# 1AC---Run for the Roses---Round 2

## 1AC

### Economy ADV---1AC

#### The United States Federal Government should substantially strengthen collective bargaining rights for secondary actions.

#### The prohibition on secondary action hamstrings union bargaining power, entrenching wage suppression and inequality.

Hafiz ’18 [Hiba; 2018; Harry A. Bigelow Teaching Fellow and Lecturer in Law, University of Chicago; Cardozo Law Review, “Picketing in the New Economy,” vol. 38]

The ban on secondary activity was intended, according to its cosponsor Senator Robert A. Taft, to ‘‘make it unlawful to . . . injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees.’’ 14 But it is no accident that judges, legislators and scholars have identified the secondary activity ban, and specifically the way in which it has artificially separated ‘‘primary’’ from ‘‘secondary’’ employers, as alternately: ‘‘draw[ing] no lines more arbitrary, tenuous, and shifting [under the labor law]’’; ‘‘gradual[ly] sapping . . . union strength’’; giving employers a ‘‘special legal advantage’’; and ‘‘fit[ting] very uncomfortably with a regime of free collective bargaining.’’ 15 Richard Trumka, the current president of the AFL-CIO, advocated the abolition of the entire NLRA to in part rid the labor movement of the ‘‘secondary boycott provisions that hamstring labor at every turn.’’ 16 This is because the CIW’s story is not unique in illustrating the impact of corporate structures on workers’ wages and terms and conditions of work and the importance of workers’ access to secondary activity protections.

The NLRA’s overbroad definition of ‘‘secondaries’’ has adverse effects on workers’ expressive and associational rights but also impacts workers’ ability to negotiate an efficient wage, increase union density and enlarge their share of the pie in the context of deep income inequality. 17 Before the statutory ban, secondary boycotts were strategically used in the late nineteenth and early twentieth century to solidify unionized workers’ gains against non-unionized employers. 18 Courts began widely enjoining secondary strikes in the 1920s and 1930s, with dramatic impacts on union strength. 19 Congress then formally amended the NLRA to ban secondary boycott bans in the 1940s and 1950s, constructing a legal regime that oversaw the steady decline of union density in the private sector from a high of 35.7% after the Korean War to its current 6.4% today. 20 This tracks a corresponding decline in non-union worker wages and an increase in income inequality. 21 Absolute income mobility trends since 1940, or the fraction of children who earn more than their parents, has fallen from approximately 90% for children born in 1940 to 50% for children born in the 1980s.22

The consequences of the ban are all the more acute in the New Economy where worker leverage over indirect employers’ power over wages is paltry----a dramatically understudied source of the rise and persistence of economic inequality. The increasing fragmentation of work arrangements----replacing vertically integrated firms with the transactional economies of subcontracting, outsourcing, franchising and supply chain disintegration----accompanied by the rise of contingent work and growing evidence of employer purchasing power, has fundamentally decentralized employment. Instead of confronting a single employer, workers contend with a number of entities that determine or control their wages, work arrangements, and terms and conditions of work. 23 Yet the NLRA limits workers to just one option when they picket for higher wages----a narrowly-defined direct employer. This creates a perverse incentive for employers to avoid labor and employment law liability merely by restructuring. 24 Picketing employers who fall outside the circumscribed definition can result in the imposition of labor law’s harshest penalties: injunctions against picketing, statutory damages plus the costs of suit, and even treble damages if the picketing is found to violate the antitrust laws. 25 These high stakes have all but eliminated from labor’s tool-kit a key source of economic pressure, which has in turn resulted in the erosion of workers’ bargaining power and arbitrary foreclosure of their ability to picket employers that have more impact on wage determinations than their direct employers. 26

Current scholarship has failed to fully address these effects of the current law or provide comprehensive proposals for reform. First, scholars have failed to take an integrated approach to analyzing the problems with the ban on secondary activity. For example, scholars have examined the impact of the ban on workers’ constitutional right to free expression without examining the ban’s adverse welfare and fairness effects. 27 Alternatively, scholars have assessed the impact of secondary boycotts on consumer welfare, with debates centering on how best to police labor’s exemption from the antitrust laws, without assessing the impact of such activity on wages and distribution. 28 Others have devised alternative tests to clarify the primary-secondary distinction or bring coherence to secondary activity doctrine without either incorporating contemporary developments in labor economics and antitrust policy or detailing what kind of economic evidence should be relevant for any new rules. 29 A number of articles have more broadly extended economic analysis to the policy goals of the labor laws, but, with one exception, have not applied that analysis to conduct specifically regulated as secondary activity. 30

This Article decisively restructures and advances these debates by integrating developments in the New Economy and economic theory into the analysis of secondary activity. It presents unified principles for the labor law’s success based on those developments, and proposing a novel test that furthers the expressive, efficiency and equitable goals of labor regulation. It is an attempt to move beyond the ‘‘ossification of the labor law’’ 31 by reviving and adapting its purposes to contemporary workplace arrangements, and particularly, its designation of lawful targets of picketing. After outlining the current state of the law on the primarysecondary distinction in secondary boycott doctrine, 32 the Article takes a step back to elaborate, as a preliminary matter, key developments in workplace arrangements as well as in economic theory in the areas of labor economics, theories of the firm, and contemporary antitrust policy and analysis. For decades, the National Labor Relations Board (NLRB), its enforcement officers, and courts interpreting the NLRA have failed to apply economic analysis to or empirically assess the targets of workers’ secondary activity. The NLRA’s ban on Board hiring of economists and its failure to solicit the expertise of social scientists as amici in its highly doctrinal adjudication have hindered the integration of contemporary advances in economic analysis into the labor law. 33 As a key theoretical contribution, the Article provides an overview of these developments and demonstrates how they are applicable to secondary boycott law’s primarysecondary distinction. 34

The Article then develops unified principles for evaluating the labor law’s success in the context of these critical developments. 35 While the literature has traditionally opposed the socially valuable goals of achieving economically efficient outcomes for labor and capital, on the one hand, with achieving equitable distributional outcomes and protecting workers’ First Amendment expressive and associational rights, on the other, it argues that these interests need not be opposed. Where labor regulation can achieve all three, it should be broadly embraced as normatively ideal. The Article then evaluates the current standard for distinguishing primary and secondary employers under these updated principles and is the first to review its deficiencies on expressive, microeconomic and macroeconomic grounds. 36

Finally, the Article puts forward a principled, economic effects-based standard that satisfies the principles for labor law’s success: the market power rule. 37 Under that rule, indirect employers with sufficient market power----whether through contractual agreements with a direct employer, monopsony power, or oligopsonistic collusion----in the direct employer’s labor input or product market to determine workers’ wages and/or their terms and conditions of work would be deemed ‘‘transactional primaries’’ rather than prohibited ‘‘secondary’’ picketing targets. The picketing of transactional primaries would be entitled to the same protections as the picketing of primary employers. The rule would have three key benefits. First, in addition to better protecting First Amendment expressive and associational rights, the rule would also increase worker bargaining power, with concomitant micro- and macroeconomic effects, without frustrating the purposes of the statutory ban. Second, the rule would protect workers against indirect employers’ evasion of their labor and employment law obligations. And third, the rule would develop the economic expertise of the Board and the courts, enhancing labor law’s ability to more closely track labor market conditions in the New Economy. The market power rule could be implemented through adjudication as a defense available to picketing employees or through either Board rulemaking or legislative amendment. 38

#### Secondary strikes are key:

#### 1. GLOBALIZATION---offshoring creates a global race to the bottom in labor standards---only secondary strikes enable international labor solidarity.

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Secondary activity, with its industry-wide effects, raises the scope of labor disputes to the global level. After all, stagnant wages are not solely domestic problems; all international actors are engaged in a “race to the bottom” to compete in trade and investment by lowering wages and labor standards as far as possible.116 Globalization has transferred a significant amount of power from nation-states to multinational corporations, and “there is little evidence of any capacity to bring the transnational corporation within some kind of effective global regulation.”117 These companies even have difficulty regulating their own supply chains. Though several have made environmental, social, and governance-oriented pledges regarding their supplies, they do not and, in some cases, cannot always fulfill them.118 These pledges can only go as far as expecting their immediate suppliers to comply with their standards, who in turn purportedly expect their own suppliers to comply, and so on.119 However, this cascade effect rarely occurs.120 Because multinational corporations too often impose unrealistic deadlines and demands on the capacity of their suppliers, suppliers are forced to work under exploitative working conditions to prevent their customers from finding other suppliers to fulfill their orders.121 Because of this state of affairs, the most effective agent through which working conditions can be improved may not be governmental regulators or the companies, but rather the workers themselves.

