young “masters of the universe” tech squad (some ranging in age from 19 to 25) with no government experience, no security clearance or vetting, and in some cases dubious records (including one who bragged online that he was “a racist before it was cool”).

The violations continue on pretty much a daily if not hourly basis. Now it appears that the administration is preparing to shut down the Consumer Financial Protection Bureau, with OMB Director Vought again acting as judge and executioner in ordering all the employees of the agency on Monday, February 10, to “not perform any work tasks.”

There are other steps that degrade American democracy without technically violating the law. These began with the shocking but expected pardoning (or sentence commutation) of ALL of the more than 1,500 individuals who were charged or sentenced for the January 6, 2021 attack on the Capitol, including those convicted of violently assaulting police officers. Dozens of these liberated insurrectionists had unrelated serious criminal convictions or charges pending, and some had prominent roles in violent domestic terrorist organizations. One of Trump’s executive orders (also on January 20) reclassified potentially tens of thousands of “policy-influencing” workers in the federal civil service from career jobs into roles where they could be replaced at will for political reasons. This will likely undermine the feature of the civil service Trump said he was seeking: meritocracy.

The most ominous question is what will happen if the federal judiciary arrives at a clear and final ruling that some (or even most) of these acts are unconstitutional or illegal, and then Trump carries on with them defiantly. According to a 2018 Harvard Law Review article cited by the New York Times, “There has been no clear example of ‘open presidential defiance of court orders in the years since 1865.’” That could now change.

On Monday, February 10, a federal district judge ruled that the administration has been violating a previous federal court order by continuing to withhold federal funds for a variety of purposes. Having gotten into the Treasury Department’s payment system, Trump’s agents of the “unitary executive” now control the plumbing of federal fiscal flows, and they can simply turn off the pipes any time they wish—quietly, with no declaration. This is in essence what several Democratic state attorneys general were alleging in their suit before the federal district court. Many Washington insiders suspect this is happening when their congressionally-obligated funds simply fail to land in their accounts at the usual times. Laws and court rulings notwithstanding, it appears that a cohesive band of political zealots within the administration and in key operational positions in Cabinet departments are determined to simply starve broad swaths of American public life they do not like into submission or death.

The federal district judge who ordered the above ruling warned that defiance of court orders could cause individuals to be held in criminal contempt of court. That would seem to be an important step toward restoring the founding vision of a federal government with three distinct branches and reciprocal checks and balances. We need to realize the most important insight of James Madison’s constitutional genius, the dictum that “ambition must be made to counteract ambition.” But in tweeting on Sunday, February 9, that “Judges aren’t allowed to control the executive’s legitimate power,” Vice President JD Vance may have been laying the groundwork to restore the United States to an era of constitutional chaos that we have not seen since the Civil War.

It Will Get Worse

One reason to worry deeply about possible open defiance of federal court orders by the Trump administration—which would be an obvious impeachable offense—is that in his first term, Trump committed other impeachable offenses for which he was not held accountable. The current Congress, with Republicans controlling both houses, seems even less inclined to do anything to stand up to an increasingly Caesarist ruler who claims absolute and imperial powers in his presidency. It is a reasonable conjecture that a great many Republican senators are privately quite troubled by how Trump is behaving and the kind of people he is appointing. This would seem to include the 23 senators who voted on the first ballot for the most institutionalist and least Trumpian candidate, John Thune, to be the Senate majority leader. Of the 53 Republican senators (and senators-elect) who voted (by secret ballot, crucially) for Thune, only 13 opted for Trump’s choice, Senator Rick Scott.

However, Trump and his plutocratic partner-in-ruling, Elon Musk, have done a brilliant job of isolating Republican senators and squeezing them one by one. Joni Ernst, it was quite apparent, wanted to vote against confirming Pete Hegseth. Had she done so, he would not have been confirmed. Senator Bill Cassidy of Louisiana, a medical doctor, was inclined to vote against Robert F. Kennedy Jr. to head the Department of Health and Human Services. Todd Young of Indiana was signaling grave concerns about voting for Tulsi Gabbard to be director of National Intelligence. These were the Republicans who were publicly voicing concerns. Many others were privately agonized, if not horrified.

But fear prevailed. Senator Ernst was hit with withering pressure from the MAGA right, who warned that they would mobilize to defeat her in the next Republican primary if she voted no on Hegseth. I have heard multiple reports from Washington political insiders that Musk privately threatened to fund a Republican primary challenge to Ernst if she did not fall in line, and that he did the same to Cassidy and Young as they wavered on their votes of conscience. There is no way to verify these reports, but it has long been obvious that Republican members of Congress have been running very, very scared. Trump’s standing with the Republican base is such that an endorsement from him of a Republican primary challenger could be enough to defeat many of these incumbents. This kind of intimidation has figured prominently in the decision of several Republican members of Congress to retire rather than endure this humiliation any longer.

But it gets worse. Recent years have seen a rising number (and intensity) of death threats against members of Congress and other public officials. The number received in 2024 was three times the level in 2017. The U.S. Capitol Police Chief testified in December that 700 death threats were made against members of Congress in November alone. Most current members of Congress were there on January 6, 2021, and they were deeply shaken by the experience. Many regard it as a near-death experience for democracy, and perhaps for themselves.

The most underestimated element in the current crisis of our democracy is the degree to which many politicians fear for their lives if they do anything forthright to cross or defy President Trump. If this concern contributed to the speed with which almost all of them fell into line behind him during the election campaign, how much worse must it be now that all of the insurrectionists—some of them known to be heavily armed and out for revenge—have been pardoned and set loose? As for the extremist, anti-democratic organizations that some of these individuals lead or support, the FBI was vigilantly monitoring these and other extremist organizations over the last four years. Will it do so with Kash Patel, a ferocious Trump loyalist who has published his own list of “deep state” enemies of Trump, as director?

With regard to the third branch of government, the judiciary, the ultimate nightmare would be if Trump defied a final judgement on a matter by the Supreme Court. But if the Supreme Court were to radically embrace the theory of the unitary executive by overturning hallowed precedents, for example on presidential impoundment or the illegal dismissal of federal officials, that would also have chilling implications for the future of American democracy.

If the courts are defied and Congress will not act, that leaves only two other potential checks. One is the complex array of regulatory and monitoring checks on administrative corruption and abuse of power. I consider these types of nonpartisan or bipartisan actors and agencies—such as the Federal Reserve, the Government Accountability Office, the Inspectors General, and some federal regulatory agencies such as the Securities and Exchange Commission, the Federal Communications Commission, the Federal Trade Commission, the Federal Election Commission, and the National Labor Relations Board—something like an informal fourth branch of government in their potential, even if weakly and imperfectly, to call out wrongdoing or bring independent judgement to policy. But Trump has been firing members and leaders of many of these agencies, some of which he has the right to do, others not. And he seems intent on ruthlessly politicizing extremely sensitive parts of the government that need to be non-political to protect democracy, such as the FBI and the CIA. In his campaign to bring opposition to heel and intimidate and punish his critics, watch what happens to the Internal Revenue Service.

The last line of defense is civil society. Liberal democracy has survived and thrived in wealthy capitalist economies because of the density and vigor of independent policy organizations, interest groups, religious institutions, media, think tanks and universities, and the strength of independent businesses that do not depend on the state for their markets. These form a thick layer of autonomous capacity to organize and mobilize in the face of abuse, illegality, and incipient tyranny. But in this century, this vital Tocquevillian arena of democratic vitality in the United States has been badly strained by intense political polarization and declining trust in one another and in all the institutions of government, partly as a result of the rise of social media with its algorithms to promote outrage and its profuse flows of misinformation, disinformation, and invective.

Civil society in America was always cleaved in many directions, but its capacity to shout, rally, lobby, and march effectively in defense of democracy is now diminished. Its resources remain formidable, but so now are its divisions, and its fears. Many media practitioners and observers are growing worried about the mounting signs of major media trying to placate Trump by generously settling defamation lawsuits that Trump seemed likely to lose (as ABC and Meta, owner of Facebook, have recently done). Most major media outlets are owned by big corporations that have multiple interests or “equities” at stake. And of course, the big social media companies are titanic corporations. They don’t want trouble. They don’t want resistance. They just hope to ride out the storm.

#### The impact to an unchecked Trump is unique and disjunctive---catalyzing many non-linear polycrisis feedbacks to extinction, including nuclear wars.

Homer-Dixon et al. 24 [Thomas Homer-Dixon, Executive Director of the Cascade Institute, PhD international relations, defense and arms control policy, and conflict theory, MIT; Michael **Lawrence**, Fellow on the Cascade Institute Polycrisis program team, PhD Global Governance, University of Waterloo; Megan **Shipman**, Fellow on the Cascade Institute Polycrisis program team, PhD neuroscience, University of Vermont; and Luke **Kemp**, affiliate with the Centre for the Study of Existential Risk and the University of Cambridge, Visiting Fellow at the Cascade Institute, PhD political science, Australian National University; “Impact 2024: How Donald Trump’s Reelection Could Amplify Global Inter-systemic Risk,” Cascade Institute, 10-3-2024, https://cascadeinstitute.org/wp-content/uploads/2024/10/Impact-2024-How-Donald-Trumps-Reelection-Could-Amplify-Inter-systemic-Risk.pdf]

1. Introduction

The impending federal election in the United States could mark an abrupt inflection point not only in the evolution of the American polity but also in the direction of global society. In this report we examine whether and how the election’s outcome could place the world on a far more perilous course.

Our world’s tightly linked economic, geopolitical, technological, and environmental systems are currently under enormous stress and potentially close to tipping points. Pushed beyond critical thresholds, these systems could swiftly reconfigure their internal structures and change their fundamental behaviors.

In this context of rising vulnerability, a Harris-Walz administration would likely implement policies that, on balance, tend to stabilize today’s highly perturbed global systems. Donald Trump, in contrast, sees himself—and acts—as a system disrupter; he is also highly unpredictable. Both characteristics make extreme outcomes more probable, should he become President.

Mr. Trump has already injected into American political discourse a range of possible outcomes—such as seizing, incarcerating, and deporting millions of undocumented immigrants; invoking the Insurrection Act and federalizing the National Guard to suppress domestic protest; and withdrawing the US from NATO—that were almost inconceivable a decade ago. Even the election process itself—the results of which are almost certain to be complex and contested, because of a loss of trust in US electoral institutions that Mr. Trump has himself engendered—could trigger a period of intense domestic turmoil with grave consequences for the world.

With this in mind, we focus our analysis on the impacts of a second Trump administration.

Mr. Trump’s second term is likely to be far more disruptive than his first. He now appears motivated by a desire for retribution; he will return to office with a much more competent and prepared administrative team with detailed, radical policy plans; that team will likely act quickly to subordinate to the President key instruments of state power, including the Departments of Justice and Defense; and constraints on the President’s use of this power are far weaker, in no small part because of the US Supreme Court’s recent immunity ruling.

In the language of statistics, Mr. Trump’s radical political influence within and beyond the United States is skewing the probability distributions of future global risks, stretching their tails into extremes that were hitherto thought highly, even vanishingly, unlikely.

This report assesses these diverse and entangled global inter-systemic risks. Intended for policymakers, the investment community, public commentators, and risk analysts, it applies a set of analytical tools to identify likely critical junctures, causal pathways, “Nth - order” impacts, and feedback loops arising from the 2024 US election.

To date, researchers and commentators have mostly focused on the election’s possible first-order impacts on specific US policy domains, including defense posture, immigration, and abortion rights. Less examined are potential multi-stage impacts that could spill across affected systems far beyond American borders.

To better understand and assess these potential consequences, we use three analytical tools—derived from complex-systems science—to explore how Mr. Trump’s reelection might interact with larger global systems to both amplify and create major risks.

1. We apply a stress-trigger-crisis model that discriminates between, as causes of crisis, Mr. Trump’s influence on slow-moving, large-scale stresses and his impacts on fast-moving, local trigger events (see Box 1).
2. We identify a set of critical junctures likely to arise from the election itself or from a Trump administration’s actions following the election (see Box 2).
3. We then combine our results from these two steps to inform a causal-loop analysis that identifies potentially dangerous self-reinforcing feedbacks that could operate across multiple global system boundaries.

This report is a first assessment of the inter-systemic consequences of a second Trump presidency. It integrates evidence and opinion we have gathered from informed commentary on possible election impacts and from confidential interviews with a diverse group of field experts, both in the US and abroad, some of whom identify as ideologically conservative. We recognize that our own values and beliefs have influenced our analysis, but we have aimed to ensure that those assumptions are visible and open to critique. We plan to release an updated assessment in late October.

Our analysis in this report indicates that, compared to a Harris administration, a second Trump administration is much more likely to ignite a trade war with China that slows global economic growth; empower authoritarianism domestically and abroad; weaken multilateral institutions that provide vital global public goods; diminish the international security presence of the US, perhaps stimulating regional arms races; and increase uncertainty about how the US responds to crisis.

These outcomes will further disrupt global systems that are already fragile and vulnerable. The result is likely to be a more fragmented, competitive international order, and ultimately, in the worst case, great-power war and a far more severe global polycrisis. But whether the risk of these worst outcomes is low or high depends crucially on how other actors around the world—nations, firms, multilateral institutions, nongovernmental organizations, transnational groups, and civil societies—respond to Mr. Trump’s actions. The worst is far from inevitable.

Box 1: The stress-trigger-crisis model

Drawing on complexity science, the Cascade Institute has developed a “stress-trigger-crisis” (STC) model to better understand and predict the behavior of the world’s connected geopolitical, economic, environmental, and other systems. The model assumes these systems generally function within a “dynamic equilibrium”—a set of conditions, stabilizing feedbacks, and structural relationships that keeps their behaviors and properties within a “normal” range.

Stresses are pressures, contradictions, or vulnerabilities that operate over long periods of time and at a large scale (societal, regional, or global); their slow pace makes them somewhat predictable. They reduce a system’s resilience and thereby create systemic risk, which is the potential for a problem to spread through an entire system and into other systems, disrupting their functions. Trigger events, in contrast, operate quickly (on a rough timescale of seconds to weeks) and tend to be local or regional in scale, while their exact timing and location are largely unpredictable.

A system goes into crisis when one or more slow-moving systemic stress interacts with a fast-moving trigger event to force the system out of its equilibrium into a state of disequilibrium. A multi-year drought, for instance, is a stress that creates conditions in which a random lightning strike can trigger a forest fire.

The figure below in this box illustrates these relationships using a “stability landscape diagram” (a common complex-systems graphical device). A dip in the landscape is a “basin of attraction” in which stabilizing feedbacks act like gravity to keep the system state, represented by the ball, in equilibrium, by pulling it back towards the bottom amidst its day-to-day fluctuations. But over time, stresses can make the basin shallower, which means the system is losing resilience. Chances increase that one or another trigger event (including some that earlier would have had little consequence) will push the system out of equilibrium into crisis. When crises with connected causes occur across multiple global systems and result in a large-scale loss of global wellbeing, we call it a global polycrisis.

We argue here that Mr. Trump can affect the risk of global polycrisis by both altering the force of existing long-term stresses and generating trigger events that interact with those existing stresses to catalyze crisis.

A diagram of a stress-trigger crisis

AI-generated content may be incorrect.

Box 2: Critical-juncture analysis

History can be interpreted as a chain of “critical junctures”—short episodes of rapid system change separated by longer periods of stasis. Critical junctures arise when underlying stresses or other factors combine to create conditions ripe for a system shift, perhaps catalyzed by a trigger event. Each critical juncture generates a fan of possible pathways for the system’s further evolution.

Analysts can anticipate some critical junctures because, for instance, they arise from institutional arrangements; a good example is the forthcoming US federal election. Mr. Trump is creating possibilities for new critical junctures in the US political, economic, and social systems —ones that can potentially be anticipated—by advocating policies not previously considered feasible (for instance, imposition of major tariffs and deportation of millions of undocumented migrants).

Analysts can also identify the pathways that might follow an anticipated critical juncture and assign each pathway a (usually rough) probability. Sometimes, even if anticipated, a particular critical juncture can occur only along a specific pathway, which makes it contingent on earlier critical junctures.

By linking together anticipated critical junctures with pathway probabilities, analysts create branching diagrams that identify possible first-, second-, and N -order impacts. Importantly, once a system starts down a particular branch, it often becomes “locked-in” along that pathway, so that the juncture essentially disappears in the past, and its other branches decline sharply in feasibility.1

[FIGURE OMITTED]

Figure 1 (“Electoral College outcome”) is a critical-juncture diagram of the 2024 US election and the social instabilities that could occur in its immediate aftermath. Line thickness indicates estimated likelihood of outcomes and subsequent impacts. The figure begins, on the left, with five possible outcomes of the electoral college vote. If either the Republicans or Democrats win by a wide margin, both would likely accept such a decisive outcome, allowing a peaceful transition to the 47th Presidency (with a slight chance that Republicans would protest even a decisive Harris-Walz victory). But if margins are close (decided by, say, a few thousand votes in a swing state), or if electoral disruptions (such as officials’ refusal to certify vote totals) prevent a clear outcome, then nation-wide protests could ensue. For these pathways, the red, blue, and gray lines allow the reader to trace proposed lines of causation (and their associated likelihoods) from either a Republican or Democratic narrow victory or from a disrupted election through consecutive critical junctures.

For example, if Democrats win by a small margin, Mr. Trump will almost certainly denounce the results as fraudulent and call on his supporters to disrupt electoral processes. We therefore estimate that such an Electoral College outcome would have a high probability of producing countrywide protests (represented by the thick blue line). Those protests would themselves create a critical juncture. Federal security institutions are still relatively nonpoliticized and have undoubtedly learned from the January 6 insurrection how to better cope with such electoral protest, but a genuine risk would remain of a spiral into large-scale violence. The two subsequent blue lines therefore indicate that we estimate a medium likelihood for both possible outcomes (protest remaining peaceful or escalating violence) in the event of a narrow Democratic victory.

2.Impact assessment

General concerns about another Trump presidency fall into two main categories.

The first encompasses concerns about Mr. Trump’s personality and psychological and cognitive wellbeing. His narcissistic, impulsive, and generally unpredictable nature, combined with his transactional approach to politics, could trigger a crisis or cripple the US response to one. Mr. Trump has also grown more psychologically erratic and distractible, showing signs of cognitive decline that would diminish his decision-making ability in a perilous world (see Box 3, “Implications of cognitive decline”).

The second category encompasses concerns about the loss of guardrails that personnel and institutional constraints have previously provided. Many commentators, and several of our interviewees, believe a second Trump administration will quickly dismiss large numbers of government personnel regarded as obstacles to the new administration’s agenda and replace them with staunch loyalists. This campaign would clear the way for a policy program far more radical and organized than that of Mr. Trump’s first term.

Beyond these general concerns, analysts and our interviewees focus on the impacts of Mr. Trump’s specific policies. Below, we use, where possible, critical-juncture analysis to highlight likely first- and second-order impacts of a second Trump administration’s policies. We group these specific policy impacts under three broad headings: institutional capture and deepening authoritarianism; socio-economic turmoil (particularly within economic, energy, climate, and health systems); and international conflict and insecurity. We focus on impacts that could have major consequences for global systems—consequences that we further analyze in Section 3.

Box 3: Implications of cognitive decline

Dementia is a degenerative disease in which deterioration worsens over time, beginning with mild cognitive impairment and progressing to an inability to execute daily functions without aid. Mr. Trump is susceptible to dementia simply because of his age (78) and family history (his father had Alzheimer’s disease). Some of his behaviors indicate cognitive decline that is either a precursor to, or evidence of, dementia.

Though he cannot be diagnosed without being subject to a full battery of neuropsychological tests, over 2,800 licensed clinicians have signed a public statement indicating that Mr. Trump is showing unmistakable signs of cognitive decline and probable dementia. Signatories cite an overall deterioration from his baseline level of verbal fluency; memory impairments beyond normal age-related forgetting of names and places; disordered speech filled with dementia-specific errors (tangential digressions and non-sensical words, for example); evident impairment of motor control in gait and hand coordination; and deteriorating control of impulses and judgments.

While dementia is heterogenous in both time of onset and progression, if Mr. Trump has the disease, certain outcomes are probable: he will show progressively more aggressiveness (especially if he has Alzheimer’s disease); a greater loss of insight, judgment, and impulse control; grander delusions; and further deterioration in verbal ability. His capacity to distinguish between reality and fiction, already uncertain, will decline.

Depending on the speed of disease progression, he could ultimately become incapacitated and unable to perform his presidential duties. Various pathways are then possible: the Vice President and a majority of Cabinet secretaries might invoke section 4 of the 25th Amendment, declaring the President cannot discharge his official responsibilities; an inner circle around the President might try to hide his dysfunction, making decisions on his behalf; or conflict among advisors and within the Cabinet could create a void in executive power.

2.1 Institutional capture and deepening American authoritarianism

Many analysts, including several of our interviewees, believe that Mr. Trump will attempt to capture government institutions, recast them in more authoritarian forms, and potentially use violent repression to reinforce and protect his rule.

* Politicized civil service: By reintroducing the Schedule F employment category for civil servants, Mr. Trump could replace tens of thousands of civil servants with loyalists. Doing so would likely spur a secondary exodus of experienced civil service employees, taking with them invaluable experience and institutional memory. If the President were to adopt the Unitary Executive Theory, he might try to interpret Article 2 of the Constitution as legal justification to place the entire executive apparatus (including the Department of Justice and the Pentagon) under direct Presidential authority. Mr. Trump could order agencies such as the IRS to harass his opponents; and to bypass congressional opposition, he might rely on rule by executive order, vetoes, impoundment (of Congressionally allocated funds), and other extraordinary measures. While this approach to governing could allow Mr. Trump to advance his political agenda, it could also critically weaken the federal government’s ability to carry out key functions, from basic administrative tasks to disaster response. Mr. Trump’s actions could also incentivize judges to become more ideologically extreme to earn favour with the executive and improve their chances of ascending in the federal court system or to avoid repercussions of his wrath.
* Weakened rule of law: The recent Supreme Court immunity ruling places the President substantially above the law. Even in this ruling’s absence, Mr. Trump likely has strong grounds to defer existing criminal proceedings until he has left the White House. He could also have the Department of Justice tell appellate courts that it no longer wishes to pursue conviction. The Department might additionally be used to advance the interests of the President’s allies and pursue charges against perceived political opponents (see Box 4 “Donald Trump on prosecuting election ‘cheating’”), as he has already threatened to do with Joe and Hunter Biden. Mr. Trump could achieve these ends by appointing a loyalist as Special Counsel and using this appointee to pursue charges. This action might be part of a wider strategy of installing partisan loyalists across federal agencies to influence their rulings. He could pardon convicted January 6th protestors and right-wing extremists. He might also instruct the Office of Legal Counsel to issue opinions that support extreme policies such as the use of the military against opposition protestors, seizing state voting machines, or using lethal force at the southern border. The rights, due processes, and checks and balances at the heart of a functioning judicial system would diminish accordingly.

Box 4: Donald Trump on prosecuting election “cheating”

[FIGURE OMITTED]

* Imperiled civil-military relations: The US has long benefited from strong norms of professionalism governing the relationship between civilian and military officials. Even within those boundaries, the President can issue a wide range of “awful but lawful” orders that the military would be obliged to carry out. But Mr. Trump could additionally weaken existing civil-military norms by replacing the upper echelon of the armed forces with loyalists, and by exploiting divisions within the ranks. On grey-area issues (for instance, torture and assassinations), he could exercise more personalistic and partisan control over the military, perhaps even corroding its commitment to defend the Constitution.

Box 5: Extraordinary presidential powers

The US President has available a wide range of extraordinary powers for use in specific circumstances. These powers confer abilities and permit measures not otherwise legal. Two main laws govern these powers: the Insurrection Act and the National Emergencies Act. The President may also have the authority to declare martial law.

The Insurrection Act allows a President to deploy the US Armed Forces or National Guard to stem protests, rebellion, or civil disorder. In essence the act temporarily suspends the Posse Comitatus Act, which prohibits the military from assisting with domestic law enforcement. Three sections specify the conditions under which the Insurrection Act can be invoked:

* Section 251 allows for state legislatures to request federal military assistance in the event of rebellion.
* Section 252 allows for the deployment of the military to quell a rebellion or insurrection that makes it “impracticable” to enforce laws in the usual manner. It does not require the consent of the state.
* Section 253 allows for the use of federal troops if an insurrection, conspiracy, or act of domestic violence either deprives state citizens of their constitutional rights and states are incapable of dealing with the situation, or if a state “opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.” It also does not require the consent of the state.

These sections, especially 253, are broad and vague. The US President has the authority to define what constitutes an insurrection, conspiracy, rebellion, or act of domestic violence sufficient to invoke them.

The National Emergencies Act provides the President with a set of 150 emergency powers: 137 potential statutory powers if the President declares a national emergency, and another 13 if Congress passes the declaration. What constitutes a “national emergency” is arbitrary, since it has never been legally defined. These powers, which are in effect for only one year unless renewed, include the ability to surveil political opponents and to block domestic transportation and financial transactions. As of September 11, 2024, 42 national emergencies were still in effect. President Trump himself declared a national emergency during his first term to procure billions of dollars of funding for a southern border wall (Proclamation 9844). He extended this national emergency twice (for a year each time), before it was repealed by President Biden.4

Martial Law in the US allows for the military to assist with non-law-enforcement activities domestically, engage in law enforcement, and to temporarily replace civilian government with military rule. In the most extreme case, military tribunals can replace the civilian judiciary, and the Constitution and normal rule of law are suspended. A state governor or Congress can invoke martial law, an act that has occurred 68 times in US history. Despite this frequency, the legality of martial law remains unclear. “Martial law” is not mentioned in the Constitution, Congress has never defined it, and Supreme Court rulings about it are “inconsistent and vague.”5 Whether the President can invoke martial law is contested, and arguably only section 253 of the Insurrection Act gives the President such authority. A President has declared martial law at a national level only once in US history, when Abraham Lincoln used it to suppress dissenters during the Civil War by suspending habeas corpus and civil rights across the country.6

* Security crackdowns: If Mr. Trump fulfils his promise to implement some of his more extreme proposals immediately after his inauguration—such as mass-deportation of undocumented immigrants—left-leaning protestors could flood the streets countrywide, provoking right-wing counter-protests. Mr. Trump’s response is unlikely to be measured. He might leverage the unrest to justify a security crackdown by, for instance, directing the Department of Justice and FBI to target opponents or invoking the Insurrection Act to permit the military to suppress protests (see Box 5, “Extraordinary presidential powers”). Right-wing militias could join in attacks on opposing protesters. In the worst case, one of our interviewees argued, Mr. Trump could create a “state of exception” in which the executive is perceived to be legitimately and perpetually above the rule of law.7

In Figure 2 we represent a Trump administration’s implementation of radical policies early in its tenure as a critical juncture with four possible subsequent pathways of public protest and administration response.

[FIGURE OMITTED]

* Populist authoritarian contagion: A Trump victory could embolden far-right movements worldwide. The measures described above, if implemented in the US, could legitimize populist authoritarian movements and their leaders elsewhere. But the strength of such a contagion effect, our interviewees stressed, would vary by region.

In Europe, the appeal of the far right is more limited than in America, because mainstream conservatives generally refuse to work with the far right, so the latter cannot subsume the former as Mr. Trump and his followers have done with the Republican Party. On the European continent, a second Trump presidency may indeed serve more to catalyze pro-democracy movements than to further empower the extreme right.

In Latin America, however, Mr. Trump’s first term legitimized copycat leaders like Brazilian President Jair Bolsonaro, and a second term would further embolden such leaders and the movements supporting them. Across the global South, an American shift towards authoritarianism would validate the politics of existing and aspiring authoritarian leaders.

More generally, since World War II the US has been a crucial exemplar of how democracy, peace, and prosperity can powerfully reinforce each other. No other country or bloc—not even the European Union—is well-positioned to pick up this mantle, should Mr. Trump abandon it. Conservative movements worldwide are already increasing their cooperation, and the loss of the American example will further cede ideological space to authoritarian ideology.

2.2 Socio-economic turmoil

Mr. Trump’s economic proposals could exacerbate inflation and weaken the country’s economic prospects in ways that ripple through the global economy and intersect with other socio-economic vulnerabilities.

* Tariffs and inflation: The first Trump presidency implemented the biggest increase in tariffs since the Great Depression. For his second term, Mr. Trump has proposed blanket tariffs of 10 to 20 percent on almost all imports, and 60 percent or more on Chinese imports. Our interviewees indicated that such measures would increase inflation in the American economy by at least 2 percent, hinder long-term planning and investment, and perhaps trigger a wage-price spiral. The inflationary pressures would worsen further if Mr. Trump were to opt to “run the economy hot” by pursuing near-zero interest rates, cutting taxes, and using economic regulations to reward supporters and punish opponents. These measures would increase the US deficit, perhaps to the point of jeopardizing investor confidence. Any effort by Mr. Trump to politicize the Federal Reserve and directly influence monetary policy would worsen these stresses. In Figure 3, we represent the Trump administration’s trade policy as a critical juncture with three possible pathways of first-order effects on the US economy.

Inflation and malaise in the US economy would exacerbate economic stress worldwide. Sharply higher US tariffs would almost certainly spur retaliatory protectionism by other countries, slowing growth in the global economy by 1 to 2 percent. These impacts would not in themselves push the world economy into recession, but they could do so in combination with other forces.

[FIGURE OMITTED]

* Mass deportations: Mr. Trump has proposed deporting up to 10 million undocumented immigrants. The process would involve mass raids and arrests, internment in camps, re-imposition of Title 42 expulsion policy to curtail land entry, and use of the military along the border on land and sea to stop the drug trade. He has also proposed ending birthright citizenship.

Our interviewees argued that deportation measures are unlikely to be implemented at such a scale. A militarized cross-country deportation campaign would be incredibly complicated and economically disruptive. Farmers would react strongly to the sudden loss of essential agricultural labor. But even deportations at a smaller scale would raise inflation, dislocate labor markets, and involve draconian measures. And climate and other global stresses will continue to drive migration towards the US through the course of a second Trump administration, providing an ongoing motivation to harden the southern border and direct xenophobic anger against immigrants.

Figure 4 shows potential pathways arising from the critical juncture of a Trump administration’s immigration policy decisions.

[FIGURE OMITTED]

* Derailed climate action: Mr. Trump will almost certainly withdraw again from the 2015 Paris Climate Agreement, dismantle domestic climate and environmental regulations (particularly those seen to hamper the fossil fuel industry), and actively oppose a transition to green energy.

Modelling suggests that likely Trump administration climate and energy policies would result in 4 billion more tonnes of US carbon emissions by 2030, compared to estimated emissions under a Harris administration, producing around $900 billion in additional climate damages worldwide. Yet many commentators argue that bipartisan support in Congress for Inflation Reduction Act policies (the returns from which flow disproportionately to Republican states) will temper Mr. Trump’s attacks on the Biden administration’s climate legacy.

Nonetheless, our interviewees noted that if the United States, one of the world’s largest carbon emitters, withdraws from international climate action (and then actively hinders such efforts), other countries may have scant incentive to pursue their own climate action. They may even imitate Mr. Trump’s environmental deregulation to remain economically competitive. But broad defection from the international climate regime did not occur during the first Trump administration. It seems equally possible that a collection of national, international, sub-national, private, and non-governmental actors would redouble their climate efforts to offset American inaction, or that China would step into the role of global climate leader to expand its influence (see Figure 5).

[FIGURE OMITTED]

* Poor pandemic response: During the COVID-19 pandemic, Mr. Trump successfully executed Operation Warp Speed, creating a funding pipeline for rapid vaccine development. But he also actively spread misinformation and castigated the medical establishment, imperilling millions of lives. His disdain for scientists as part of a cosmopolitan elite would likely continue in his second term. Nominations of scientific and medical advisors and personnel within the administration would emphasize ideological alignment and loyalty over scientific expertise, increasing the risk that the administration would disseminate poor advice or even outright disinformation should another pandemic occur.

A Trump administration crackdown on migrants, who make up the vast majority of agricultural and factory farm workers, would both prevent virus testing (as workers avoid contact with authorities) and push those being detained for deportation into crowded facilities enhancing contagion. Mr. Trump has also said he would probably dismantle the Office of Pandemic Preparedness and Response Policy, an action that would hamper the government’s ability to prevent virus spread and counter misinformation. His likely weak support for public health measures (lockdowns, masks, vaccines, and the like) would exacerbate an outbreak.

2.3 International conflict and security

Mr. Trump has proposed actions in the foreign-policy and security spheres that—while appealing to his domestic constituencies—would greatly erode America’s international influence. His “transactional isolationism,” would lead to a more uncertain and conflictual world order.

* Weakened NATO, emboldened Russia: Mr. Trump has suggested that the US might withdraw from NATO; he has threatened to abandon allies to Russian aggression; and he has brow-beaten NATO members into raising their defense spending. Yet the US is unlikely to leave NATO, as doing so would require a two-thirds majority vote in the Senate. Still, ambivalent or ambiguous support for NATO and its members, involving actions such as withholding diplomatic envoys or cutting funding, would critically undermine the alliance (see Figure 6).

Mr. Trump would probably end US military support of Ukraine, leaving Europe struggling to fill shortfalls in materiel. Together, US ambivalence about NATO and a Ukrainian defeat (of some kind) could encourage President Putin to extend his military aggression to other countries formerly part of the Soviet orbit (perhaps starting with Moldova). The resulting security panic in Western Europe would divert attention and spending from other policy priorities.

But our interviewees stressed that all these outcomes are uncertain due to Mr. Trump’s unpredictability. He may attempt to broker a ceasefire between Ukraine and Russia to bolster his image as a “dealmaker” (though neither Ukraine nor Russia would likely agree to any settlement Mr. Trump could propose). And even if the US disengages from Europe, Russia may still act cautiously, fearing Mr. Trump’s volatile nature.

[FIGURE OMITTED]

* Middle East conflict: Arguably, the Abraham Accords were the first Trump administration’s most significant foreign policy success. A second Trump administration would likely return to that playbook, by working to bridge the widening gulf between Israel and Saudi Arabia. But Mr. Trump’s affinity for Israeli Prime Minister Benjamin Netanyahu will handicap this strategy if the Israeli leader and his coalition supporters remain entirely unwilling to consider a realistic pathway to Palestinian statehood. US policy towards Iran will return to the extreme hardline taken by the first Trump administration.
* Chinese aggression towards Taiwan: Our interviewees were divided as to whether a return of Mr. Trump to office would embolden Chinese President Xi Jinping to attack Taiwan, or if the return of Mr. Trump’s unpredictability might instead deter Chinese aggression. But they agreed that were Xi to act, President Trump would be more likely (than President Harris, were she in office) to make rash and unconsidered decisions, thus escalating the crisis—and ultimately perhaps stumbling into nuclear war.
* Transactional isolationism and international leadership: In a second administration, Mr. Trump would eschew America’s longstanding international leadership in favor of “transactional isolationist” diplomacy and a broad turn inward. The world could progressively lose the coordination, security, and stability that America has provided by acting as a global referee and protector of international public goods, such as shipping routes. Mr. Trump would also reduce financial support for multilateral organizations, including United Nations’ agencies and international legal bodies, and scapegoat them for the world’s ills.