As it stands, the prohibition on secondary activity means that workers cannot refuse to work with companies that engage in these practices. However, the PRO Act will not only allow workers to strike, picket, or boycott employers doing business with their primary employer, but it will also end the prohibition on “hot cargo” agreements.122 These agreements are a form of secondary activity in which an employer promises in the collective bargaining agreement not to force their employees to handle goods of other employers whose workers were on strike or picketing.123

#### 2. FRAGMENTATION---fissured supply chains break collective bargaining---only secondary strikes allow workers to hold employers accountable.

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However, the Act’s supporters argue that the PRO Act in fact addresses an imbalance: bargaining power. A rethinking of the primary/secondary divide may be necessary in a modern, global economy “characterized by global supply chains, multiple levels of contracting, and widespread use of independent contractors, franchise relationships, and other non-traditional and fissured forms of employment.”84 A workplace is fissured when it heavily outsources jobs and entire departments to subcontractor firms while the lead business maintains tight control of those subsidiaries.85 It used to be the case that employees of a major company were actually employed by that company; now, a conservative estimate finds that 19% of the entire private-sector workforce is in industries where fissuring predominates.86 Since subcontracting firms involved in fissured business arrangements are technically independent, unions cannot call strikes across the lead business since it would constitute secondary activity.

An example of this dynamic can be found in SEIU Local 87 v. NLRB. 87 Union janitors picketed an office building owned by Harvest Properties due to low wages, poor working conditions, and sexual harassment by managers.88 However, Harvest Properties had subcontracted with Preferred Building Services for their janitors; this company in turn subcontracted with Ortiz Janitorial Service.89 An administrative law judge found the janitors to be joint employees of the two subcontractors.90 However, the workers understandably picketed outside Harvest Properties’ office building as this was the only physical workplace they knew.91 The NLRB found that the janitors had engaged in unlawful secondary activity, though it was overruled by the 9th Circuit which held that the janitors only intended to target Preferred Building Services, not the building itself.92 Such fragmented situations can obscure which businesses are directly responsible for working conditions and cause workers to act against the wrong entity.93 In addition, the fear of violating the law due to this confusion may create a chilling effect on protected speech and activity, discouraging workers from engaging in legitimate activities.

There is a far greater danger to fragmentation: lead businesses may exercise control over working conditions yet escape labor actions due to the ban on secondary activity. Economic giants such as Amazon and Google are no exception to this fragmentation. Amazon has not only hired hundreds of subcontracted companies to perform deliveries,94 but it also hires gig workers as “Delivery Partners” who deliver packages for a part-time income of $5.30 per hour, accounting for driver costs.95 Even the workforce of Google, a tech giant that depends on highly skilled labor, is 54% composed of subcontractors and temporary workers.96 This kind of contingent labor makes up 40–50% of the workforce of most technology firms.97 These “dependent contractors,” not within the contemplation of the Congress that passed the NLRA, were entirely excluded from the NLRA’s protections and are, therefore, not permitted to form a union.98 Even if these dependent contractors worked in concert to increase their wages through work refusals, they could risk violating antitrust law.99

By fragmenting their workforces in these ways, lead businesses can determine wages and conditions while forcing workers, already in meager bargaining units, to restrain their industrial actions to their smaller employer to avoid charges of secondary activity.100 While lead businesses naturally attempt to lower contract costs as much as feasibly possible, subcontractors increase profits by reducing their labor costs in turn. This means that contracted workers are doubly burdened by downward wage pressure. Despite this, these contingent employees are prohibited from influencing what the work site pays them or how it treats them since this could violate § 8(b)(4). This is a massive imbalance in labor/employer power which the NLRA was intended to correct: its declaration of policy states that “[t]he inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers . . . substantially burdens and affects the flow of commerce.”101 However, the NLRA’s understanding of workplaces is nearly a century out of date; widespread subcontracting and other business models were uncommon or virtually unknown in the early twentieth century.102

With the PRO Act’s legalization of secondary activity, workers may avoid being pigeonholed into staffing agencies with little power to effect change—they instead may join with each other across massive company groups in industrial action. This pigeonholing raises another concern addressed by the PRO Act’s sponsors: the right to free speech, especially concerning picketing.103 Not only has the Supreme Court determined that restrictions on speech based on speaker and content are presumptively invalid,104 but the fissuring of workplaces limits the ability of workers to engage in free speech due to fears that their picketing may be unlawful.105

#### 3. CONSCIOUSNESS---secondary actions unlock political strikes---that galvanizes labor AND raises public support.

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This more nuanced account of the relationship between law, power, and culture is particularly important in the current historical moment. While the law of the strike has not changed in recent years, public consciousness about economic inequality and the potential role of labor unions in combatting it has changed—dramatically.147 Sociological research traces the origins of this shift, in significant part, to the Occupy Wall Street protests of 2011. These broad, public-facing protests did not change law, but they did propel economic inequality back into public discourse.148 Given that awareness of inequality increases support for labor unions,149 it is perhaps not surprising that public support for organized labor is now at a fifteen-year-high.150 That this sea change in public consciousness was led not by the labor movement, but by a motley crew of unorganized middle-class precariat151 says much about labor’s long turn away from the public sphere.

Consistent with an understanding of labor law and political economy as mutually constitutive (but not with a legal formalist account), in the past few years, there has been an uptick in strikes.152 The trend thus far is meaningful, albeit short. The number of workers who went on strike in 2018 and 2019—485,200 and 425,500 respectively—reflects the largest two-year-average in thirty-five years.153 Some of these strikes adhere to the narrow confines of labor law; many do not. Yet, like one hundred years ago, the efficacy of these strikes is not determined by their adherence to legal rules.

B. Striking as Political

For those who believe that a stronger labor movement is needed to counterbalance the concentrations of economic and political power in this new Gilded Age, the question is not just whether the law is bad (it is), but whether strikes can be effective nonetheless. If labor activists are correct that there is “no such thing” as an illegal strike, just an unsuccessful strike, the question follows: what makes a strike successful enough, under current conditions, to transcend legal constraints?154 To some extent this is an empirical question, and one on which there are many opportunities for generative research. Beginning with the theoretical, however, I suggest that the success of strikes must be measured in more than economic wins in the private sphere. Like their Progressive Era progenitors, their success must be in raising political consciousness in the public sphere—in making the stakes of the twenty-first century labor question apparent.155

As noted above, under current labor law, strikes are conceptualized as “economic weapons,” as hard bargaining.156 And while legal terminology is distinct from on-the-ground understandings, unions have often emphasized the economic nature of the strike as well. Strikes are “[t]he power to stop production, distribution and exchange, whether of goods or services.”157 A strike works because “we withhold something that the employer needs.”158 At the same time, there has been a corresponding tendency to dismiss the more symbolic aspects of the strike. To quote White again, “while publicity and morale are not irrelevant, in the end, they are not effective weapons in their own right.”159

These arguments are important. A strike is not simply protest; it is direct action, material pressure. But with union density lower than ever, ongoing automation of work tasks that renders employees increasingly replaceable, and decades of neoliberal cultural tropes celebrating capital as the driver of all economic growth and innovation, it is a mistake to think of publicity and morale as nice-to-haves, rather than necessities. Instead, striking must be part of building what sociologists have described as the “moral economy,” cultural beliefs about fair distribution untethered to technocratic arguments about what is most efficient.160 And in that way, striking is and must be understood as political.