The international community’s long-term planning and conflict/crisis management capacities would erode, with adverse effects on development assistance, international trade, north-south relations, macro-economic stability, climate action, and peacebuilding. Our interviewees suggested, as shown in Figure 7, that Mr. Trump’s transactional isolationism and reliance upon military coercion as a single, blunt foreign policy instrument could ultimately create a more anarchic world order based on the principle of self-help; or it could create openings for China to expand its leadership around the globe, with all the risks that entails; or, finally, it could spur more collaborative and effective global governance by the European Union, middle powers, and overlapping coalitions.

[FIGURE OMITTED]

* Weakened nuclear command and control: The experts we consulted argued that the chain of command involving nuclear weapons is more robust than conventionally appreciated. Two scenarios involving Mr. Trump’s possible use of nuclear weapons are commonly presented. In the first, the Pentagon alerts the President about an emergency that requires his immediate decision on whether to use the weapons. In such circumstances, because the military would already be aware of the threat, it would be primed to respond, and key military and intelligence personnel would be ready to advise the President on appropriate actions. In the second, Mr. Trump, based on his own inclinations, unexpectedly orders the military to launch nuclear weapons. Here, the military apparatus is unprepared for launch, so various officials would have to review the President’s decision and reasoning, thereby delaying action. The public is most concerned about the second scenario— in which Mr. Trump uses nuclear weapons on a whim—but that kind of situation is highly unlikely to result in a nuclear launch. Of greater concern is the first scenario where the decision truly comes down to the President’s judgment and the quality of advice on offer, likely under extreme pressure.

3. Feedback assessment

In Section 2, we identified some significant first- and second-order impacts of a second Trump Presidency. In this section, we propose that these impacts could produce eight feedback loops in global systems that would further magnify inter-systemic risks.

We then show how connections amongst these eight feedback loops could have additional, cascading effects that escalate into a new and more perilous phase of global polycrisis—a complex tangle of simultaneous crises that, combined, would cause enormous human harm.

This section thus fundamentally concerns the relationship between Donald Trump—an impulsive and unpredictable decision maker with an immense need for self-affirmation and a radical political agenda supported by a powerful, coordinated group of conservative US elites—and global geopolitical, economic, technological, and governance systems. It echoes longstanding debates about the relative roles of structure and agency in the course of human history.

In many ways, Mr. Trump is a product, or a symptom, of global systemic stresses that were worsening for decades before he became a Presidential candidate. Growing economic precarity and inequality, widespread political and social alienation, soaring international migration, American hegemonic retrenchment, and the weakening of multilateral institutions all predated Mr. Trump’s first term. He exploited many of these trends to gain office. The Biden administration found itself subject to the same array of stresses and felt compelled to continue many of the first Trump administration’s policies, including trade measures targeting China, harsh immigration restrictions, and support for domestic fossil-fuel production. A Harris-Walz government would likely do similar things. Global systemic stresses and the global polycrisis will continue to escalate regardless of the 2024 electoral outcome.

Still, Mr. Trump has significantly accelerated many of these stresses, while adding more stresses and triggers to the morass. As a system disrupter, he is uniquely determined and effective. For example, while stresses in the international system stemming from changes in relative economic and military power certainly demanded strategic shifts in American leadership, in his first term, Mr. Trump went far further, largely eschewing American leadership altogether while maligning multilateral institutions. His derision for the rule of law, electoral results, and scientific evidence alongside his authoritarian predilections—often accompanied by xenophobia, racism, misogyny, and misinformation—have undermined America’s democratic model. And the promised policies of his second term, such as rescinding American security commitments or radically boosting protectionist measures, could be uniquely Trumpian triggers of global systemic crises.

#### It collapses nuclear deterrence and empirical checks on escalation---internally and externally.

Hymans 22 [Dr. Jacques E. C. Hymans, Associate Professor of International Relations at the University of Southern California, PhD Government, Harvard University, “Responses to Meier and Vieluf,” The Nonproliferation Review, 28(1-3), pp.52-54, DOI 10.1080/10736700.2022.2093513]

Building on Meier and Vieluf’s accounting of the dangers of populism

I have argued that nuclear-armed establishments are more dangerous than Meier and Vieluf suggest. Now I will also argue that nuclear-armed populists are dangerous for even more reasons than Meier and Vieluf enumerate.

Meier and Vieluf’s article does not do enough with its basic definition of nationalist populism as a black–white oppositional stance toward internal as well as external enemies. If we take that definition seriously, it becomes apparent that the biggest problem stemming from the rise of populists is not that they might ignore the advice of traditional nuclear and defense establishments and behave carelessly toward foreign powers. The biggest problem is that populism is a gateway drug to internal political violence, revolution, and civil war.12 And, perhaps needless to say, serious domestic upheaval in a nuclear power also increases the likelihood of a nuclear incident of some kind.

Perhaps the first-ever populist government in history was led by the Jacobin faction that drove the French Revolution forward from 1792 to 1794.13 The Jacobins expressed a radical populist faith in the power of “redemptive violence” by “the people.” 14 They made war both inside and outside France. To quote historian Brian Singer, the Jacobins’ violence was directed neither “at a well-defined enemy” nor “at some limited, short-term end, but to the creation of a new regime, a new humanity.” 15 In short, they wanted to raze the old world to the ground—or die trying. The Jacobins’ favorite metaphor for their violence was lightning, which materializes from out of nowhere to simultaneously destroy and enlighten the dark world it strikes. Their interest in lightning was not only metaphorical; Jacobin ideologues such as Jean-Paul Marat were serious students of the new science of electricity.16 France and the world are lucky that nuclear physics was not very far advanced in the Jacobins’ day.

None of the contemporary nuclear-armed populist leaders listed by Meier and Vieluf is a modern-day Jacobin. Most populists are merely unprincipled con artists who prey on atomized and insecure sections of the public, manipulating them to gain personal wealth and power. Even so, the language of populism is the language of revolution and civil war, and pretend revolutionaries can easily be carried along by the tide of social resentments that they have irresponsibly stirred up. Take, for instance, Trump and his followers’ dismal trajectory to January 6, 2021. We need to consider worst-case scenarios.

Trump did not actually want a civil war in the United States, but his rhetoric emboldened the not-so-small number of Americans who do. A rigorous time-series analysis found that Trump’s presidential run in 2016 was associated with an abrupt, statistically significant, and durable increase in violent attacks by domestic far-right extremists.17 For instance, the leading ideologist of the neo-Nazi group Atomwaffen Division, James Mason, wrote in July 2017, “I am not ashamed to say that I shed a tear of joy at [Trump’s] win.” 18 Far from standing back and standing by, Mason preached direct action to “accelerate” the onset of a society-purifying race war that he believed would push the Trump administration into embracing full-blown fascism. In May 2017, an Atomwaffen member, National Guard veteran, and onetime physics major named Brandon Russell was arrested for plotting to attack the Turkey Point nuclear power plant, among other targets. Police later also found traces of thorium and americium in Russell’s bedroom.19

The domestic divisions fomented by populists do not have to arrive at their logical end point of revolution and civil war to increase deterrence instability and the chances of a nuclear incident. Below I elaborate three more specific hypotheses on the deterrence consequences of internally divisive populist governments. The hypotheses are speculative, but they logically follow from the definition of populism and should therefore serve as useful points for further discussion of Meier and Vieluf’s core idea.

Hypothesis 1. Populists are likely to be insensitive to nuclear threats to the political strongholds of their domestic opponents. Meier and Vieluf observe that the credibility of US extended-deterrence promises to America’s allies suffered massively under the Trump administration. That is certainly true, but the question of whether the United States would be willing to trade “Pittsburgh for Paris” (p. 19) has been around for decades. The new problem that populism creates is that even homeland deterrence starts to suffer from the same credibility dilemmas as extended deterrence. In addition to the “Pittsburgh for Paris” question, we now also have to ask whether a populist administration in Washington would be willing to trade Pittsburgh for Portland.

In a country where populist leaders revel in dividing society against itself, deterrence theory’s standard assumption that a nuclear threat to any part of the homeland will be treated as a threat to the whole homeland can no longer be taken for granted.20 Whatever the president’s true intentions, foreign powers could potentially calculate that they will not be punished for striking at certain targets within the country’s borders.21 For instance, the longest-range North Korean missile that is currently operational, the Hwasong-14, has enough range for a nuclear attack against Seattle but not Mar-a-Lago. 22 Would the same president who formally designated Seattle as an “anarchist jurisdiction” in an attempt to starve it of federal dollars be greatly concerned by a credible threat of a North Korean strike against it? 23 Probably—but is “probably” a good enough answer for homeland deterrence credibility?

Another dimension of this same hypothesis has to do with the precise locations where populists choose to install military installations that are likely to become nuclear targets. During the Nixon administration, the objections of congressional Democrats to the planned construction of Sentinel anti-ballistic-missile facilities near their political strongholds such as Boston and Seattle led Secretary of Defense Melvin Laird to move the projects to less populated areas.24 President Nixon believed that he needed to work constructively with the Democrats on core national security issues. By contrast, a populist president would love to see his political opponents sweating the targets he put on their backs.25

Populists in power may even be slow to help their political opponents’ regions recover from an actual nuclear attack. There is a lesson for nuclear analysts in the Trump administration’s intentional slow-walking of congressionally mandated emergency aid to the US territory of Puerto Rico after Hurricane Maria in 2017, one of the deadliest natural disasters in US history.26 Having long held a low opinion of Puerto Ricans, Trump reportedly told his chief of staff and budget director that he “did not want a single dollar going to Puerto Rico.” 27 Would Trump have been any more helpful if the island had been hit by a man-made bomb instead of a natural one? Maybe if Puerto Rico could do something for him in return, which leads to the second hypothesis:

Hypothesis 2. Populists are likely to exploit their control over homeland deterrence to demand political concessions from their domestic political opponents. At the heart of populism is a disrespect for the principle of equal application of the laws. Instead, governance becomes a pure power game, and populist rulers notably exploit crises as opportunities to bring domestic political opponents to their knees. There is every reason to assume that a populist in full command of the nuclear and defense establishment would similarly take advantage of a nuclear crisis to conduct such a shakedown. In other words, populists in power will charge a high price for adequately responding to nuclear threats against their domestic opponents’ political strongholds.

Let us continue with the example of the Trump administration. The mass-destructive COVID-19 pandemic offers a highly relevant analogy for thinking about the internal political dynamics of a potential nuclear crisis under populist rule. Public-administration scholars have labeled Trump’s governing approach as “chaotic transactional federalism,” a cynical power system that “removes any vestige of certainty as decisions are shaped based on a desire to reward or punish other political actors, or left to subnational actors entirely. Expertise matters very little in these political, partisan transactions.” 28 In line with this, Trump responded to the COVID-19 crisis by pitting the 50 states against each other in bidding wars for vital medical supplies and for his political favor.29 The president publicly criticized Vice President Mike Pence for reaching out to all the state governors in his role as the coordinator of the national pandemic response, telling the press that he wanted Pence to deal only with those governors who were sufficiently “appreciative.” 30 Trump administration officials were even blunter in private. Trump’s son-in-law and closest adviser Jared Kushner reportedly said that New York Governor Andrew Cuomo “didn’t pound the phones hard enough to get PPE [personal protective equipment] for his state … . His people are going to suffer and that’s their problem.” 31 Trump’s response to the Democratic governors’ pleas for PPE to defend against the virus was essentially the same as his response to Ukrainian President Volodymyr Zelenskyy’s pleas for weapons to defend against Russia: “I would like you to do us a favor though.” 32

The hypothesis that populists will demand concessions from their domestic political opponents in exchange for issuing nuclear-deterrent threats on their behalf may at first glance appear to be only a matter of internal politics, but the distractions caused by internal political wrangling could greatly affect the denouement of a time-sensitive nuclear crisis. Foreign powers could also be tempted to initiate a nuclear crisis precisely in order to intensify their adversary’s domestic divisions. In addition, when facing the double burden of a nuclear threat and simultaneous shakedown by the president, politicians from disfavored regions would likely appeal to friendly elements of the military for assistance. That possibility tees up the third hypothesis:

Hypothesis 3. The establishment’s reaction to populism is likely to increase deterrence instability at least as much as the actions of the populists themselves. Meier and Vieluf’s article implies that the fate of the world hangs on the establishment’s ability to keep populist fingers off the nuclear button. But the establishment’s effort to fend off the populists could itself dramatically increase deterrence instability, for instance by sowing confusion about the chain of command. This hypothesis is not mere speculation. Reacting to widespread fears that Trump might be tempted to launch a nuclear attack against China or another country after his 2020 election loss to Joe Biden, in January 2021, General Mark Milley, the chairman of the Joint Chiefs of Staff, quietly worked the phone lines to reassure key people at home and abroad that he personally would not allow the president to do anything of the sort. The chairman of the Joint Chiefs is legally outside the chain of command for the execution of the president’s military strategy. Indeed, neither he nor anyone else has the legal authority to prevent a determined president from launching a nuclear strike.33 Yet Milley told Pelosi, “The president alone can order the use of nuclear weapons. But he doesn’t make the decision alone. One person can order it, several people have to launch it.” 34 Essentially, Milley was saying that if push came to shove, the military would mutiny. Meier and Vieluf seem to think that Milley did the right thing (pp. 15–16). Maybe so, but he also set an ominous precedent.

As I mentioned at the outset, these comments are simply intended to spark further discussion about the important issues raised by Meier and Vieluf’s stimulating article. I would be relieved to discover that I am being overly pessimistic about humanity’s chances of survival with either the establishments or the populists in charge of nuclear arsenals. But the more I study the issue, the more pessimistic I become.

#### US democratic resilience averts existential backsliding globally.

Kasparov 17 [Garry Kasparov, chairman for the Human Rights Foundation, “Democracy and Human Rights: The Case for U.S. Leadership,” Testimony before the Subcommittee on Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women's Issues, 2-16-2017, https://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf] \*[language modifications in brackets]

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat.

American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great.

The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news.

The fear of making things worse has paralyzed [prevented] the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last.

#### It’s more important than any other factor in determining existential risk.

Jain et al. 19 [Ash Jain, senior fellow with the Scowcroft Center for Strategy and Security, adjunct professor at Georgetown University’s School of Foreign Service, JD/MS foreign service, Georgetown University, BA political science, University of Michigan; Dr. Matthew **Kroenig**, deputy director for strategy in the Scowcroft Center for Strategy and Security, associate professor of government and foreign service at Georgetown University, PhD political science, University of California at Berkeley; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” Atlantic Council, 2019, https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf]

This international system, while not perfect, has proven to be more successful than any in human history at providing security, economic prosperity, and freedom. The evidence of this is apparent in the numbers. Before 1945, major powers frequently engaged in direct warfare on a massive scale, as in the Napoleonic Wars, World War I, and World War II. Since 1945, however, there have been zero great-power wars. As shown in Figure 1, the percentage of people killed in armed conflict has drastically declined in the post-World War II era. Armed conflict killed an average of 1–2 percent of the human population from 1600 to 1945. During the Cold War, an average of 0.4 percent of the world’s population perished due to war. Since the year 2000, less than one one-hundredth of 1 percent of people have died this way.8 Under a rules-based system, the world has continued to make progress in reducing deaths from all kinds of war, including often-intractable civil conflicts.9

Turning to economic prosperity, the global gross domestic product (GDP) per capita in 1945 was $4,079.10 Today it is $11,570.11 This drastic increase in global living standards is evident in Figure 2. The share of the global population living in poverty has dramatically decreased. In 1929, the number of people living in extreme poverty (defined as earning less than 1.90 international dollars per day) was 1.35 billion, almost two-thirds of the world population at the time. In 2015, that figure was 733.48 million, or slightly less than 10 percent of the world population.12 China itself has been one of the biggest beneficiaries of this system, as geopolitical stability in Asia and integration into the global economy helped to lift four hundred million Chinese out of poverty.

In the realm of good governance, the number of democracies has substantially increased. With the end of World War II and decolonization, the number of democracies increased from seventeen to forty-eight between 1945 and 1989.13 That number further skyrocketed at the end of the Cold War, as countries formerly behind the Iron Curtain rushed to join the West. In the year 1900, there were twelve democracies in the world. Today there are ninety-six.14 The percentage of the world’s population living under democratic governments has also increased from about 12 percent in 1900 to more than 55 percent today.15 This trend is visible in Figure 3.

To be sure, these outcomes are the result of an enormous and interconnected range of factors. International-relations scholars, for example, believe that nuclear deterrence and the absence of a multipolar distribution of power also contributed to great-power peace.16 In addition, globalization and economic development have been fueled by new technological developments. Further, global norms on democratic governance and human rights have come a long way since the early twentieth century.17

Still, it is doubtful whether this dramatic improvement in the human condition could have been achieved in the absence of the rules-based international system. Moreover, many of these other driving forces are themselves constitutive of, if not partially the result of, that system. Global bipolarity, and then unipolarity with the United States at its center, was critical for the postwar development of a rules-based system, which may not have been possible in a more multipolar distribution of international power, or with a non-democratic hegemon at the system’s apex. The splitting of the atom could have resulted in widespread nuclear-weapons proliferation and nuclear use had it not been for the NPT and extended US nuclear deterrence in Europe and Asia.18 The most important technological advances for globalization, including the Internet, occurred and flourished in the free world, defended by the United States and its democratic allies and partners.19 Finally, the United States and its democratic partners, along with nongovernmental organizations and individuals operating in these states, were the most important norm entrepreneurs propagating global norms around issues of good governance, democracy, and human rights.

In sum, the rules-based international system that has been the defining feature of global order for the past seventy years has coincided with—and was almost certainly essential in bringing about—the most secure, prosperous, and well-governed world humanity has ever known.

Despite this record of unprecedented and enduring success, the rules-based international system is currently besieged by a number of challenges unleashed by rapid and dramatic global change. Understanding the current strategic context, including global trends and threats both external and internal to the system’s democratic core, is a necessary first step toward devising a strategy to revitalize, adapt, and defend a rules-based international system.

Global Diffusion of Power. The international distribution of power, as defined by relative economic weight, is shifting away from the founders of the post-World War II system to other emerging economies. As recently as the 1990s, nearly 70 percent of global economic activity occurred in Europe and the Americas. By the 2040s, that number is expected to drop to roughly 40 percent. At the same time, the Asian share of global GDP will increase from 32 percent at present to 53 percent in 2050, meaning that, by that time, the majority of all economic activity on Earth will occur in Asia.

While the United States remains the world’s most powerful state militarily and economically, it is declining relative to other rising powers, particularly China. When corrected for purchasing-power parity (PPP), China’s GDP has already surpassed the United States. The better metric for international power and influence, however, is real GDP; here, too, the US advantage is narrowing, but more slowly.21 At the conclusion of World War II, the United States possessed roughly 50 percent of global GDP.22 From the 1970s through today, that number has held steady at roughly 25 percent.23 Despite a common misperception, the United States’ share of global power is not declining in absolute terms.

Rather, other powers—especially China—are rising. China’s share of global GDP rose from 4.6 percent in the 1990s to 15 percent today.24 Many economists predict that China could surpass the United States as the world’s largest economy by 2030. It is noteworthy, however, that in 2009, economists predicted that this transition would happen by 2020. That date has been pushed back a decade as Chinese growth has slowed. Future projections depend entirely on assumptions about growth rates in the United States and China that cannot be known with certainty. Still, most economists expect that China will, at some point, surpass the United States as the world’s largest economy.

China is joined by other emerging economies with rapid growth rates, including India, Indonesia, and others. US allies, including Japan, Germany, and the United Kingdom, remain among the wealthiest nations on Earth, but their share of global power is also declining relative to the rise of the rest.

This shift is significant because international orders function best when their formal attributes at least roughly reflect the underlying balance of power. While only one measure of global influence, economic power is central given the leverage it provides over trade and investment, and the resources it offers to sustain military and security advantages.

It is also important to point out, however, that the United States and its formal treaty allies continue to possess a preponderance of power in the international system. As Figure 4 shows, the United States and its formal allies currently produce 59 percent of global GDP. When including other countries considered to be “democracies” by the widely used Polity scores, that number rises to 75 percent of global GDP. Democracies continue to retain global influence because more countries have transitioned to democracy since the end of the Cold War, and overall economic growth in democratic countries has outpaced that in autocratic states since 1991.

The major shift since the dawn of the post-Cold War world, therefore, is not that the power of the United States and its democratic allies and partners has declined substantially. The major difference is that the share possessed by autocratic challengers, especially China, has grown. As Figure 4 shows, the world is approaching a more bipolar distribution of power, with more wealth concentrated in the democracies and in a grouping of autocratic challengers led by China.

This means that, if they are able to work together more cohesively, the United States and its democratic allies and partners still have the power and influence necessary to significantly shape international outcomes. Moreover, if they are able to expand their ranks to court other nonaligned democracies like India, Indonesia, and Mexico, their influence on the international system can be even more decisive.

Disruptive Technologies. New technologies—including artificial intelligence (AI), robotics, quantum computing, and biotech, among others—are being developed at an exponential pace, and have the promise to transform society. They will determine how people live and function in the twenty-first century, significantly shaping the global economy, international security, and the course of geopolitics.

Throughout history, progress has been built on technological innovation, ranging from Thomas Edison’s light bulb to Henry Ford’s assembly line to the silicon chip, the personal computer, and the Internet. While new technology promises improved productivity and quality of life, it will bring serious downside risks, including economic dislocation and weapons proliferation. AI, for example, is already being widely adopted in the private sector to achieve great efficiencies and cost savings.25 At the same time, automation threatens to put millions out of work as jobs once performed by humans are replaced by machines. Moreover, AI is also being introduced into national militaries. A logical next step is fully autonomous weapons that can select and engage targets without a human in the decision-making loop. Some warn that these “killer robots” introduce many ethical and security risks, including the fear that they may turn on their creators and threaten humans’ very existence or, indeed, what it means to be human.26 Henry Kissinger warns, “We are in danger of losing the capacity that has been the essence of human cognition.”27

The existing international system was designed to deal with the most important dual-use technologies of the twentieth century, such as nuclear power, but it must be updated to deal with the technologies of the twenty-first century. As with nuclear energy, the international community needs an entirely new set of international norms, standards, and agreements for responsible uses of new technologies that mitigate their downside risks, while maximizing their upside potential.

#### Empirics confirm democratic peace.

Imai & Lo 21 [Kosuke, Professor of Government and Statistics at Harvard, and James, Assistant Professor of Political Science at the University of Southern California, “Robustness of Empirical Evidence for the Democratic Peace: A Nonparametric Sensitivity Analysis,” International Organization 75, Summer 2021, pp. 901–19, doi:10.1017/S0020818321000126]

The democratic peace—the idea that democracies rarely fight one another— has been called “the closest thing we have to an empirical law in the study of international relations.” Yet, some contend that this relationship is spurious and suggest alternative explanations. Unfortunately, in the absence of randomized experiments, we can never rule out the possible existence of such confounding biases. Rather than commonly used regression-based approaches, we apply a nonparametric sensitivity analysis. We show that overturning the negative association between democracy and conflict would require a confounder that is forty-seven times more prevalent in democratic dyads than in other dyads. To put this number in context, the relationship between democracy and peace is at least five times as robust as that between smoking and lung cancer. To explain away the democratic peace, therefore, scholars would have to find far more powerful confounders than those already identified in the literature.

The proposition that democratic states do not fight interstate wars against each other is one of the most enduring and influential ideas in international relations. The idea is theoretically rooted in the work of Immanuel Kant, who argued that interactions between states with a republican form of government give “a favorable prospect for the desired consequence, i.e., perpetual peace.”1 This has led to a large literature empirically documenting a negative association between democracy and conflict,2 leading one scholar to comment that the democratic peace is “the closest thing we have to an empirical law in the study of international relations.”

Despite the law-like nature of this association, no scholarly consensus has emerged on whether the observed association reflects a causal relationship or a spurious correlation. According to a recent survey, more than 30 percent of international relations scholars disagree with the democratic peace theory.4 In particular, skeptics have challenged the democratic peace by arguing that alliance structures from the Cold War,5 capitalism,6 and contract-intensive economies7 confound the observed association. These authors find that adding certain confounding variables to regression models eliminates the statistical significance of the estimated coefficient for the joint democracy variable.8

How should we resolve this empirical debate regarding the democratic peace?9 Unfortunately, in the absence of randomized experiments, we can never completely rule out the possible existence of confounding biases that arise from omitted variables. While scholars in this literature have exclusively relied on parametric regression models, this approach requires strong assumptions, namely that the model accurately characterizes the true data-generating process (correct set of variables, right functional form, valid distributional assumption, etc.). Given that these assumptions may not be verifiable from observed data, it is no surprise that various scholars advocate different regression models with diverging sets of variables, resulting in contradictory findings. The difficulty of adjudicating between these alternative modeling approaches has led to the ongoing controversy in the empirical democratic peace literature.

We propose an alternative approach based on nonparametric sensitivity analysis to formally assess the robustness of the empirical evidence.10 Specifically, we quantify the strength of confounding relationships that could explain away the observed association between democracy and peace. That is, we compute the precise level of unobserved confounding needed to render the observed association between democracy and conflict spurious. The idea is that although not all correlations imply causation, a very strong correlation suggests it. Unlike the parametric regression modeling approach prevalent in the literature, the proposed nonparametric sensitivity approach directly addresses the existence of unobserved confounders without assuming a particular regression model.11 Although one can never know with certainty from observational data whether democracy causes peace, this nonparametric sensitivity analysis can formally assess the robustness of empirical evidence for the democratic peace.

Our analysis applies the nonparametric sensitivity analysis method originally developed by Cornfield and colleagues, who were concerned with the robustness of the positive association between cigarette smoking and lung cancer in the potential presence of unobserved confounders.12 The study of the causal relationship between smoking and lung cancer closely parallels the dispute on the democratic peace. In both cases, randomized experiments cannot be conducted for ethical and logistical reasons, and critics contend that the observed association suffers from confounding biases. While no definitive conclusion can be drawn from observational data, Cornfield and colleagues argue that no existing confounder can explain the strong association between smoking and cancer and therefore this relationship is likely to be causal. Their conclusion is worth quoting here:

Cigarette smokers have a ninefold greater risk of developing lung cancer than nonsmokers, while over-two-pack-a-day smokers have at least a 60-fold greater risk. Any characteristic proposed as a measure of the postulated cause common to both smoking status and lung-cancer risk must therefore be at least nine-fold more prevalent among cigarette smokers than among nonsmokers and at least 60-fold more prevalent among two-pack-a-day smokers. No such characteristic has yet been produced despite diligent search.13

Our application of nonparametric sensitivity analysis to the democratic peace yields striking results. Depending on the definition of democracy, we find that a confounder must be at least forty-seven times more prevalent in democratic dyads than in other types of dyads. Thus, any potential confounder that could explain the democratic peace would have to be at least five times as prevalent as a similar confounder for smoking and lung cancer. In other words, according to our analysis, the positive association between democracy and peace is much more robust than that between smoking and lung cancer.

### 1AC---Plan

#### Plan:

#### The United States Federal Government should restore collective bargaining for federal civil servants weakened by executive actions.

### 1AC---Solvency

#### Contention 3 is Solvency:

#### Collective bargaining is both necessary and sufficient for policy autonomy and confidence in protection.

Handler 24 [Nicholas Handler, Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School, former Associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, clerked at the U.S. Court of Appeals for the Second Circuit, JD Yale Law School, MPhil University of Cambridge, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, 99(1), April 2024, pp.45-127, HeinOnline] \*[language modifications in brackets]

This Article demonstrates for the first time how civil servants check and restrain presidential power through collective bargaining. The executive branch is typically depicted as a top-down hierarchy. The President, as chief executive, issues policy directives, and the tenured bureaucracy of civil servants below him follow them. This presumed top-down structure shapes many influential critiques of the modern administrative state. Proponents of a strong President decry civil servants as an unelected "deep state" usurping popular will. Skeptics of presidential power fear the growth of an imperial presidency, held in check by an impartial bureaucracy.

Federal sector labor rights, which play an increasingly central role in structuring the modern executive branch, complicate each of these critiques. Under federal law, civil servants have the right to enter into binding contracts with administrative agencies governing the conditions of their employment. These agreements restrain and reshape the President's power to manage the federal bureaucracy and impact nearly every area of executive branch policymaking, from how administrative law judges decide cases to how immigration agents and prison guards enforce federal law. Bureaucratic power arrangements are neither imposed from above by an "imperial" presidency nor subverted from below by an "unaccountable" bureaucracy. Rather, the President and the civil service bargain over the contours of executive authority and litigate their disputes before arbitrators and courts. Bargaining thus encourages a form of government-wide civil servant "resistance" that is legalistic rather than lawless, and highly structured and transparent rather than opaque and inchoate.

Despite the increasingly intense judicial and scholarly battles over the administrative state and its legitimacy, civil servant labor rights have gone largely unnoticed and unstudied. This Article shows for the first time how these labor rights restructure and legitimize the modern executive branch. First, using a novel dataset of almost 1,000 contract disputes spanning forty years, as well as in-depth case studies of multiple agencies, it documents the myriad ways in which collective bargaining reshapes bureaucratic relationships within the executive branch. Second, this Article draws on primary source material and academic literature to illuminate the history and theoretical foundations of bargaining as a basis for bureaucratic government. What emerges from this history is a picture of modern bureaucracy that is more mutualistic, legally ordered, and politically responsive than modern observers appreciate.

**[TOC CONDENSED]**

INTRODUCTION ...........................................47 I. THE HISTORY OF FEDERAL SECTOR BARGAINING .......... 54 A. The Civil Service Reform Act of1978 .............. 55 B. Labor Rights as an Enhancement of Presidential Power......................................... 58 1. Labor Market ............................. 58 2. Disputes Over Presidential Administration ...... 61 C. Labor Rights as a Restraint on Presidential Power ... 63 II. HOw BARGAINING RIGHTS SHAPE BUREAUCRATIC POWER ... 66 A. How Substantive Rights Mediate Bureaucratic Relations ......................... 67 1. Check on Structural Deregulation ............. 68 2. Indirect Constraints on Policy ................ 71 3. Direct Constraints on Policy .................. 75 B. How Unionization Rights Mediate Bureaucratic Relations .................................... 76 1. The Value of Unions ........................ 77 2. Recognition Disputes: The Boundaries of Union Rights .............................. 80 3. Unions as Democratic Actors ................. 82 III. BARGAINING AS BUREAUCRATIC POWER IN CONTEMPORARY PRACTICE ......................................... 84 A . D ata.......................................... 85 1. Wins and Losses .......................... 86 2. Controversy .............................. 89 B. Immigration ................................. 94 1. Enforcement ..............................94 2. Adjudication .............................. 101 C . Tax ........................................... 106 D. Environment ................................. 110 IV. THEORETICAL IMPLICATIONS OF COLLECTIVE BARGAINING ... 113 A. The Legitimizing Role of Collective Bargaining .....114 1. Implications for Presidential Power ............ 114 2. Implications for Bureaucracy and Democracy ... 118 B. Collective Bargaining's Challenge to Administrative Legitimacy ......................124 CONCLUSION.......................................... 127

**[\TOC CONDENSED]**

INTRODUCTION

Over the past three decades, the President's power to shape policy through executive action has grown substantially.1 Scholars have responded by spotlighting how the federal civil service, and the millions of bureaucrats who staff it, restrain presidential power.2 Observers agree that Congress and courts are no longer capable of overseeing the full scope of executive activity. The federal bureaucracy, by contrast, has the size, personnel, and expertise to monitor executive action, identify potential abuses, and resist ill-considered or improperly politicized policy. Bureaucrats' independence and their practical and legal ability to challenge presidential policy therefore have become critical modulators of executive power.3 **[FOOTNOTE 3]** 3 A number of emerging accounts focus on the substantial practical ability of the civil service to check presidential power by leveraging asymmetries of resources and information to pursue programs that might be at odds with the President's goals, see, e.g., Nou, supra note 2, at 363-65, or by maintaining bureaucratic cultures that persistently exercise discretion in specific ways, see, e.g., Ingber, supra note 2, at 169-73. Other accounts have investigated more formal mechanisms for civil servants to challenge the President, including by seeking standing to challenge executive policies on the merits in Article III courts. See, e.g., Jennifer Nou, Dismissing Decisional Independence Suits, 86 U. CH1. L. REv. 1187, 1191-95 (2019) (discussing Judge Posner's approach to analyzing the standing of ALJs to challenge agency action); Alex Hemmer, Note, Civil Servant Suits, 124 YALE L.J. 758 (2014). Still others focus on the role that internal management of the executive branch plays in lending structure and legitimacy to executive action, importing the norms and structure of traditional law into areas of otherwise unconstrained policy discretion. See, e.g., Gillian E. Metzger & Kevin M. Stack, Internal Administrative Law, 115 MIcH. L. REv. 1239, 1249-59 (2017); Christopher J. Walker & Rebecca Turnbull, Operationalizing Internal Administrative Law, 71 HASTINGS L.J. 1225,1231-32 (2020). **[\FOOTNOTE 3]**

To critics, including proponents of the unitary executive theory, the tenured federal bureaucracy constitutes a "deep state," unelected and illegitimate, that has wrested away power constitutionally vested in the President.4 Former President Trump has vowed, if re-elected in 2024, to purge thousands of federal civil servants and replace them with political loyalists, claiming to have a list of fifty thousand civil servants to terminate.5 Even bureaucracy's defenders worry about the civil service's supposed insulation from interbranch supervision and democratic accountability. The mechanisms bureaucrats use to "check" the President are deemed irregular at best, extralegal at worst. They require acts of "disobedience" or "resistance"-such as deliberate noncompliance with or half-hearted implementation of the President's directives.6 **[FOOTNOTE 6]** 6 See, e.g., Nou, supra note 2, at 381 (noting that "bureaucracy [was] openly challenging decisions" during the Trump administration); Ingber, supra note 2, at 139. **[\FOOTNOTE 6]**

At the heart of this debate over the legitimacy of the federal bureaucracy are basic questions of personnel management-to whom do bureaucrats answer? Who structures their incentives? Who can fire, discipline, or reassign them, and for what reasons? Are bureaucrats truly a "ruling class" of "unaccountable 'ministers,"' insulated from the control of the coordinate branches and the American public, as critics on the Supreme Court and elsewhere suggest?? Or do they, as defenders argue, serve a pro-constitutional role by curbing presidential excess and promoting separation of powers and rule of law?8 The answers to these questions have important implications for the legal viability of the administrative state itself, as recent judicial decisions make clear.9

But surprisingly, administrative law scholars have ignored a complex system of labor law at the heart of modern personnel administration, which reshapes presidential-bureaucratic relations in profound ways and challenges many of our assumptions about bureaucracy and the administrative state. Federal employees have extensive, statutorily enshrined labor rights. They have the legal right to form labor unions, to negotiate the terms of their employment with presidentially appointed agency heads, and to enter into complex collective bargaining agreements (CBAs) that govern many aspects of their work and shape how the federal government implements public policy.10 These contractual arrangements can amend the relationship between the President and the civil service in important ways, restructuring how agencies work and constraining what agency heads can direct employees to do in service of an agency's mission. Hundreds of these CBAs have been adopted, governing millions of federal employees ranging from immigration judges to scientists to prison guards.11 Their provisions are enforced through thousands of adjudications each year, hundreds of which are appealed to the Federal Labor Relations Authority (FLRA) and dozens to circuit courts.12

Take the field of immigration as an example. Typically, the story goes that the President imposes policies with profound implications for the immigration system, such as prioritizing the arrest and deportation of certain populations or setting targets to grant or deny certain numbers of asylum applications or removal challenges." Once those policies are announced, bureaucrats may choose to either sheepishly obey or clandestinely resist their orders. Presidential administration thus produces either an "imperial" presidency or an unaccountable "deep state."

But in the overlooked field of labor, bureaucrats may check presidential directives not through subterfuge, but through formal and legal challenges resting on breach of contract or labor violation claims. Immigration and Customs Enforcement (ICE) agents can challenge and defeat policies requiring them to deprioritize the arrest of certain populations-such as minors and those without criminal records-or to provide legal information to detained immigrants on the grounds that those policies improperly alter agents' conditions of employment.14 Border patrol guards can defeat policies altering what types of border searches they may conduct, what types of weapons they may carry, or what disciplinary processes they may face for misconduct.15 Immigration judges can defeat productivity quotas or performance evaluation standards designed to force them to process cases more quickly-a process well known to produce lower win rates for immigrants challenging removals.16 And employees of the United States Customs and Immigration Service (USCIS) may challenge directives pushing them to grant fewer asylum applications.'7 In all these instances, important questions of presidential policy may rise and fall not on deep analyses of Article II or the Administrative Procedure Act, but on disputes over contractual interpretation, bargaining obligations, and unfair labor practices. In short, federal labor provides a forum in which civil servants openly and formally, rather than secretly and illicitly, challenge presidential administration in a wide range of important contexts. What emerges from the study of federal sector labor is a picture of presidential power neither imposed from above nor subverted from below. Rather, the President and the civil service bargain over the contours of executive authority and litigate their disputes before arbitrators and courts.

Federal employees' labor rights are likely to become more important in coming years. The Trump Administration accelerated a trend towards federal employees leveraging their labor rights to influence executive branch policies.18 In February 2020, for instance, the union representing ICE employees attempted to negotiate a collective bargaining agreement with Kenneth Cuccinelli, the departing de facto deputy head19 of the Department of Homeland Security, that would have significantly expanded their power to challenge immigration enforcement directives as violating agents' rights to certain working conditions.20 An EPA employees' union, emboldened by a victory before the FLRA, likewise sought to negotiate a new CBA enshrining certain protections for scientific expertise and neutrality as employment rights.21 Presidents, however, are not always on the losing end of such contractual arrangements. A 2004 effort by the Bush Administration to insert non-disclosure requirements into a CBA between the Department of Homeland Security and its employees, for instance, resulted in an employment-based ban on leaking from one of the nation's largest and most politically controversial agencies.22 As the norms promoting bureaucratic expertise weaken,23 and as other administrative structures designed to protect civil service independence come under sustained attack,24 such efforts will likely multiply.25 Understanding federal sector labor law is thus an urgent task, as it is an increasingly important battlefield for contesting both the practical control and legal legitimacy of the administrative state.

This Article begins that task by making two primary contributions. First,the Article describes and empirically documents how employment-based challenges to top-down management reshape presidential power by reviewing and compiling data on nearly 1,000 FLRA adjudications from the past forty years. It then provides in-depth case studies of agencies in three policy areas-immigration, environmental protection, and tax-to demonstrate how federal labor rights can shape policy outcomes within the executive branch. The Article focuses on these agencies because they have been sites of recurring, high-salience policy changes by presidential directive over the past several decades. And by virtue of the President's focus on these agencies as vehicles for executive policymaking, they have also been at the center of several high-profile disputes over agency policy between tenured staff and politically appointed heads.26 These case studies show that, at least in these critical areas of presidential policymaking, contractual rights play an important and underappreciated role in shaping presidential discretion over executive branch policy.

Second, this Article illuminates the ideological underpinnings of the modern federal labor regime and its implications for administrative law. It challenges the assumption, prevalent in the academic literature and central to debates about the legitimacy of the administrative state, that executive branch bureaucracy is a top-down hierarchy insulated from political influence. Both bureaucracy's critics and its defenders presume it suffers from a profound democratic deficit. Unitarists believe bureaucracy usurps presidential power, while defenders believe that, despite its salutary role in restraining presidential abuses, bureaucracy sits largely outside the legitimizing force of American law.27 But labor rights complicate these critiques. The federal labor regime is a more mutualistic and legalistic model of presidential-bureaucratic relations than contemporary observers appreciate.

While labor rights restrain the President's managerial authority in some respects, they also enhance presidential power and expand executive branch capacity in other ways, thereby complicating the unitarist critique. One surprising insight from the history of federal sector bargaining reveals that neither Congress nor the courts imposed such bargaining on the President.28 Instead, the President urged its adoption for two reasons. First, bargaining allowed the President to recruit skilled workers to join rapidly expanding executive agencies.29 Although the federal government could not compete with the private sector in terms of salary or perquisites, it could offer workers greater workplace autonomy and enable them to serve the public interest free from political interference.30 Second, bargaining tightened the President's control over the federal workforce. Since the late nineteenth century, most federal personnel administration had fallen under the control of the Civil Service Commission (CSC), an immensely powerful independent agency that oversaw everything from employee classification and hiring to disciplinary proceedings.31 Collective bargaining allowed the President to bypass the CSC and take a more active role in shaping federal workforce policies through negotiations and contract.32 In short, while worker protections are often cast as improper limits on presidential power, history shows that presidents themselves view labor rights in precisely the opposite terms, as a means of expanding presidential power through strategic concessions.

Labor rights also respond to concerns that bureaucratic resistance, however valuable in other ways, subverts democratic governance by permitting an unelected cohort of civil servants to shape executive policymaking.33 Labor rights are susceptible to formal, legal resolution and democratic oversight. Many of the disputes over bureaucratic power and managerial control that might otherwise be fought through inchoate "resistance," or opaque attempts to subvert managerial initiatives, are instead channeled into a highly formalized system of negotiation, contracting, arbitration, and appeal. The power arrangements between the bureaucracy and presidentially appointed agency heads are reduced to writings, and disputes are resolved by contract and statutory law, rather than through the exercise of raw institutional power. This arrangement not only makes bureaucratic power struggles more transparent and legalistic, it also enables each of the coordinate branches to supervise and regulate presidential-bureaucratic relations. By directing negotiations with unions, the President actively shapes workplace policy. Congress can shape civil servants' legal rights through statutory enactments. And courts can supervise the enforcement of these rights, reviewing important questions of statutory interpretation and ensuring that both labor and management bargain in good faith.

Nonetheless, civil servant labor rights do present a different set of challenges for the administrative state. While collective bargaining imports some of the legitimizing aspects of American political and legal culture into the federal bureaucracy, it may import some of those cultures' pathologies as well, for instance by providing new avenues to manipulate civil service rights for partisan advantage or to entrench ideological preferences.

This Article proceeds in four Parts. Part I draws on an array of primary and secondary sources to describe the historical origins and ideological underpinnings of federal sector bargaining. Part II sets forth the legal contours of modern federal sector labor rights and analyzes how they reshape presidential power and permit entry points for the coordinate branches to participate in shaping bureaucratic relations. Part III offers case studies on how bargaining can reshape agency dynamics in specific policy areas; it begins with descriptive data on FLRA adjudications, including how frequently labor and management prevail on their contract claims and how that success varies over time. It then provides descriptive accounts of how bargaining has impacted the operation of immigration, environmental, and tax policy. Finally, Part IV concludes with some reflections on the doctrinal and theoretical implications of bargaining's underappreciated influence on the administrative state.

I

THE HISTORY OF FEDERAL SECTOR BARGAINING

This Part draws on an array of primary sources and legislative history to document the history of federal sector bargaining and the reasons for its emergence. This story, while critical to understanding the modern executive branch, has never been told in the legal scholarship and has been presented only sparingly in other literatures. The proceeding sections argue that bargaining rights emerged as a way to expand the executive branch and to retain the professional integrity of skilled bureaucrats, while rendering bureaucratic relationships more transparent and susceptible to legal supervision. This made the federal bureaucracy more legitimate to an American political culture that by the 1970s was increasingly skeptical of centralized federal power.34 Unions were seen by both the President and Congress as a way of preserving civil servant independence while also rendering the civil service more responsive to democratic forces.

Section I.A provides an overview of the Civil Service Reform Act (CSRA) and the structural changes it imposed on the modern federal bureaucracy. Sections I.B and I.C document the reasons for the CSRA's passage, detailing the incentives that both the President and Congress, respectively, had for granting civil servants extensive rights to bargain over the contours of agency management.

A. The Civil Service Reform Act of1978

In 1978, President Carter signed the Civil Service Reform Act into law.35 Although now largely forgotten, the law was the most significant civil service reform in nearly a century: the "centerpiece" of President Carter's efforts at government reorganization.36 The Act's goal was to loosen the power of traditional, Progressive Era merit protections, allowing the President to steer executive branch policy over the resistance of "dug-in establishmentarians" within the federal bureaucracy.37

The CSRA "comprehensively overhauled the civil service system" of the New Deal era.38 As relevant here, the CSRA made two key changes to federal personnel management. One was structural. Prior to the enactment of the CSRA, nearly every aspect of the federal civil service was overseen by the Civil Service Commission (CSC), an enormously powerful independent agency. The CSC had been created by the Pendleton Act of 188339 and had grown over successive generations from a mostly advisory body to one tasked with administering a wide variety of things, such as hiring and classifying federal workers, adjudicating employment disputes and appeals, and formulating government-wide management policy.0 The CSRA abolished the CSC and distributed its functions across an array of new agencies. The Merits Systems Protection Board (MSPB) would oversee employee challenges to adverse personnel actions such as suspensions, demotions, and terminations; the Office of Personnel Management (OPM) would formulate management policy; and the Office of Special Counsel (OSC) would investigate certain violations of federal law, such as improper political activities in contravention of the Hatch Act.41 While still politically independent, these agencies were smaller and more specialized than the CSC, exerting a less concentrated influence over the bureaucratic organization of the executive branch and leaving more space for the President to influence personnel policy.

The second key change was substantive. The CSRA fundamentally altered the array of employment rights available to federal civil servants. Some rights were weakened. For instance, a number of procedural rights that had been developed by the CSC over the middle of the twentieth century and afforded to individual civil servants challenging adverse employment actions were eliminated or significantly curtailed.42 At the same time, however, the CSRA also granted federal workers an array of new labor and contractual rights. For the first time, federal workers were given the legal right to join a union, to collectively bargain over nearly any issue affecting the "conditions" of their employment, and to sue their employing agencies for violations of those contractual provisions.43 These contractual rights were to 'be enforced by a new independent agency, the Federal Labor Relations Authority (FLRA). The FLRA had a number of component parts, but at its core was a system of semi-private arbitration: In the event of an alleged breach of a CBA, the agency and the union would bring their dispute before a mutually selected, third-party arbitrator. Arbitrations could be appealed, or "except[ed]" in labor parlance, to the FLRA itself, which was composed of three bipartisan members serving fixed, five-year terms.44

The CSRA's establishment of labor rights was a dramatic departure from historical practice. Prior to 1978, federal law provided no formal statutory mechanism for employees to shape the ways in which the federal workplace was managed through contract or union organizing.45 While civil servants did attempt to unionize and bargain, they were afforded no formal legal status and their agreements were unenforceable against the federal government.46 Many commentators through the early 1970s believed that public sector unionism was fundamentally incompatible with democratic principles.47 In a widely cited article, then-professor Ralph K. Winter argued that a unionized public sector would "radically alter[]" the political process through the exercise of its extensive bargaining power.48 Indeed, prior to the 1960s, many viewed public sector bargaining as an unconstitutional delegation of executive power to private citizens.49

The CSRA's establishment of muscular federal labor rights thus poses a historical riddle. Why, if greater presidential control of the bureaucracy was the ultimate goal, did the CSRA create for the first time an extensive right for labor to bargain collectively? Why cede so much managerial authority to unions, particularly at a time when private sector labor power was declining precipitously?50 And why restructure bureaucratic relationships-a paradigmatic component of public law-through bargaining and contracts, a form of private ordering that historically had played no role in executive branch management?

As described in Sections I.B and I.C, a central claim of this Article is that the private law model of contract and bargaining provided a vehicle for dramatically expanding the scope of public administration from the mid-twentieth century forward, while presenting that expansion as both legally and democratically legitimate. The rise of federal sector collective bargaining can be understood as the product of two concurrent trends. One was internal to the executive branch, driven by the desire of the President to assert greater political control over the terms of federal employment.The other was external, driven by Congress's desire to exert greater control over executive branch operations and management. Both trends responded to a need to expand state capacity while shoring up its legitimacy, reining in both real and perceived abuses of a bureaucracy insulated from democratic control.

B. Labor Rights as an Enhancement of Presidential Power

President Kennedy first established federal sector bargaining by Executive Order in 1962,51 and it was subsequently expanded by presidents of both parties.52 The move reflected two strategic considerations. One responded to changes in the labor market. The President encouraged collective bargaining to entice skilled labor to join the executive branch. By offering workers autonomy and protection from managerial abuses, the federal bureaucracy could compete with the private sector. Politically, contracting also offered the President an opportunity to sidestep the long-standing managerial power of CSC. In both cases, contrary to depictions of unions and bureaucracies as illegitimate drags on presidential power, the executive branch itself initiated bargaining, primarily as a means of politically empowering the President and building state capacity.

1. Labor Market

Government from the 1950s to the 1970s was a "growth industry."53 The postwar era saw a major expansion in social service provision and a rapid expansion in the federal government's regulatory and national security remits.54 The growing need for skilled personnel created a recruiting crisis for government. There was a general perception that despite multiplying needs, the quality and efficiency of regulation and federal service provision had declined badly in the decades since the New Deal.55

The executive branch identified several recruiting challenges. One was a general inability to keep pace with private sector wages. In a 1953 report, the House Committee on the Post Office and Civil Service identified a number of "common deterrents in obtaining sufficient applicant supply," including pay "significantly below comparable jobs in industry" and "insecurity of tenure," which had a "marked adverse influence on the attraction of high caliber scientific and professional personnel, as well as key administrative personnel," as it was "generally felt that industry offers a better opportunity than Government for advancement in position and salary if an individual merits such advancement."56 The CSC reached similar conclusions about "[t]he problem of attracting highly qualified people-scientists, engineers, [and] administrators" in 1959.57

Low wages were exacerbated by widespread managerial abuses in federal employment. Despite extensive formal protections from major adverse actions such as firing and demotion, civil servants were susceptible to an array of lower-grade abuses that, in practice, gave managers wide range to harass or demoralize them. As a comprehensive study of the civil service concluded in1975,"[t]he work environment may be made friendly or hostile, open or repressive, tolerable or intolerable by the superior, who is equipped with a finely honed and calibrated set of sanctions to be used against subordinates."58 The CSC, which had a close relationship with the management at many agencies, was often accused of looking the other way when abuses occurred. By the 1970s, this reality had become widely known. As The Washington Post summarized, under the civil service system managers could "dispatch any civil servant" when their "prerogatives" are "attack[ed]."59 The practice was epitomized by the so-called Malek Manual (drafted by Fred Malek, President Nixon's director of personnel), a memorandum that expansively outlined the strategies managers could employ to sideline or harass disfavored workers without running afoul of civil service laws.60 The memo, which became notorious during the Senate's Watergate investigation, was considered to be "to personnel administration what Machiavelli's The Prince is [to] the broader field of political science."61

More generally, there was a growing belief that America, as the world's most powerful democracy, should subject its own government apparatus to "industrial democracy," promoting "consultative management by its own good example."62The 1949 Hoover Commission on government reorganization observed that employees "were 'not provided a positive opportunity to participate in the formulation of policies and practices which affect their welfare"'and"that'the President should require the heads of departments and agencies to provide for employee participation in the formulation and improvement of Federal personnel policies and practices."'63 By the 1950s, many labor organizers and public administrators questioned why robust unionization was permitted in the private sector but forbidden for similar roles in the public sector. The Second Hoover Commission concluded in 1955 that "[t]he Federal Government ha[d] lagged behind other organizations in recognizing the value of providing formal means for employee- management consultation."64

These challenges-the growing need for federal manpower, competition from the private sector, and the executive branch's particular need for skilled knowledge workers-required new models for recruitment and management. In exchange for lower wages than those in the private sector, collective bargaining could offer workers greater autonomy and a sense of professional purpose.65 As one expert in public administration testified in 1978, the "increasing professionalization of skills and bodies of knowledge" in social science and technical fields required management strategies for attracting skilled labor and for maximizing its creative output.66 This led to "an increasing reliance on public sector collective bargaining," a "decreasing reliance on authority/control strategies," and "a greater reliance on rational analysis, negotiation, and incentives."67

As early as the 1940s, the CSC and other commissions studying the civil service began insisting that federal employees' labor rights should be in parity with private sector ones.68 Others, including the Hoover Commission and National Civil Service League, similarly encouraged dealing.69 Increasingly, major private sector unions began to organize public sector workers.70 The executive branch began responding to these pressures even before any formal legal authorization.71 Informal bargaining with growing unions and trade associations in the executive branch expanded throughout the 1940s and 1950s.72 A 1961 Task Force commissioned by President Kennedy recognized that "[f]ederal employees very much want to participate in the formulation and implementation of personnel policies and have established large and stable organizations for this specific purpose."73 Executive Order 11,491 formalized this understanding, creating a centralized process for civil servants to bargain over employment conditions with agency heads.74

2. Disputes Over Presidential Administration

In addition to recruiting and labor pressures, the President also had a concrete political interest in pursuing more expansive bargaining. The CSC, as an independent Progressive Era agency, was highly insulated from presidential influence.75 Bargaining between unions and presidentially appointed agency heads gave the President greater direct control over the contours of bureaucratic power and cut a powerful intermediary out of his relationship with the federal workforce.

Moreover, presidents had long been hostile to the CSC. Since the Wilson administration, presidents had sought to exercise greater control over executive branch operations.76 The Brownlow and Hoover commissions on government reorganization had both wanted to bring personnel management under direct presidential control but had failed, even as they had succeeded in restructuring other previously independent branches of the executive branch such as the Budget Bureau.77 The independent CSC proved sticky: It had extensive formal legal power, management expertise, and was adept at building both bureaucratic and legislative constituencies.78It managed everything from hiring and classification of employees, to investigating and adjudicating disciplinary disputes, to generating high-level management policy. Serving "simultaneously both as the protector of employee rights and as the promoter of efficient personnel management policy,"it had become "manager, rulemaker, prosecutor and judge" of personnel matters.79 The CSC's extraordinary and very opaque power led to concern that the "federal personnel system" had become "too immune from political directives of any kind," and thus was "isolated, and resistant to carrying out new policy directives."80 This "lack of responsiveness to elected political leaders," in turn, revived longstanding concerns about the democratic legitimacy of the tenured civil service, as it "indicated a general lack of bureaucratic responsiveness to the citizenry."81

Labor agreements offered the President an opportunity to bypass the CSC, and thus the contours of bureaucratic power, and to negotiate terms of employment directly with the federal workforce. Moreover, these arrangements could be reduced to written and legally enforceable contracts, rather than entrusted to the rulemaking and enforcement discretion of the CSC. Bernard Rosen, chair of the CSC, expressed his view in 1975 that the CSC's position as sole arbiter of personnel disputes had become untenable: "With the growing power of Federal employee unions, and as general government-wide personnel policies have become a matter of increasing concern to them and to other organizations in our society," Rosen wrote, the "complexity of Federal personnel administration" and the "increasingly adversary relations developing between unions and agency management" necessitated "a central personnel agency that enjoys the confidence of the Congress, the President, and the unions ...."82

With the neoliberal policy turn of the late 1970s,83 President Carter had the opportunity to codify federal bargaining rights into law. Several factors produced the conditions for bureaucratic reform, including a loss of political support for bureaucracy, an economic slowdown, and resulting fiscal constraints. In the 1950s and 1960s, there had been an emphasis on expanding services, with less concern for fiscal discipline. By the 1970s, however, large outlays for bureaucratic programs, and the tenured civil servants that administered them, were increasingly seen as fiscally irresponsible and wasteful of taxpayer dollars.84 Carter had campaigned on the promise to clean up the "horrible bureaucratic mess in Washington" and to institute "tight, businesslike management and planning techniques" in government.85 But beyond cost-cutting, the CSRA also reflected a deeper ideological evolution in public administration. Throughout the 1960s and 1970s, economists and policy consultants had been reframing public policy in terms of economic efficiency, arguing that government programs modeled on private enterprise would be not only more socially productive but also, like private enterprises, more responsive to the demands of the public and the market and thus more legitimate.86 The CSRA extended this logic to the management of the civil service itself. While the bureaucracy of the New Deal legitimized its power through subject matter expertise and insulation from politics, the bureaucracy of the post-New Deal era would legitimize its power by bargaining for it. Contracts would reflect the social and economic value of civil servants by granting them only those labor rights to which the President and his appointees, under electoral pressure to deliver useful services, would agree.

C. Labor Rights as a Restraint on Presidential Power

The President thus leveraged bargaining rights to recruit talent to the executive branch and to consolidate presidential control over the bureaucracy. Congress, by contrast, viewed those same labor rights as tools for exercising greatersupervisionover presidentialadministration.Thesame attributes that made contract and bargaining effective tools for recruiting and negotiating with labor-their transparency, their enforceability against the President, their capacity to change in response to shifting political and economic conditions, and their ability to cover conditions of employment not captured by civil service laws-also made them effective tools for supervising presidential control of the executive branch.

In the 1970s, Congress and the judiciary established new checks on presidential power in response to the Watergate and Vietnam crises, as well as the revelation of longstanding abuses by the FBI, CIA, and other executive agencies.87 These checks included statutory reforms and commissions,such as the Freedom of InformationAct (FOIA),the Foreign Intelligence Surveillance Act (FISA), and the Church Commission, to limit executive discretion in law enforcement.88 They also included more general limitations on the power of the administrative state to make and enforce regulations, through judicial innovations such as "hard look" review of agency action.89 The CSRA presented a vehicle for extending similar interbranch checks to executive branch personnel management and was supported enthusiastically by congressional Democrats. In a 1977 report, the House Committee on the Post Office and Civil Service emphasized the need for alabor rights "system based on... statute,"rather than executive order, and with meaningful access to judicial review.90 The American Bar Association likewise testified that "[c]onsistent with a fundamental precept of our constitutional law system," statutory labor rights would provide civil service with "a source of authority outside the executive branch and beyond the control of. the executive as the primary employer of Federal civil servants," allowing for "access to the judicial branch for redress of grievances with the executive branch" and "meaningful bilateralism in the collective bargaining relationship."91

Like the President, Congress relied on the language of efficiency to justify the enlargement of labor rights. Here, it was the efficiency of management, rather than the bureaucracy, that Congress claimed to be advancing. In a committee report in support of draft labor legislation from 1977, the House Committee on the Post Office and Civil Service opined that "collective bargaining rights for Federal employees," including "[e]ffective labor unions," would "play a positive role in improving productivity in public service."92

Federal workers also lobbied for collective bargaining to play a greater role in civil service independence. Labor had historically been suspicious of the CSC and viewed it as hostile to their interests. A comprehensive 1975 study of civil service and the CSC observed that, despite statutory protections against firing and other major adverse actions, civil servants found themselves with "a lack of substantive rights" in a relationship "in which the superior has many opportunities to make discretionary judgments of considerable importance to the subordinate."93 Workers'"exercise of legal rights in such a relationship" was "often difficult and restrained."94 By the 1960s and 1970s, federal workers had come to view the merit system as a "euphemism for favoritism"and saw collective bargaining as an alternative that advanced stricter application of employment rules, based on uniform application of CBAs rather than managerial discretion.95

For labor and its allies in Congress, however, a weakening of the CSC's traditional power over federal personnel (which, however flawed, did restrain at least some managerial abuses by the President and his appointees) had to be accompanied by more robust labor and bargaining rights. As a legislative representative for AFL-CIO, which represented many federal workers, put it, labor's "support for the President's civil service reform plan is not unconditional," but was contingent on a robust "system of labor-management relations" codified "into statutory law."96 Labor's goal was not just to codify specific substantive labor rights, but to establish a statutory framework for collective organizing, bargaining, and adjudication to ensure that those rights were meaningfully enforced in practice. As a chapter president of the National Treasury Employees Union (NTEU) testified, "[i]f this reorganization effort is to improve the efficiency of government, and to protect the public interest in a merit-based civil service system, expanded collective bargaining must be a central factor."97 The CSRA would invest large, well-resourced unions, not individual employees or an independent agency with doubtful allegiances, with the legal power to bargain, litigate, and lobby on behalf of workers, granting labor's "countervailing power" against the President a foothold in law.98 The weaker position of the labor movement in the 1970s helped supporters of the CSRA frame unions as cooperative partners in government, rather than an adversarial interest group.99 Historical concerns that federal worker unions would be too powerful to be held democratically accountable-concerns prevalent through the bullish labor markets of the 1960s-had significantly diminished.

As enacted, the CSRA formalized and expanded existing bargain- ing relationships and provided for independent agency enforcement and judicial review of labor disputes. In addition to abolishing the CSC, the CSRA moved many traditional civil service functions into separate, presidentially controlled agencies, shifting the center of bureaucratic power from statutory to contractual protections.100 In doing so, the Act adopted the rationales of efficiency and amicable labor relations deployed by both labor and the President. As articulated in its statutory purpose, the Act's goal was to protect "the right of employees to organize" and "bargain collectively," which would "safeguard[] the public interest," by promoting "the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government."101

II

HOW BARGAINING RIGHTS SHAPE BUREAUCRATIC POWER

The goal of the CSRA was to provide a framework that could mediate employment disputes, empowering both labor and the President to reshape bureaucratic relationships, while at the same time allowing for legal and democratic supervision by the coordinate branches. This Part provides a typology of the methods by which unionized labor reshapes presidential administration in contemporary practice.

Descriptively, this Part aims to show how labor rights, while largely unnoticed and unstudied, reshape executive branch relations in profound ways. Across a wide variety of policy areas-from federal prisons to the adjudication of asylum applications-collective bargaining changes how agencies (and the millions of bureaucrats who staff them) carry out their missions. What enforcement guidelines border patrol agents follow, how claims processors assess benefits applications, how guards staff prisons-all of these decisions are shaped by labor agreements, with profound consequences for federal policy.

Normatively, this Part aims to upend a core assumption about bureaucratic power in the contemporary executive branch. There are many tools that the President uses to structure the incentives and behavior of civil servants, and thereby to influence how they implement federal policy: the power to discipline employees for disobedience; the power to allocate an agency's budget and resources, thereby setting the agency's enforcement priorities; the power to set performance standards and productivity quotas, determining what types of bureaucratic decisions merit reward or punishment; and many more. Most scholarship on administrative law and presidential power presume these tools to operate in a top-down manner: The President implements new management directives, and bureaucrats either obediently follow or illicitly resist them.10

But, as set forth below, this model of top-down implementation and bottom-up resistance is critically incomplete. More often, the President and the unionized civil service bargain over questions of management, rather than fight out their differences through the exercise of raw institutional power. Indeed, in a sharp deviation from the Progressive Era model of a politically insulated civil service, the CSRA explicitly empowered unions to act in a political capacity, including by lobbying Congress, litigating management disputes before Article III courts, endorsing political candidates, and speaking out publicly on questions of executive branch management and policy. Unions thus engage directly in democratic politics and serve as a key mechanism for bringing other democratic stakeholders, such as Congress and the judiciary, into disputes over the President's managerial power. In short, modern bureaucratic management is far more mutualistic, legalistic, and democratically engaged than administrative law scholarship generally presumes.

Section II.A below examines the substantive rights that labor law confers on civil servants, and the ways in which those rights can reshape presidential administration. Section II.B discusses unionization rights, including the boundaries and limitations of civil servant unionization and the role that federal sector unions play in promoting democratic oversight of the executive branch.

A. How Substantive Rights Mediate Bureaucratic Relations

Substantive labor rights, particularly those memorialized in collective bargaining agreements, are at the heart of how labor rebalances executive branch power. The CSRA grants extensive rights to labor. With certain important exceptions, particularly for salary and benefits which cannot be altered by contract,103 unions are permitted to bargain over nearly any issue affecting "conditions of employment."104 The main limitation on civil servant bargaining, and thus the primary battleground in litigation between agencies and labor, are certain statutorily defined "management rights," which are enumerated in sub- provisions of 5 U.S.C. § 7106.105

Through contractual provisions, the President and the civil service can agree to modify any number of key management tools, from employee discipline to performance evaluation metrics to merit pay. For the purpose of analyzing their impact on presidential power, contractual rights can be sorted into three categories. First are rights that act as a check on structural deregulation, or the use of abusive working conditions to demoralize or sideline bureaucrats in order to undermine an agency's substantive policy mission. Second, labor rights can act as indirect constraints on policy by shaping management tools, such as performance reviews and productivity requirements, that are well known to nudge civil servants' decisionmaking in certain ways. Finally, in certain circumstances labor can act as a direct constraint on policy by seriously limiting the types of enforcement directives management can issue to employees.

1. Check on Structural Deregulation

A major method of undermining regulatory effectiveness is to defund agencies, undermine the morale of agency personnel, and obstruct agency operations. Jody Freeman and Sharon Jacobs have identified many of the strategies that the President may use to cripple [incapacitate] agencies while evading civil service protections, including imposing burdensome working conditions, reassigning staff to undesirable roles, "demoralizing" staff through denigration and abuse, and cutting funding, resources, and pay.106 These are not direct attacks on an agency's legal authority, but a "structural" attack on an agency's ability to function.107 President Trump's unusually aggressive posture towards administrative agencies has put structural deregulation back in public focus, but it has long been a feature of presidential management, as the controversy surrounding the Malek memo in the 1970s illustrates.108

Here, many of the seemingly prosaic aspects of federal labor law are important. The terms and conditions of employment that govern the quotidian existence of civil servants are precisely the sorts of areas that structural deregulation targets. Changes to remote work policies, scheduling, and other routine workplace concerns can be used to demoralize or undermine an agency's staff.109 Unions routinely leverage contract rights to prevent deterioration in working conditions, litigating issues such as increases in workloads,110 compensation for travel and other overtime expenses,111 backpay for wrongful personnel actions,112 and how and when to award bonuses or special compensation required by contract or statute.113 Agencies can also be required to bargain over reductions in staffing levels or reorganization of duties.114

There are numerous examples in which fights over working conditions reflect larger political struggles over the ability of an agency to properly carry out its statutory mission. The infamous nationwide strike in 1981 by the Professional Air Traffic Controllers Organization (PATCO), representing federal air traffic controllers, is a useful example. The PATCO strike flouted the federal prohibition on civil servant strikes, in a bid by the union for higher pay and improved working conditions.115 Instead of negotiating, President Reagan broke the strike by calling up military service members and retired controllers to manage the nation's air traffic and firing the strikers (who made up nearly seventy- five percent of federal controllers).116 While PATCO is remembered today for its catastrophic collapse, the union's founding in the 1960s was driven by a decline in conditions of employment that related directly to the substantive mission of the Federal Aviation Administration: Flight speeds for jet planes reduced the margin of error for air traffic controllers, while understaffing and aging equipment made working conditions for controllers increasingly difficult and airport conditions less safe, leading to crashes. It was the FAA's failure to respond to these worker complaints, and its attempt to cover up safety risks, that first inspired the formation of the PATCO union.117

Contemporary examples abound as well. During the Trump Administration, the Department of Education was a frequent target of structural deregulation. In 2018, the agency purported to impose a new labor contract on employees without bargaining that, among other things, removed protections regarding pay raises, altered performance evaluations, and reduced rights regarding overtime, childcare, and work schedules.118 The FLRA subsequently ruled the unilateral contract illegal, forcing the agency to enter into an extensive settlement covering disputed labor issues.119 Federal prisons were another key site of disputes over labor rights. The Trump Administration sought to cut budgets, weaken unions, and worsen conditions at federal facilities at the Bureau of Prisons (BOP), as a prelude to privatization of many key functions. The agency would, for instance, cut shifts for guards and replace them with untrained, non-custody employees to guard prisons.120 These policies were enacted despite Congress allocating money for staffing, which the Administration refused to spend.121 At the same time, federal facilities experienced a significant influx of prisoners, including very large numbers of immigrants detained by ICE.122 BOP saw a major decline in prison conditions, leading to increases in assaults, health risks,123 overcrowding,124 and declining staff morale.125 The primary means for resisting these deregulatory policies was labor litigation. Many of these labor disputes concerned the precise tactics-shifting schedules, using untrained and unauthorized workers to staff dangerous prisons, understaffing, overcrowding, removing posts from union positions-that the Administration was deploying to defy Congress and pave the way for privatization.126 Workplace disputes thus dovetailed closely with a broader agenda of weakening prison standards and asserting greater political control over prisons.

2. Indirect Constraints on Policy

Labor can also serve to constrain substantive executive branch policy in many indirect but significant ways. It has long been recognized that certain presidential management techniques, while they putatively concern the internal business of overseeing executive branch resources and personnel, can impact substantive enforcement outcomes. As Jerry Mashaw canonically articulated, the administration of many large- scale federal welfare and regulatory programs requires a species of "bureaucratic justice," where fairness and efficiency are achieved through quality assurance, performance metrics, productivity quotas and other general, organization-wide management tools.127 Labor can reshape how many of these tools are used, in turn reshaping agency outcomes.