The term political, of course, has many meanings—engendered by law, culture, and the relationship between the two. Building on the work of other scholars, I have argued that neo-Lochnerian readings of the First Amendment which have categorized labor protest as solely economic, and therefore apolitical, are one mechanism by which unions have lost legitimacy (and legal protection) as a social movement.161 Under current law, what precisely constitutes the political is less than clear, though. In distinguishing “political” speech from other kinds of speech for the purpose of First Amendment analysis, the Supreme Court has at times equated the political with: electioneering;162 speech directed to or about the government;163 or most broadly, “speech and debate on public policy issues.”164 Within labor parlance, by contrast, the term “political strike” is specifically used to refer to strikes that are “designed to win a specific political outcome, such as the passage of legislation or a change in regulation.”165 Consistent with the NLRA’s construction of unions as economic entities, strikes which are solely “political” and without sufficient nexus to the employment relationship, are deemed unlawful secondary boycotts.166

But my argument here for reconceptualizing the strike as political is not about more “political strikes,” or about electoral politics, or even necessarily about state action. Based on a vision of the “political” as normative engagement directed towards collective decision-making—it is about destabilizing jurisprudential line drawing between the economic and the political in the first place.167 It is recognizing that all strikes are political or have the potential to be—in that all strikes are protest meant to transform collective conditions, not merely bargaining towards immediate, transactional ends. To use political science terminology, strikes are contentious politics: “[E]pisodic, public, collective interaction among makers of claims and their objects.”168 They are a way through which workers engage in claims-making when business and politics as usual have proven nonresponsive.169 They do not only address the employer; they engage the polity.

The need to reconceptualize the strike as outward-facing towards the public, not just inward-facing towards the employer, is partly a function of material changes, both in economic production and union density. As labor scholar Jane McAlevey points out, “Today’s service worker has a radically different relationship to the consuming public than last century’s manufacturing worker had . . . In large swaths of the service economy, the point of production is the community.”170 For this reason, she argues that effective strikes today must engage the public to be successful.171 Union density is also many times higher now in the public sector than in the private one, an upending of the realities of unionization mid-century.172 As illustrated by the Supreme Court’s decision in Janus v. AFSCME, it is easier to see the economic work of unions as political (qua affecting government policy, spending, and debt) in the public sector.173

Yet, the shift is also about recognizing that it was a legal and an ideological accommodation that made the work of unions in their representative capacity appear as “economic,” and thus outside politics. The work of unions has been artificially “bifurcated” vis-à-vis the political realm.174 For years, as Reuel Schiller has argued, unions have engaged in “two sets of activities that appear barely related to one another”: private, transaction bargaining in the workplace; combined with broad, public mobilization around electoral politics. But there were always alternate visions of the relationship between the economic and the political within union advocacy and workplace governance.175 If “establishing terms and conditions of employment [is] a political act involving not just a worker and an employer, but also a union, an industry as a whole, and the state,” then union advocacy is a political act too.176 Strikes are part of the “contest of ideas.”

Reconstructing a purposefully political philosophy, jurisprudence, and tactical repertoire of collective-labor advocacy is a project that is new again; and it will inevitably require deliberation, debate, and compromise.177 For the time being, though, one thing seems apparent. Strikes must be a part of engaging a broad swath of the public in reconceptualizing political economy.

#### Wage suppression causes inequality and myriad economic inefficiencies.

Hafiz ’18 [Hiba; 2018; Harry A. Bigelow Teaching Fellow and Lecturer in Law, University of Chicago; Cardozo Law Review, “Picketing in the New Economy,” vol. 38]

Finally, the NLRB and the courts have ignored the effect of indirect employer monopsony power and monopsonistic competition in markets with multiple employers on employee wages when distinguishing ‘‘primaries’’ from ‘‘secondaries.’’ This is an area of growing study and concern in both the economic and antitrust literature. 121 Monopsony power is the inverse of monopoly power, or the ability to charge higher prices for a product. 122 Firms with monopsony power have the ability to pay lower prices for inputs without losing sellers to competition from other firms buying the same or similar product. 123 In the labor market, monopsonistic employers can pay lower wages to workers than would otherwise prevail in a competitive market without losing those workers to competing employers. As with monopoly, monopsony power can lead to economic inefficiencies, and in the labor market, to redistribution from workers to employers. 124 This is because, in an otherwise competitive labor market, firms would bid wages up to recruit workers from other firms as long as the revenue they could earn by hiring another worker exceeds the wage it must pay, tracking as closely as possible wages and worker productivity, or the worker’s value-added. If a firm bids too low for a worker’s wages in a perfectly competitive market, the worker would find alternative employment, so competitive firms would all need to pay market wages and compensation would equalize across similarly productive workers for similar types of jobs. 125 However, when there is imperfect competition, firms with monopsony power are incentivized to employ fewer workers at a lower wage than they would in a competitive labor market because what they lose in reduced output and revenue they can make up for in reduced labor costs by paying lower wages. 126 Monopsonistic employers can thus recoup labor and recruitment costs, shifting the benefits of production from wages to profits. 127

Economists and policymakers increasingly recognize the existence of employer monopsony power in labor markets based on direct evidence of collusion between employers and non-compete agreements as well as indirect evidence of minimum wage impacts on employment, wagesetting, and wage discrimination. 128 The Department of Justice and class action litigants have brought suit against major Silicon Valley employers, hospital and sports associations for artificially suppressing the wages of high-tech employees, nurses, mixed martial arts fighters and others, through no-poaching agreements, collusive wage-setting and unlawful monopsony acquisition and maintenance. 129 An estimated 18 percent of the U.S. labor force is covered by non-compete agreements based on recent survey evidence. 130 Indirect evidence of monopsonistic wage-setting is also strong. Beginning in the 1990s, economists began finding that minimum wage increases were not accompanied by job loss, indicating that wages have not been bid up to the marginal value of labor. 131 Empirical evidence also indicates that workers’ quit rates are less responsive to wage changes than would be expected if labor markets were competitive, suggesting that employers can set wages significantly below what would prevail in a competitive market without losing their workforce. 132 Employment restructuring is a critical component of firms’ ability to engage in wage discrimination by outsourcing and subcontracting away from internal equity constraints. 133

There is also evidence that employer discretion over workers’ wages may be rising due to rising market concentration, declining labor market dynamism, and the decline of unions and the federal minimum wage. 134 Between 1997 and 2012, there has been a steady increase of product market concentration in the U.S. economy, where the majority of industries have seen increases in revenue share by the 50 largest firms. 135 Rising concentration can impact labor markets by expanding each individual firm’s monopsony power, facilitating collusion, and increasing barriers to entry. 136 Labor market dynamism, or the frequency of changes in who is working for whom, has also been in a pattern of long-term decline, suggesting that incumbents are shielded from competitive upward pressure on wages and an increase in job-switching costs for noncontingent workers. 137 Finally, with union density in the private sector at a historic low, and the real value of the federal minimum wage declining 24 percent since its peak of $9.55 (in 2015 dollars) in 1968, there are reduced checks to employer wage-setting power. 138

Integrating the distorting effects of monopsony power and oligopsonistic collusion on wage suppression is necessary for evaluating labor market impacts on worker bargaining power and any resulting efficiency and distributional effects. 139 Without assessing which firms in fact have the power to determine wages, the purpose, function and success of a collective bargaining framework for negotiating wages becomes shadow puppetry. Antitrust scholars, economists, and the courts have developed a range of mechanisms for measuring harm resulting from an employer’s monopsony power or monopsonistic competition, whether through unilateral conduct or through agreement, providing economic modeling that can be used in adjudication to determine whether workers suffer lower wages due to monopsony power or monopsonistic competition in the labor market. 14

Monopsony power by an indirect employer can be directly shown with evidence that that employer can depress wages below the competitive level by withholding the purchase of labor inputs and not losing the sellers of those inputs to other purchasers or employers. 141 Monopsony power can also be shown indirectly with evidence of an indirect employers’ market share in a relevant geographic market for labor inputs protected by entry barriers. 142 Courts have found a 20% market share to be sufficient to infer buyer market power over sellers of labor inputs. 143 But even buyers with low market shares can exert significant market power over sellers to the extent that sellers are more dependent on buyers than buyers on sellers. 144 For example, high-volume retailers have tremendous leverage over suppliers, especially where the market for particular products is relatively small but benefits from resale in high-distribution, nationally-scaled businesses like Amazon.com or Wal-Mart are significant. 145 There is a strong consensus that market share thresholds alone are insufficient to find monopsony power, and courts should thus consider interrelated factors such as ‘‘upward sloping or somewhat inelastic supply curve[s] in the input market’’ and ‘‘an inability or unwillingness for new purchasers to enter the market or current purchasers to expand the amount of their purchases in the market.’’ 146 An employer’s market share can be determined as the percentage of its share in either dollars or units of its labor input purchases; the elasticity of fringe demand can be the capacity of alternative buyers to purchase the labor inputs ‘‘without undue delay, risk, or cost’’ (including barriers to entry); and the elasticity of supply can be determined by the workers’ ability and incentive to switch to selling other services. 147 Where employees are less responsive to wage changes than would be expected in a competitive labor market, economists infer evidence of monopsony power. 148 Further, evidence of worker search costs, labor market frictions, ‘‘job lock,’’ information asymmetries and barriers to market price discovery, immobile benefits, and regulatory or other barriers to worker mobility can support a finding of monopsony power. 149

Where multiple employers collude on wages and agree to fix wages, employer conduct is per se unlawful and litigants need not establish that anticompetitive harms outweigh any procompetitive benefits from agreement. 150 Where agreements are not directly evidenced, they can be inferred through circumstantial evidence of market concentration, industry structures, firm histories, employer collusion (such as through no- poaching agreements and coordinating wage offers), and market environments that are conducive to and/or facilitate collusion. 151 Other ‘‘plus factors’’ indicating agreement include: actions contrary to an employer’s self-interest; evidence of employers’ regular communication; industry performance data suggesting successful coordination; and the absence of a plausible business rationale for suspicious conduct. 152

The core evidence of harm to workers from employer monopsony power is artificially suppressed wages. 153 Evidence of artificially suppressed wages can be determined through econometric regressions comparing existing wage conditions to a ‘‘but-for’’ world where wages would be competitive within the same labor market. 154 Economists usually utilize a benchmark or yardstick approach comparing existing wages to those before the anticompetitive conduct occurred (say, prior to the merger of two defendant firms) or in comparison to a similar industry with similar labor market conditions to ascertain the marginal revenue product (MRP), the value that an employee creates for his or her employer in competitive conditions. 155 For example, in a case alleging that hospitals in the Albany area colluded to suppress registered nurses’ wages, economic expert testimony was offered to show that wages of agency nurses in the same geographic market, argued to be interchangeable with registered nurses they worked alongside performing the same tasks on the same days, was the appropriate benchmark for comparing registered nurses’ wages, and agency nurse wages exceeded the registered nurses’ wages. 156

#### Reversing the long-term decline in the labor share of income is key to reversing stagnation.

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Recent decades have been marked by two major and approximately general trends in advanced economies: the increase in income and, especially, wealth inequality within countries, and the long-run decline in labor productivity growth (secular stagnation). Despite the long preoccupation by economists working in the classical political economy (CPE henceforth) and post-Keynesian (PK) tradition with the role of distributional changes in fostering or hampering the growth process, the mainstream of the economics profession has not paid enough attention to questions related to income and wealth distribution for many decades. Certainly, Thomas Piketty's Capital in the XXI Century (Piketty 2014), which used a neoclassical framework to explain the process of rising inequality and stagnation, played a fundamental role in reviving the interest of mainstream economists in these issues. However, as argued by Petach and Tavani (2020), this approach can only explain the two trends under the assumptions of a high elasticity of substitution between capital and labor and an exogenous growth rate.

Focusing on the US economy, its recent economic history is distinguished by five interrelated stylized facts. First, a downward trend in the labor share has been observed nationally since the mid-1970s. As the relative constancy of the wage share in the longer run used to be seen as a stylized fact of economic growth (Kaldor 1961), the recent global trend of decline in wage shares has attracted a great deal of research attention. For instance, Karabarbounis and Neiman (2014) and Stockhammer (2017) show that the wage share has fallen significantly in advanced economies. Second, the share of wealth held by the top percentile has dramatically increased since the late 1970s. These trends in income and wealth inequality are illustrated in Figure 1.

Third, labor productivity growth in the U.S. has shown a slightly decreasing trend since the 1960s, although arguably still growing faster than wages—contributing to the pronounced decline in the wage share as depicted in Panel (a) of Figure 1. This trend is illustrated through the filtered data on labor productivity growth from 1960 to 2022 in Panel (a) of Figure 2. Fourth, as documented in Piketty (2014) and Piketty and Zucman (2014), the capital-income ratio has displayed an upward trend since the 1960s, as shown in Panel (b) of Figure 2.

Lastly, since the mid-1970s, the US economy has experienced a clear institutional shift, with economic power moving away from labor toward capital. This shift is evidenced by the consistent reduction in the bargaining power of workers, exemplified by the declining unionization rate of the labor force, as documented by Grossman and Oberfield (2022). Stansbury and Summers (2020) relate this reduction in labor power to lower wage levels and higher profit shares. Panel (a) of Figure 3 presents this declining trend in unionization rates since the end of the 1970s. Notably, this weakening of unionization is especially significant in the private sector, which constitutes the majority of U.S. employment.1 Concurrently, there has been a significant increase in the market power of firms, observed through rising market concentration since the early 1980s. De Loecker et al. (2020) describe the evolution of market power based on firm-level data for the US economy, indicating that aggregate markups began to rise from 21% above marginal cost in 1980 to 61% currently.2 Autor et al. (2020) link the rise of “superstar firms”, responsible for the largest increases in the average markup rates, to the decline in the labor share in the U.S. Panel (b) of Figure 3 indicates this increasing trend on the average market power of firms using the aggregate average markup of US publicly traded firms.

Despite some notable exceptions (Taylor et al. 2019; Petach and Tavani 2020; Ederer and Rehm 2020; Cruz and Tavani 2023), most theoretical frameworks do not generally provide a clear link between a rising capital-income ratio, a falling labor share, and growing wealth inequality, and to what extent these distributional changes impact the reduction in labor productivity growth and the growth rate of the economy. This limitation is even more pronounced considering the fundamental role of insufficient aggregate demand as a driving force behind the phenomenon of secular stagnation in advanced economies. This paper aims to bridge these gaps by proposing an alternative theoretical framework to better organize and interpret the stylized facts outlined previously.

Drawing both upon the CPE and the neo-Kaleckian traditions, we develop a formal model that not only addresses the five stylized facts detailed earlier but also integrates the crucial role of insufficient aggregate demand to elucidate the dynamics of secular stagnation, income and wealth inequality. Although demand-led models have been previously used to discuss the process of wealth accumulation and income distribution in recent contributions—for instance in Kumar et al. (2018), Ederer and Rehm (2020), Taylor et al. (2019) and Stamegna (2023)—to our knowledge this paper is the first to structure a condensed explanation of trends in distributive, technological, and labor bargaining power that affect the US economy in past decades.

The second contribution of this paper is a nuanced examination of the institutional changes that have unfolded since the late 1970s, changes we argue are central to understanding the recent history of the U.S. economy. Petach and Tavani (2020) and Cruz and Tavani (2023), following the induced innovation hypothesis by Kennedy (1964), link factor-augmenting technologies and factor shares and consider the effect of changes in a “catch-all” institutional variable affecting the labor share in the long run. We develop an alternative, plausible logic for the determination of a similar institutional or policy parameter within the model, that has the advantage of indicating more clearly the connection of this variable with the functional distribution of income and the dynamics of the labor market. Our formulation draws on the structuralist tradition, modeling wage- and price-setting behaviors as manifestations of the conflicting claims of workers and firms over the social product (Rowthorn 1977; Dutt 1987; Taylor 1985). Importantly, the reduced form dynamics of such conflicting claims deliver a distributive curve that links the labor share of income to aggregate demand (Barbosa-Filho and Taylor 2006).

Our results are as follows. Institutional or policy changes that, at the same time, deteriorated workers' bargaining power and increased firms' market power have negatively impacted the wage share. This, in turn, may have positively affected economic activity and accumulation in the short term if the demand regime on the economy is profit-led, which would have reinforced the initial negative shock. However, the direct relationship between the labor income share and the rate of labor-augmenting technological progress implies that the decline in labor power will produce a reduction in the natural growth rate of the economy, which is linked to labor productivity growth.3 In other words, the economy is wage-led in the long run because of supply forces, namely the wage-led nature of labor productivity growth. For balanced growth to be restored, an increase in the capital-income—a decline in the income-capital—ratio is necessary. In addition, we analyze in detail the evolution of wealth distribution, whose Pasinetti (1962) dynamics reveals a long-term inverse relationship between the wage share and the capitalist (top, in the data) wealth share, as well as between the top wealth share and the rate of capacity utilization.