One important example is productivity requirements. Determining how much work employees are required to perform, and how they are to perform it, is a well-recognized management tool. These management tools have particularly important impacts on adjudicatory bodies and other discretionary decision-makers: Rules governing decisionmaking processes limit adjudicators' flexibility, while increased productivity requirements reduce the amount of time and effort adjudicators can spend on any one case, making it difficult to rule in favor of poorly represented or under- resourced parties.128 The FLRA routinely enforces contractual limitations on the types of productivity quotas agency management imposes, intervening for instance in disputes over quotas for claims processing for veterans' benefits,129 screening of passport applications by the Department of State,130 and caseload requirements for Taxpayer Advocates employed by the IRS.131

The Trump Administration engaged in particularly hard-fought disputes over productivity and process rules. The Social Security Administration (SSA) extensively litigated proposed productivity requirements for its unionized administrative law judges (ALJs), which would have sped up case timelines, potentially impacting the quality of decisionmaking and the amount of benefits awarded. An arbitrator repeatedly found that the agency's requirements violated the parties' CBA. A two-member majority on the FLRA, appointed by President Trump, however, consistently reversed these rulings,132 over the dissent of Member DuBester, the sole Democratic appointee, who found the policy to be a "straightforward" violation of the parties' agreement.133 Immigration law judges (IJs), likewise, have used bargaining and litigation to resist increased efficiency requirements during the Trump Administration, which would have limited IJs' ability to assist asylum seekers during removal hearings.134 Similarly, the United States Customs and Immigration Service (USCIS), under de facto head Ken Cuccinelli,135 pressured asylum officers to reduce grants of asylum, citing statistics showing high grant rates, urging officers to use tools to combat "frivolous claims" and make only "positive credible fear determinations."136 The union resisted these initiatives, which it characterized as pressure to "misapply laws" and "politicize" the asylum process.137 The USCIS union likewise challenged administration guidance to exclude large categories of migrants from asylum consideration and to divert considerable numbers to Honduras and Guatemala, calling the policies "unlawful" and even filing an amicus brief in support of a lawsuit challenging them.138

Negotiated provisions governing selection and promotion likewise can yield "significant" divergences from management's preferences.139 Federally unionized technicians with the Ohio National Guard, for instance,negotiated extensive contractual requirements for promotions, including criteria used to evaluate candidates and differences in merit promotion procedures.140 Agencies can be required to honor promotions dictated by contract.141 The FLRA has required the SSA to bargain over promotion plans for adjudicatory employees.142 Union contracts can also prevent discrimination. Unions included clauses in contracts protecting gay employees in the 1990s, well before federal antidiscrimination protections for LGBTQ+ people existed.143

Labor can also substantially reshape employment-based discipline and the hierarchies and incentives that disciplinary power creates. While agencies are subject to formal disciplinary procedures under civil service statutes, they often discipline workers through negotiated grievance procedures, resulting in sanctions that can differ substantially from those that might otherwise apply.144 A prominent example of this phenomenon involved a group of CBP officers who were discovered to have exchanged racist and threatening messages through a private Facebook group in 2019. Even though the incident aroused public outrage and the CBP Discipline Review Board recommended harsh punishments-including termination for eighteen agents-following a negotiated grievance process, some of the officers received substantially lighter punishments, including letters of reprimand, paid suspensions, and only two terminations.145 Indeed, according to data recently released by the Office of Personnel Management, arbitrators who hear cases under labor grievance reinstate three-fifths of all dismissed employees, as compared with only one quarter of all MSPB appeals.146 These obstacles to firing and other forms of discipline are some of labor's most powerful tools, and are also among its most controversial: Many critics accuse union-backed limits on employee discipline of rendering government service less efficient, though the evidence on this question is hotly contested.147 **[FOOTNOTE 147]** 147 See id. at 1 (arguing that the grievance arbitration "makes removing unionized federal employees very difficult"); see also PHILLIP K. HOWARD, NOT ACCOUNTABLE: RETHINKING THE CONSTITUTIONALITY OF PUBLIC EMPLOYEE UNIONS 18 (2023) (arguing that, due to public sector unionization,"[e]lected executives," including the President, "no longer have effective authority over the operations of government"). **[\FOOTNOTE 147]**

Finally, labor rights condition the ability of civil servants to leak, criticize, or otherwise speak out publicly about agency policy. David Pozen and Jennifer Nou, among others, have described how unauthorized disclosures of critical information by civil servants can check agency abuses, inform policy debates, and shape agencies' agendas by shifting public opinion.148 Labor rights are a key guarantor of civil servants' ability to speak publicly about agency policy through testimony, statements to the press, and other means. The CSRA protects the right of employees, when speaking in their capacity as union representatives, to present the "views of the labor organization" to "appropriate authorities," which the FLRA interprets, in many circumstances, to include the press.149 Union officials can thus speak publicly about agency policy and management, even when line employees cannot. Union officials have leveraged their protected status to criticize executive branch policy in environmental regulation, education, immigration, and labor, among other policy areas.150 Unions also advocate for the right of other employees to speak out through litigation and labor agreements. Immigration judges, for example, have historically been protected by labor agreements in their right to critique removal policies, even if they are not union officials.151

3. Direct Constraints on Policy

Labor provisions may also directly constrain policy choices. Theoretically, many such provisions are limited by management rights.152 But labor has been pushing for such contractual provisions more aggressively in recent years, sometimes with the encouragement of sympathetic presidents looking to lock in policy preferences.

By way of disputes over conditions of employment, labor can resist substantive policy directives to which line employees are opposed for professional, ideological, or other reasons. As discussed in greater detail in Part III, law enforcement functions, particularly in the immigration context, are perhaps the most prominent example. Unions representing CBP and ICE agents have successfully used labor rights to challenge many substantive management policies touching core questions of immigration enforcement tactics and priorities, often over the objection that such challenges infringe on protected management rights. These include what weapons agents are issued,153 what types of searches they must perform and how,154 and what information officers must provide to detained immigrants, including identifying information about officers and information about potential legal remedies,155 among many other issues. Complaints about conditions of employment have been used, among other things, to delay the implementation of agency policies directing agents to prioritize detentions of violent criminals and to deprioritize arrests of minors and other nonviolent immigrants.156

Under President Trump, both CBP and ICE negotiated, with the encouragement of the administration, for even more expansive rights to challenge any enforcement guidance affecting the conditions of their employment and to delay the implementation of those policies until any labor disputes have been resolved, a process potentially lasting years.157 Under the Biden Administration, unionized employees at the EPA are now attempting to bargain for similar protections that would preclude the agency from adopting any policies that violate certain principles of "scientific integrity."158 These developments demonstrate the capacity for labor to become not only an influence on policy but, through the deliberate use of conditions of employment as a restraint on managerial discretion, a primary driver of it.

B. How Unionization Rights Mediate Bureaucratic Relations

This Section sets forth the special rights that unions enjoy under the CSRA, and the ways in which union rights advance the separation-of-powers goals of the CSRA. Unions are the bedrock of legalized resistance to presidential management. The CSRA did not individualize labor rights, but instead provided for collective organization in institutions that are capable of bargaining, litigating, and lobbying.159 Battles between the civil service and the President over the scope of unionization rights, the proper bargaining units to be represented by unions, and the resources and legal rights available to unions reflect the growing centrality of collective bargaining to disputes over bureaucracy and the importance of unions in determining the balance of power between the President and the tenured workforce. The following sections set forth: (1) the value of unions to the civil service and the internal separation of powers, (2) the ways in which the President and the civil servants contest the scope of union power, and (3) the ways in which unions serve to further democratic and interbranch supervision of the President.

1. The Value of Unions

The civil service's move toward unionization reflects a broader recognition of the value of organized groups in protecting rights and pursuing key political objectives.160 Unions accumulate resources and expertise, allowing civil servants to mount sophisticated and well-financed defenses in labor disputes and to lobby effectively on key issues.161 Unions, for instance, are more effective at litigating employment disputes, a key tool in resisting the disciplinary efforts of management.162 They achieve higher win rates than unrepresented employees before arbitrators, a key strategic consideration for union-side counsel, as well as a key source of criticism from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully litigate employment disputes against agencies in other ways. Through FLRA litigation, unions have secured civil servants Weingarten rights: the right to have a union representative present during a disciplinary investigation.164 Unions have likewise fought, with mixed success, to bargain for specific substantive rights for civil servants during interviews by agency inspectors general.165 Unions also provide extensive financial and logistical support to individual employees. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in "critical incidents," such as the use of force.166

Even when unions do not litigate labor disputes directly, the threat of litigation-the possibility of losing, the need to delay policy implementation, the drain on budgets, and the attendant uncertainty-incentivizes agencies to cooperate with unions, and to take their preferences into account when staffing political positions and formulating policy. For instance, powerful unions, including those representing ICE and the EPA, can and do express their opposition to certain agency heads, dissuading the President from appointing them for fear of souring labor relations and inciting costly litigation battles.167

Perhaps the best example of labor's deterrent power is President Clinton's National Performance Review (NPR) program, launched in 1993. NPR's goal was to "reinvent[]" government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for union support for a variety of cost- and personnel-cutting measures, President Clinton granted unions substantial new powers.169 The National Partnership Council, which shaped agency reorganization policy, was given four union representatives (one from AFL-CIO, and one each from the largest federal unions-NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President Clinton issued Executive Order 12,871 requiring agencies to bargain over formerly optional subjects, effectively waiving a broad range of management rights and significantly expanding union bargaining power.171 Unions also took a substantial role in shaping the federal government's downsizing to ensure union positions received protection during workforce reduction.172

In addition to litigation, unions also have extensive statutory power to lobby Congress, often acting as one of the only sophisticated, proregulation advocacy groups in a competition of political influence dominated by private interests and well-funded nonprofit groups. The CSRA created unions that are, in effect, federally subsidized by dues, "official time" (time during which union officials are paid to engage in organizing and bargaining work), and protections against unfair labor practices.'73 To facilitate union lobbying, Congress also created numerous exceptions to rules governing political engagement by civil servants, including the right to lobby on behalf of a labor organization and Hatch Act exemptions to participate in politics.174

Unionized federal employees have been politically engaged since the enactment of the CSRA, lobbying on a range of budgetary and regulatory reform issues.175 Unions lobby on issues ranging from regulatory enforcement policy, to the selection of agency leadership, to questions of funding-and their efforts have had substantial influence in Congress.176 Unions representing the employees of the NLRB, Department of Education, and IRS have all, for instance, lobbied for increases in appropriations for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses political candidates, testifies routinely before Congress, and speaks to the press on high- visibility policy issues, often expressing views contrary to the views of agency leadership.178

#### Intervention to strengthen it ensures the employer credibility to retain expertise and check personalism, or at worst, recover from Trump.

Bednar 25 [Nicholas R. Bednar, Associate Professor of Law at the University of Minnesota Law School, PhD political science, Vanderbilt University, JD University of Minnesota Law School, “Presidential Control and Administrative Capacity,” Stanford Law Review, 77, April 2025, 77 STAN. L.REV. 823, https://review.law.stanford.edu/wp-content/uploads/sites/3/2025/04/Bednar-77-Stan.-L.-Rev.-823.pdf]

B. The Trade-Off Between Capacity and Control

The results here and elsewhere show a positive relationship between capacity and structural independence.472 Why do we observe this relationship? One explanation is that structural independence promotes bureaucratic autonomy.473 Autonomy is not synonymous with the legal concept of “independence,” but describes a broader form of discretion.474 By my definition, autonomy does not require a complete transfer of control from the President to agencies. Rather, career employees must personally feel like their opinion contributes to the operations of the agency.

Scholars have illustrated the importance of autonomy across time and contexts. Countries with stronger civil service laws possess higher levels of state capacity.475 Historically, federal agencies with greater autonomy developed strong policymaking and implementation capabilities.476 To explain this correlation, Sean Gailmard and John Patty theorize that discretion encourages individuals to choose careers in government and build expertise.477

As autonomy declines, however, career employees leave their agencies for other opportunities and expend less effort to build expertise.478 Employees who perceive high levels of politicization are a third more likely to express an intent to leave their agencies.479 These same employees engage in fewer activities to develop expertise, such as attending trainings or consulting with outside policy experts.480 Other evidence suggests that politicization decreases employee morale and results in poor performance.481 As Mark Richardson explains, “[l]oss of policy influence reduces the value policy-motivated civil servants derive from public service.”482

Agency structures help to protect autonomy. Gailmard and Patty argue that governments can preserve autonomy, in part, by “instituting relatively common civil service practices,” such as tenure.483 Although the United States has relatively high capacity compared to other states,484 some agencies exhibit higher capacity than others.485 One likely explanation is that many of the highest capacity agencies have additional structures, such as for-cause removal protections, that temper—but do not wholly eliminate—political influence.486

Collectively, these studies—paired with the finding that independent commissions exhibit higher levels of capacity487—offer evidence of a negative correlation between presidential control and capacity. Reforms aimed at increasing presidential control may erode capacity by eliminating structures that preserve autonomy. If true, then increasing presidential control may further weaken the President’s ability to implement their agenda in agencies that suffer from capacity constraints.

Current movements in constitutional law seek to strengthen presidential control. Proponents of a unitary executive argue that Article II vests the executive power in the President alone and, therefore, Presidents must have authority to control all powers of the Executive Branch.488 Although proponents of a unitary executive agree that Presidents must control administrative policymaking, they disagree about what mechanisms of control the Constitution mandates.489 Some proponents believe that Presidents may personally exercise the policymaking authority otherwise delegated to agencies.490 Others state that the Constitution permits the President to “veto” the actions of a subordinate.491 Most (but not all)492 proponents argue that Article II endows Presidents with the power to remove officers.493 This final argument has influenced the Supreme Court to strike down statutory features, such as for-cause removal protections, that insulate agencies from political pressure.494

Proponents of a unitary executive acknowledge—as a practical matter— that Presidents must rely on subordinates because they lack the requisite time and expertise to execute the laws themselves.495 But they assume that presidential control has the effect of energizing government.496 More often than not, proponents of a unitary executive espouse the familiar assumption that Presidents are sufficiently incentivized to build capacity and lack incentives to undermine capacity.497 But neither proponents nor critics of the unitary executive theory have thoroughly examined the risks presidential control poses to capacity.498

Unfortunately, implementation of unitary executive theory threatens policymaking capacity by eroding the autonomy that attracts individuals to public service. Schedule F provides one recent example. Schedule F exempted individuals in a “confidential, policy-determining, policy-making, or policy-advocating” occupation from the competitive service.499 The Trump Administration justified Schedule F with constitutional rhetoric, arguing that “[f]aithful execution of the law requires that the President have appropriate management oversight regarding this select cadre of professionals.”500 Proponents and opponents estimated that as many as 100,000 employees would be reclassified under Schedule F.501 The Government Accountability Office warned that “Schedule F could result in increased employee turnover between administrations, leading to a lack of continuity and a potential degradation in the overall subject matter expertise held within the civil service.”502

In the courts, the implementation of unitary executive theory has focused on restrictions on the removal of appointees.503 The degree to which the insulation of appointees protects the autonomy of career employees remains an open question. Nevertheless, some have sought to find a constitutional hook for eliminating civil-service protections for career employees. Judge James Ho of the Fifth Circuit has called on courts to reconsider the constitutionality of civil-service laws:

Federal civil service laws make it virtually impossible for a President to implement his vision without the active consent and cooperation of an army of unaccountable federal employees. . . . As anyone who has ever held a senior position in the Executive Branch can attest, federal employees often regard themselves, not as subordinates duty-bound to carry out the President’s vision whether they personally agree with it or not, but as a free-standing interest group entitled to make demands on their superiors. . . . In an appropriate case, we should consider whether laws that limit the President’s power to remove Executive Branch employees are consistent with the vesting of executive power exclusively in the President.504

These proposals would abandon the “relatively common civil service practices” that encourage individuals to pursue government service and invest in their expertise.505 Proponents of these reforms, however, fail to recognize that the President cannot pursue their vision without the capacity provided by these employees. Presidential control means nothing if the President lacks the workforce needed to make policy. Even Presidents who favor deregulation need some source of procedural expertise to avoid having their policies reversed by federal courts under the APA.506 As an assistant to President Lyndon Johnson once stated, “If you shouldn’t fire a pistol with a blindfold, you shouldn’t propose a major program without some basic knowledge of what will happen.”507

In theory, a robust labor pool may mitigate these concerns. If an administration could quickly fill vacancies with individuals who support the President’s agenda, then the President would have fewer difficulties balancing control and capacity. But that is unrealistic and dangerous for several reasons. Presume for the moment that Presidents make a good faith effort to ensure agencies have the capacity they need to execute their visions. First, Presidents already fail to fully staff the approximately 1,300 presidential appointments with Senate confirmation (PAS) in federal agencies.508 Larger human capital campaigns would require even greater effort. The Trump campaign indicated that it would attempt to replace 50,000 career employees through reforms like Schedule F.509 Staffing an additional 50,000 career employees would increase the federal government’s rate of hiring by 64% within a single presidential term.510

Moreover, constant turnover deprives the workforce of the experience and institutional knowledge possessed by high-capacity agencies. Steep learning curves ensure new employees need time to develop the procedural expertise and professional judgment that enable policymaking.511 When asked about turnover, career employees often express grave concerns about the loss of institutional knowledge in addition to the reduction in the size of the workforce.512

All of this suggests that a unitary executive threatens to undermine capacity by encouraging turnover and eliminating structures that protect bureaucratic autonomy.513 Nor is it clear that further increasing presidential control would improve the President’s ability to set rulemaking agendas or direct the day-to-day activities of the agency. The results generally suggest that control does not pose a major obstacle for Presidents because Presidents have invested significant energy into reforming the Executive Branch to improve responsive competence.514 Large-scale reforms to agency design or the civil service may increase turnover, creating problems for agency recruitment and retention, with only marginal improvements in presidential control.

What is the proper balance between presidential control and capacity? It is hard to say. If Presidents increase their control over the administrative state, then agencies may struggle to recruit and retain expert and experienced agency policymakers. Suddenly, Presidents find themselves incapable of promulgating policy through rulemaking. On the other hand, if Presidents voluntarily insulate agencies from presidential control to encourage recruitment, they may find themselves incapable of directing the agency’s policymaking activities. Agencies and careerists do have their own policy preferences, and they do behave strategically to advance those interests through the rulemaking process.515 Without institutions like OMB and OIRA, Presidents would surely encounter greater resistance to implementing their rulemaking agendas.

The equilibrium level of control and capacity varies from agency to agency. A preference for control may be more desirable in agencies that implement politically fraught policies under a theory that presidential involvement increases democratic accountability. A preference for capacity may be necessary in agencies that develop policies for highly technical and important sectors, such as financial, energy, or insurance markets. Discovering the precise balance requires management decisions tailored to specific domains rather than widespread reforms that impose a specific structure upon the entire administrative state.

C. Who Should Manage the Administrative State?

Who should manage the administrative state? I explore four options: the President, the courts, Congress, and the public. I identify ways that all four actors can promote capacity building.

1. Presidents

Presidents are the constitutional managers of the Executive Branch. Due to their position in the executive hierarchy, the President has the greatest opportunity to discover why a specific agency has failed to implement the President’s agenda. When a President struggles to control an agency, they may further politicize the agency’s leadership or centralize policymaking within the White House.516 When the agency lacks capacity, the President may improve recruitment and retention.

In some cases, recruiting and retaining a workforce of expert and experienced policymakers may require Presidents to adopt structural reforms aimed at increasing bureaucratic autonomy. Indeed, one plausible justification for independent commissions is that they better preserve expertise relative to agencies subject to complete presidential control.517 In the past, Congress has authorized Presidents to reorganize the Executive Branch to promote good governance.518 In 2003, the Volcker Commission recommended granting the President “expedited authority to recommend structural reorganization of federal agencies and departments” to ensure that “the operations of the federal government keep pace with the demands placed upon it.”519 Restoring the President’s authority to manage, reorganize, and restructure the administrative state may allow Presidents to design the administrative state in a way that improves agency performance.

Some may argue that Presidents would never use this reorganization power to insulate agencies. But history shows that Presidents sometimes tie their own hands to promote good administration. More than half of the agencies established since 1946 have been created through executive action, including the EPA, OPM, the Occupational Safety and Health Administration, and many others.520 Reorganization grants the President a first-mover advantage, resulting in a different structure than Congress may have chosen through the legislative process.521 Presidents occasionally choose to insulate these agencies from presidential control by locating them outside the cabinet departments, imposing a commission structure, or requiring appointees to have certain qualifications.522 The willingness of Presidents to sometimes insulate agencies demonstrates some engagement with agency design as a means of promoting good management.

Presidents also propose the budget and have a first-mover advantage in the budgeting process.523 In passing the Budget and Accounting Act, Representative James Good explained that “the President must lay out a work program for the Government, and the appropriations that would necessarily follow would only be to supply the money to do the work in accordance with that work program.”524 But the budgeting process has become another tool of presidential control rather than one of capacity building.525 Presidents should use budgeting as an opportunity to investigate which agencies need more capacity and to request that Congress provide needed resources.

I recommend presidential management with some trepidation. Improving the quality of administrative policymaking requires Presidents to take an active role in managing the administrative state. But Presidents rarely have sufficient incentives to build capacity.526

Asymmetric priorities among Presidents exacerbate the situation. During the 2020 election, 95% of liberal voters said that climate change was an important election issue.527 President Biden coupled large regulatory reforms in the EPA with a significant push for increased staffing.528 By contrast, President Trump disfavored EPA policy and allowed the agency’s workforce to shrink to the lowest level since the 1980s.529 Ideological differences may cause agencies to whipsaw between periods of growth and periods of deconstruction. Left to their own devices, Presidents are unlikely to build or maintain capacity in an agency if they disapprove of its mission.

The EPA reveals another asymmetry. Although all Presidents enact new policies, some Presidents place a greater emphasis on deregulation. Approximately half of Americans support a reduction in government regulation and programs, making an emphasis on deregulation a viable campaign strategy for some Presidents.530 Repealing existing regulations may require less capacity than developing new regulations. When seeking to develop new policies, agencies must collect evidence and identify new methods of achieving the desired policy outcome.531 By contrast, repealing old policies simply requires reversion to the status quo and a reasoned explanation about the benefits of the old policy.532 Future research may explore whether deregulation truly requires less capacity.

At the same time, we should be cautious about overstating the role that these asymmetries play in everyday governance. Even Presidents who prefer deregulation benefit from experienced civil servants who understand the rulemaking process. Failure to rely on career civil servants during rulemaking often leads to litigation and vacatur of the agency’s action.533 Moreover, Presidents have few incentives to deconstruct agencies that administer popular programs. Benefits programs like Social Security and Medicare enjoy widespread support from the public.534 To improve Medicare, the Trump Administration reduced Medicare Advantage premiums and reformed insulin pricing.535 Other programs, however, are so obscure that Presidents have no reason to either build or deconstruct the agency’s capacity. The greatest problem confronting the average agency is not deconstruction; it is decades of persistent neglect.536

How do we incentivize greater investment by Presidents and discourage behaviors that diminish capacity? Presidential control does not prompt Presidents to invest. The agencies with the lowest levels of capacity are in the fifteen cabinet departments.537 Despite already high levels of control, we do not observe Presidents prioritizing management in these agencies. If control does not cure maladministration, then we must seek new strategies to improve governance. One strategy is to empower other actors—the courts, Congress, and the public—to meaningfully oversee the managerial activities of the President.

2. Courts

Judicial review may have both positive and negative impacts on administrative capacity. I have already reviewed the threat posed by constitutional challenges to agency design.538 Another threat comes from the development of doctrine. In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, the Supreme Court held that, “in light of internal organization considerations,” courts should not impose additional procedures on agency rulemaking beyond what the APA requires.539 Despite Vermont Yankee, the courts have read heightened evidentiary requirements into the APA, such as hard look review,540 the obligation to disclose data relied upon in rulemaking,541 and the requirement that agencies respond to significant comments.542 Some of these doctrines may follow from a good-faith reading of the APA; others may not.543

More stringent doctrines, such as hard look review, require agencies to conduct more reaching analyses during rulemaking, requiring greater capacity.544 Richard Pierce accuses the Supreme Court of basing its doctrine “on the implicit assumption that the politically accountable branches of government will simply take whatever actions are necessary to assure adequate agency staffing and funding to perform the missions they are assigned in a manner consistent with the doctrines announced and applied by the Court”— an assumption that mirrors those advanced by scholars of presidential administration.545

Judicial review plays an important role in checking the procedural and substantive quality of agency regulations.546 At the same time, it is unclear whether stringent procedural requirements produce better policy. Nicholas Bagley argues that proceduralism tends to “drain agencies of their legitimacy, impair their responsiveness to the public, and expose them to capture” rather than improve their legitimacy.547 Moreover, judges are generalists who may struggle to discern whether improper procedures truly resulted in substantive errors.548 Justice Barrett’s dissent in Ohio v. EPA accuses the majority of favoring a “cherry-picked assortment of EPA statements” to strike down a regulation as procedurally defective based on purely speculative comments.549 Of course, as Judge Posner states, “understaffing is not a defense to a violation of principles of administrative law.”550 Yet the Supreme Court should review whether current administrative law doctrines frustrate the ability of agencies to implement the policies enacted by Congress.

Courts could also play a positive role by protecting agencies from intentional maladministration by the President. This argument assumes that Presidents have an obligation to faithfully manage the administrative state. Gillian Metzger argues that the delegation of broad authority to the Executive Branch creates a “responsibility to supervise so as to ensure that the transferred authority is used in a constitutional and accountable fashion.”551 Metzger’s description creates a duty to supervise. Jodi Freeman and Sharon Jacobs argue that efforts to deconstruct agencies undermine the separation of powers by preventing agencies from executing the laws enacted by Congress.552 Freeman and Jacobs’s description creates a prohibition on malicious deconstruction.

Proponents of a unitary executive have traditionally assumed Presidents do not engage in intentional maladministration.553 Annie Benn, however, theorizes that Presidents intentionally undermine capacity to “tie the hands” of their successors.554 Space may exist for courts to police intentional maladministration. In Free Enterprise Fund v. Public Company Accounting Oversight Board, the Supreme Court invoked the Take Care Clause in severing for-cause removal restrictions from members of the Public Company Accounting Oversight Board.555 In justifying the majority’s decision, Chief Justice Roberts explained, “[t]he President can always choose to restrain himself in his dealings with subordinates. He cannot, however, choose to bind his successors by diminishing their powers, nor can he escape responsibility for his choices by pretending that they are not his own.”556

The Supreme Court’s decision suggests that Presidents cannot manage the administrative state in ways that limit the power of future Presidents. It is unclear why a unitary executive would prohibit tying a successor’s hand with respect to control but would permit intentionally undermining capacity. Undermining capacity diminishes the power of future Presidents by limiting their ability to engage in administrative policymaking.557

The Supreme Court has expressed hesitation to intervene in cases that involve an agency’s allocation of resources.558 How does one distinguish between budget cuts resulting from policy disagreements versus those that seek to intentionally hobble an agency’s ability to execute the law? At the same time, courts have placed prisons into receivership when poor management interferes with the constitutional rights of inmates.559 Future research may identify the conditions under which receivership of agencies is an appropriate remedy.

3. Congress

We should not understate the role of Congress. Congress possesses the power of the purse and appropriates funds for agencies.560 Congress should scrutinize any proposed budget cuts to determine whether those cuts are likely to interfere with agency operations. In the wake of government failure, Congress should conduct oversight hearings and pursue long-term solutions to deficiencies in capacity.

Yet like Presidents, members of Congress also lack sufficient incentives to build capacity.561 Congress often builds capacity on a quid pro quo basis, expecting agencies to deliver benefits to their districts in exchange for funding.562 Members of Congress also recognize the benefits of funding relief in the wake of a disaster because this spending increases their vote shares.563 Yet they have fewer incentives to prepare the agency for productive management in the future.564 Incentivizing Congress to appropriate funds and conduct oversight is a main hurdle to building capacity.

4. The public

Presidents and members of Congress lack electoral incentives to build administrative capacity. Therefore, the incentivize must come from the voting public. A primary reason that Presidents and Congress neglect most agencies is that the public lacks awareness about these agencies and their programs.565 The public struggles to connect the everyday benefits of government programs to specific agencies.566 When voters do become aware of maladministration, however, they punish elected officials.567 Raising public awareness about agencies, their programs, and maladministration may incentivize Presidents and members of Congress to build capacity to avoid these electoral consequences.

Conclusion

All Presidents want to make policy using the authority delegated to federal agencies. Rulemaking allows Presidents to create durable policies while circumventing congressional logjams. To succeed, Presidents must exercise sufficient control over the agency, and the agency to have sufficient capacity. Balancing control and capacity proves more difficult than scholars often appreciate.

Presidential power as it relates to the administrative state can only be defined when control and capacity are considered in concert. Undoubtedly, presidential control is important. The results in this Article suggest that Presidents largely succeed at setting rulemaking agendas and directing the day-to-day activities of agencies. Yet the dearth of capacity in many agencies poses a significant hurdle to presidential administration. Without sufficient capacity, agencies prove incapable of developing and promulgating the policies promised by Presidents.

Improving administrative capacity likely requires more than bigger budgets. Presidents must create an environment amenable to recruiting and retaining the best people for government work. In some instances, that means loosening the reins and granting civil servants some degree of autonomy over the policymaking process. Theories of presidential power that advocate for strengthening the presidency by improving presidential control may prove ineffective. Wrestling with this question requires both empiricists and constitutional law scholars to engage more with administrative capacity and less with presidential control.

Postscript

Shortly before this Article’s publication, President Trump was inaugurated for a second term in office. The early days of his presidency have highlighted the tension between presidential control and administrative capacity. The Trump Administration has cited unitary executive theory in its reinstatement of Schedule F and its efforts to remove over 700,000 federal employees through reductions in force, voluntary resignations, and the use of administrative leave.568 These personnel actions have already had a negative impact on the implementation of federal programs.569 In some cases, the Trump Administration has sought to reverse its removal of career employees with limited success.570 Simultaneously, it has also announced a massive deregulatory program that requires agencies to repeal ten existing rules for every new rule promulgated.571

Many of the personnel actions taken by the Trump administration reflect a fear that the President lacks sufficient control over career employees. For example, in reinstating Schedule F, President Trump included new language that Schedule F employees are “required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President.”572 This fear is misplaced. Presidential control rarely impedes the implementation of the President’s policy agenda. In light of his swift effort to shrink the federal workforce, administrative capacity will present a greater constraint on President Trump’s agenda during his second term. An attorney within the Department of Justice has told a federal judge that the firings have made it difficult to properly staff cases seeking to defend the President’s policies.573 Diminishing administrative capacity will limit the administration’s ability to deregulate and defend its actions in court.

In some ways, the events of the first month of the Trump administration provide support for the final arguments of this Article.574 President Trump has demonstrated that the President has the greatest ability to make meaningful changes—good or bad—to agency management. At the same time, his actions demonstrate the need for significant guardrails to prevent executive actions from threatening the long-term health of the administrative state. Many courts have refused to intervene in cases involving the termination of federal employees, citing the need for employees to exhaust their administrative remedies before the Merit Systems Protection Board.575 **[FOOTNOTE 575]** 575. See Am. Fed’n of Gov’t Emps. v. Ezell, No. 12-10276, 2025 WL 470459, at \*2 (D. Mass. Feb. 12, 2025) (“Congress intended for the FSL-MRS and the Civil Service Reform Act of 1978 . . . to provide the exclusive procedures for disputes involving employees and their federal employers and disputes between unions representing federal employees and the federal government.”); Nat’l Treasury Emps. Union v. Trump, 25-CV-420, 2025 WL 561080, at \*8 (D.D.C. Feb. 20, 2025) (requiring a union to present its claims to the Federal Labor Relations Authority). **[\FOOTNOTE 575]** Members of Congress have done little to hold the President accountable,576 despite concerns about the economic impact of the President’s actions in their districts.577 Consequently, morale among federal workers has declined, and the agencies have begun to lose their credibility as employers.578 The loss of agency autonomy, morale, and reputation will make it more difficult for future Presidents to rebuild the administrative capacity they need to implement their own policy agendas.

# Kansas

**1AC**

**BUREAUCRACY---1AC**

**Advantage 1 is the BUREAUCRACY.**

**The D.C. Federal Court of Appeals’ decision to stay E**xecutive **O**rder **14251 weakened collective bargaining rights for hundreds of thousands of federal workers.**

**Fields 25**, Breaking news reporter at The Hill, former assistant editor at the Afro-American. Graduate from the Howard University school of Journalism. (Ashleigh Fields, 08-02-2025, “Federal Judges Side with Trump on Ending Union Bargaining for Federal Workers,” The Hill, https://thehill.com/homenews/administration/5433509-federal-employees-trump-order-union-ruling/)

A federal appeals court on Friday sided with the **Trump** administration in lifting a temporary block on a March **e**xecutive **o**rder that prevented government workers from **union bargaining**.

The **three-judge panel** for the 9th Circuit Court of Appeals **rejected** the plaintiffs’ argument alleging Trump issued the order on the basis of **retaliation**.

Instead, the panel, which includes one appointee of former President Obama and two Trump appointees, said the president “would have taken the same action even **in the absence** of the protected conduct.”

A lower-court ruling issued by U.S. District Judge James Donato previously **prevented** 21 agencies from implementing the president’s March **e**xecutive **o**rder, siding with six **labor unions**, including the American Federation of Government Employees (**AFGE**), the nation’s largest federal employee union.

A separate judge in Waco, **Texas**, denied the Trump administration’s “power to **rescind** or **repudiate**” **c**ollective **b**argaining **a**greement**s** across numerous agencies in late July.

However, on Friday, the **appeals court** upheld the president’s order, arguing the agencies excluded from union bargaining have “**primary functions** implicating **national security**” and cannot be subject to the **F**ederal **S**ervice **L**abor-**M**anagement **R**elations **S**tatute, a law that established bargaining rights for most federal workers in 1978.

“President Trump’s latest **e**xecutive **o**rder is a **disgraceful** and **retaliatory** attack on the rights of **hundreds of thousands** of patriotic American civil servants—nearly **one-third** of whom are veterans—simply because they are members of a union that **stands up** to his harmful policies,” Everett Kelley, national president of AFGE, said in a March statement in response to Trump’s order.

“This administration’s **bullying tactics** represent a clear threat not just to **federal employees** and their **unions**, but to every American who values **democracy** and the **freedoms of speech** and **association**. Trump’s threat to unions and working people across America is clear: **fall in line or else**,” she added.

**That collapses the bureaucracy:**

**1. It allows Trump to take a politicized machete to the entire federal workforce.**

**Handler 26**, Associate Professor of Law at Texas A&M University School of Law. (Nicholas Handler, 2026, “Administrative Law of McCarthyism,” in 78 Stanford Law Review, forthcoming 2026) ~~language~~ [modified]

Beyond its theoretical and descriptive contributions, this history holds lessons for the legal and political conflicts of today. Since taking office in 2025, the **Trump** administration has embarked on an **unprecedented campaign** to **remake** federal policy, often by leveraging **personnel** management, **budget** management, and **dramatic changes** to other areas of internal executive branch management. 297

The administration has been **explicit** that it views personnel management as a means for achieving substantive **policy goals**. Shortly after taking office, the **President** stated publicly that civil servants who “**refuse** to advance the **interests** of the President” should “**no longer** have a job.”298 Indeed, a central theme of Project 2025, a blueprint for reshaping federal policy that was drafted by the conservative Heritage Foundation in consultation with President Trump’s campaign, is that many long-standing **conservative** policy **objectives** can be achieved through creative and **aggressive repurposing** of **management** and **organization** techniques within the executive branch, rather than through **formal enactment** of positive law. In one of the first sections in the 900-page report, the authors emphasize that the President must make “personnel management his **highest priority**,” explaining that “whoever holds a government position **sets its policy**,” and that thus “[w]ho the President **assigns** to **design** and **implement** his political policy agenda will determine whether he can **carry** out the responsibility given to him by the American people.”299

In some cases, the administration has sought to achieve its political objectives by ~~crippling~~ [**collapsing**] offices whose missions it **opposes** through **mass layoffs**. To take but a few prominent examples, the President and his advisors have sought to [**dismantle** the U.S. Department of **Ed**ucation, order **mass firings** (technically known as “reductions in force”) to the agency’s staff, effectively **preventing it** from carrying out a number of **core functions**300; it has sought to “**feed**” the **U.S. A**gency for **I**nternational **D**evelopment “into the **woodchipper**,” firing nearly its entire staff301; and it has pursued **similar goals** at a number of other agencies, including the Department of **H**ealth and **H**uman **S**ervices and **D**epartment **o**f **S**tate, among many others. 302

In other instances, the administration has sought not to dismantle programs, but to **influence** the exercise of **official discretion** by subjecting civil servants to a combination of **loyalty tests** and unprecedented **workplace surveillance**. For instance, a cornerstone of the President’s personnel initiative has been a push to **reclassify** a number of civil servants out of the **competitive service** (which enjoys removal protections), and into a new employment schedule that would render them to removable **at will**.303 At some agencies, like the Federal Bureau of Investigation, the administration has gone so far as to use polygraph tests to assess individual employees’ loyalty to the President.304 These attempts to police civil servants’ personal loyalties are **reminiscent** of the loyalty program. And often, the administration’s justifications for them harken back to the fears of bureaucratic sabotage and “resistance” that motivated the Red Scare purges of the 1940s and 50s.305 In the administration’s notice of proposed rulemaking, published in advance of the creation of its new at-will Policy/Career schedule, it warned of “**politicized competence**” within the civil service; a tendency by federal workers to develop “competency in agency operations, but us[e] that competency to advance their personal political preferences” instead of “implementing the elected President's agenda.” 306

These strategies have been challenged by states, municipalities, unions, and others in a wave of lawsuits. 307 In assessing these challenges, courts have been confronted with the same tension that confronted the CSC and judiciary during the first Red Scare. On the one hand, while civil service law (which was substantially overhauled by the Civil Service Reform Act of 1978) 308 provides more procedural protections to federal workers than it did in the McCarthy Era, many fundamental questions about personnel management (for example, when reductions in force are appropriate, when cause exists for termination) are still left largely to executive discretion.