#### Relative economic decline causes greenlights revisionism and triggers war in every hotspot---China, Russia, North Korea, and Iran.

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Nothing lasts forever: Every international order finds its end. Pax Romana stabilized the greater Mediterranean world, until decline set in. The British global order flourished in the 19th century but came apart amid two world wars in the 20th. Today, in an unruly world led by an erratic America, it’s hard not to wonder if the US-led order is on its way out.

Since 1945, that order has generated tremendous peace, prosperity and freedom. It can only be termed a smashing success. But stresses on that order — those imposed by its challengers, and those imposed by its creator — have been mounting. One way of gauging just how severe the risks have become is by considering the various ways an order might end.

The brilliant Cambridge historian Brendan Simms has suggested that international orders typically end in one of three ways: Through defeat in war or some catastrophic failure of deterrence; through economic decline or a divergence between the order’s political and economic arrangements; or through the collapse of respect for its guiding rules and norms.

The US order has proven remarkably resilient, but the possibility of a breakdown is growing as America piles up risk on each of these dimensions at once. And while recent leaders, including President Donald Trump, have made important moves to shore up the order, America’s present policies are increasingly making those dangers worse.

Orders can die of murder, exhaustion or suicide. Today, it’s difficult to rule any of those grim finales out.

How America Took the Lead

Order is about rules and rule-makers. International orders feature commonly accepted norms or principles meant to govern global behavior. Those rules are made, and sustained, by mighty actors and institutions. A long line of powers has sought to structure the globe to their liking. But since World War II, America’s order has been the biggest, most successful game in town.

The lesson US policymakers took from that conflict was that only a secure, prosperous system could ensure America’s own wellbeing. So the US built an order based on relatively free trade; a preference for human rights and democratic values; the prevention of great-power aggression and war; and institutionalized cooperation to address common problems.

Washington used its unmatched military and economic power to buoy the fortunes of like-minded nations. America, said President Harry Truman, was “assuming the responsibility which God Almighty intended” for “the welfare of the world in generations to come.”

Make no mistake: This endeavor was rooted in US interests. But because America was so powerful, and defined those interests so broadly, this project brought historic gains for much of the world.

Democracy went from endangered to dominant in the postwar decades. Trade flourished and living standards soared, first in the free world and then globally after communism fell. A world that suffered two all-consuming great-power wars in quick succession has avoided anything like that since 1945.

The US presided over a global golden age. Yet the stresses on America’s order have become impossible to ignore.

Revisionist powers — China, Russia, Iran, North Korea — are challenging a system they view as dangerous to their illiberal regimes and oppressive to their geopolitical ambitions. The Global South has become disillusioned with Western dominance. The US itself has seemed ambivalent, in recent decades, about world leadership. Threats to its economic and military supremacy have grown more severe.

Visit nearly any US ally, and you’ll notice conviction that American power remains necessary — and concern that the post-World War II order is slipping away. So how real is the danger? Let’s consider the three ways an order can come apart.

Losing a War

One path to failure runs through defeat or devastation in war. Nothing ruptures the authority of a hegemonic power like a humiliating beatdown on the battlefield. The Athenian empire collapsed after losing the Great Peloponnesian War. Britain won World War I, but never recovered from its costs.

For decades, America has been the sole superpower. As last month’s attack on Iran’s nuclear program reminded us, the Pentagon still possesses power-projection capabilities without peer. But anyone who thinks the US is militarily invincible hasn’t been paying attention.

The Pentagon faces a vexing military arithmetic problem. Several challenges — from Russia in Europe, Iran and its proxies in the Middle East, and China and North Korea in Asia — are stretching US resources. A superpower with a military designed to fight one war at a time is always at risk in a world of multiple, interlocking threats. But the danger of crushing defeat is most concentrated in the Western Pacific.

“The intelligence couldn’t be clearer,” said Secretary of the Air Force Frank Kendall in 2023. “China is preparing for a war and specifically for a war with the United States.” The Chinese threat is real, “and it could be imminent,” Secretary of Defense Pete Hegseth observed this year. Those are only two of many alarming statements from US officials.

Beijing is building the forces and rehearsing the plans needed to attack Taiwan or otherwise reorder the Western Pacific. It is racing to construct a nuclear arsenal that will match, and maybe exceed, America’s. Meanwhile, Xi Jinping’s government is hoarding food, fuel and other resources. Xi would surely prefer to eject America from the Western Pacific peacefully. But he’s getting ready for a fight.

A US-China war would cause cascading economic carnage and bring serious risks of nuclear escalation. And if America lost — which is a real possibility — the damage to the US order would be profound. America’s alliances in the Indo-Pacific might fracture. A broken US military might struggle to police other parts of the world. “The trajectory must change,” the head of US Indo-Pacific Command, Admiral Samuel Paparo, has warned: America isn’t responding with the urgency the threat demands.

In fairness, there have been encouraging developments. Israel, with American help, has ravaged Iran and its proxies since late 2023. The US and its North Atlantic Treaty Organization allies have used the war in Ukraine to grind down Russian power.

Trump can take some credit for getting the allies to agree to spend 3.5% of GDP on defense, and another 1.5% on related investments. Over time, that spending will strengthen the military position of the democratic world. But global overstretch remains real, the trends in Asia are daunting, and the US still isn’t acting like it could lose World War III.

American military spending is below 3.5% of GDP, among the lowest levels since World War II, and could dip next year. Stockpiles of munitions and missile defenses are, reportedly, low, and have been depleted by recent scrapes in the Middle East.

With a moribund shipbuilding industry and a sluggish, fragile industrial base, America would struggle to replace assets lost in the opening phase of a fight. “You can’t AI your way out of material deficiency,” Paparo has argued: A country that can’t replace battlefield losses won’t win a grinding, great-power war.

No one, not even Xi Jinping, knows exactly how capable China’s untested military is. But as the Pacific military balance changes, the dangers of an order-breaking catastrophe mount.

An Economic Collapse

Orders don’t have to explode violently. They can also implode, when the leading power can’t — or won’t — sustain the economic arrangements that make the system work. The British order crumbled when two world wars bankrupted the empire. The American order has long rested on two economic pillars.

The first is simply the economic and financial wherewithal to sustain America’s global power — among other things, to pay for military capabilities that keep revisionist threats in check. The second pillar consists of economic arrangements that reinforce strategic commitments: the international economic leadership, the ties of trade and investment, that bind Washington to its allies and give them all a shared stake in preserving a US-led world.

Both pillars have been remarkably durable. For all the talk of decline, America’s share of global GDP is roughly the same as it was in the 1970s. The dollar dominates world trade and finance. Foreign investors have long been willing to support dollar dominance, and finance large US deficits, because those arrangements help Washington fund its alliance commitments and military muscle. And when the economic arrangements that underpin the order grow outdated or unbalanced, they are typically renegotiated — as happened when the US ditched the gold standard in 1971 and shifted to the floating exchange-rate system we know today.

#### Decline ignites global hotspots.

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Weakened systems only require the smallest shock to edge past the tipping point of resilience. In the second time frame covered by the survey, respondents were asked to rank the likely impact of risks in the next two years. The results suggest that corrosive socioeconomic vulnerabilities will be amplified in the near term, with looming concerns about an Economic downturn (Chapter 1.5), resurgent risks such as Interstate armed conflict (Chapter 1.4), and rapidly evolving risks like Misinformation and disinformation (Chapter 1.3).

As discussed in last year’s Global Risks Report, less predictable and harder-to-handle inflation heightens the risk of miscalibration of efforts to balance price stability and economic growth (Chapter 1.5: Economic uncertainty). Economic risks are notable new entrants to the top 10 rankings this year, with both Inflation (#7) and Economic downturn (#9) featuring in the two-year time frame (Figure 1.3). Economic risks are prioritized in particular by public- and private-sector respondents (Figure 1.5). Geoeconomic confrontation (#14) is a marked absence from the top 10 rankings this year (Figure 1.4) and has decreased in perceived severity compared to last year’s scores. However, like related economic risks, it features among the top concerns for both public- and private-sector respondents (at #10 and #11, respectively) as a continuing source of economic volatility.

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<<FIGURE 1.3 OMITTED>> <<FIGURE 1.4 OMITTED>> <<FIGURE 1.5 OMITTED>> Misinformation and disinformation has risen rapidly in rankings to first place for the two-year time frame, and the risk is likely to become more acute as elections in several economies take place this year (Chapter 1.3: False information). Societal polarization is the third-most severe risk over the short term, and a consistent concern across nearly all stakeholder groupings (Figures 1.5 and 1.6). Divisive factors such as political polarization and economic hardship are diminishing trust and a sense of shared values. The erosion of social cohesion is leaving ample room for new and evolving risks to propagate in turn. Societal polarization, alongside Economic downturn, is seen as one of the most central risks in the interconnected “risks network”, with the greatest potential to trigger and be influenced by other risks (Figure 1.7). <<FIGURE 1.6 OMITTED>> <<FIGURE 1.7 OMITTED>> Interstate armed conflict (#5) rises in the rankings for the two-year horizon, across nearly all stakeholder groups, except for government respondents. This divergence may simply reflect different views around defining conflict: interstate armed conflict in the strict definition has remained relatively rare thus far, but international interventions in intrastate conflict are on the rise (Chapter 1.4: Rise in conflict). Extreme weather events, a persistent concern between last year and this year, is at #2, Cyber insecurity at #4, Involuntary migration at #8 and Pollution at #10, rounding out the top 10 concerns in respondents’ risk perceptions through to 2026. Overall, global risks have lower severity scores compared to last year’s results.7 Further down in the two-year time frame rankings, Critical change to Earth systems comes in at #11, Debt in 16th place, and Adverse outcomes of AI technologies and other frontier technologies in 29th and last place, respectively. The following sections explore some of the most severe risks that many expect to play out over the next two years, focusing on three entrants to the top 10 risks list over the short term: Misinformation and disinformation (#1), Interstate armed conflict (#5) and Economic downturn (#9). We briefly describe the latest developments and key drivers for false information, a rise in conflict and economic uncertainty, and consider their emerging implications and knock-on effects. <<FIGURE 1.8 OMITTED>> 1.3 False information – Misinformation and disinformation may radically disrupt electoral processes in several economies over the next two years. – A growing distrust of information, as well as media and governments as sources, will deepen polarized views – a vicious cycle that could trigger civil unrest and possibly confrontation. – There is a risk of repression and erosion of rights as authorities seek to crack down on the proliferation of false information – as well as risks arising from inaction. 1.3 False information FIGURE 1.8 Severity score: Misinformation and disinformation Source World Economic Forum Global Risks Perception Survey 2023-2024. Rank: 1st 1% Persistent false information (deliberate or otherwise) widely spread through media networks, shifting public opinion in a significant way towards distrust in facts and authority. Includes, but is not limited to: false, imposter, manipulated and fabricated content. 16% 15% 23% 21% 16% 7% Average: 4.7 Proportion of respondents Note Severity was assessed on a 1-7 Likert scale [1 – Low severity, 7 – High severity]. The percentages in the graph may not add up to 100% because figures have been rounded up/down. 2 years 7 High Low 6 5 4 3 2 1 Severity The disruptive capabilities of manipulated information are rapidly accelerating, as open access to increasingly sophisticated technologies proliferates and trust in information and institutions deteriorates. In the next two years, a wide set of actors will capitalize on the boom in synthetic content,8 amplifying societal divisions, ideological violence and political repression – ramifications that will persist far beyond the short term. Misinformation and disinformation (#1) is a new leader of the top 10 rankings this year. No longer requiring a niche skill set, easy-to-use interfaces to large-scale artificial intelligence (AI) models have already enabled an explosion in falsified information and so-called ‘synthetic’ content, from sophisticated voice cloning to counterfeit websites. To combat growing risks, governments are beginning to roll out new and evolving regulations to target both hosts and creators of online disinformation and illegal content.9 Nascent regulation of generative AI will likely complement these efforts. For example, requirements in China to watermark AI-generated content may help identify false information, including unintentional misinformation through AI hallucinated content.10 Generally however, the speed and effectiveness of regulation is unlikely to match the pace of development. Synthetic content will manipulate individuals, damage economies and fracture societies in numerous ways over the next two years. Falsified information could be deployed in pursuit of diverse goals, from climate activism to conflict escalation. New classes of crimes will also proliferate, such as non-consensual deepfake pornography or stock market manipulation.11 However, even as the insidious spread of misinformation and disinformation threatens the cohesion of societies, there is a risk that some governments will act too slowly, facing a trade-off between preventing misinformation and protecting free speech, while repressive governments could use enhanced regulatory control to erode human rights. Mistrust in elections Over the next two years, close to three billion people will head to the electoral polls across several economies, including the United States, India, the United Kingdom, Mexico and Indonesia (Figure 1.9).12 The presence of misinformation and disinformation in these electoral processes could seriously destabilize the real and perceived legitimacy of newly elected governments, risking political unrest, violence and terrorism, and a longer-term erosion of democratic processes. Recent technological advances have enhanced the volume, reach and efficacy of falsified information, with flows more difficult to track, attribute and control. The capacity of social media companies to ensure platform integrity will likely be overwhelmed in the face of multiple overlapping campaigns.13 Disinformation will also be increasingly personalized to its recipients and targeted to specific groups, such as minority communities, as well as disseminated through more opaque messaging platforms such as WhatsApp or WeChat.14 The identification of AI-generated mis- and disinformation in these campaigns will not be clear-cut. The difference between AI- and human-generated content is becoming more difficult to discern, not only for digitally literate individuals, but also for detection mechanisms.15 Research and development continues at pace, but this area of innovation is radically underfunded in comparison to the underlying technology.16 Moreover, even if synthetic content is labelled as such,17 these labels are often digital and not visible to consumers of content or appear as warnings that still allow the information to spread. Such information can thus still be emotively powerful, blurring the line between malign and benign use. For example, an AI-generated campaign video could influence voters and fuel protests, or in more extreme scenarios, lead to violence or radicalization, even if it carries a warning by the platform on which it is shared that it is fabricated content.18 The implications of these manipulative campaigns could be profound, threatening democratic processes. If the legitimacy of elections is questioned, civil confrontation is possible – and could even expand to internal conflicts and terrorism, and state collapse in more extreme cases. Depending on the systemic importance of an economy, there is also a risk to global trade and financial markets. State-backed campaigns could deteriorate interstate relations, by way of strengthened sanctions regimes, cyber offense operations with related spillover risks, and detention of individuals (including targeting primarily based on nationality, ethnicity and religion).19 Societies divided Misinformation and disinformation and Societal polarization are seen by GRPS respondents to be the most strongly connected risks in the network, with the largest potential to amplify each other. Indeed, polarized societies are more likely to trust information (true or false) that confirms their beliefs. Given distrust in the government and media as sources of false information,20 manipulated content may not be needed – merely raising a question as to whether it has been fabricated may be sufficient to achieve relevant objectives. This then sows the seeds for further polarization. As identified in last year’s Global Risks Report (Chapter 1.2: Societal polarization), the consequences could be vast. Societies may become polarized not only in their political affiliations, but also in their perceptions of reality, posing a serious challenge to social cohesion and even mental health. When emotions and ideologies overshadow facts, manipulative narratives can infiltrate the public discourse on issues ranging from public health to social justice and education to the environment. Falsified information can also fuel animosity, from bias and discrimination in the workplace to violent protests, hate crimes and terrorism. Some governments and platforms, aiming to protect free speech and civil liberties, may fail to act to effectively curb falsified information and harmful content, making the definition of “truth” increasingly contentious across societies. State and non-state actors alike may leverage false information to widen fractures in societal views, erode public confidence in political institutions, and threaten national cohesion and coherence. Trust in specific leaders will confer trust in information, and the authority of these actors – from conspiracy theorists, including politicians, and extremist groups to influencers and business leaders – could be amplified as they become arbiters of truth. Defining truth False information could not only be used as a source of societal disruption, but also of control, by domestic actors in pursuit of political agendas.21 Although misinformation and disinformation have long histories, the erosion of political checks and balances, and growth in tools that spread and control information, could amplify the efficacy of domestic disinformation over the next two years.22 Global internet freedom is already in decline and access to wider sets of information has dropped in numerous countries.23 Falls in press freedoms in recent years and a related lack of strong investigative media, are also significant vulnerabilities that are set to grow.24 Indeed, the proliferation of misinformation and disinformation may be leveraged to strengthen digital authoritarianism and the use of technology to control citizens. Governments themselves will be increasingly in a position to determine what is true, potentially allowing political parties to monopolize the public discourse and suppress dissenting voices, including journalists and opponents.25 Individuals have already been imprisoned in Belarus and Nicaragua, and killed in Myanmar and Iran, for online speech.26 <<FIGURE 1.10 OMITTED>> The export of authoritarian digital norms to a wider set of countries could create a vicious cycle: the risk of misinformation quickly descends into the widespread control of information which, in turn, leaves citizens vulnerable to political repression and domestic disinformation.27 GRPS respondents highlight strong bilateral relationships between Misinformation and disinformation, Censorship and surveillance (#21) and the Erosion of human rights (#15), indicating a higher perceived likelihood of all three risks occurring together (Figure 1.10). This is a particular concern in those countries facing upcoming elections, where a crackdown on real or perceived foreign interference could be used to consolidate existing control, particularly in flawed democracies or hybrid regimes. Yet more mature democracies could also be at risk, both from extensive exercises of government control or due to trade-offs between managing mis- and disinformation and protecting free speech. In January last year, Twitter and YouTube agreed to remove links to a BBC documentary in India.28 In Mexico, civil society has been concerned about the government's approach to fake news and its implications for press freedom and safety.29