On the other hand, as the administration’s campaign against the civil service has made clear, when pushed to their limits, **personnel actions** implicate more **fundamental questions** of administrative and constitutional law. Yes, the President has broad discretion to decide when to conduct reductions in force in the name of making agencies more efficient. 309 But when does the **elimination** of a large number of civil service positions so **limit** an agency’s capacity that it becomes **unable** to carry out its statutory mission? Asked another way, when does a personnel action (where the executive branch operates with considerable deference) so impact agency operations that it implicates broader questions under the Administrative Procedure Act, the Impoundment Control Act, or the Supreme Court’s precedent on the separation of powers? 310 When does personnel management exit the world of “internal administrative law”—lawlike and important, but not subject to the same standards of judicial review311—and enter the world of administrative law proper?

Likewise, **hiring** and **firing** civil servants based on **political loyalty** is **prohibited** under the CSRA and the Hatch Act,312 but claims are **difficult** to prove and channeled through the **M**erit **S**ystems **P**rotection **B**oard and Office of Special Counsel, which pose additional hurdles.313 Yet, when the President makes clear that employment in a particular federal office requires civil servants to prioritize the President’s own political agenda over statutory criteria or professional norms when making important decisions,314 those personnel management techniques again implicate more fundamental questions about whether a program is operating in the manner required by Congress. Can the President staff an agency in such a biased manner, with the aim of achieving specific policy outcomes, that the personnel policy becomes inextricable from questions of statutory implementation? Now, as then, it becomes difficult to cleanly separate the world of personnel administration from the world of administrative law.

**2. Agency dismantlement incites private-sector flight and ends recruitment.**

**Simpson et al. 25**, \*Founder and CEO, Archer Avenue Consulting. Former Executive Director of Joint Production Acceleration Cell, U.S. DOD. PhD, Government, Harvard University. BA, Political Science & International Studies, The University of Kansas. \*\*Senior Advisor, Federation of American Scientists. Former Associate Director of Performance and Personnel Management, U.S. OMB. MPP, University of Minnesota. \*\*\*Vice President of AI-First Transformation, IMB. Former Chief Digital and Artificial Intelligence Officer, U.S. DOD. PhD, Economics, Princeton University. (\*Erin Simpson \*\*Loren DeJonge Schulman \*\*\*Radha Iyengar, 07-29-2025, “Reductions, Retention, and Reimagining,” Sirens: A Bombshell Production, Apple Podcasts) [Automatically transcribed by Apple Podcasts]

ES: “We wanted to continue the conversation with Cristin around the impacts that we see, not only to the day-to-day workforce and how agencies operate, but the actual impact that we see for the country overall. Let's go back to the conversation. These **cuts**, as we've been talking about, they come on top of all the other cuts of **probationary employees**, the folks who took early retirement, the folks who were eliminated as part of the getting rid of US Agency for International Development.

Are we starting to see or when do you think we're going to start to see actual **mission impact** in terms of government offering fewer services or slower services or doing what Radha called the government version of quiet quitting? Can they actually just do less? And is that actually starting to happen at this point?”

LD: “It's absolutely starting to happen. It's helpful to think about all of this **attrition** and these **layoffs** in **context**, not in a vacuum. And I see them in two different categories.

In one category, the administration is going after **agencies** and **laying off** staff and agencies. It's intending to close ahead of even working with Congress to agree with Congress that that agency should close and that that funding shouldn't be spent. So in agencies like **USAID** or the Institute for Museum and Library Services, you're seeing a move to a layoff, which means **all activities** of that agency are **ceasing** ahead of even **consulting** with **Congress**, right?

And what happens then is that it's one tactic in withholding funds, and it's a real quick way to do it. At IMLS, you saw, which is the Institute of Museum and Library Services, they put most of those staff on leave, including all but four of those who knew how to manage grants. When you do that, what happens?

Grants stop flowing to libraries and museums, period, right? When you let every single person at USAID go, what happens? Life-saving aid doesn't get delivered.

It's a very **fast way** to **dismantle** an agency with or without Congress, and in this case, without. But in other agencies, the changes are a little **harder to see** where they're coming from, right? Because at the Department of **H**ealth and **H**uman **S**ervices, or **Ag**riculture, or Housing and Urban Development, you're not trying to **close** the **agency** if you're this administration.

You're just trying to make some really **big changes**. And so what you get is compounding effect of **layoffs**, **firings**, **resignations**, and **retirements**, totally disconnected from mission or plan, and then **attrition** that's so **much deeper** even than the administration intended in certain areas that they're having to again rehire. So it's CDC rehiring hundreds of employees so that schools can deal with lead, hazardous levels of lead poisoning and monitoring wildfire smoke and taking care of coal miners.

The administration didn't actually mean to **cut** those programs, or if they did, they **walked back** from them pretty quickly when they got some pressure from Congress. And again, here we are trying to clean up that mess. And we're only six months in.

This to me just demonstrates a real **lack of understanding** what it means to meet **agency missions**. And we are the people feeling that, right? Those schools, those coal miners, the people in the area suffering from wildfire smoke are the ones who are to **suffer** if we don't actually **succeed** in keeping those experts aboard.”

ES: “This is something that's been on my mind a lot for the past few months that yes, the administration has attempted to **end contracts**, cut off grants and other things in a much more explicit way. But by eliminating **federal workers** and federal capacity, it's the **same** sort of policy choice, even if they didn't write it down as I'm getting rid of this program, by getting rid of the workers that are actually leading this, it has the exact same effect. But you can't separate out the overall impact and the relationship between the two.”

Something else I've been worried about because we don't need more these days, is how does this impact the federal government's ability to actually retain the existing workforce that it needs, but also to at some point, I assume, is going to have to **recruit** additional folks to come in as new opportunities come up. How might it impact its ability to recruit the workforce we need in the future?”

RI: “Yeah, I mean, we've talked about how **chaotic** and **unpredictable** this has been, but it's also **embedded** with messaging and a **mood** vibes that are really **disrespectful** and at times **immoral** and disconnected from thoughtful plans about how to be effective. Delivering agency missions are a large part of **why** people choose to work in the federal government, right? They want to make their nation, their communities **better**.

And so when you **don't** have that **care**, you don't have that respect, that is going to **harm** not just retention of current employees, but **recruitment** of new ones. The number of **rock stars**, civil servants I know who are choosing to **leave** government now, the number of people coming out of great training programs that are choosing not to apply is sobering. And that **scope** and **scale** then can't be ignored.

So if you were an early career expert in **tech**nology, or service design, or **policy**, these skills the government needs, and you had an option of **serving** in the federal government right now, or looking at a role in the **private sector** or state and local government, I mean, there are **many arguments** you would turn away from federal service. I don't know about you, but that would be a hard choice for me to make. We hate bad managers, all of us.

This is like another level. Imagine if the federal government as a whole was open for glass door reviews right now, like how brutal would that be? And all you got to do is look at federal news subreddit to see how bad it has gotten for federal workers in their day-to-day experience.

Like it's hard to put that amount of **actual trauma** into context. This is going to have **generational impacts**. I don't think that's an overstatement.”

**3. It creates a constitutional vision of replacing skilled bureaucrats with loyalists.**

**Fisk 25**, Barbara Nachtrieb Armstrong Distinguished Professor of Law, University of California, Berkeley. (Catherine L. Fisk, 02-04-2025, “Democracy and a Nonpartisan Civil Service,” University of California, Berkeley School of Law, SSRN eLibrary)

The EO is part of a **broad effort** in the conservative legal movement to **strip all** federal government employees of protection against **retaliation** based on their beliefs or **political affiliation** and to strip public employees (sometimes with the exception of police) of **c**ollective **b**argaining **r**ight**s**. Professor Kate Shaw has aptly labeled this “**partisanship creep**.”22 In this Essay, I explain that the **constitutional vision** of an **all-powerful President** goes against 150 years of legal efforts to make civil servants **independent** of the party in power. While the Supreme Court has embraced some constitutional limits on Congress’ ability to protect high-level appointees and administrative law judges from removal without cause, nothing in its Article II decisions authorize such a huge expansion of White House authority over Congress or independent agencies and the civil service. Moreover, the effort to make **loyalty** to the president or his party a criterion for hiring, continued employment, or advancement is contrary to **well-settled** First Amendment law. For decades, and as recently as 25 years ago, the Supreme Court has held that governments cannot hire, promote, or fire public employees, except the very highest level of political appointees, on the basis of their political affiliation.23

**Which creates a reckless pyramid-scheme government controlled by Trump and his cronies.**

**Fisk 25**, Barbara Nachtrieb Armstrong Distinguished Professor of Law, University of California, Berkeley. (Catherine L. Fisk, 02-04-2025, “Democracy and a Nonpartisan Civil Service,” University of California, Berkeley School of Law, SSRN eLibrary)

Nevertheless, two authors of who hold divergent views about the desirability of eliminating civil service published a book surveying studies on radical civil service reform. They conclude, “increased **managerial flexibility** coupled with **less accountability** to civil service authorities may spawn **bureaucratic fiefdoms** controlled by **skilled** bureaucratic entrepreneurs. … At a minimum, particularly in large organizations, the result of **arbitrary** personnel rulings with **little opportunity** for impartial recourse may lead to an **exodus** of government’s more **skilled** and **mobile** employees and discourage persons at the start of their careers from seeking government employment.”106

In sum, the **empirical evidence** on abolishing job protections for government employees does not sustain the **robust claims** made by the supporters of the 2025 EO that it will **improve government**. But the **tone** and **content** of the EO suggests that the **real justification** is not to improve the **quality** of government, but rather to allow the **President** and his trusted deputies **unfettered power** to **remake it**. It is to that argument I now turn.

**That ensures bureaucratic instability, nationalist protectionism, and unchecked populism.**

**Sasso & Morelli 21**, \*Assistant Instructional Professor, Social Sciences Collegiate Division, University of Chicago \*\*Fellow of the Econometric Society, Professor of Political Science and Economics, Bocconi University (\*Greg Sasso \*\*Massimo Morelli, 08-09-2021, “DP14499 Bureaucrats under Populism,” in CEPR Discussion Paper No. 14499. CEPR Press, Paris & London)

Populists’ rhetoric often includes **criticism** of the bureaucracy.1 However, policymaking is a **complex process** and policy implementation **requires** use of the **bureaucracy**. Even when populists are in power, **high-level agents** are needed for implementation and can **greatly affect** policy. To combat this, populist leaders often try to **hire** their own **loyalist** agents (Muller 2017). ¨ 2 The **Trump** administration had a **far higher** number of **overturned policies** than previous administrations (Barbash and Paul 2019). Moreover, the higher rate of **turnover** among appointees (Tenpass 2018) is likely to have **instability effects**, incentive **distortion effects**, and to reduce **institutional memory**.

In this paper we characterize the equilibrium incentives of populist and non-populist politicians in terms of the choice of bureaucrats, whose competence (good or bad) is private information. We assume that a populist politician prefers the bureaucrat policymaker to implement a fixed policy whereas a non-populist politician typically prefers delegation to good bureaucrats who are able to match the policy to the changing states of the world.3 This difference implies that a populist may prefer a **bad bureaucrat** over a good bureaucrat. In fact, for a bad bureaucrat the **opportunity cost** of loyalty to the populist fixed policy is **lower** than for a good bureaucrat, since the latter knows what the **correct policy** would be and the bad does not. Beside analyzing the different hiring and firing decisions by politicians, we also characterize the consequent incentive distortions by good and bad bureaucrats.

We study the problem with a two period game where in each period there are just two players, namely a politician and a bureaucrat. The politician can be populist or not, and the bureaucrat can be good or bad. In each period, the incumbent politician decides on whether to fire the incumbent bureaucrat; if the bureaucrat is fired a new one is randomly chosen. The bureaucrat in office then chooses a policy. In between the first and second period there is an election, and a new politician type may take office for the second period.

Morelli, Nicolo and Roberti (2021) provide a micro-foundation of the choice of unconditional platforms for a politician, and also show why the **choice** of a commitment strategy leads to **all** the other features of populism as well. They show that when **delegation** is plagued by **risk of capture** by interest groups or **elites** and hence trust in politicians is **low**, parties and politicians may find it rational to make **policy commitments**, like building **walls**, **protectionism**, **nationalism**. The model presented here shows the consequences the strategic choice of populist commitments has for bureaucratic appointments, policy implementation and bureaucratic behavior. Populists want **loyal bureaucrats** who do not **challenge** their policy commitment they made with voters – a political agency motivation for not wanting resistance by (or delegation to) the bureaucracy. Thus, a populist politician wants to **fire experts** in order to **reduce** potential resistance or to avoid that the bureaucracy can end up **implementing** a different policy.

Good bureaucrats know the state of the world while the bad ones have no extra information in the model. Besides this difference, both bureaucratic types are exactly the same. They care about office rents and also about correctly matching policy to the state of the world. However, only good bureaucrats can successfully implement the correct policy; the best bad bureaucrats can do is match public interest in expectation. By conditioning office rents on implementation of the populist policy, **populist politicians** can entice bureaucrats away from pursuing the correct policy. Crucially, the necessary rents are lower for bad than for good bureaucrats. **Bad bureaucrats** can only **match policy** with the state in expectation, and this gives them a **lower** expected policy payoff than good bureaucrats. Therefore bad bureaucrats **optimally choose** to act as **loyalists** in a much **larger** set of circumstances. Good bureaucrats sometimes choose the populist policy as well, because this type of pooling behavior avoids firing and hence may be preferred when office rents are very high and/or the optimal policy is not far from the populist desired policy. The different **frequencies** of endogenous **loyal behavior** ensures that populist politicians have a **strict preference** for **bad bureaucrats**.

**Only an effective bureaucracy maintains readiness, staves off pandemics, and solves global warming.**

**Smith 23**, Professor at Stony Brook University, Ph.D. at the University of Michigan. (Noah Smith, 10-22-2023, “America Needs a Bigger, Better Bureaucracy,” Noahpinion https://www.noahpinion.blog/p/america-needs-a-bigger-better-bureaucracy) ~~language~~ [modified]

I believe that the U.S. suffers from a distinct lack of **state capacity**. We’ve outsourced many of our core government functions to nonprofits and consultants, resulting in cost bloat and the waste of taxpayer money. We’ve farmed out environmental regulation to the courts and to private citizens, resulting in paralysis for industry and infrastructure alike. And we’ve left ourselves **critically vulnerable** to threats like **pandemics** and — most importantly — **war**.

It’s time for us to **bring back** the **bureaucrats**.

Aggregate numbers give a decent general impression of how the United States’ **civil service** has **withered** over the decades. This process began in the 1970s, before Reagan ever took power, and has continued to this day. The percent of American workers employed by the government rose through 1975 and fell thereafter, interrupted only by recessions (in which government employees were less likely to be laid off):

It’s worth noting that much of this decline was at the federal level. State and local governments employ a lot of people in public education and policing, which are both harder to cut:

An even better way to see the decline might be to look at government spending on wages and salaries as a percent of total government spending. This represents the percent of government dollars that actually goes to pay government workers. It held steady until the mid-70s at around 34%, and then collapsed in the late 70s and early 80s to around 25%. It has since fallen to around 18% — about half of what it used to be.

If government spending isn’t going to pay government workers, it must be going to pay people who work in the private sector — nonprofits, for-profit contractors, consultants, and so on. In other words, **state capacity** is being **outsourced**. But this graph doesn’t actually capture the full scope of the decline, because it doesn’t include outsourcing via unfunded mandates — things that the government could do, but instead simply orders the private sector to do, without providing the funding.

I’m far from the first person to sound the alarm about this. John DiIulio wrote a book in 2014 called Bring Back the Bureaucrats: Why More Federal Workers Will Lead to Better (and Smaller!) Government, which is the basis for many of the ideas in this post and others. More recently, Brink Lindsey of the Niskanen Center put out a great report in 2021 called “State Capacity: What Is It, How We Lost It, And How to Get It Back”. A few excerpts from the executive summary:

A series of calamities during the 21st century—the **Iraq War**, Hurricane **Katrina**, the **financial crisis**, and most recently the **COVID**-19 pandemic—have made it **painfully clear** that American **state capacity** is not what it once was…On the right, healthy suspicion of rapid government expansion has given way to a toxic contempt for government and public service per se. On the left, efforts to expand “citizen voice” in government as a check on abusive power have produced a sclerotic “vetocracy” that makes effective governance all but impossible…

[The Niskanen Center is] taking on five new issues that we see as critical arenas for the struggle to rebuild state capacity: (1) expanding and upgrading the federal workforce, (2) improving tax collection and closing the tax gap, (3) overhauling how the federal government acquires and uses information technology, (4) streamlining environmental review to reduce delays and cost overruns in infrastructure projects, and (5) revitalizing the country’s sclerotic public health institutions to better prepare for the next pandemic.

This is in concert with Tyler Cowen’s concept of “state capacity libertarianism”, which he outlined in January 2020 as an alternative to traditional libertarianism or classical liberalism.

Meanwhile, on the progressive side of the aisle, writers like Ezra Klein have begun to focus on low **state capacity** as a reason why it’s hard for **progressives** to accomplish their objectives. Don Moynihan has also written a bunch of good stuff on the topic, including this post:

[[[[Post omitted]]]]

A bunch of people across the ideological spectrum are thus homing in the same conclusion: America needs a **better bureaucracy**. Here are just a few of the reasons why.

Bureaucrats vs. NEPA

Maybe this is just my personal experience, but I find that when Americans say the word “bureaucracy”, they tend to mean “a bunch of regulations and red tape”, rather than “the civil service”. This sets up an implicit dichotomy between private-sector individuals and companies that just want to do their thing, and civil servants who work tirelessly to enforce rules that prevent them from doing their thing.

For example, this is the depiction of environmental regulation in the movie Ghostbusters (another of my favorites). Our heroes have set up a private business trapping and imprisoning dangerous ghosts. Then Walter Peck, a bureaucrat from the Environmental Protection Agency, shows up and tells them that the rules forbid them from doing this, eventually managing to shut them down (which causes a citywide catastrophe).

This is also the depiction of environmental regulation in The Simpsons Movie, in which the EPA tries to stop pollution by sending an army to take over Springfield and encasing it in a giant dome.

But in fact, this is not actually how the most cumbersome environmental regulation works in America! Instead, we have laws like NEPA and its stronger state-level equivalents like CEQA, which farm out the job of environmental regulation to citizens and the courts. The way it works is this: A developer starts work on a project, like a solar plant or an apartment complex. Then private citizens who don’t want that project in their backyards — because of concern over scenic views, or property values, or “neighborhood character”, or whatever — sue the developer in court. Even if the project satisfies all relevant environmental laws from day 1, citizens can sue the developer under NEPA or CEQA to force it to stop the project and complete a cumbersome environmental review — basically, a ton of paperwork. This often delays the project for years, and drives up costs immensely — which of course discourages many developers from even trying to build anything in the first place.

Enforcing environmental regulation via judicialized procedural review has had devastating consequences on America’s ability to build the thing we need. Housing projects are routinely held up by NIMBYs using environmental review laws to sue developers, often under the most ridiculous of pretexts (such as labeling human noise from apartment complexes a form of pollution). The **solar** plants and **battery** factories and **transmission** lines that we need to **decarbonize** our economy **aren’t getting built** nearly as fast as they should, because they’re getting **held up** by these review laws. And remember that most of these projects aren’t violating any environmental review laws in the first place — the NIMBYs have the right to sue and hold up development regardless of whether any regulation is actually being violated!

Which raises an obvious question: How can we know if no **environmental reg**ulation is being violated, other than waiting for a **lawsuit** and a **multi-year** environmental review? The answer is: **bureaucrats**. The answer is that you have a bunch of **government workers** examine the project and make sure it checks all the relevant **regulatory boxes**, and then if it does, you simply allow the project to go ahead, **without** lawsuits or multi-year studies. This is called “ministerial approval” or “ministerial review”. This is how Japan does things, which is why they’ve been able to build enough housing to keep rent affordable.

NIMBYs are absolutely terrified of ministerial review. I strongly encourage you to read this thread by Jordan Grimes, detailing the dismay of a NIMBY pressure group at a raft of new pro-housing laws in California. The most terrifying prospect, for the opponents of new housing, turns out to be “as-of-right” development, which means a bureaucrat gets to decide whether to allow a housing project rather than a lawsuit and a judge.

In other words, environmental regulation doesn’t **threaten** America’s economy via a **sea** of **red tape** enforced by an army of punctilious bureaucrats. It threatens America’s economy via a **plague** of **lawsuits** and pointless paperwork that we implemented as an **alternative** to hiring an army of **punctilious bureaucrats**. If we **scrapped** this legalistic permitting regime and **replaced it** with an **army** of bureaucrats, we would still be able to **protect** the environment just fine, but we would be able to do it **without** causing insane **multi-year delays** and driving costs **to the moon**.

The nine most terrifying words in the English language are not “I’m from the Government and I’m here to help”. Nine far more terrifying words are: “Please spend four years completing your Environmental Impact Statement.”

Bureaucrats vs. nonprofits and consultants

Even as environmental regulation has been outsourced to the courts, a huge variety of other **government functions** have been **outsourced** to nonprofits. In a post back in May, I argued that this represented a **toxic compromise** between anti-government conservatives who wanted to **shrink** the **state** and progressives who wanted to increase **community input** into policymaking:

[[[Post omitted]]]

Some excerpts from that post:

We do know that about a third of nonprofit funding comes from government purchases and grants, and that nonprofit revenue rose by about 70% in inflation-adjusted terms from 1998 to 2016. A rough back-of-the-envelope calculation — $2.62 trillion in nonprofit revenue in 2016, 32.3% from government — says that this would equate to around $850 billion in government spending on nonprofits in the U.S.

That’s about 13% of all government spending, including state and local, spent via nonprofits. Compare that to about 18.4% of government spending spent on actual government workers as of 2022. We’ve outsourced a significant amount of our government to nonprofits. Here’s a brief overview of some of the ways this work is outsourced. Of course the number includes things like public university funding (universities are also nonprofits). But a lot of it is just paying organizations to administer government spending.

Outsourcing government functions to nonprofits — which is definitely a form of privatization, even if no one is officially making a profit — has a **number** of problems. First there’s the obvious danger of **corruption**, in which nonprofits line their pockets by using taxpayer money to help elect leaders who give them more taxpayer money. Of course this money is paid out in executive salaries rather than “profit”, but it amounts to the same thing.

But even more important is what economists call an “**agency problem**”. Nonprofits would rather get the government to give them as much **money** as possible; they would love to rip the government off. And if all the **expertise** involved in building housing or providing social services resides in the nonprofits instead of the **government** itself, the government doesn’t have the ability to judge whether it’s getting **ripped off**. Here’s how I put it in my earlier post:

When the government controls the purse strings but only the contractors know how much things should really cost, you get the worst of both worlds — a government that doesn’t know how to save taxpayer money, paying contractors who don’t want to save taxpayer money.

This problem is especially acute in San Francisco, which makes it extremely difficult to hire workers for the civil service, and has taken nonprofit-outsourcing to an extreme. (In fact, if you want to read a fun satire about nonprofit-outsourcing in SF in the late 60s and 70s, check out Tom Wolfe’s essay “Mau-Mauing the Flak Catchers”.) Investigations have shown that oversight of SF nonprofits has been extremely poor — in part because the city got rid of the bureaucrats who could have done that monitoring effectively. Massive inefficiencies are allowed to fester for years, only coming to light after elected officials discover the problems and raise the alarm. The most recent blowup I’ve seen is over an addiction treatment nonprofit:

A San Francisco supervisor is calling for an audit of the city’s largest addiction treatment nonprofit after word leaked that a staffing shortage forced the organization’s detox program to pause intakes last week…

HealthRight 360 is the largest drug treatment provider in San Francisco and is slated to receive more than $200 million from the city this fiscal year, according to a city database.

“This is not to cast aspersions on anyone, but I am truly concerned that we are paying for a service that they’re not able to provide,” Stefani said at Tuesday’s hearing.

Of course this doesn’t mean that bureaucrats always have the right incentives. With the wrong funding incentives, civil service agencies can fall into a trap in which they try to maximize the amount they spend each year in order to increase their budgets for future years. An efficient bureaucracy requires avoiding **perverse incentives** like that. But when the **funds** are being spent via **nonprofits** instead of government workers, the incentives are much **harder** to get right, because the government lacks most of the **levers of control** that it has over its own workforce.

Of course, the agency problems doesn’t just apply to nonprofits, but to any **government contractors**. And when it comes to transportation planning, a huge problem is the amount that governments have come to rely on **consultants**. The Transit Cost Project has been looking into the question of why it costs so much more to build each mile of train in the U.S. than in other rich countries (most of which have stronger unions). Their big report, released earlier this year, found that state and local governments’ excessive reliance on outside consultants rather than in-house bureaucratic expertise was a huge driver of excess cost. Here are some excerpts from a great writeup by Henry Grabar:

[M]any of the [**transit** cost] **problems** can be traced to a larger philosophy: **outsourcing** government expertise to a retainer of consultants…

For example, when the Massachusetts Bay Transportation Authority got to work on the Green Line Extension, the agency only had a half-dozen full-time employees managing the largest capital project the MBTA had ever undertaken. On New York’s Second Avenue subway, the most expensive mile of subway ever built, consultant contracts were more than 20 percent of construction costs—more than double what’s standard in France or Italy. By 2011, the MTA had trimmed its in-house capital projects management group of 1,600 full-time employees (circa 1990) to just 124, tasked with steering $20 billion in investment. Perhaps the most notorious case in this business is the debacle of the California High-Speed Rail project, which in its early years had a tiny full-time staff managing hundreds of millions of dollars in consulting contracts…

It’s that lack of institutional know-how, of which consultants are both a symptom and a cause, that really hampers projects…It means staff are overwhelmed by change orders as projects evolve. In the case of New York’s Second Avenue subway, the lack of a powerful, effective team of civil servants may also explain some inexplicable conflicts and mistakes: misunderstandings and feuds with local agencies, hugely overbuilt stations, and so little standardization that the escalators in the three new stops were built by three different companies.

Would replacing some of these consultants with government bureaucrats really lower costs? A recent paper by Zachary Liscow, William Nober, and Cailin Slattery suggests that it would:

[W]e find evidence that state capacity correlates **inversely** with costs in a several ways. States with (perceived) higher quality DOT employees have lower costs. A state with a neutral rating has almost 30% higher costs per mile than one that rates the DOT employees as “moderately high quality”, all else equal. Consistent with the capacity hypothesis, states that flag concerns about consultant costs have higher costs. States where contractors and procurement officials expect more change orders have significantly higher costs. Frequent change orders could directly lead to higher costs through delays and costly renegotiation; they could also be a downstream symptom of poor administrative capacity at a state DOT—many contractors reference poor-quality project plans made by third-party consultants. Moreover, when we measure capacity using external data we show that states with higher DOT capacity have lower infrastructure costs. A one standard deviation increase in capacity is correlated with 16% lower costs.

And a recent paper by Maggie Shi finds that when the government monitors **Medicare** spending more closely, it reduces waste by a **huge amount**:

Every dollar Medicare spent on **monitoring** generated **$24–29** in government savings. The majority of savings stem from the deterrence of future care, rather than reclaimed payments from prior care. I do not find evidence that the health of the marginal patient is harmed, indicating that monitoring primarily deters low-value care. Monitoring does increase provider administrative costs, but these costs are mostly incurred upfront and include investments in technology to assess the medical necessity of care.

And guess who’s responsible for monitoring Medicare spending? Bureaucrats. So that’s at least a 2300% **r**eturn **o**n **i**nvestment in bureaucracy!

In sum, the years since the 1970s have been a massive experiment in whether a government, by outsourcing core functions to private actors like nonprofits and consultants, can increase the efficiency with which public funds are spent. That experiment has failed, and it needs to be reversed.

Preparing for the next threat

I became **painfully aware** of the problems of a weak bureaucracy during the early days of the **Covid** pandemic. I started a group to help encourage state public health agencies to improve contact tracing — an approach that ultimately proved futile due to hyper-infectious mutations. But back when the virus was less contagious and we still thought contact tracing might work, my partners and I had some meetings with government workers at the **CDC**. It was clear that they had absolutely **no resources** to commit to our project, and that they were **overwhelmed** with other demands.

Perhaps that’s to be expected in the middle of a massive pandemic. But it was also **clear** that the CDC workers we talked to didn’t know a lot of **basic facts** about how their organization worked; there was lots of **data** that they had no idea how to find, or even who was **responsible** for collecting it, and they had **little concept** of who was responsible for **contact tracing** at the state level. Those are things they should have known long before the pandemic even started.

In fact, the **pathetic** crisis performance of the CDC — which before the pandemic was often believed to be one of our most competent government agencies — is now the stuff of **legend**. Most damningly, the agency was unable to collect even the most **basic data** on the spread of the virus — data that private individuals were forced to collect in its stead. In addition, it made numerous **bad recommendations** that were later reversed, issued confusing guidance, and failed to develop Covid tests in the early days of the pandemic. The agency is now being reformed, but it’s not yet clear how deep the reforms go.

But what I’m **most** afraid of is not another pandemic; it’s a **major war**. In a widely-read post last week, I warned that a war with China over **Taiwan** is a lot more **likely** than most Americans seem to realize, and that we need to be **preparing** for that grim possibility right **now**. China’s state apparatus is **famously effective** in building large amounts of stuff very quickly — in the space of just a few years, while the U.S. was failing to build even a **small amount** of high-speed rail, China built a high-speed rail network that ~~dwarfed~~ [**mogged**] American transit advocates’ **wildest dreams**. In a war situation, China’s **massive production** advantage means that the U.S. will be at a **dramatic disadvantage** in a protracted conflict. We do not have the equivalent of the effective bureaucracies that we created in the runup to World War 2.

But even **beyond** military production, the U.S. needs to do lots of **preparation** for the possibility of a China conflict. Private companies need to audit their supply chains to make sure they can sustain production in the event of a war. The U.S. **government** needs to ensure that **critical minerals** can be accessed without reliance on **Chinese** processing facilities. And the government needs to **revive** the **d**efense-**i**ndustrial **b**ase, so we don’t see **bottlenecks** of the kind we encountered when we tried to produce Covid masks, tests, and ventilators in the early days of the pandemic.

All of this requires a **large**, **competent**, well-funded **bureaucracy**. Yet I worry that neither progressives nor conservatives understand this need. Progressives still seem wedded to the idea of defending NEPA, while conservatives still seem wedded to the idea of slashing and burning any government agency they can. It’s a toxic equilibrium in which one side wants to drown the government in a bathtub and the other wants to outsource it to every NIMBY and nonprofit in the country.

To **reestablish** U.S. state capacity, we have to **sail** between the rocks of both of these **disastrous approaches**. We have to **rebuild** the civil service, with sufficient long-term **funding guarantees**, **talent**, and **size**. For all our sake, we need to **bring back** the bureaucrats.

**All three risks are independently existential:**

**1. Warming** ends human life.

**Spangenberg 25**, Professor at University of Versailles St. Quentin, Research Coordinator at the Sustainable Europe Research Institute, member of the Executive Committee of the International Network of Engineers and Scientists for Global Responsibility, PhD in Economics. Citing, among others:

Chi Xu, Professor of Ecology at Nanjing University.

Timothy A. Kohler, Professor of Anthropology at Washington State University, Fellow at the Research Institute for Humanity and Nature.

Tim Lenton, Professor of Earth Science at University of Exeter, PhD, University of East Anglia.

Jens-Christian Svenning, Professor in the Department of Bioscience at Aarhus University.

Marten Scheffer, Professor at Wageningen University.

Nicole D. Miranda, Professor of Engineering Science at the University of Oxford.

Jesus Lizana, Associate Professor in Engineering Science at the University of Oxford.

Sarah Sparrow, Associate Professor in Environmental Impact, University of Oxford.

Miriam Zachau-Walker, PhD Candidate in Engineering Science.

Peter A.G. Watson, PhD, Senior Lecturer at School of Geographical Sciences at Bristol University.

David C.H. Wallom, Professor in Informatics at Oxford.

Radhika Khosla, PhD, Associate Professor at the School of Geography and the Environment at Oxford.

Malcolm McCulloch, PhD, Professor of Engineering at Oxford.

(Joachim H. Spangenberg, 2025, “The roadmap to collapse: whatever the last summers have been like for you, one thing is clear: you are currently experiencing the coolest period of your lives,” Consumption and Society Journal, Vol. 4, No. 1, pp. 141-55, University of Kansas Libraries, ILL)

In 2022, European meteorologists recorded the worst drought on the European continent in more than 500 years (European Commission et al, 2022). AtmosphericCO2 concentrations were more than 50 per cent above pre-industrial levels for the first time, primarily because of emissions from the combustion of fossil fuels and cement production (WMO, 2023), but also driven by the surge in military spending after the Russian invasion of Ukraine. NATO’s 2023 military spending accounted for 233 million t CO2 , 5.5 per cent of the total emissions and an increase of 15 per cent. The last time such concentrations prevailed, 3–5 million years ago, the Earth temperature was 2–3°C and the sea level 10–20 m higher (WMO, 2023). Little wonder then that 2023 was the hottest of the last 125,000 years. We and the plants and animals we use are **leaving** the climate **envelope** of human civilization, **everywhere** (Xu et al, 2020). However, mere temperature figures are dry air temperatures taken by thermometers, and do not reflect human health impacts. To consider sweating and humidity, ‘wet-bulb temperature’ (**WBT**) is measured. Vanos et al (2023) have shown that in a mixture of sun and shade exposure, and rest and sport, the **survival limits** for WBT are between **26°**C and 34°C in young people and between 21°C and 34°C in older people. At these thresholds, a healthy person can survive for only around six hours, leading to **heat stroke** in even the healthiest people – **everyone** will die at that point (Wong, 2023). More than 60,000 people died in Europe as a result of the 2022 heat waves (Ballester et al, 2023), and almost 50,000 in 2023 (Miranda et al, 2023). During the 2024 Hajj, the Muslim pilgrimage to Mecca, the heat caused more than 1,300 heat deaths. According to the United Nations, around 70 per cent of the global working population, that is, 2.4 billion people, are now at high risk from extreme heat.

While in 2009, three Planetary Boundaries had been crossed, it was four in 2015 and six out of nine in 2023 (Ruwet, 2023). Having crossed a tipping point, there is no way back to the status quo ante – the development is irreversible and no longer under human control. Overshooting tipping points and triggering tipping cascades will shape the Earth for the millennia to come. For instance, on Greenland, ice equivalent to a 1–2-metre rise in global sea levels is likely already doomed to melt, only the time scale is disputed (Boers, 2021). Tropical coral reefs are bound to die off, and the Amazon rainforest **dieback** (including logging) will not only **wreak havoc** on South and some North American precipitation systems, forest **fires** and drinking **water** availability (Joughin et al, 2014; Armstrong McKay et al, 2022), but will accelerate global **heating** by turning a **carbon sink** into a **source**. The same is happening to the **Canadian** (and probably **Russian**) boreal **forests**, turning from a carbon sink to a major source – in 2024, only China, the United States and India emitted more CO2 than the Canadian forest fires (Byrne et al, 2024). The **AMOC** (in the North called the Gulf Stream) might **be** the **next** tipping point to be crossed (Lohmann and Ditlevsen, 2021). It is now weaker than it has been for at least 1,600 years (Thornalley et al, 2018). Most of the weakening can clearly be **attributed** to the burning of **fossil fuels** (Caesar et al, 2018). Its collapse would lead to a massive cooling of Europe in a heating world and is expected for 2050 (central estimate, range 2025–2095) if global carbon emissions are not significantly reduced (Ditlevsen and Ditlevsen, 2023).

Politics

The reports to COP28 in December 2023 were incomplete and partly greenwashing. While emissions of 20 bln t CO2eq 2030 would be 1.5° consistent (25 bln for 2°), government pledges add up to 33 bln t. Current policies, if continued, would lead to 37 bln t 2030, that is, no reductions as compared to 2023, and announced plans and projects would increase emissions about 45 bln t CO2eq 2030. Escalating politicaltensions in the Eastern Mediterranean and in the South China Sea over ownership of (expected) gas reserves illustrate that access to additional fossil fuels is still a policy priority. This is all the more true for a number of mostly extreme right authoritarian governments and personalities (Trump, Musk, and so on).

For the following projections we assume that neither pledges nor the announced plans are realised, and hence emissions remain almost constant – that is, we assume that the efforts in antagonistic directions rather cancel out each other’s effects. This is an optimistic assumption, given the announced exploitation plan for coal (calculation in exajoule for better comparability: India +11 EJ, Russia +3 EJ, Indonesia +2.3 EJ, Colombia +1.8 EJ), oil (Saudi Arabia +5.5 EJ, USA +5 EJ, Brazil +5 EJ, Canada +3 EJ) and gas (Qatar +3.8 EJ, Russia +3 EJ, Nigeria, USA and China each +2.5 EJ) (SEI et al, 2023).

Globalisation is in retreat, neoimperialism is replacing neoliberalism in international relations – but it still dominates in domestic politics. Nonetheless, free trade is in decline – currently, more than a quarter of countries and almost a third of the global economy are affected by sanctions. The biggest problem are the secondary sanctions, which most international lawyers classify as illegal (Shidore, 2024). These developments have diminished the predicted ‘bouncing back’ of the global economy after the recent periods of recession (the global financial crisis, the COVID-19 pandemic and the war/inflation/cost-of-living crisis). These crises have shown that it is precisely the growth dependent economic model that is in enormous difficulties when the economic system reduces its consumption of energy and new materials, that is, stops growing. However, despite the multiple environmental (climate, biodiversity, pollution) and social crises (poverty, income polarisation) and the resulting necessity to adjust the economic system, this has not led to developing a ‘Plan B’. The European conservatives, like many decision-makers, even hope to achieve climate protection by economic growth, an oxymoron turned principle of faith, even dogma, against all empirical data, and sacrificing biodiversity and pollution policies on this altar.

Consumers

Consumers are reluctant to adapt their habits as well, although even food insecurity is rising, also in the North: the 2018 European heatwave led to multiple crop failures and loss of yield of up to 50 per cent in Central and Northern Europe. In 2022, record temperatures in the UK killed fruit and vegetables on the vine (Tollefson, 2023). Large numbers of people are being displaced by worsening weather extremes, and the world’s poor are being hit by far the hardest (IPCC, 2022).

The world’s richest 10 per cent are causing 50 per cent of the climate heating emissions, making them key to ending the climate crisis; about two-thirds of them live in the North. The global consumer class encompasses most of the middle classes in developed countries (anyone paid more than about €38,000 a year), who are hardly willing to give up their lifestyles. The number of cars per capita still increases in Europe, although two-thirds of global oil consumption is for the transport sector, mostly private cars. Middle-income country citizens were more motivated to endorse strict mitigation measures than those from affluent countries (OECD, 2020).

When climate negotiations began in the 1990s, most of the inequality in people’s carbon emissions was between rich and poor nations. Today, most of the inequality in emissions between the rich and poor exists within individual countries, with the richest 10 per cent of people causing up to 40 times more climate heating emissions than the poorest 10 per cent of their fellow citizens. A 2020 Organisation for Economic Co-operation and Development study found that the most effective mitigation measures find least consumer support, with the strongest support in China, followed by Italy (OECD, 2020).

Business

The big oil companies have recently abandoned the targets they promised in recent years to reduce oil and gas production and cut their emissions – they do not expect effective climate policies to be enacted. Consequently, ExxonMobil, Chevron, BP, Shell and Total modified their business plans, started exploring new oil fields and invested in additional production capacities which are to come online in 2026/7. As these were voluntary declarations, there is no sanction for this breach of promise, and the retreat pays out: the profit margins in renewable energy are lower than what oil managers are used to, so they re-fossilise their portfolios. For instance, ExxonMobil quietly withdrew funding for a high-profile project to use algae to produce lowcarbon fuels. Exxon CEO Darren Woods told an industry conference in June 2023 that his company planned to double oil production from its US shale gas reserves over the next five years – resulting in record profits of US$9.2 bln for Exxon in the three months of the second quarter of 2024. Banks are more than willing to finance such investments. BP retracted its earlier target of cutting emissions by 35 per cent by 2030 – in real terms BP has expanded its gas drilling. Shell announced that it would not increase its investment in renewable energy in 2023, even though it had previously promised to drastically reduce its emissions (Noor, 2023). The Organization of the Petroleum Exporting Countries announced that it would increase its annual oil production by more than half a million barrels per day from October 2024, as it expects peak demand at some time long after 2040.

The chemical industry tries to rescue its business model, replacing fossil by solar energy and fossil feedstock by organic and synthetic substances. Unfortunately for them, the volumes of both biomass and green electricity available are but a fraction of what an unchanged business model requires, and they are expensive. Already in 2023 the sector estimated that to transition to net zero in Europe, chemical companies would need to increase their capital expenditure by 70 per cent and maintain this level of investment annually until 2050 – money that would have to come from government subsidies as 60 per cent of chemical industry executives said they couldn’t afford further investment in decarbonisation (Scott, 2024). However, given the supply constraints, even substantial public subsidies cannot bridge the gap – a climate neutral chemistry remains out of reach.

The automotive industry reluctantly endorses the switch to electro-mobility, but also has no new business model and tries to limit the innovation to replacing the fossil by a new electric drivetrain, in Europe and the United States for SUVs and pick-up trucks. Sustainable mobility in a broader sense, for instance preference for non-motorised transport or replacement of business trips by online communication, is still anathema.

Science

The **effects** of such a strong warming are **still** insufficiently researched – some scientists speak of the ‘climate endgame’ (Kemp et al, 2022). Climate researchers have constantly **underestimated** both the **extent** and the **speed** of change, and economists, who have long **played down** climate change, still massively misperceive science (economics is a scholastic system, not a science: Diesendorf et al, 2024), underestimate the social costs of the climate crisis, and thus misadvise policy (Rennert et al, 2022).

2030

Economy and Politics

The war in Ukraine has ended with a compromise, Russia keeping Crimea, but the Near East conflict is close to a nuclear confrontation. The United States has withdrawn support from Ukraine, leaving the multi-billion job to rebuild the country to Europe; no comparable efforts are undertaken in Palestine. The significant weaponry production facilities built up during the war in Ukraine continue producing, flooding the world with exports from Europe, Russia and the United States, and fuelling military conflicts around the world. The international order, international regulations and norms are eroding. Throughout the world economy, resource constraints are felt – this is a major challenge to the EU refining economy model (importing cheap resources at low cost, exporting sophisticated products at high ones). With these effects on top of the decades-old trend of secular stagnation, economic growth has come to a standstill. To secure resource access and trade, the major powers (United States, China, Russia and their satellites) increasingly use military means.

The electrification of all spheres of life continues, following US standards for the West, and Chinese ones for the rest of the world. Artificial intelligence and Large Language Models made the share of global greenhouse gas emissions double from about 4 per cent of the global total – an unbroken trend driven by demand and supply. Governments invest heavily in subsidising technical solutions to still not declining CO2 emissions like carbon capture and storage (CCS – capturing CO2 from production processes, purifying and compressing it, transporting it to on-shore and off-shore underground dumping sites and storing it there). However, the volumes stored remain marginal, and the process is expensive and increases overall energy consumption. The new ‘hydrogen ready’ natural gas fired power stations built in the first half of the decade continue running on fossil fuels as the limited amount of ‘green hydrogen’ available is used for production processes. Hence, even if some of them are converted to hydrogen, the hydrogen they use is generated from natural gas. So while gasoline use is decreasing, natural gas consumption increases steeply.

Consumers are still unwilling to change habits – solar energy production in households has been growing significantly as it saves costs, but overall energy consumption is still increasing. Reduction of heat demand falls short of what is needed to limit the climate crisis, sustainable mobility including less car use, and even the market share of electric vehicles, is only growing slowly – bans on fossil fuel cars have been abandoned under the pressure of public opinion and conservative parties. Sufficiency is still anathema, even more so as expectations of rising incomes are being disappointed. After a short phase of war Keynesianism (growth through military investment), economic growth is further slowing down due to higher resource and energy costs, insecure supply chains, re-shoring (relocating industries back into the national economy – a kind of insurance against supply risks, associated with less division of tasks and higher cost).

Society

Social inequality is increasing, as the richer strata of society are better able to protect themselves from climate impacts than the poorer, but this is accepted after decades of neoliberal education – social consideration is dwindling, self-fulfilment at the expense of others is on the rise (Benz, 2022), the brutalisation of elites has taken hold of the middle classes (Heitmeyer, 2012). The crisis of care, remunerated and voluntary, is accelerating (Spangenberg and Lorek, 2022). As in the past after floods, droughts, cyclones and heat waves, violence against women and members of gender minorities is on the rise – mental stress, drug abuse, economic problems, food insecurity and poor social infrastructure after climate disasters are the immediate triggers (Rodrigues, 2022).

The readiness to employ violence in all kinds of conflicts, or just for the fun of it, continues to increase – police, fire brigades and ambulances are attacked, as are local politicians. As frightened people withdraw from such engagement, public security and democracy are suffering, and extremism is on the rise. Together with the increasing income polarisation, this leads to emerging unrest, intensifying social tensions exploited by the far right/neo-fascists; and populist parties win majorities.

Climate

The global **temp**erature rise has surpassed 1.5°C and is on its way to 2° to **3°**C (Carrington, 2022). The causes are manifold – besides the lack of **political will** and sufficient **funding**, and institutional feasibility constraints, the conversion of many economic sectors is failing due to a lack of skilled workers, especially in handicraft professions. Second, physical resources are lacking, not only because of unreliable supply chains, but also because minerals and metals are not available in sufficient quantities – past expansion plans have systematically ignored the finite nature of resources. Given the lack of resources, competition of decarbonisation strategies with digital applications and armament is leading to a price explosion that is slowing down the expansion of renewable energies. **NATO** members have increased their **military** spending to 2 per cent of their GDP, causing annual additional **emissions** larger than those of **Russia**, the world’s largest natural gas producer. Accelerated clean energy production reduces the energy cost, but contributes little to reducing the overall emissions.

Due to insufficient decarbonisation, lack of conservation of materials and energy, and the influence of the fossil fuel industry, greenhouse gas emissions remain **too high**. For example, since 2022, the 12 largest oil and gas companies alone have spent €103 million per day on the development and exploitation of new oil and gas fields (Carrington, 2021). Correspondingly, emissions have increased by **14 per cent** since **2020** instead of **falling** by 50 per cent as required (McKie, 2022). Governments did nothing to prevent oil and gas multinationals from embarking on these projects, which clearly made compliance with the 1.5° limit impossible (Carrington and Taylor, 2022).

As a result of higher evaporation, summer **drought** is the new **normal** in Europe, including heat waves and large-scale forest fires (up 40 per cent in the Mediterranean). The number of **heat days** has **doubled** compared to 1971–81 and the number of frost days has dropped significantly. At the same time, there are extreme **cold spells** (persistent low temperatures of up to minus 20°C in Central Europe and massive snowfalls in the Mediterranean) due to polar air intrusions, caused by the **weakening** of the circumpolar **jet stream**. The ongoing Amazon **dieback** has turned wider parts of the basin from carbon **sinks** into carbon emission **sources**, further accelerating **climate** change.

Although heavy rainfall on land has increased by 16 per cent in Europe, and massive investments in flood protection are required, more than 270 million people suffer from water shortages, and in some regions water has to be rationed regularly. Water-intensive agricultural crops are being cut back, ploughing is becoming problematic. Harvests are **at risk** due to the mix of **heat**, drought, heavy **rain** and **frost** periods, while varieties genetically optimised for one environmental condition fail under the other conditions. In particular, winter cereals, depending on a prolonged period of low temperatures before they can shoot and flower (vernalisation), produce significantly **reduced yields**.

The collapse of the **Greenland** ice sheet is accelerating, but it is not yet clear by when it will have melted completely, raising global sea levels by seven metres. Decision-makers are hoping for the long term and postponing protective measures for coastal regions that go beyond incremental dike increases. The **tipping points** of the climate, first exceeded in the early 2020s, are becoming **a cascade** (Armstrong McKay et al, 2022). Migration and immigration of species result in communities that have never existed in the past 10,000 years, altering the spectrum of ecosystem services provided. The **restoration** of ecosystems and their services proves to be **impossible**.

Health

In particular in ageing societies, health costs are spiralling out of control (in European public health systems less than in the United States). The problem is aggravated by the additional challenges caused by environmental degradation, like more frequent pandemics, new infectious diseases and the curbs on medical research introduced to minimise the risk of terrorists using bio-medical know-how to produce and disseminate bioweapons (Brent et al, 2024).

The areas suitable for malaria transmission have grown by 10 per cent and more where re-wetting of wetlands was implemented. Disease vectors such as the tiger mosquito are forming stable local populations in formerly temperate climate zones, ticks continue to spread, and known tropical pathogens are spreading at an increasing rate (Mora et al, 2022). It is not possible to prevent the new waves of infection through precautionary measures due to the multitude of mechanisms of action.

2040

Economy

The obstacles to growth already manifest in 2030 have been growing, and new ones have emerged, for individual countries (mostly the heavily export-dependent ones like China and Germany), and for the world economy as a whole. Already 15 years ago, economic research estimated that an increase in global temperature of 1°C would lead to a 12 per cent decline in global GDP (Bilal and Känzig, 2024), and the ‘locked in’ global economic damage caused by global warming up to the year 2050 was estimated to be almost US$60,000 billion, corresponding to 30 per cent of the global economy (Kotz et al, 2024) – now the bill has to be paid. Add to this the expenditure on coastal protection, relocation of dykes and partial abandonment of cities and settlements due to the faster than expected rise in sea levels now and in the next decades (Taberna, 2022), what we have been facing since 2030 is just the beginning of a long-term, climate change-induced recession of the entire global economy (Kotz et al, 2024).

Hence, after years of stagnation, economic growth has **turned negative**. The economic reason is that to generate growth, the annual investment must be higher than what is needed to compensate for loss to wear and tear, and the requirements of technological development – otherwise the production potential does not increase. Investments are financed from the surplus of the previous year, plus by credit. The latter is limited in the private sector by the risk of over-indebtedness, and in the public sector by the necessity to keep redemption below a level impinging on key policy priorities, and to limit the regressive effects of taxpayers financing the interest for rich lenders. Hence the necessary massive defensive investments in climate **adaptation**, the repair of environmental **damages**, protection of biodiversity (not least for **food** security) and cleaning the environment from health-threatening pollution with particulate matter, microplastics and the like – economically necessary to avoid future losses – begin **crowding out** investments in expanding the **production** potential. The increased spending on CCS and hydrogen processes and **infra**structures, **arm**ament**s**, and business subsidies for climate neutral production (state subsidies cover a significant share of the European chemical industry’s 2021–50 decarbonisation funding gap of US$550 billion [Scott, 2024]), and so on, **exacerbates** the situation. Furthermore, the health systems are at the brink of **collapse** due to heat-induced treatment needs, and with them the **stability** of an **ageing** society (Romanello et al, 2021). Such investments are classified as ‘defensive’, as they prevent damages accumulating, but are not (or only to a certain part) enhancing the production potential. Subsidies are claimed as for the business sector, defensive investment needs are mostly the result of mandatory legal obligations. Innovation, dematerialization and digitalization suffer, in particular as decarbonization, digitalization and weapons production are competing for the same or similar physical resources. As defensive investments are crowding out business production capacity enhancing investments, the production potential is shrinking, and GDP declines. For some time, public authorities have tried to compensate such investment capital scarcity with public **funding**, but the required level is **surpassing** all estimates of public fund **availability**. The necessary level of government spending begins to lead to a higher tax burden on corporate profits and to declining real incomes, public disapproval and social unrest.

Consumption

Consumption, which has been the main driver of ecological burdens since the turn of the millennium, is declining – the consumer society is **running out** of consumers (Spangenberg and Kurz, 2023). However, this externally enforced reduction in consumption leads an ever fiercer defence of privileges, less willingness to voluntarily reduce consumption, or to share the remaining wealth with others, in particular with the Global South. Hence, public pressure results in an end to development cooperation and (the always insufficient) financial support for climate adaptation to poor countries. The result is more climate refugees, clashing with a decreasing willingness to welcome any kind of migrants as they are – wrongly – perceived as competitors for the diminishing consumption space. Consumer dissatisfaction spills over into increasing scepticism regarding the liberal democratic system – an institutional crisis is emerging (Kalke et al, 2024).

Politics

The global political situation has become volatile, with a group of major powers struggling for dominance, while the majority of countries tries to navigate the stormy waters in changing collaborations and confrontations. **Trade wars** and patent conflicts prevail; international regimes of intellectual property rights have collapsed and **free trade** in resources has come to a virtual **standstill**. Armed conflicts are fueled by geopolitics and upscaled by weapons export since 2025, resource wars increase, but in order to avoid nuclear escalation, the major powers impose an allocation system for raw materials, with quotas for all countries (which many consider a neocolonial means to deny access to non-affiliate countries). There are political and **armed conflicts** about access to increasingly short fresh**water** supplies. The global water **crisis** takes its toll, **hunger** is getting **normalized** in many parts of the world, due to declining **harvests** due to heat stress and lack of irrigation water.

Public pressure demands a ‘Fortress’ policy, denying climate refugees access to the still relatively affluent countries – a demand the strong extreme right is more than happy to fulfil (nativism, economic fears, and so on). Permanent involvement in resource wars and repulsion fights against refugees at all borders leads to a militarizing of societies, but also to a more favorable view on elements of a war economy. This, together with the shortage of physical resources, has drastic political consequences.

Domestically, in most European countries and beyond, politicians have pulled the emergency brake and declared both a ‘climate war’ (mostly neglecting other environmental problems) and ‘identity defense’ (rejection not only of refugees, but all ‘foreign’ inhabitants – at the expense of lacking skills and workers in the labor force). As the permanent resource constraints and the high cost of enforcing access make it impossible to any longer ignore the problem of overconsumption, decisionmakers try to find ways to accommodate the internationally set resource quota. The limited materials are auctioned off nationally, with special purchase rights for non-commercial users. This mechanism, borrowed from war economics, leads to a massive restructuring of industry, as high resource efficiency becomes a prerequisite for a secured further existence. In order to limit overconsumption, those consumer goods that have become scarce are given away on non-tradable ration coupons. This ensures that scarce goods are available to all and are not consumed or hoarded by a privileged few at the expense of the general public.

2050

Rising temperature, rising sea levels, rising migration

The emergency measures introduced in 2040 have managed to prevent or at least postpone the collapse otherwise due. Nevertheless, global warming **surpasses** 2.5°C (that is, **5°**C over land), triggered by **tipping cascades** such as the melting of **permafrost** regions since 2040, when the conditions for their permanent existence were no longer given, transforming large parts of **Siberia**, Alaska and northern **Canada** into barely usable, greenhouse gas **emitting swamps** (IPCC, 2021; Fewster et al, 2022) plagued by wildfires. Wetlands and moors are **drying out** – and thus releasing additional **CO2**. Deadly heat waves and **temp**erature**s** of over **50°**C are no longer un**common** in the tropics, and temperate latitudes exceed 40°C in summer, causing tens of thousands of heat deaths annually in Europe. In many regions in the South, but also in European regions such as the Spanish highlands, human life is **no longer** possible.

Anthropogenic warming is casting **billions** of people outside of the **boundaries** of normal human **habitation**, with abundant negative consequences for human wellbeing, mortality and levels of international migration (Scheffer et al, 2024). A **billion people** are facing coastal **flooding risk** from rising seas, and more people are forced out of their homes by weather disasters, in particular flooding, sea level rise and tropical cyclones (Selby et al, 2024). Once **warming** exceeds a **few more tenths** of a degree, it will lead to **large areas** becoming **uninhabitable** (IPCC, 2022).

While most refugees stay in neighbouring countries until their capacities are exhausted, many move to the North, only temporarily stopped at the crumbling military border defence of the EU (less so, and later, the United States). Migration is **enhanced** by the neocolonial economic policy of the dominant powers, with militarily supported **land-grabbing** where **fertile ground** and **water** are available (for example, Ukraine) to overcome domestic food supply volatility problems.

Freshwater scarcity

Heavy rainfall on land has increased by more than a third; summer precipitation comes in the form of flash floods, which only partly seep into the ground and replenish the groundwater available for dry periods. Freshwater has become scarce and is part of the rationing system. Private swimming pools, watering lawns or washing private cars have been banned. Not least because of the melting of the last glaciers in the Alps and the Andes/Rocky Mountains, river levels fluctuate extremely, affecting both shipping and summer water supplies. More than 390 million people are suffering from water scarcity, and their number is bound to rise. The **thawing** of the **Himalayan** glaciers accelerates (they had lost 40 per cent of their area by 2020 [Lee et al, 2021]), putting the regular **water** supply of **two billion** people at risk, who depend on the waters of Indus, Ganges, Brahmaputra, Irrawaddy, Mekong and Yangtzekiang (Wester et al, 2019).

Sea levels are **rising faster** than expected and are approaching one metre. **Salt** water **penetrates** the groundwater reservoirs in coastal regions and all major **river** delta**s**, putting some of the **‘bread baskets’** of the world at risk (for example, in Egypt, Vietnam, India, Bangladesh, Argentina, the United States). The **tidal flats** and salt marshes along the North Sea and similar coastal regions are under pressure – where dikes are not moved back, sacrificing land to the sea and allowing salt marshes to move inland, they are **flooded** and some of the most biologically diverse habitats on earth are thus **lost** (Saintilan et al, 2022). The oceans are not only becoming warmer and hence low-oxygen, but also **more acidic**, affecting countless species along the entire **food chain**. Shell-forming animal species are **dying out**, fish stocks – until 2040 a major protein source of humankind – have more or less **collapsed** due to past overfishing, persistent ocean pollution, **acidification** and the loss of breeding grounds (temperate salt marshes decline, coral reefs are gone). Habitat for nearly 20 per cent of all insect species has at least halved.

Food (in)security

The **cultivation** of wheat, barley, rye, oats and maize is **hardly possible** anymore (wheat becomes sterile at 30°C, maize pollen at 35°C); agriculture has switched to millet/sorghum and chickpeas instead of wheat, yams instead of potatoes, as well as cassava/ manioc and sweet potatoes. Small farmers have **not survived** the crisis economically. In addition, higher **CO2** concentrations **reduce** the quality of **proteins** in cereals and fruits, and cows have to digest more grass for the same milk yield.

The number of frost days has decreased sharply, in many years they no longer occur – a problem for food production from fruit trees, vegetables and wheat. To these plants, prolonged cold exposure is required to provide competency to flower (vernalisation). In other years, non-moving polar air masses lead to weeks of deep low temperatures, which do not suit many of the new, drought-resistant agricultural plants. These are hot–cold times. Vegetation also feels the effects: native tree species are not adapted to heat and drought, but Mediterranean species are not adapted to the cold spells. As a result, more than half of Europe’s tree species are threatened with extinction. Forest fires accelerate that – burning areas in the Mediterranean region have grown by more than 60 per cent.

Health

Areas suitable for malaria transmission have grown by 15 per cent. Tropical disease vectors are well established, but tropical and emerging pathogens are spreading mainly through transmission by indigenous species; dengue, chika and West Nile fever are regular occurrences. New **pathogens** have emerged from **zoonoses**, pandemics with previously unknown pathogens regularly claim numerous victims worldwide – the ‘age of pandemics’, of which IPBES had warned urgently, has **dawned** (IPBES, 2020).

Alternative scenario for Europe (other regions unaffected)

Following the calculations of Ditlevsen and Ditlevsen (2023), the AMOC/Gulf Stream warm water circulation would collapse between 2025 and 2095 with a central estimate of 2050 (assuming emissions are not reduced, in line with our earlier assumptions). Such a collapse would result in Western Europe suffering far more extreme winters, rapidly rising sea levels on the east coast of the United States and a lack of vital tropical rainfall. During the last ice age, some major changes in AMOC flow caused winter temperatures to change by 5–10°C in just one to three years. The chilling effect would be moderated by the heating that has already occurred in the northern hemisphere (Spangenberg et al, 2012).

2070

A **dystopian** situation has emerged: planetary boundaries continue to be crossed, **tipping cascades** cause irreversible **damage** and have escaped human control, ecosystem cycles **are collapsing**. The loss of **pollinators** reduces **food** availability; fermented substitutes are consumed instead. Desperate attempts at **geoengineering** have not solved any problem, but **created** new damages and **conflicts**. The global heating has surpassed +2.5°C and is heading for 3°C – which implies 5–6°C heating over land (IPCC, 2021). All **coral reefs** and almost all large tropical **forests** have disappeared. The melting of the Greenland ice sheet, the increasing loss of South Polar ice and of almost all glaciers is driving up sea levels. Coastal **cities** around the world are being **abandoned**, partly because of direct flooding and ever stronger typhoons, partly because infrastructures **cannot** withstand rising **sea levels** despite high dikes. Life expectancy is decreasing, and water and food supply has become unreliable, even in the richest parts of the world.

For two billion people, survival in their homeland is **no longer possible** – flight or death is the alternative as a result of heat, drought, lost soil fertility or as a result of flooding and salinisation. As neighbouring countries and regions can no longer absorb the refugees – they are already overburdened and suffer just as much from climate and environmental destruction – a global **migration** of more than **one billion** of people has **set in**, upsetting all previous geopolitical power constellations. Countries are at **permanent war** to uphold the neocolonial status quo, but the threat of **nuclear escalation** is growing by the day. The mood of migrants is not only desperate, but also aggressive: those affected are well aware that they are innocent victims of the North’s overconsumption. Already in 2020, the richest 10 per cent of humanity (that is, all those with an annual income of over US$90,000) emitted almost half of all CO2 emissions, while the poorer half of the world’s population was only responsible for 12 per cent (Herrmann, 2022). Such facts have been sinking into the collective consciousness and attitudes. The Global North has been stealing the future as well as the present, not only from its own children but, above all, from those who live in the most affected parts of the world. The EU and the United States are losing their defensive wars against migrants, and their militarised societies fail to adapt to the inflow of refugees. The result of the conflict is unpredictable, but will certainly be paid for with high human sacrifices.

In temperate latitudes, landscapes are dotted with wind turbines and solar panels; there are also a few trees, but only a few species that have adapted to climate change and water scarcity. Lush greenery, buzzing insects, singing birds – absent. The **planet** has become **silent** – 90 years after Rachel Carson’s Silent Spring.

**2. Pandemics** are likely and existential.

**Johnson 24**, DPhil from Oxford, Researcher in the Ethics of Pandemic Preparedness, Surveillance and Response (Tess F. Johnson, February 7, 2024, “For the Good of the Globe: Moral Reasons for States to Mitigate Global Catastrophic Biological Risks,” Bioethical Inquiry, Vol. 21, pp. 559–570 University of Kansas Libraries, Springer Link)

Harms during the COVID-19 pandemic resulted not only from the disease itself, but from poorly internationally coordinated responses. Mortality, economic losses, and ongoing mental and physical health burdens continue around the world. The pandemic highlighted human vulnerability to biological threats, and policymakers’ often-ineffectual attempts to take collective action against them. In 2020–2021, worldwide excess mortality associated with COVID-19 was around fifteen million lives (World Health Organization 2022). Yet, even COVID-19 has not had a very significant impact on the world, when compared to the biological catastrophes that might be still to come. “Global catastrophic biological risks” (GCBRs) can be defined as events leading to “sudden, extraordinary, widespread disaster beyond the collective capability of national and international governments and the private sector to control” (Schoch-Spana, et al. 2017, 323). Examples may include naturally occurring pandemics, pandemics resulting from artificial/engineered pathogens, use of bioweapons programmes, the development of extreme drug resistance across multiple pathogens, or bio-hacking and harmful outcomes of human genome editing (Nouri and Chyba 2011). Their possible effects (whether the actions were deliberate or accidental) range from societal collapse to the institution of totalitarian regimes, to extreme morbidity and mortality across the human population. Indeed, they might occur on a scale that could cause human extinction and would then be re-termed existential risks. Whilst the risk of extinction from natural causes remains relatively constant (and we are not extinct yet, despite having spent a while now on this planet), anthropogenic existential and catastrophic risks are increasing. Despite this, bioethical work to date mostly focuses on natural pandemics and biological risks (Dawson 2007; Emanuel, et al. 2020; Giubilini 2019), with some exceptions (Adalja, et al. 2019; Chyba and Greninger 2004). Building on emerging public goods accounts in bioethics, I propose applying this framing to GCBRs to illuminate the issue of GCBR mitigation in a way that may help the future development and international coordination of interventions.

Experts on GCBRs have estimated a chance of up to 1 in 1000 that humanity will become extinct from an artificial pandemic within the next century (Lewis 2020; Millett and Snyder-Beattie 2017). This is an example of only one potential GCBR, and we might therefore expect the risk of extinction from GCBRs as a whole to be greater. The data is based on extrapolations from historical data on experiments with creating or modifying pathogens. The situation for this GCBR and others that involve the use of biotechnologies, including biohacking and misuses of human genome editing may deteriorate in the future, as two changes occur (Lewis 2020). The first change is increasing technological availability: the tools needed to edit genomes, whether pathogen or human, are becoming more available and affordable, with benchtop DNA synthesizers available to buy online, and mail-order DNA sequences available for USD 100-300 for a small gene, even back in 2017. The second change is knowledge availability: knowledge concerning how to simultaneously increase the lethality, transmissibility, incubation time and drug-resistance of pathogens whilst reducing their detectability is set to improve as synthetic biology research and, in particular, gain-of-function research continues and is performed and published in freely or pay-for-access academic journals. (For instance, in 2012, the U.S. National Science Advisory Board for Biosecurity allowed the publication of studies that described the modification of H5N1 viruses to allow airborne transmission between ferrets (Burki 2018).) The same goes for knowledge surrounding the influence of particular human genes on our traits and how these might be used for personal gain (Ma, et al. 2017).

**3. Readiness** collapse forces American first use.

**Klare 21**, Ph.D., Professor Emeritus, Peace and World-Security Studies, Hampshire College (Michael T. Klare, February 26, 2021, “A New Cold War on a Scalding Planet: Biden, Climate Change, and China,” Counter Punch, https://www.counterpunch.org/2021/02/26/a-new-cold-war-on-a-scalding-planet-biden-climate-change-and-china/)

Because American **forces** are [poised](https://www.reuters.com/article/us-usa-china-missiles-specialreport-us/special-report-u-s-rearms-to-nullify-chinas-missile-supremacy-idUSKBN22I1EQ) to **strike** at vital **targets** on the **Chinese** mainland, it’s impossible to preclude China’s use of nuclear weapons or, if **preparations** for such use are **detected**, a preemptive U.S. **nuclear strike**. Any full-scale **thermonuclear** conflagration **resulting from** that would probably cause a **nuclear winter** and the **death of billions** of people, making the **climate-change** peril **moot**. But even if nuclear weapons are not employed, a war between the two powers could result in immense destruction in China’s industrial heartland and to such key U.S. allies as Japan and South Korea. **Fires** ignited in the **course** of **battle** would, of course, add additional **carbon** to the **atmosphere**, while the subsequent breakdown in global economic activity would postpone by years any transition to a green economy.

**Independently, cool-headed, experienced, and rational policymakers are necessary to constrain Trump’s worst impulses. Extinction.**

**Homer-Dixon 24**, \*PhD IR, Executive Director of the Cascade Institute. \*\*PhD Political Science, affiliate with the Centre for the Study of Existential Risk and the University of Cambridge. \*\*\*PhD Global Governance, Fellow on the Cascade Institute Polycrisis program team †PhD Neuroscience, Fellow on the Cascade Institute Polycrisis program team. (\*Thomas Homer-Dixon, \*\*Luke Kemp, \*\*\*Michael Lawrence, †Megan Shipman, 10-29-2024, "Impact 2024: How Donald Trump’s Reelection Could Amplify Global Inter-systemic Risk," Cascade Institute, Accessible at: https://cascadeinstitute.org/technical-paper/impact-2024/)

Our world’s tightly linked economic, geopolitical, technological, and environmental systems are currently **under enormous stress** and potentially **close to tipping points**. Pushed beyond critical thresholds, these systems could swiftly reconfigure their internal structures and change their fundamental behaviors.

In this context of rising vulnerability, a Harris-Walz administration would likely implement policies that, on balance, tend to stabilize today’s highly perturbed global systems. Donald Trump, in contrast, sees himself—and acts—as a system disrupter; he is also highly unpredictable. Both characteristics make extreme outcomes more probable, should he become President.

Mr. Trump has already injected into American political discourse a range of possible outcomes—such as seizing, incarcerating, and deporting millions of undocumented immigrants; invoking the Insurrection Act and federalizing the National Guard to suppress domestic protest; and withdrawing the US from NATO—that were almost inconceivable a decade ago. Even the election process itself—the results of which are almost certain to be complex and contested, because of a loss of trust in US electoral institutions that Mr. Trump has himself engendered—could trigger a period of intense domestic turmoil with **grave consequences** for the world.

With this in mind, we focus our analysis on the impacts of a second Trump administration. Mr. Trump’s second term is likely to be **far more disruptive** than his first. He now appears motivated by a desire for **retribution**; he will return to office with a much more competent and prepared administrative team with detailed, **radical** policy **plans**; that team will likely act quickly to **subordinate** to the President key instruments of state power, including the Departments of Justice and Defense; and constraints on the President’s use of this power are far weaker, in no small part because of the US Supreme Court’s recent immunity ruling.

In the language of statistics, Mr. Trump’s radical political influence within and beyond the United States is **skewing** the probability **distributions** of **future global risks**, stretching their tails into **extremes** that were hitherto thought highly, even vanishingly, unlikely.

This report assesses these diverse and entangled global inter-systemic risks. Intended for policymakers, the investment community, public commentators, and risk analysts, it applies a set of analytical tools to identify likely critical junctures, causal pathways, “N - order” impacts, and feedback loops arising from the 2024 US election.

To date, researchers and commentators have mostly focused on the election’s possible first-order impacts on specific US policy domains, including defense posture, immigration, and abortion rights. Less examined are potential multi-stage impacts that could spill across affected systems far beyond American borders.