<<PARAGRAPH BREAKS RESUME>>

1.4 Rise in conflict

<<FIGURE 1.11 OMITTED>>

– Escalation in three key hotspots – Ukraine, Israel and Taiwan – is possible, with high-stakes ramifications for the geopolitical order, global economy, and safety and security.

– Geographic, ideological, socioeconomic and environmental trends could converge to spark new and resurgent hostilities, amplifying state fragility.

– As the world becomes more multipolar, a widening array of pivotal powers will step into the vacuum, potentially eroding guardrails to conflict containment.

The world has become significantly less peaceful over the past decade, with conflict erupting in multiple regions last year.30 Active conflicts are at the highest levels in decades, while related deaths have witnessed a steep increase, nearly quadrupling over the two-year period from 2020 to 2022 (Figure 1.12), largely attributable to developments in Ethiopia and Ukraine. While difficult to attribute to a single cause, longer-term shifts in geopolitical power, economic fragility and limits to the efficacy and capacity of international security mechanisms have all contributed to this surge.

Interstate armed conflict (#5) is a new entrant to the top 10 risk rankings this year. Specific flashpoints could absorb focus and split the resources of major powers over the next two years, degrading global security and destabilizing the global financial system and supply chains. Although war between two states in the strict definition remains relatively rare (Figure 1.12), this could contribute to conflict contagion, leading to rapidly expanding humanitarian crises that overwhelm the capacity to respond.

<<FIGURE 1.12 OMITTED>>

High-stakes hotspots

Over the next two years, the attention and resources of global powers are likely to be focused on three hotspots in particular: the war in Ukraine, the Israel-Gaza conflict and tensions over Taiwan. Escalation in any one of these hotspots would radically disrupt global supply chains, financial markets, security dynamics and political stability, viscerally threatening the sense of security and safety of individuals worldwide.

All three areas stand at a geopolitical crossroads, where major powers have vested interests: oil and trade routes in the Middle East, stability and the balance of power in Eastern Europe, and advanced technological supply chains in East Asia. Each could lead to broader regional destabilization, directly drawing in major power(s) and escalating the scale of conflict. All three also directly involve power(s) reckoned to possess nuclear capabilities.

Over the next two years, the war in Ukraine could sporadically alternate between intensifying and refreezing. Despite sanctions, Russia has continued to benefit from energy profits and commodity exports – and this could increase further if the conflict in the Middle East widens.31 Pro-Russian or neutral sentiment in Eastern and Central Europe could soften support from Ukraine’s European allies,32 while support in the United States could wane under domestic pressures, other international priorities, or under a new government. Global divisions with respect to the Middle East conflict may also complicate efforts by Ukraine to maintain unity with Western allies, while also garnering support from the Global South.33 If the conflict intensifies, it is still more likely to do so through conventional rather than nuclear means, but it could also expand to neighbouring countries. While post-conflict scenarios for both Ukraine and Russia are difficult to predict, the war could ‘refreeze’ into a prolonged, sporadic conflict that could last years or even decades.34

Proximate developments in the Middle East are a source of considerable uncertainty, risking further indirect or direct confrontation between global powers. If the Israel-Gaza conflict destabilizes into wider regional warfare, more extensive intervention by major powers is possible, including Iran and the West.35 Beyond potentially seismic shocks to global energy prices and supply chains, escalation could split the attention and resources of the EU and the United States between Ukraine and Israel.36 The scale of Gulf countries’ or Western intervention is uncertain; it’s likely to continue to be deeply polarizing domestically and hold significant political sway.

Numerous GRPS respondents also cited Taiwan and disputed territories in East and South-East Asia as areas of concern. In contrast to Russia, which doubled its defense spending target to more than $100 billion in 2023, and the United States, which allocated over $113 billion in assistance relating to the war in Ukraine alone,37 China has largely acted as a non-interventionist power in both the Ukraine and Middle East conflicts, avoiding the risk of overstretch.38 While there is no evidence to suggest that escalation is imminent, there remains a material possibility of accidental or intentional outbreak of hostilities, given heightened activity in the region.39

Conflict contagion

As high-stakes hotspots undermine global security, a wider set of trends may fuel a combustible environment in which new and existing hostilities are more likely to ignite. As conflicts spread, guardrails to their containment are eroding and resolve for long-term solutions have stalled.40 In parallel, the internationalization of conflicts by a wider set of alternate powers will accelerate ‘multipolarity’ and the risk of inadvertent escalation.

First, simmering tensions and frozen conflicts that are proximate to existing hotspots could heat up. For example, spillover impacts from a high concentration of conflicts, such as in Asia and Africa (Figure 1.13), could range from more readily available arms trafficking to conflict-driven migration. Other states could also deliberately stoke tensions in neighbouring countries to divert attention and resources, through disinformation campaigns or the deployment of state-backed militia groups, for example. Frozen conflicts at risk could include the Balkans, Libya, Syria, Kashmir, Guyana, the Kurdish region and Korean peninsula.41 These risks are well-recognized by business leaders: Interstate armed conflict features as a top-five risk in 20 countries (18%) surveyed in the Forum’s Executive Opinion Survey (EOS, see Appendix C: Executive Opinion Survey: National Risk Perceptions), including Egypt, Iraq, Kazakhstan and Serbia, and is the top risk in Armenia, Georgia, Kyrgyzstan and Japan.

Second, resource stress, economic hardship and weakened state capacity will likely grow and, in turn, fuel conflict.42 There may also be a rise of ‘ungoverned countries’, where non-state actors fight for control over large swathes of territory, or where parties not recognized by the international system gain full control. For example, resource-rich countries could become caught in a battleground of proxy warfare between multiple powers, including neighbouring economies, organized crime networks and paramilitary groups (Chapter 2.6: Crime wave).43

<<FIGURE 1.13 OMITTED>>

Third, with instant information networks and reinforcing algorithms, the symbolism of highstakes hotspots could trigger contagion beyond conflict geographies. Deeply ingrained ideological grievances are in some cases driving hostilities, and these divisions are resonating with communities and political parties elsewhere. This expands beyond religious and ethnic divisions to broader challenges to systems of governance. National identities, international law and democratic values are coming into question, contributing to civil unrest, threatening human rights, and reigniting violence, including in advanced democracies and between the Global North and South.

North-South rift

Dissatisfaction with the continued political, military and economic dominance of the Global North is growing, particularly as states in the Global South bear the brunt of a changing climate, the aftereffects of pandemic-era crises and geoeconomic rifts between major powers. Historical grievances of colonialism, combined with more recent ones regarding the costs of food and fuel, geopolitical alliances, the United Nations and Bretton Woods systems, and the loss and damage agenda, could accelerate anti-Western sentiment over the next two years. In conjunction with more thinly spread resources and tighter economic conditions, military power projection by the West could fade further, potentially creating power vacuums in parts of Africa, the Middle East and Asia. France, for example, has withdrawn troops on request from Mali, Burkina Faso and Niger over the past two years.44

As the dominance of long-held power centres wanes, alternate powers will compete for influence in interstate and intrastate conflicts, potentially leading to deadlier, prolonged proxy warfare and overwhelming humanitarian crises.45 There are a number of incentives to this involvement, from access to raw resources, such as minerals and oil, to the protection and promotion of trade, investment and security interests. Pivotal powers will also increasingly lend support and resources to garner political allies, taking advantage of this widening rift between the Global North and the Global South.