To better understand and assess these potential consequences, we use three analytical tools—derived from complex-systems science—to explore how Mr. **Trump**’s reelection might interact with larger global systems to both **amplify** and **create major risks**.

1. We apply a stress-trigger-crisis model that discriminates between, as causes of crisis, Mr. Trump’s influence on slow-moving, large-scale stresses and his impacts on fast-moving, local trigger events (see Box 1).

2. We identify a set of critical junctures likely to arise from the election itself or from a Trump administration’s actions following the election (see Box 2).

3. We then combine our results from these two steps to inform a causal-loop analysis that identifies potentially dangerous self-reinforcing feedbacks that could operate across multiple global system boundaries.

This report is a first assessment of the inter-systemic consequences of a second Trump presidency. It integrates evidence and opinion we have gathered from informed commentary on possible election impacts and from **confidential interviews** with a diverse group of **field experts**, both in the US and abroad, some of whom identify as ideologically conservative. We recognize that our own values and beliefs have influenced our analysis, but we have aimed to ensure that those assumptions are visible and open to critique. We plan to release an updated assessment in late October.

Our analysis in this report indicates that, compared to a Harris administration, a second Trump administration is much more likely to **ignite a trade war** with China that slows global economic growth; **empower authoritarianism** domestically and abroad; **weaken** multilateral **institutions** that provide vital global public goods; diminish the international **security presence** of the US, perhaps **stimulat**ing regional **arms races**; and increase uncertainty about how the US responds to crisis.

These outcomes will further disrupt global systems that are **already fragile** and **vulnerable**. The result is likely to be a more fragmented, competitive international order, and ultimately, in the worst case, **great-power war** and a far more **severe** global **polycrisis**. But whether the risk of these worst outcomes is low or high depends crucially on how other actors around the world—nations, firms, multilateral institutions, nongovernmental organizations, transnational groups, and civil societies—respond to Mr. Trump’s actions. The worst is far from inevitable.

Box 1: The stress-trigger-crisis model

Drawing on complexity science, the Cascade Institute has developed a “stress-trigger-crisis” (STC) model to better understand and predict the behavior of the world’s connected geopolitical, economic, environmental, and other systems. The model assumes these systems generally function within a “dynamic equilibrium”—a set of conditions, stabilizing feedbacks, and structural relationships that keeps their behaviors and properties within a “normal” range.

Stresses are pressures, contradictions, or vulnerabilities that operate over long periods of time and at a large scale (societal, regional, or global); their slow pace makes them somewhat predictable. They reduce a system’s resilience and thereby create systemic risk, which is the potential for a problem to spread through an entire system and into other systems, disrupting their functions. Trigger events, in contrast, operate quickly (on a rough timescale of seconds to weeks) and tend to be local or regional in scale, while their exact timing and location are largely unpredictable.

A system goes into crisis when one or more slow-moving systemic stresses interacts with a fast-moving trigger event to force the system out of its equilibrium into a state of disequilibrium. A multi-year drought, for instance, is a stress that creates conditions in which a random lightning strike can trigger a forest fire.

The figure below in this box illustrates these relationships using a “stability landscape diagram” (a common complex-systems graphical device). A dip in the landscape is a “basin of attraction” in which stabilizing feedbacks act like gravity to keep the system state, represented by the ball, in equilibrium, by pulling it back towards the bottom amidst its day-to-day fluctuations. But over time, stresses can make the basin shallower, which means the system is losing resilience.

Chances increase that one or another trigger event (including some that earlier would have had little consequence) will push the system out of equilibrium into crisis. When crises with connected causes occur across multiple global systems and result in a large-scale loss of global wellbeing, we call it a global polycrisis.

We argue here that Mr. Trump can affect the risk of global polycrisis by both altering the force of existing long-term stresses and generating trigger events that interact with those existing stresses to catalyze crisis.

Box 2: Critical-juncture analysis

History can be interpreted as a chain of “critical junctures”—short episodes of rapid system change separated by longer periods of stasis. Critical junctures arise when underlying stresses or other factors combine to create conditions ripe for a system shift, perhaps catalyzed by a trigger event. Each critical juncture generates a fan of possible pathways for the system’s further evolution.

Analysts can anticipate some critical junctures because, for instance, they arise from institutional arrangements; a good example is the forthcoming US federal election. Mr. Trump is creating possibilities for new critical junctures in the US political, economic, and social systems —ones that can potentially be anticipated—by advocating policies not previously considered feasible (for instance, imposition of major tariffs and deportation of millions of undocumented migrants).

Analysts can also identify the pathways that might follow an anticipated critical juncture and assign each pathway a (usually rough) probability. Sometimes, even if anticipated, a particular critical juncture can occur only along a specific pathway, which makes it contingent on earlier critical junctures.

By linking together anticipated critical junctures with pathway probabilities, analysts create branching diagrams that identify possible first-, second-, and N -order impacts. Importantly, once a system starts down a particular branch, it often becomes “locked-in” along that pathway, so that the juncture essentially disappears in the past, and its other branches decline sharply in feasibility. 1

[[FIGURE 1 OMITTED]]

Figure 1 (“Electoral College outcome”) is a critical-juncture diagram of the 2024 US election and the social instabilities that could occur in its immediate aftermath. Line thickness indicates estimated likelihood of outcomes and subsequent impacts. The figure begins, on the left, with five possible outcomes of the electoral college vote. If either the Republicans or Democrats win by a wide margin, both would likely accept such a decisive outcome, allowing a peaceful transition to the 47th Presidency (with a slight chance that Republicans would protest even a decisive Harris-Walz victory). But if margins are close (decided by, say, a few thousand votes in a swing state), or if electoral disruptions (such as officials’ refusal to certify vote totals) prevent a clear outcome, then nation-wide protests could ensue. For these pathways, the red, blue, and gray lines allow the reader to trace proposed lines of causation (and their associated likelihoods) from either a Republican or Democratic narrow victory or from a disrupted election through consecutive critical junctures.

For example, if Democrats win by a small margin, Mr. Trump will almost certainly denounce the results as fraudulent and call on his supporters to disrupt electoral processes. We therefore estimate that such an Electoral College outcome would have a high probability of producing countrywide protests (represented by the thick blue line). Those protests would themselves create a critical juncture. Federal security institutions are still relatively nonpoliticized and have undoubtedly learned from the January 6 insurrection how to better cope with such electoral protest, but a genuine risk would remain of a spiral into large-scale violence. The two subsequent blue lines therefore indicate that we estimate a medium likelihood for both possible outcomes (protest remaining peaceful or escalating violence) in the event of a narrow Democratic victory.

2.Impact assessment

General concerns about another Trump presidency fall into two main categories.

The first encompasses concerns about Mr. Trump’s personality and psychological and cognitive wellbeing. His narcissistic, impulsive, and generally unpredictable nature, combined with his transactional approach to politics, could trigger a crisis or cripple the US response to one. Mr. Trump has also grown more psychologically erratic and distractible, showing signs of cognitive decline that would diminish his decision-making ability in a perilous world (see Box 3, “Implications of cognitive decline”).

The second category encompasses concerns about the loss of guardrails that personnel and institutional constraints have previously provided. Many commentators, and several of our interviewees, believe a second **Trump** administration will **quickly dismiss** large numbers of **government personnel** regarded as **obstacles** to the new administration’s agenda and replace **them with** staunch **loyalists**. This campaign would clear the way for a policy program far **more radical** and **organized** than that of Mr. Trump’s first term.

Beyond these general concerns, analysts and our interviewees focus on the impacts of Mr. Trump’s specific policies. Below, we use, where possible, critical-juncture analysis to highlight likely first- and second-order impacts of a second Trump administration’s policies. We group these specific policy impacts under three broad headings: institutional capture and deepening authoritarianism; socio-economic turmoil (particularly within economic, energy, climate, and health systems); and international conflict and insecurity. We focus on impacts that could have major consequences for global systems— consequences that we further analyze in Section 3.

Box 3: Implications of cognitive decline

Dementia is a degenerative disease in which deterioration worsens over time, beginning with mild cognitive impairment and progressing to an inability to execute daily functions without aid. Mr. Trump is susceptible to dementia simply because of his age (78) and family history (his father had Alzheimer’s disease). Some of his behaviors indicate cognitive decline that is either a precursor to, or evidence of, dementia.

Though he cannot be diagnosed without being subject to a full battery of neuropsychological tests, over 2,800 licensed clinicians have signed a public statement indicating that Mr. Trump is showing unmistakable signs of cognitive decline and probable dementia. Signatories cite an overall deterioration from his baseline level of verbal fluency; memory impairments beyond normal age-related forgetting of names and places; disordered speech filled with dementia-specific errors (tangential digressions and non-sensical words, for example); evident impairment of motor control in gait and hand coordination; and deteriorating control of impulses and judgments.

While dementia is heterogenous in both time of onset and progression, if Mr. Trump has the disease, certain outcomes are probable: he will show progressively more aggressiveness (especially if he has Alzheimer’s disease); a greater loss of insight, judgment, and impulse control; grander delusions; and further deterioration in verbal ability. His capacity to distinguish between reality and fiction, already uncertain, will decline.

Depending on the speed of disease progression, he could ultimately become incapacitated and unable to perform his presidential duties. Various pathways are then possible: the Vice President and a majority of Cabinet secretaries might invoke section 4 of the 25th Amendment, declaring the President cannot discharge his official responsibilities; an inner circle around the President might try to hide his dysfunction, making decisions on his behalf; or conflict among advisors and within the Cabinet could create a void in executive power.

2.1 **Institutional capture** and deepening American authoritarianism

Many analysts, including several of our interviewees, believe that Mr. Trump will attempt to capture government institutions, recast them in more authoritarian forms, and potentially use violent repression to reinforce and protect his rule.

Politicized civil service: By reintroducing the **Schedule F** employment category for civil servants, Mr. Trump could replace tens of **thousands** of civil servants with **loyalists**. Doing so would likely **spur a secondary exodus** of **experienced civil** service **employees**, taking with them invaluable **experience** and institutional memory. If the President were to adopt the Unitary Executive Theory, he might try to interpret Article 2 of the Constitution as legal justification to place the entire executive apparatus (including the Department of Justice and the Pentagon) under direct **Presidential authority**. Mr. Trump could order agencies such as the IRS to harass his opponents; and to bypass congressional opposition, he might rely on rule by **executive order**, vetoes, impoundment (of Congressionally allocated funds), and other extraordinary measures. While this approach to governing could allow Mr. Trump to advance his political agenda, it could also **critically weaken** the federal government’s ability to **carry out key functions**, from basic **administrative tasks** to **disaster response**. Mr. Trump’s actions could also incentivize judges to become more ideologically extreme to earn favour with the executive and improve their chances of ascending in the federal court system or to avoid repercussions of his wrath.2

**PUBLICITY---1AC**

**Advantage 2 is PUBLICITY.**

***Selia Law* consolidated liberal institutions that check presidential power.**

**Driessen 24**, Professor of Law at the Syracuse University College of Law. (David M. Dreissen, 10-2024, “Donald Trump and the Collapse of Checks and Balances,” SMU Law Review Forum, https://scholar.smu.edu/cgi/viewcontent.cgi?article=1066&context=smulrforum)

iii. **Consolidation of Power** to Use the Executive Branch to **Defeat** the **Rule of Law**

**Seila Law** LLC v. Consumer Financial Protection Bureau undermines a **key check** on autocratic power, the requirement that the head of state only remove officials for **cause**. That decision authorizes the President to remove individual heads of agencies **without cause**, even when statutes signed by former presidents only authorize **for-cause removal**.94 For-cause removal provisions allow a president to remove officials who fail to properly implement the law.95 Removal without cause allows the President to remove officials who **resist illegal orders**. For that reason, the principle of **complete presidential control** over the executive branch of government aids creation of **autocratic government**.96

The ability of a president to remove a law-abiding official provides an incentive for that official to “**fear and obey**” the President.97 It will have this effect even when the President issues an **illegal order** or asks that official to **selectively enforce** the law in ways that benefit **regime supporters** and harm **regime opponents**.

Seila Law expands the **range** of officials that President Trump can remove for **obeying the law**. It held that he may remove **single heads** of agencies for **political reasons**, whether sound or nefarious.98 So, Trump could defeat the operation of laws administered by single heads of agencies formerly protected from arbitrary removal by firing an **incumbent** and then replacing the removed official with an **acting official** of his choosing. He could use this technique, for example, to expansively enforce consumer protection law against **political opponents** while protecting his **corrupt supporters** from its application.99

But Seila Law invites **further expansion** of presidential power to support **authoritarian aims**. It suggests that independent agencies not explicitly protected by prior precedent must **give up their independence**.100 And it suggests that the President can fire any employee with administrative or policymaking responsibility, which may provide a means of encouraging **selective enforcement of laws** or disabling their operation.101

**E.O. 14251 is the final puzzle piece: it allows Trump to create a secretive executive hivemind which asserts unfettered presidential power, disincentivizes whistleblowing, and guarantees groupthink.**

**Fisk 25**, Barbara Nachtrieb Armstrong Distinguished Professor of Law, University of California, Berkeley. (Catherine L. Fisk, 02-04-2025, “Democracy and a Nonpartisan Civil Service,” University of California, Berkeley School of Law, SSRN eLibrary)

It is worth noting the **specific positions** that the EO seeks to make subject to presidential fiat. Most of the attention has focused on policymaking, perhaps because those jobs seem most closely related to presidential control over policy, which has intuitive appeal. (Unless one focuses on the fact that Congress is also the constitutionally-designated policymaker.) But making **anyone** who even views or circulates proposed **reg**ulation**s** or **guidance** an **at will employee** seems aimed not only at policymakers, but at **low-level employees** who might be inclined to **blow the whistle** on (or, as the administration would put it, leak) administrative actions they fear are **unlawful** or an **abuse of power**. It thus seemed to be aimed squarely at the threat of **whistleblowing**, a practice **explicitly protected** by the whistleblower protections written into the civil service laws.

And what of those who **bargain collectively**? The EO speaks to that too. It excludes from civil service protection both those who **bargain** for the government with **unions** and **union representation** for anyone who “**views**” policy. In other words, both **union members** and **labor relations managers** are in the group whose civil service and **labor rights** the EO seeks to eliminate.

In particular, the EO identifies as policy employees those who “**conduct**, on the agency’s behalf, collective bargaining negotiations.”120 This is clearly aimed at allowing the White House to **directly control** the **content** and **enforcement** of the **c**ollective **b**argaining **a**greement**s** that agencies negotiate with public employee unions representing the rank-and-file of government employees.

But the EO goes further. It directs each agency head to “**expeditiously petition** the **F**ederal **L**abor **R**elations **A**uthority to determine whether any Schedule **Policy/Career** position must be **excluded** from a **c**ollective **b**argaining **u**nit.”121 Because the EO defines positions subject to reclassification so **broadly** (to include not just those empowered to make policy but those who may “**view**” or **be involved** with the “circulation” of policies or **reg**ulation**s**, it may sweep broadly in limiting union rights.

**Nothing** in the EO itself or in the defenses of it have explained why collective bargaining poses a **threat** to the **efficiency**, **competence**, or **accountability** of government workers. Rather, the EO and its defender have focused on whether the workers are “**required** or authorized to formulate, determine, or influence the policies of the agency.”122 But **Congress’ decision** to allow government workers to **unionize** reflects the view that one can be authorized to influence **agency policy** and still have an **interest** in **collective representation** on compensation, conditions of employment, and just treatment. To **override** this legislative determination (one that was enacted by Congress and signed into law by a prior President) is a **startling overreach**.

These exception to civil service and other **labor rights** seem aimed at **controlling**, perhaps without regard to what the law requires, those who might be **more inclined** to **follow** the **statutes** and **reg**ulation**s** they believe they are charged to **enforce** than to follow the **unorthodox views** of **political appointees**. **Stripping labor rights** is the first step toward **asserting unfettered power**. If you control the **lawyers** and the **unions**, you can, as Trump said he wants to do, bring the administrators to **heel**. Here, too, the focus seems not to be on increasing the competence or efficiency of government work, but rather on controlling those who the new administration fear might have the ability to protect workers or the public from unlawful actions or abuse of power.

The EO’s chief proponent said it would affect 2 to 4 percent of the federal civilian workforce of more than 2.27 million,123 or 45,000 to 90,000 workers.124 But, when the Office of Management and Budget proposed to reclassify its workforce in late 2020, it proposed to strip civil service protections from 88% of its staff.125 Moreover, the 2025 EO directs the Director of OPM to consult with the Executive Office of the President and then to issue guidance about additional categories of positions to include in the excepted Policy/Career Schedule, thus paving the way for the civil service to be narrowed further.

Finally, the 2025 EO contains a provision absent from the 2020 version. It states that “Employees in or applicants for Schedule Policy/Career positions are not required to personally or politically support the current President or the policies of the current administration. They are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal.”126 This provision is obviously directed at avoiding a First Amendment or Hatch Act challenge. But the question is how it will be interpreted and enforced.

As a cautionary example, the news reports of the Trump Transition in January 2025 indicate that officials at the **N**ational **S**ecurity **C**ouncil interrogated all civil servants above a certain level about whether they **voted for** or contributed to **Trump** and examined their social media to determine whether they support him, aiming to have the entire agency be “100% aligned with the President’s agenda.”127 They dismissed a large number on January 24. The point is probably not that the new administration will actually fire all or most civil services. Rather, the point of the **loyalty review** is to make government employees **fear** they will be **fired** if they fail to demonstrate **sufficient loyalty** to Trump or to the administration’s policy initiatives or actions, **no matter** how **unlawful** those actions may be.128 The NSC may be a particularly sensitive agency for Trump, as it was two civil servants at the NSC who blew the whistle on Trump’s 2019 efforts to pressure Ukraine to provide information to undermine Biden, which led to Trump’s first impeachment.129

A second cautionary example is the **firing** of civil service Justice Department lawyers because of their work with the special counsel, **Jack Smith**, whom the Attorney General appointed to investigate the efforts to overturn the 2020 election and the January 6 violent assault on the Capitol. In an ominous “Notice of Removal from Federal Service,” the new Acting Attorney General asserted an unqualified Article II power to fire, without notice and with immediate effect, civil servants who worked on an investigation that was authorized by the Attorney General and by the federal courts that issued search warrants, simply because the new DOJ leadership does not **“trust” them** to “assist in implementing the President’s agenda **faithfully**.”130 This suggests that, whatever the **EO** says about personal or political support of the current administration, it will be implemented to **root out** perceived **political enemies**.

Although this is not the first Republican President to try and reduce civil service and labor rights and protections, the current President seeks to **go further** than any predecessor.

**Malevolent governance is guaranteed under Trump. He’s in the pocket of billionaires.**

**Dols 25**, \*President of IFPTE Local 98, District Value Officer and Cost Engineer at the US Army Corp of Engineers. M.S., Civil Engineering, The City College of New York. B.S., Civil & Environmental Engineering, The University of Wisconsin \*\*-\*\*\*Hosts, TVLR. (\*Chris Dols \*\*Jacob Morris \*\*\*Adam Keller, 03-01-2025, “Why Attacks on Federal Workers are an Attack on the American Working Class,” The Valley Labor Report, Apple Podcasts) [Automatically Transcribed by Apple Podcasts]

CD: “Your listeners know the attack on the **federal workforce** is **not** really about the federal workforce. It's not really about government efficiency. It's really about **remaking** the civil service, **eliminating** large parts of the civil service in the image of the **billionaire class**.

They want to see all the **worst aspects** of small government, so **deregulation**, **privatization**. They want to **eliminate** all kinds of safety net programs that raise the bar, whether it's minimum wage policies or it's the types of **reg**ulation**s** that keep our community safe to live in, and the air safe to breathe, and the food safe to eat. They want to **eliminate** all kinds of the **safety net protections** that the civil service provides while at the same time implementing the **worst aspects** of a big government.

It's repressive apparatus, its capacity to deport the weakest people in our society, those who have the fewest rights, undocumented immigrants. They're really combining the worst aspects of large government and small government. That's their vision.

That's what this is really about. It's not about government **efficiency**. If they wanted the government to be more efficient, if they wanted Congress's mandate to be implemented more efficiently, because God knows, I think we should be more efficient at regulating businesses like Elon Musk's.

We should be more effective at stopping predatory lenders, the way that the Consumer Financial Protection Bureau was set up to do. The EPA should be more resourced to protect the quality of our air and water and our environment. But that's not what this is about.

This is an attack on **government services** to **immiserate** the population and make it easier to be a **billionaire** in this country and **harder** to be a worker because that makes us more **exploitable**. So it's actually a very simple project that they have afoot and it's our job to pivot the narrative that I think the media has been attracted to, which is government workers as just victims of this. Sure, of course, government workers are facing, you know, **mass terminations** and **erosion** of our **labor protections** and the programs and agencies that we've committed ourselves to are being, you know, shuttered in some cases, significantly curtailed.

But the **real narrative** isn't about like what might happen to me and my family. Appreciate the solidarity when that comes. But it's really about the broader services.

And that's why the National Day of Action was themed around SOS, save our services. It's a beacon call. It's a distress signal from the federal workforce to the broader public that this is not just our fight.

This is about defending the **entire** public sphere from the vision of a **handful** of **billionaires** who are trying to **remake** our government and our **society** in their own image. And so that's the call that we're putting out from the Federal Unionists Network.”

JM: “Yeah, it is really frustrating to see so many people kind of buying this line that, oh, you know, the government, like buying the line that is being sold to them by literally the richest person in the world. As if he is going in for your benefit and cutting up the government and trying to destroy it. And it's not for him at all.

I mean, it really is kind of amazing that folks are buying this. And I was talking to somebody literally just last week. And so much of this information is repressed that we don't know about.

And the fact that the reality is that, yeah, maybe there are problems, but the fix to the problem is a **reinvigorated** public service, is a public sector that has been unleashed. And specifically, when we talk about Social Security. Social Security, the Social Security Administration, is at its lowest level in 50 years in terms of staffing.

And they always talk about, oh, it's going to go bankrupt in five years or ten years or whatever. I told somebody this the other weekend, and I have been in circles that this fact has been going around long enough that I thought that everybody knew this. But this person, you know, twice my age had never heard this.

**The systematic risks of a consolidated, secretive, and captured government outweighs everything.**

**Kemp 21**, Research associate at the Centre for the Study of Existential Risk at the University of Cambridge. (Luke Kemp, 10-21-2021, “Agents of Doom: Who is creating the apocalypse and why,” BBC Future, https://www.bbc.com/future/article/20211014-agents-of-doom-who-is-hastening-the-apocalypse-and-why)

Instead, many catastrophic risk researchers focus on a "citizen terror narrative", concerned with "**agential risks**": doomsday level-threats from **minor actors** such as ambitious **terrorists**. Across the masses of citizens, the concern is that there will be at least **one individual** or **group** motivated to bring about **Ragnarök**. Hence, one of the greatest problems is the increased availability of **dangerous information** and **technologies**. Some have even suggested that preventive policing and ubiquitous surveillance may be required to control these hypothetical wide-spread weapons of mass destruction.

With this view, the most powerful are trusted to not destroy the world due to rational self-interest. As the UK's Astronomer Royal Lord Martin Rees frames it in his book Our Final Century, a human-triggered apocalypse would likely be a case of "terror or error": malicious action by a small group or a mistake by the powerful.

**Terrorists** and **lone wolves** are undoubtedly a problem. However, it appears they are **highly unlikely** to be the source of **global destruction**. The historical and present reality of human-made **global hazards** suggests that a different set of actors are **culpable**. Destroying **large swathes** of the world requires **power** and **secrecy**.

For the past few years, I have been studying the forces that cause historical catastrophes and collapses, as well as working with colleagues at the University of Cambridge's Centre for the Study of Existential Risk to analyse the modern dangers we face in the present-day. (Read more: Are we on the road to civilisation collapse?)

During my research I have become convinced that only a **few institutions** have the resources – and lack of **oversight** – to **imperil** the world. This is an enduring predicament that is unlikely to change. The **greatest threats** are not born from **average citizens**, but from a desire from the **powerful** for **control**, **profit**, and **military advantage**.

Scholars of castastophic risk often point to a handful of infamous **human-made** global threats: artificial general intelligence (**AGI**), catastrophic **bio**logical threats, **climate change**, **l**ethal **a**utonomous **w**eapon**s**, **nuclear weapons** and **mass surveillance**. The impact of each of these threats is **uncertain** and some are **more likely** than **others**: we have already experienced around 1C of global warming since industrialisation, but whether AGI can or will be created is uncertain. They are best thought of as **interconnected threats** that could cause **significant** worldwide loss of **life** and liberty.

All of these are the product of a **small group** of often **overlapping**, powerful industries dominated by a **few actors**. These are primarily: **m**ilitary-**i**ndustrial **c**omplexes, the **fossil fuel** industry and **Big Tech**. All of these are **concentrated** in a handful of countries, particularly **the US**. Let us call them the **Agents of Doom**.

Global catastrophe is a case of **public costs** and **private benefits**. Too often we mistakenly think of the future of global catastrophe as a set of (falsely) **separate hazards** and **tech**nologies. The true risk underlying all of these is unaccountable, **concentrated power**.

<<<Text condensed, none omitted>>>

Artificial general intelligence (AGI) Some scholars are concerned that the creation of advanced artificial intelligence could have dire impacts. In 2020, approximately 72 projects were openly researching AGI across 37 countries. These are primarily corporate and academic projects. About half of these are in the US and eight of the nine projects that have military connections are in the US. These can be taken as an underestimate as existing military programmes are likely to be kept confidential. Catastrophic biological threats The intentional development and cultivation of bioweapons didn’t truly begin until around World War One. Approximately 11 countries had bioweapons programmes over the course of the 20th Century resulting in around 18 bioweapons related incidents. The worst act during this time was the use of Typhus, Cholera and other agents by the Japanese (namely through Unit 731) against China during WW2. Bioterrorism has been more frequent but less impactful. A survey of multiple studies suggests an average incident rate of 0.35-3.5 for biocrime and bioterrorism (in other words, approximately one every 2.9 years to 3.5 every year). But this includes a large number of hoaxes and threats. The vast majority of actual attacks result in a few casualties at most. This has led some researchers to conclude "even if considerable financial, structural and logistical resources are available, successfully delivering a large-scale biological attack is harder than it may seem to be". In contrast, scholars note that the revolution in biotechnology will be one that likely gives an enormous advantage to stronger, militarised states. Climate change Just 100 companies are responsible for 71% of global industrial greenhouse gas emissions since 1988. Some of these fossil fuel giants have funded a complex of firms, think tanks and scientists that have been responsible for sewing doubt on climate science. These "merchants of doubt" are a small, concentrated group. For countries, the top 10 historical emitters account for three-quarters of cumulative global emissions (counting the EU as single emitter), with the US alone accounting for around a quarter. A similar pattern appears when we look at the actual spread of fossil fuel reserves throughout the Earth’s land. Six countries and one region (collectively 18 countries) together hold 80% of fossil fuel reserves. Lethal autonomous weapons (LAWs) One of the first intentional initiatives to attempt to develop general lethal autonomous weapons was the Defence Advanced Research Projects Agencies’ (Darpa) 1983 Smart Weapons Program, which contained a "Killer Robots" project. Its slogan was "The battlefield is no place for humans". Since then, interest in automated killers has grown. The most recent review of the lethal AI arms race found that the US was the outright forerunner, followed by China, Russia, South Korea and the EU. They are abetted by what the NGO Pax describes as 30 "high-risk" companies working on LAWs, or relevant technologies, who do not have any policy to ensure meaningful human control. Nuclear weapons The 1942-1946 Manhattan Project produced the 1945 successful Trinity test. The 1954 Castle Bravo test produced the first thermonuclear device. Both were deliberate, well-funded and organised enterprises by the US government. Scientists involved with the programme first performed calculations, and then took bets as to whether the first test would potentially ignite the atmosphere, killing all life on Earth. (Read more: The moments that could have accidentally ended humanity.) Currently, 89% of nuclear weapons are held by two countries: the US and Russia. The entire global nuclear arsenal belongs to just nine countries. The production and maintenance of nuclear weapons is overwhelmingly reliant on just 28 major companies (primarily US based). Mass surveillance There are concerns not just of global calamity, but the risk of dystopias, such as a long-lasting, AI-surveillance power totalitarian state. The social scholar and author Shoshana Zuboff at Harvard University has branded the modern era as the Age of Surveillance Capitalism. It is a situation in which human attention, experience and data are captured and commercialised en-masse. It is dominated by a few, familiar titans: Alphabet (Google), Microsoft, Facebook, Amazon, Tencent, Baidu, Alibaba and Apple. All of which are in the top 10 largest companies in the world by market capitalisation. These are accompanied by tech firms tailored to provide cyberweapons and surveillance, such as Palantir and the NSO Group. The latter has recently been exposed by investigative journalists as having provided malware that has been used to infect the devices of activists, politicians, union leaders and journalists around the world, including by repressive regimes. (NSO denies any wrongdoing). Big Tech and surveillance firms are accompanied by intelligence communities to form what I call a Stalker Complex that constantly watches the world. The breadth and intrusiveness of this mass surveillance apparatus is carried out by a small number of intelligence agencies such as the National Security Agency (NSA) and its UK counterpart the Government Communications Headquarters (GCHQ). While the future of AI surveillance technologies such as facial recognition technology is dominated by US and Chinese firms. China already possesses advanced surveillance systems, including widespread use of facial recognition, and even the deployment of drones to help enforce Covid-19 regulations. Concentrated, captured and covert

<<<Paragraph integrity returns>>>

There are three distinct lessons here. First, the **production** of human-made global **catastrophic hazards** is **highly concentrated**. The **US military** is responsible for **pioneering work** in **nuclear** and **thermo**nuclear weapons, **LAWs**, surveillance, and **AI**. To this day, the US plays an **outsized role** in **endangering** the world. It is the world’s **largest** historical **emitter**, possesses the second largest, and **most advanced** nuclear arsenal, is the leader in **developing LAWs**, houses the **largest agencies** and firms working on **surveillance**, and has by-far the **highest number** of groups working on developing **AGI**.

Second, the **producers** of such threats have frequently played an active role in **suffocating action** to address them. This is commonly referred to as "**regulatory capture**": regulatory efforts become **captured** by those that they are supposed to **oversee**. For climate change it is the **fossil fuel lobby**. For nuclear weapons, the arms race was stoked by the "bomber gap" and "missile gap" myths perpetuated by the US **m**ilitary **i**ndustrial **c**omplex. Key US military and political figures claimed that the Soviets had a swelling superiority in strategic bombers and ballistic missiles. Later U2 surveillance flights showed that these were serious overestimates. While fictitious, it was enough to justify surges in defence spending.

A similar dyanmic occurs in **international negotiations**, with just a few key countries blocking regulation of catastrophic hazards. For biological weapons it was the US who was the **primary culprit** in preventing the adoption of a **global verification** scheme under the **B**iological **W**eapons **C**onvention. For **LAWs**, approximately **five countries** (Australia, Israel, Russia, South Korea and the **US**) have actively **blocked progress** on banning or strongly regulating lethal autonomous weapons.

Third, producing the **worst** global threats is almost always done **in the shadows**.

Secrecy hazards

The history of anthropogenic global threats is a history of hidden information. I call these secrecy hazards: harms arising from intentionally concealed or obscured knowledge.

Secrecy hazards are almost always a tool of the **Agents of Doom** and history is **rife** with them. Both Castle Bravo and the Manhattan Project were among the most **secretive projects** in **US history**. The NSA’s mass surveillance programmes were **intentionally hidden** from the public eye while whistle-blowers such as Edward **Snowden** were marginalised and hunted for prosecution. The **fossil fuel** industry has spent decades burying its own **private knowledge** of climate change and **obscuring** scientific evidence. Research on LAWs and numerous other powerful weapons have been performed in **confidential programmes** in agencies such as Darpa.

As Tom Mueller shows in his overview of whistleblowing "Crisis of Conscience", the **military** and **intelligence communities** frequently use **secrecy provisions**, and companies deploy commercial **n**on-**d**isclosure **a**greement**s**, to conceal **corruption** and avoid embarrassment and **public scrutiny** rather than hide genuinely dangerous information.

Risk and responsibility

All of this could change in the future. The potential threat of future bio-terrorism seems particularly notable given the rising accessibility of bioengineering tools. This has led some catastophic risk scholars to become concerned with "information hazards": the dissemination of true information that could cause harm.

Yet there appears to be little concrete reason as to why we should expect the burden of catastrophic hazards to undergo a dramatic shift from powerful states and companies to individuals and small groups. Currently, citizen terror fears tend to revolve around either far-flung thought experiments of "easy nukes" (nuclear weapons, or similarly destructive devices, that can be feasibly produced at a low cost by individuals and small groups) or naive extrapolation of technological trends assuming no limits or regulation. An empirical investigation of the past and present is a far more reliable basis for thinking about an uncertain future.

Even if a catastrophic global terrorist incident was to occur due to futuristic dangerous dispersed technology, it would almost certainly be traced back to the Agents of Doom in developing, overproducing, and preventing the regulation of such technologies.

Rather than fearing the public, scholars of catastrophic risk should see them as a wellspring of hope. The **Agents** of Doom should **embrace** rather than evade public scrutiny if they are **genuinely concerned** about **global catastrophe**. For all of these hazards there is **abundant evidence** that one of the **best forms** of risk management would be to hand their **regulation** and development over to **citizens**.

**Public opinion** polls across China, the **US**, Australia and the EU have showed **strong** majority support for greater action on **climate change**. In a poll across 26 countries, 61% opposed the use of lethal autonomous weapons. Europeans strongly favour an international ban on nuclear weapons. Similarly, a survey of six countries including the **US** and Israel found that a **substantial majority** of citizens in each country supported **eliminating** all nuclear weapons through an enforceable **international agreement**. Most recently extensive surveys by the Global Challenges Foundation found that strong majorities across numerous countries are open to creating a new supra-national body to manage global risks.

Notably this is from citizens who have often **poor, distorted information**. Deliberative democratic approaches in which juries or assemblies of randomly selected citizens are briefed by experts and then discuss among themselves, tend to **vastly improve** their judgement.

A popular way to explain the **lack of action** on **global risk** is **cognitive biases**. This misses the point. The problem isn’t these threats being **publicly neglected**; it is that they are **actively hidden** and any attempts at regulation are often delayed, distorted or destroyed.

Ironically, the **common response** during crises to empower governments and the Stalker Complex through **emergency powers** is **entirely counter-productive**. This "Stomp Reflex" is largely a **movement of power** from citizens to the Agents of Doom.

**PLAN---1AC**

**The United States federal government should substantially strengthen collective bargaining** rights for workers at the Department of the Treasury, International Trade Administration, Department of Commerce, Environmental Protection Agency, Nuclear Regulatory Commission, National Science Foundation, United States International Trade Commission, Federal Communications Commission, General Services Administration, and Transportation Security Administration in the United States.

**SOLVENCY---1AC**

**Lastly, SOLVENCY:**

**Collective Bargaining is key.**

**1. WORKER MENTALITY.**

**Only unions give federal workers meaning behind their labor. Without it, the bureaucracy collapses.**

**Bruno & Grant 16**, \*Director of the Labor Education Program and Project for Middle Class Renewal and a Professor of Labor and Employment Relations in the School of Labor and Employment Relations at the University of Illinois, Urbana-Champaign \*\*4th-year doctoral student with the School of Labor and Employment Relations at the University of Illinois. (\*Robert A. Bruno \*\*Brandon C. Grant, 10-14-2016, “The Relationship Between Unions and Meaningful Work: A Study of Public Sector Workers in Illinois,” IUIC School of Labor and Employment Relations, https://lep.illinois.edu/wp-content/uploads/2021/08/Public-Sector-Meaningful-Work-Report-FINAL.pdf#:~:text=union%20as%20a%20primary%20source,experience%20while%20on%20the%20job)

This report, The Relationship Between Unions and Meaningful Work describes findings from a survey of a small group of Illinois public sector workers which investigates the work motivations of public employees. The study shows **new evidence** that government employees are **strongly motivated** to find “**purpose** in work that is **greater** than the extrinsic **outcomes** of the work.” Additionally, we find that government employees view their public sector **union** as a **primary source** of **intrinsic motivation**.

The **unions** that public sector workers belong to, do more than simply negotiate and enforce **c**ollective **b**argaining **a**greement**s**. As our findings suggest, they are also related to the **competence** and **performance** level of **public sector employees**. But perhaps more provocatively, it is likely that the union plays an **important role** in the **meaningful work** that they experience while on the job, the job satisfaction they experience, and the **prosocial values** they maintain; some of the **very factors** that draw individuals into public service.

The **policy implications** for Illinois and other states are **obvious**. First, by taking away the **right** to **unionize** or denigrating the value of collective bargaining, as occurred in Wisconsin, Indiana, and Michigan the state may be removing one of the **most important** incentives to recruit **highly educated** people to public service. Second, a **weaker** or nonexistent unionized government labor force may transform the **choice** of public service into merely a **self-interested** financial exchange; labor becomes just another commodity.

Finally and most potentially troubling, if workers are without a **collective identity** that potentially facilitates their quest for meaningful work and subsequently, they perceive their employment as primarily or **solely** as a way to **earn living**, then public service itself loses a **significant portion** of its service dimension. Ironically, weakening the **institution** that is unjustifiably characterized as imposing a financial burden on citizens may produce a workforce that labors for little more than a paycheck. Fair compensation should be a **minimum requirement** for government employees, but so should a commitment to preserving the people’s **common assets**.

Our study challenges the claim that public sector unions act contrary to the common good. We found evidence that not only do workers who choose to pursue careers in the public sector do so **in spite** of the **comparative lower wages** that they earn, but that the unions they belong to **strongly related** to their desire to **accomplish more** thorough work than earning an income. Work in the public sector serves as a **vehicle to fulfill**, at least in part, a **personal need** to experience a **meaningful life** and job.

**A mass brain drain is inevitable absent giving workers a say in their labor.**

**Hsu 25**, Labor and Workplace Correspondent, NPR. **CITING:** Anthony Lee, Regulatory Counsel, FDA. President of NTEU Chapter 282, J.D., University of Baltimore. (Andrea Hsu, 8-31-2025, "How Trump is decimating federal employee unions one step at a time", NPR, https://www.npr.org/2025/09/01/nx-s1-5515633/trump-federal-workers-labor-unions-va)

Fears of a **brain drain**

Across the federal government, some workers **are**n't **waiting** around to see what happens. They're **quitting** now, having decided a government job just **isn't worth it** anymore. Many workers fear with **unions gone**, they won't have a say in matters such as telework or family leave policies that make a **difference** to their **quality of life**.

"Although they came to the federal government because of their **passion** for **public service**, they also came because of the **flexibility** of the **government**, and those flexibilities are just being **wiped away**," says Anthony Lee, a longtime Food and Drug Administration employee who's also president of NTEU Chapter 282, representing some 9,000 FDA employees across the Mid Atlantic.

Although the FDA has not yet terminated the union's contract, it has ordered the union to pack up its offices.

Lee says the government is losing **chemists**, **toxicologists**, **engineers** and others who ensure **drugs** and medical devices are safe and effective and **food** ingredients aren't poisonous.

"It is **already**, in my view, harming the public because we're losing that **institutional knowledge**. We're losing that subject matter expertise," Lee says. "As much as the current administration thinks that everyone is just quickly **replaceable**, they're not."

**Without bureaucratic equilibrium, qualified workers are fired or feign loyalty to autocrats.**

**Fisk 25**, Barbara Nachtrieb Armstrong Distinguished Professor of Law, University of California, Berkeley. (Catherine L. Fisk, 02-04-2025, “Democracy and a Nonpartisan Civil Service,” University of California, Berkeley School of Law, SSRN eLibrary)

Scholars have reviewed the considerable **empirical literature** on civil service reform and developed models to explain whether or under what conditions reducing job protections increases the quality and responsiveness of government employee work. One model shows that “**bureaucratic performance** is greater in any **equilibrium** in which motivated bureaucrats choose government than in which all equilibria in which they do not.”100 The idea, translated into English, is that some degree of **job security** improves governance by **recruiting** and **retaining** motivated and skilled employees to **government**, but that **too much** job security **reduces government performance** by **disincentivizing** good work and by making it **unduly difficult** to dismiss bad employees. Of course, the difficulty is defining and achieving that equilibrium.

Another paper studied and modeled the incentives of **populist leaders** on whether to replace bureaucrats with **loyalists**. They find that bureaucrats faced with populist leaders determined to **undermine** existing policy have incentives to **feign loyalty** to the leader in the hopes of **keeping their job** and waiting for a future administration, and that **strong civil service protections** lessen the need for feigning loyalty. But they also find that when a populist hires a loyalist, strong civil service protections **enable** the loyalist to **stay in office** in a future administration. Ultimately, they conclude that “even short-term populism can **lower** the **expertise** of the bureaucracy and create **poor policy implementation**.”101

Some scholars have studied the effect of civil service laws by comparing measures of performance before and after a civil service law was implemented or by comparing the performance of government agencies where staff are subject to replacement to agencies where staff are protected from political replacement.102 One large study measured the effect of the adoption and expansion of the Pendleton Act in 1883 and 1893 on the efficiency and productivity of the U.S. postal service. The study found, while controlling for many possibly confounding variables, that civil service protections improved the **efficiency**, the **accuracy**, and the **productivity** of the postal service.103 Another study approached the similar problem from a different methodological point of view focusing on the effect of politically-mandated turnover of school staff on student test scores in Brazil. Students at schools where staff were subject to replacement after a mayoral election had lower test scores after the election than did students at schools where school staff were insulated from replacement following an election.104

The empirical and theoretical literature on reforming the civil service is too vast to survey here. In general, the **consensus** of the **lit**erature is that some **reforms** are **desirable**, some have been tried and have produced good results, and **completely abolishing** legal rights to job tenure during good behavior is an extremely **risky proposition** because of the **dissensus** about whether it produces more **harm** than **good**.105 Perhaps the change that bears the **closest** to what the **Trump** Administration is trying is known to scholars of public administration as “**radical c**ivil **s**ervice **r**eform.” Some states, beginning with Georgia as noted above, have experimented with “radical civil service reform” by abolishing civil service protections for numerous categories of jobs. Few of the studies of these state experiments clearly disentangled whether the states that repealed civil service protections (which are often characterized by nonlawyers as making government employment at-will) also abolished other job protections, including collective bargaining agreements with just cause protections. And of course no state could deprive its workforce from federal laws prohibiting discrimination on the basis of race, religion, sex, national origin, age, disability, or veteran status. Nor could they insulate personnel decisions from scrutiny for political discrimination under the First Amendment. Thus, studies of state experiences with repealing civil service laws are not a reliable predictor of what will happen if the 2025 Executive Order is upheld and enforced.

**2. UNION STRENGTH.**

**Arbitration, lobbying, publicity, and political endorsements ensure high employment while insulating expert regulators from the whims of haphazard administrations.**

**Handler 24**, Associate Professor of Law at Texas A&M University School of Law. Former Thomas C. Grey Fellow and Lecturer in Law, Stanford Law School. (Nicholas Handler, April 2024, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, Volume 99:45, pp. 76-80, Kansas Libraries)

The civil service’s move toward **unionization** reflects a broader recognition of the **value** of organized groups in **protecting rights** and pursuing **key political objectives**.160 Unions accumulate **resources** and **expertise**, allowing civil servants to mount **sophisticated** and **well-financed defenses** in labor disputes and to **lobby** effectively on key issues.161 **Unions**, for instance, are **more effective** at litigating employment disputes, a **key tool** in resisting the disciplinary efforts of management.162 They achieve **higher win rates** than unrepresented employees before arbitrators, a **key strategic consideration** for union side counsel, as well as a key source of **criticism** from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully **litigate** employment disputes **against agencies** in other ways. Through **FLRA litigation**, unions have secured **civil servants Weingarten rights**: the right to have a **union representative** present during a disciplinary investigation.164 Unions have likewise fought, with mixed success, to bargain for **specific substantive rights** for civil servants during **interviews** by agency inspectors general.165 Unions also provide extensive **financial** and **logistical support** to **individual employees**. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in “critical incidents,” such as the use of force.166

Even when unions do not **litigate** labor disputes directly, the **threat of litigation**—the possibility of **losing**, the need to **delay policy implementation**, the **drain on budgets**, and the attendant **uncertainty**—incentivizes agencies to **cooperate** with unions, and to take their preferences into account when staffing **political positions** and formulating policy. For instance, **powerful unions**, including those representing ICE and the EPA, can and do express their opposition to certain **agency heads**, dissuading the President from appointing them for fear of **souring labor relations** and inciting costly **litigation battles**.167

Perhaps the best example of labor’s deterrent power is President **Clinton’s** National Performance Review (**NPR**) program, launched in 1993. NPR’s goal was to “reinvent[]” government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for **union support** for a variety of cost- and personnel-cutting measures, President **Clinton** granted unions **substantial new powers**.169 The National Partnership Council, which shaped agency reorganization policy, was given **four union representatives** (one from AFL-CIO, and one each from the largest federal unions—NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President **Clinton** issued Executive Order 12,871 requiring agencies to bargain over formerly **optional subjects**, effectively waiving a **broad range** of management rights and **significantly expanding** union bargaining power.171 Unions also took a **substantial role** in shaping the federal government’s **downsizing** to ensure union positions received **protection** during workforce reduction.172

In addition to litigation, unions also have **extensive statutory power** to **lobby Congress**, often acting as one of the only sophisticated, **reregulation advocacy groups** in a competition of political influence dominated by **private interests** and **well-funded nonprofit groups**. The CSRA created unions that are, in effect, **federally subsidized** by dues, “**official time**” (time during which union officials are paid to engage in organizing and bargaining work), and **protections** against unfair labor practices.173 To facilitate union lobbying, Congress also created **numerous exceptions** to rules governing **political engagement** by civil servants, including the right to lobby on behalf of a labor organization and **Hatch Act exemptions** to participate in politics.174

Unionized federal employees have been **politically engaged** since the enactment of the CSRA, lobbying on a range of **budgetary** and **regulatory reform issues**.175 Unions lobby on issues ranging from **regulatory enforcement** policy, to the selection of **agency leadership**, to questions of **funding**—and their efforts have had **substantial influence** in Congress.176 Unions representing the employees of the **NLRB**, Department of **Ed**ucation, and **IRS** have all, for instance, lobbied for increases in **appropriations** for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses **political candidates**, testifies routinely before Congress, and speaks to the press on **high visibility policy issues**, often expressing views **contrary** to the views of agency leadership.178

**Only union rights solve workplace culture, worker voice, and push back against politicization.**

**Dorning 9-1**, President of the Department for Professional Employees, AFL-CIO. (Jennifer Dorning, 09-01-2025, “Congress Must Immediately Restore the Union Rights of Federal Employees,” The Hill, https://thehill.com/opinion/congress-blog/labor/5477873-trump-union-busting-attack/)

We celebrate Labor Day this year under the shadow of one of the greatest ongoing attacks on union rights in this nation’s history.

In March, President **Trump** signed an **e**xecutive **o**rder intended to strip nearly **1 million** federal employees of their **union rights** at multiple agencies.

Over the last month, the Trump administration has started to implement the president’s **union-busting** executive order by unilaterally and **unlawfully** terminating union contracts at the Environmental Protection Agency, Federal Emergency Management Agency, U.S. Citizenship and Immigration Services and the Department of Veterans Affairs.

Union rights provide federal employees a way to **improve** their workplaces and **report** wrongdoing. The **loss** of union rights, therefore, not only impacts federal employees, but also the **American people**, who depend on the federal government and the **services** it provides.

That is why, on this Labor Day, we are calling on Congress to immediately pass the Protect America’s Workforce Act.

The Protect America’s Workforce Act is bipartisan legislation introduced by Reps. Brian Fitzpatrick (R-Pa.) and Jared Golden (D-Maine) and cosponsored by 222 members of Congress.

It restores the collective bargaining rights of the union federal employees impacted by President Trump’s attempted union-busting. It has the majority support needed to pass if it came to the House floor for a vote today.

Members of Congress on both sides of the aisle back the Protect America’s Workforce Act because they know that employees with a voice in their workplace have higher morale and are able to better serve the American people.

In fact, Republicans supporting the bill wrote to President Trump emphasizing that collective bargaining in the federal government plays a positive role by providing a structured way for employees and management to communicate and address workplace concerns.

Specifically, through **collective bargaining**, federal employees are able to offer **expertise** and **experience** that improves processes, reduces **waste** and generates **efficiencies**.

Officers at the Transportation Security Administration have been able to negotiate for policies that provide for better work-life **balance** and **expanded benefits** that have helped **performance** and **retention** at the agency.

Additionally, collective bargaining at the Department of Veterans Affairs led to an improved **promotion** process, which is important to ensuring the agency can retain **talent**ed staff.

At the Social Security Administration, union members secured more time for employees to attend and complete **training** that helps them perform their responsibilities more **effectively**.

Union rights also provide federal employees with a **voice** and **protections** that allows them to **push back** against politically motivated requests to **compromise** professional standards or **ignore facts** without putting their **jobs** at risk.

For example, EPA staff secured scientific integrity provisions and whistleblower protections in their union contract to ensure federal scientists cannot be pressured to alter climate data to align with political agendas. FEMA employees, who support communities that have suffered from natural disasters, negotiated for the right to refuse unlawful orders.

If federal employees’ union rights are not restored, we can expect to see a **politicized** civil service that puts politicians and **special interests** ahead of the American people. This means that the **effectiveness** of government services will **suffer**, which will result in worse outcomes for everyday Americans.

**Federal unions consistently win arbitration disputes, EVEN under Trump.** The plan is also preferrable to civil service protections.

**Handler 24**, Associate Professor of Law at Texas A&M University School of Law. Former Thomas C. Grey Fellow and Lecturer in Law, Stanford Law School. (Nicholas Handler, April 2024, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, Volume 99:45, pp. 86-90, Kansas Libraries) [Figures 3, 4, 5, 6 omitted]

Key to understanding the effect of **labor rights** on **bureaucratic relations** is understanding **which parties** benefit from its provisions. Federal sector labor rights were designed to **secure industrial peace** within the executive branch. As described above, federal sector labor rights were the **product of compromise** between a presidency seeking **greater freedom** to structure the executive branch and a labor movement, supported by congressional Democrats, seeking more **robust protections** for federal employees. If they are serving that purpose, one would expect both labor and the President to prevail a meaningful percentage of the time. Guarantees of **moderating power** would be **useless** if one side gains a **decisive** or **permanent** advantage.

The **data indicates** that both **labor** and **management** do win a **meaningful percentage** of the time.208 As shown in Figures 1 and 2, this is true **across presidential administrations**, from 1979 to the present. It is **true** in periods of labor turmoil, such as the Reagan Administration, as well as times of **relative rapprochement**, such as the Clinton era.

[[[FIGURE 3 OMITTED]]]

[[[FIGURE 4 OMITTED]]]

As shown in Figures 3 and 4, while labor wins **slightly more frequently** when the FLRA has a Democratic majority (51.7% versus 48.0% during Republican majorities), the difference is relatively **modest**. Indeed, win rates for labor are **much higher** than for equivalent disputes before the **MSPB**, where surveys have **consistently shown** that agencies win over 75%, and perhaps as much as 90%, of the time.209 This data supports **labor** and **Congress’s assumption** that unionized r

epresentation could serve as a more **effective check** on **managerial authority** than **traditional civil service protections**.

[[[FIGURE 5 OMITTED]]]

[[[FIGURE 6 OMITTED]]]

One other aspect of this data is worth noting. The total number of cases declined dramatically from the 1980s to 2020s. This is not a quirk of the specific agencies studied here. The total number of FLRA decisions has declined over the past four decades. From January 1, 1979 to December 31, 1989 the FLRA issued 4,196 opinions; from January 1, 1990 to December 31, 2000, it issued 3,147; from January 1, 2001 to December 31, 2010, it issued 1,514; and from January 1, 2011 to December 31, 2020, it issued 1,176.210 The decline of the total number of FLRA cases does not mean that the federal labor regime has declined in importance. First, many disputes that were litigated in the CSRA’s first decade are now settled informally through grievance procedures and labor-management programs such as those established under President Clinton’s NPR program.211 These efforts reflect the bargaining power of federal workers. FLRA litigation is costly and disruptive. While there is no clear data on management council outcomes, anecdotes suggest that labor has a **meaningful role** in shaping **management policy**, and the councils are **responsive** to unions’ concerns.212 Likewise, many disputes that might otherwise be **litigated** are instead now resolved through **negotiated grievance procedures**. Here again, **anecdotal evidence** suggest that these procedures can be **more favorable** to labor than the alternative.213

1. Controversy

The data also appear to show relative **stability** through the **Trump Admin**istration. This is **significant**, given President Trump’s **overt hostility** to labor and the many ways in which his administration **departed** from traditional norms of labor relations.214 Observers have presumed that the FLRA majority appointed by President **Trump** was **more hostile** to labor than **previous boards**, including those with Republican-appointed majorities.215 Indeed, these accusations were **so frequent** that the FLRA’s Chairman was questioned by the **House Oversight** and Reform Government Operations **Subcommittee** over her alleged “‘anti-union’ modus operandi.”216 In terms of **raw numbers on wins** and losses, there is **no clear indication** of a **strong anti-union bias**. However, I reviewed additional metrics to examine whether there was any empirical support for the claim that the Trump-appointed FLRA was uniquely hostile to labor. Consistent with observations of labor hostility, and consistent with the general trend toward greater politicization of democratic institutions,217 these data do provide some indication that labor has become more politically divisive in the past decade.

**3. DEREGULATION.**

**Only unions can perma-block Trump’s deregulation and without-cause firings. They have a lengthy record of success and the FLRA interprets cases generously.**

**Morse 23**, J.D., Stanford Law (Forthcoming 2024), M.A., English Language and Literature/Letters, University of Virginia, B.A., Sarah Lawrence College. (Asher Morse, 09-25-2023, “How to Protect Federal Agencies Through Collaborative Bargaining,” The LPE Project, https://lpeproject.org/blog/how-to-protect-federal-agencies-through-collaborative-bargaining/) ~~language~~ [modified]

Challenging **structural deregulation** in the courts can prove **difficult**. Under federal law, before individual federal employees can appeal a decision to the U.S. **Court of Appeals** for the **Federal Circuit**, they must typically channel complaints through the **M**erit **S**ystems **P**rotection **B**oard. But that agency **lacked a quorum** for the entire Trump presidency, creating a **tremendous backlog** of complaints—and no **feasible means** of **judicial review** as a result. Meanwhile, **outside organizations** typically struggle to **establish standing** to challenge actions that, at least as a first order matter, most **directly impact employees**.

There is, however, **one defense mechanism** against future structural assaults that is **lying in plain sight** of agency management: **federal sector unions**. Federal **c**ollective **b**argaining **a**greement**s** are **meaningfully enforceable** — by third-party arbitrators, whose decisions are **appealable** to the Federal Labor Relations Authority (“**FLRA**”) — and forthcoming scholarship by Nicholas Handler demonstrates the profound extent to which litigation to enforce these contractual rights can shape federal policy. **Federal** **c**ollective **b**argaining **a**greement**s** thus offer the chance to proactively **build in protections** that will be **vital** if dangerously **anti-administrative candidates** such as **Trump** or DeSantis take office. But that’s only true if agency leadership is willing to shed **knee-jerk anti-union attitudes**.

Collaboration at the Bargaining Table

Federal sector unions already appreciate the **defensive value** of such agreements. For example, the union representing roughly **half of EPA employees** is seeking a “**scientific integrity**” provision in their next contract, guaranteeing that scientists have a say in drafting **EPA positions** and **decisions**. (A direct reaction to the attacks on science that occurred at the agency during the Trump administration.) They are also seeking **new provisions** on **d**iversity, **i**nclusion, **e**quity, and accessibility. Despite these laudable goals, the union’s executive vice president, Joyce Howell, characterized EPA management’s counterproposal to the union’s first offer as “kind of minimal,” further stating that “[t]he approach of the agency seems to be to do what the law requires and nothing more. They’re even regressive in some areas–certainly conservative.”

This **adversarial posture**, while unsurprising given that agency management are ultimately **employers** negotiating with **employees**, is **not inevitable**. Under the relevant statute, management can be **conciliatory** and **collaborative** in negotiations—and indeed **they should be**, if leadership hopes to protect agencies from **structural dereg**ulation. Such an approach would be **precisely** what was envisioned by the Biden administration’s stated goals of protecting the civil service and “ensuring that the federal government is a **model employer** with respect to encouraging **worker organizing** and **collective bargaining** among its workforce.”

Even the **Trump** administration recognized the power of this collaborative approach where it concerned unions at some of its most **ideologically-aligned** agencies. In 2021, then-acting Deputy Secretary of the Department of Homeland Security Ken Cuccinelli attempted (ultimately without success) to effect unprecedented union-empowering contracts between DHS and ICE’s union. In 2019, Trump’s DHS actually managed to ink a similar contract with the National Border Patrol Council.

The ICE and CBP contracts gave these agencies’ unions incredible latitude to influence agency policy, as well as stupendously generous grants of paid time off from assigned government duties to represent a union or its bargaining unit employees. Under the administration’s supposedly standard formula, the National Border Patrol Council would have been entitled to approximately 18,000 hours of such time over the first year of the contract. Instead, its 2019 contract granted it 153,920 hours—over eight times that amount. The nixed ICE agreement would have been similarly atypical.

While certain aspects of these contracts were of questionable legality, the grants of official time at least were within the bounds laid out by the Federal Service Labor-Management Relations Statute. The statute stipulates which issues agencies must, may, or cannot bargain over. For instance, agencies must negotiate over subject matter affecting “conditions of employment,” defined as “personnel policies, practices, and matters…affecting working conditions.” In one negotiability dispute, for example, the FLRA held that the IRS was required to bargain over how a set of new Commodity Tax Shelter working groups within its Examination Division were to be staffed (i.e., through what mix of volunteering and reassignment the working groups would be staffed, and whether any reassignments would be made according to seniority).

Agencies can, at their election, **bargain** over a category of **permissive** subject matter, statutorily encompassing “the **numbers**, **types**, and **grades** of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.” These terms have been interpreted **capaciously**. For example, the **FLRA** has held that a **USDA proposal** to change union employees’ schedules to include a 30-minute unpaid lunch period was **negotiable** at the agency’s election. It interpreted the term “**tour of duty**” to mean the hours and days constituting **employees’ administrative workweeks**. Because the proposal would affect the number of employees assigned to a particular kind of “tour of duty” (i.e., the kind with a 30-minute unpaid lunch break in it), it fell into the statute’s **permissive category**.

It is true that, under the statute, collective bargaining cannot **intrude** on the exercise of various management rights, including agency leadership’s prerogatives to “determine the **mission**, **budget**, [and] **organization**” of an agency, and to “**hire**, **assign**, **direct**, **layoff**, and **retain employees** in the agency.” But the prohibition on such bargaining subjects comes with certain **exceptions**.

Agencies are permitted to bargain over “**procedures** which management officials of the agency will observe in exercising any authority under [the section],” **even if** those procedures impact how management exercises its **protected rights**. Additionally, even **substantive provisions** affecting protected management rights may be **bargained over**, if they also fall into the **permissive category**. In the 30-minute unpaid lunch break case, the FLRA explained that the proposal fell into both the statutorily prohibited (it affected management’s statutory right to “assign work”) and permissive (it was to have affected the number of employees within an agency assigned to a particular “tour of duty”) categories of bargaining—and thus determined that the proposal was negotiable at the agency’s election.

Given these **permissions** and **constraints**, consider how an agency might defend against something like the attempted **BLM relocation**. Although determinations as to “the geographic locations in which an agency will provide services or otherwise conduct its operations” were held by the FLRA to affect management’s right to “**determine an agency’s organization**,” an agency and its employee union could likely use the **“procedure” carveout** to agree on a set of **consultation processes** that would ensure employees have **meaningful input** into any relocation decision. Such a procedural protection would likely **deter** attempts to **browbeat federal employees** into retirement, as well as ~~mute~~ [**dull**] the **impact** of any such attempts.

In sum, agency leaders concerned about how to **defend** against the damaging **anti-administrative agendas** of candidates such as **Trump** and DeSantis who may take office in 2025 should **seize the opportunities** available to them now through **collective bargaining** to **protect their workforces** and their **statutory functions**.

**While maximizing efficiency and mitigating disputes.**

**Handler 25**, Associate Professor of Law at Texas A&M University School of Law. (Nicholas Handler, 05-05-2025, “Federal Labor Unions Strengthen the Administrative State,” LPE Project, https://lpeproject.org/blog/federal-labor-unions-strengthen-the-administrative-state/) ~~language~~ [modified]

First, it is **simplistic** to suggest that federal labor rights **limit** presidential power, while eliminating unions **expands it**. Bargaining might limit the President’s ability to **micromanage** (and **manipulate**) the lower reaches of the federal bureaucracy. But in exchange, the **protections** and **autonomy** provided by **enforceable labor agreements** allow the President to recruit **skilled workers** in a **variety of fields** (scientists, doctors, attorneys, economists, and experts in dozens more areas) to work for the executive branch, providing **valuable skills** for much **lower pay** than they would earn in the private sector. This **expanded recruitment pool** gives the President power to deliver on key campaign **promises** in areas ranging from **environmental protection** to **national security**. Labor rights thus represent not a **diminution** of presidential power, but a **tradeoff** of one form of presidential power (**managerial**) for another (**expanded state capacity**). Conversely, undermining labor agreements doesn’t really expand presidential power—it simply **swaps** out one form of policy-implementing presidential power for another.

Such **loyalty-competence tradeoffs** (or control-capacity tradeoffs) have been documented in **other areas** of executive branch policy. And at least in the area of **civil service unions**, historical evidence suggests that presidents prefer the **expanded capacity** of a **robust civil service** to the narrower power to **micromanage** lower-level workers. Indeed, one surprising aspect of the history of federal sector bargaining is that it was begun largely on the initiative of **presidents themselves**, the unions’ ultimate counterparty. President Kennedy first authorized civil servants to join unions and bargain by executive order in 1962, rights subsequently expanded by other presidents until being formalized by the Civil Service Reform Act of 1978 at the urging of President Carter.

Presidents **repeatedly explained** that these expansions of bargaining rights were **necessary** to recruit **skilled workers** (especially knowledge workers) to the executive branch, and thus to meet the increasingly labor- and skill-intensive **demands** of the modern presidency. As a major government reform commission explained in 1955, “[t]he Federal Government ha[d] **lagged behind** other organizations in recognizing the **value** of providing **formal means** for employee management consultation,” and as a result had **failed** to attract the white-collar workers it needed for more **knowledge-intensive public administration**. In short, the unitarist argument that labor rights undermine presidential power is both **simplistic** and **short-sighted**: labor rights offer the executive a **different**, more **valuable** form of power that is arguably **necessary** for modern presidents to deliver on their campaign promises.

Second, labor rights also provide presidential-bureaucratic relations a more **transparent**, **legally accountable structure** than they would otherwise have. Absent an absolutely **catastrophic loss** of **state capacity**, the **exec**utive branch needs to employ **millions** of people across a **wide range of fields** to implement public policy. A bureaucracy of that size and complexity will **inevitably** pose difficulties in terms of **oversight** and **political control**: There is only **one president**, and he has only a **limited ability** to monitor and control **individual civil servants** at any given point in time. Thus, regardless of how much formal power the president has, **oversight breakdowns** and **tensions** between the desires of the President and the interests of the bureaucracy are **bound to arise**. This is not an issue of constitutional law, but a **reality** of large-scale organizational management.

The question is what form these tensions and breakdowns will take. In **poorly regulated systems** without **well-defined worker rights**, bureaucrats might express **displeasure** with the president through various forms of **quasi-legal “resistance”** (for example, shirking duties, leaking to the press, or performing their job functions in manner designed to **hinder** presidential objectives). Presidents might assert **managerial authority** through **threats**, **abuses**, and **preferential treatment** of **political allies**. In short, the ordinary disputes that arise between labor and management would **work themselves out** through **opaque**, **inefficient**, and often **counter-productive conflicts** that would be impossible for democratic institutions to effectively monitor.

In a bureaucracy with **well-defined labor rights**, by contrast, agency heads and workers bargain over points of **contention**, reduce agreements to **written contracts**, and **litigate disputes** before **formal arbitral bodies**. The President and his agency heads can **negotiate** and **litigate** conflicts **openly**; administrative judges and Article III courts can **supervise disputes**; and Congress can **amend statutes** to alter the balance of **labor** and **management rights** to address any **perceived imbalances**. In other words, bureaucratic disputes that would otherwise be **opaque** and **unregulated** are instead **managed** and **overseen** by all **three branches** of federal government, with **ample room** for the President to vindicate his managerial rights and press his policy objectives.

**4. PUBLICITY.**

**Unions protect laborers that expose the president to political realities through civil service alarms.**

**Handler 24**, Associate Professor of Law at Texas A&M University School of Law. Former Thomas C. Grey Fellow and Lecturer in Law, Stanford Law School. (Nicholas Handler, April 2024, “Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power,” New York University Law Review, Volume 99:45, pp. 82-84, Kansas Libraries)

As powerful interest groups representing **tenured bureaucrats**, public sector **union**s are often criticized as the **least democratic participants** in the labor regime. But while civil servants undoubtedly have their own **unique interests**—and as will be seen in Part III, their own **ideologies**—their power as political actors is a **feature**, not a bug, of modern executive branch organization. Both the President and Congress understood when they enacted **civil service reform** that they were **empowering federal workers** to **reshape** the executive branch. But in at least two critical ways, the political branches understood unions to **further**, rather than to subvert, **democratic oversight** of the federal bureaucracy.

First, the federal labor regime is designed to make bureaucracy more **sensitive** to **political realities** and **public opinion**. In contrast to the **political insulation** of the Progressive-era civil service, the CSRA incentivizes **open political engagement** by bureaucrats: Federal workers can **organize**, make **political donations**, **lobby**, and **speak publicly** on political questions touching on an agency’s **mission** without **fear of retaliation**.197 Labor also relies, far more than the traditional civil service, on support from the **political branches** for its power. Many of the **most valuable** contractual protections, such as those concerning quotas or performance evaluations, are **permissive subjects** of bargaining.198 The President may, but need not, **agree** to terms controlling those issues.199 And even for **mandatory subjects**, the President can **choose** how intransigent to be at the negotiating table.200 Contract protections are **binding** once finalized, but whether to **consent to them** is a political calculation. The President’s negotiating posture depends in part on **public opinion** and potential **retaliation by Congress**. Presidents Biden and Clinton, for instance, were eager to court labor’s support.201 President **Reagan** was **hostile to labor** but was compelled to **rein in his attacks** after pushback from a **hostile Congress**.202 As a result, labor understands that **broad-based political support** is **key** to securing strong, protective **c**ollective **b**argaining **a**greement**s**. Indeed, one of the **primary lessons** of the PATCO collapse was the risk of taking an **aggressive bargaining position** without first shoring up **broad support** from the **public** and **other unions**, both of which had opposed the air traffic controllers’ strike.203 Today, prominent federal unions maintain **extensive lobbying** and **communications operations** for the purpose of **mobilizing** democratic support for their agenda as a means of influencing executive bargaining posture.204

Second, unions are **key** to activating **other constitutional stakeholders** in labor disputes. Where unions cannot achieve a **key element** of their agenda, such as an increase in agency enforcement budgets, they often, consistent with the extensive political rights granted by the CSRA, **lobby Congress**. Likewise, when the President interferes with the operation of the civil service in ways that arguably subvert the will of Congress, litigation by unions allows **courts to intervene**. Unions thus serve as a more **formalized vehicle** for what have been called “**civil servant alarms**,” or methods by which line workers with **specialized knowledge** of government operations surface issues that might otherwise **escape** the notice of the **political branches**, thereby facilitating **intervention** and **democratic churn**.205

**AND bake in protections against coercion and retaliation against whistleblowing.**

**Fisk 25**, Barbara Nachtrieb Armstrong Distinguished Professor of Law, University of California, Berkeley. (Catherine L. Fisk, 02-04-2025, “Democracy and a Nonpartisan Civil Service,” University of California, Berkeley School of Law, SSRN eLibrary)

One final feature of the **CSRA** deserves mention because it also **limits** the discretionary authority of the President over federal employees. **Several sections** of the statute known collectively as the **F**ederal **L**abor **R**elations **A**ct **codify** a practice first authorized by Executive Order in 1962 creating the right of many federal employees to **unionize** and **bargain collectively**.88 The FLRA is patterned on the National Labor Relations Act of 1935, as amended in 1947 and 1959, which protects rights to unionize and bargain collectively in private sector employment. Like the NLRA, the FLRA grants employees the right to **unionize** and obligates federal agency employers to **recognize** the union chosen by the employees and to bargain in **good faith** with it. Like the NLRA, the FLRA makes it an unfair labor practice for an employer “to **interfere** with, **restrain**, or **coerce** any employee in the exercise by the employee of any right under this chapter,” “to encourage or discourage membership in any labor organization by **discriminat**ion in connection with hiring, tenure, promotion, or other conditions of employment,” and to **retaliate** against employees for participating in the enforcement of the statute.89 It also prohibits unions from coercing and discriminating against workers and grants workers rights to fair treatment by their union.90

The CSRA also **protect**ed federal employees who **blew the whistle** on wrongful government conduct. Those protections were **strengthened** with the enactment of the Whistleblower Protection Act of 1989.91 Federal employees are protected in the right to disclose information that the employee “reasonably believes evidences a **violation** of any **law**, **rule** or **reg**ulation; or **gross mismanagement**, a gross waste of funds, an abuse of authority, or a **substantial** and **specific danger** to public health or safety” unless the “disclosure is specifically prohibited by law” and is not “specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.”92 One of the comments cited by **OPM** in its 2024 regulations protecting the job rights of employees whose positions might have been **reclassified** as excepted from civil service by **Schedule F** stated that the whistleblower protections might have been **jeopardized** by **reclassification** of the positions of employees suspected of being **disloyal**.93

The experience of Alexander Vindman bears out the **concern** that attempts to revive Schedule F may be prompted by the desire to child whistleblowing. Vindman was an NSC staff member who was assigned to listen in on calls between the **Pres**ident and certain foreign leaders. While doing that, he heard Donald **Trump** threaten to withhold funds to Ukraine unless President **Zelinsky** produced **damning information** on Hunter Biden. Concerned that this was illegal, Vindman **reported** what he heard. His disclosure led to the **first Trump impeachment**.