As a new set of influences in global affairs takes shape, political alliances and alignment within the Global South will also shape the longer-term trajectory of internationalized conflicts. A deep divide on the international stage could mean that coordinated efforts to isolate ‘rogue’ states may be increasingly futile, while international governance and peacekeeping mechanisms shown to be ineffective at ‘policing’ conflict could be sidelined.

1.5 Economic uncertainty

<<FIGURE 1.14 OMITTED>>

– The near-term outlook remains highly uncertain due to domestic factors in some of the world's largest markets as well as geopolitical developments.

– Continued supply-side pressures and demand uncertainty could contribute to persistent inflation and high interest rates.

– Small- and medium-sized companies and heavily indebted countries will be particularly exposed to slowing growth amid elevated interest rates.

According to one narrative, the global economy has shown surprising resilience in the face of the most aggressive global tightening of monetary policy in decades. Despite widespread predictions of a recession in 2023 (Figure 1.15),46 the perception of a ‘softer landing’ appears to be prevailing. Inflation is falling amid tight labour markets and stronger-than-anticipated consumer spending and growth, particularly in the United States.47 In another version, persistently elevated inflation in many countries and high interest rates are weighing heavily on economic growth, particularly in export- and manufacturing-led markets. An already visible economic downturn is likely to spread, with a risk that new economic shocks would be unmanageable in such fragility and debt passes the tipping point of sustainability.

<<FIGURE 1.15 OMITTED>>

<<FIGURE 1.16 OMITTED>>

These contrasting narratives encapsulate the highly uncertain economic outlook. Fears of an Economic downturn are widespread among private-sector respondents, featuring as a top-five risk in 102 countries (90%) surveyed in the EOS, a significant uptick from 2022 (Figure 1.16). A slowdown in global growth is already occurring, but it is taking place under a different set of economic parameters than previous cycles, heightening uncertainty. Over the next two years, there may be a lack of coherence in forward projections within and between economies, particularly with respect to inflation, interest rates and growth rates. With contrasting views about the future, the risk of miscalibration by central banks, governments and companies will rise accordingly, potentially deepening and prolonging economic risks. Additionally, continued trade conflicts and geoeconomic rifts between the United States, European Union and China add to the significant economic uncertainty ahead.

Supply-driven price pressures

Markets are already anticipating interest rate cuts in key economies in the first half of this year.48 However, there are several inflationary pressures that may stymie expectations and present a less-smooth path to inflation targets. If price pressures continue, central banks could be hesitant to cut rates in response to signals of weaker growth, resulting in higher-for-longer inflation and interest rates.

Reflecting tighter financial conditions, both headline and core inflation have dropped in the United States and the Eurozone (Figure 1.17).49 In parallel, there has been a slowdown in economic growth in key industries and markets. The global economy had been propped up by continued strength in services throughout 2023, which is now flagging, while manufacturing has already been in contraction for over a year (Figure 1.18).50 Economic growth is stagnant in the European Union, at 0.6% last year, with estimates suggesting that the economic powerhouse of Germany contracted by 0.3% in 2023.51 Profits of the S&P 500, excluding the ‘Magnificent 7’ tech stocks, were estimated to contract by 8.6% last year.52

<<FIGURE 1.17 OMITTED>>  
<<FIGURE 1.18 OMITTED>>

Yet even as inflation has been partially tamed through higher interest rates, it has not reached central bank targets of two percent and there remains a material risk of largely supply-side price pressures over the next two years. For example, El Niño-impacts to food production and logistics could drive inflation and costly disruptions to supply chains. Any amplification of the Middle East conflict could trigger price spikes in energy and further disrupt shipping routes, compounding continued impacts from the war in Ukraine.53 The cost-ofliving impact of persistent inflation, perceived to be declining in 2024, could resurge as the continued impact of elevated prices persists. A wage-price spiral is still possible, with EOS respondents anticipating labour shortages in key sectors and economies over the next two years (Chapter 2.5: End of development?). Stronger industrial policies and trade controls emanating from advanced economies, targeting the green transition and advanced technology, could also remain a persistent inflationary trend over this period.

Uncertainty within global powerhouses

The outlooks for the two largest economies – China and the United States – are highly complex, and these two key sources of uncertainty could lead to unanticipated, and possibly divergent, implications for the trajectory of the global economy.

China’s economy is widely expected to slow this year, with the weakening of the property market and local and external demand generally cited as primary causes.54 Despite retaining its ‘A1’ long-term credit rating, the outlook for China’s government debt was recently downgraded from ‘neutral’ to ‘negative’, reflecting risks relating to ‘structurally and persistently lower medium term economic growth’.55 Yet investment in both manufacturing and energy infrastructure have been key drivers of growth in recent years, replacing lost construction demand to a degree.56 Although challenges remain, in the absence of further shocks, there is room for an upside surprise – local consumption may revive, growth may be less sluggish and the slowdown shallower than pervasive market expectations. In addition, in the absence of further geoeconomic backlash, excess capacity in advanced manufacturing, particularly in green technologies, could help counteract global price pressures, lending momentum to the green transition and global demand.57

There is similar uncertainty in the United States. Some forecasts are already pricing in up to 2.4% economic growth for 2024, and others predict rate cuts in the early half of the year.58 Fiscal policy has remained loose even as monetary policy tightened, with the United States running a $1.7 trillion deficit in 2023, effectively doubling the deficit in the past year alone.59 This could continue to keep demand-driven price pressures high. The correlation between consumer sentiment and spending is also adding to uncertainty: economic pessimism may be widespread, but it is not necessarily dampening demand – yet.60 On the other hand, debt servicing hit over $981 billion in Q3 2023 – an increase of over $753 billion compared to the same period in 2022, a sum similar to the budgetary spend on defense.61 Any fiscal consolidation in the United States – or a political stand-off relating to debt loads – could have a profound effect on global markets and trade, while any overestimation of the slowdown could lead to earlier or sharper intervention on interest rates and re-spark demand-side price pressures. The outcome of the US presidential elections in November creates additional uncertainty for the country’s economic outlook, depending on the policy choices of the next government.62

Debt distress

Higher interest rates amid slowing growth will strain debt loads for the public and private sector alike. The corporate debt default rate remains far lower than peaks hit during the 2008-09 Global Financial Crisis (Figure 1.19).63 The majority of corporate debt is also years from maturity. Less than 14% of S&P 500 debt is set to mature in the next two years, with nearly half to mature after 2030.64 In essence, the world’s largest companies will be effectively insulated from higher interest rates for more than half a decade.

However, small and medium-sized companies, that form the backbone of many domestic markets, will be particularly sensitive to slowing economic growth and persistently high interest rates. As struggling companies cut costs, unemployment may rise, reducing consumer spending and creating a negative feedback loop that can contribute to a deeper economic downturn. This could also contribute to heightened market concentration, as start-ups struggle and larger, more financially robust corporations consolidate their position, including in the tech sector (Chapter 2.4: AI in charge).

Heavily indebted countries are also exposed to these economic conditions. The risk of sovereign debt defaults is rising but notably, even with a strong US dollar, larger emerging economies such as Mexico and Brazil have largely avoided debt distress to date.65 This has been attributed to structurally different conditions in these markets than in the past, including central bank independence and the accumulation of large foreign-exchange reserves.66 In other parts of the world, like in Egypt, Ethiopia, Ghana, Lebanon, Pakistan, and Tunisia, the risks are much higher. The impacts of tighter financial conditions will build over time, and pressures on fiscal balances will rise. Given historically high debt loads, many governments might be unable or unwilling to help cushion economic impacts to the same degree as they have in recent years, sharpening the slowdown for companies and individuals.

#### Growth pacifies great-power tensions.

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1 Introduction

Although peace and development are central themes of our time, various forms of conflict – between nations, ethnic groups, organizations, and individuals– remain pervasive. High-profile geopolitical tensions, such as the ongoing conflicts between Russia and Ukraine and in the Middle East, serve as stark reminders of the preciousness of peace. The shifting global landscape and power struggles among major nations are particularly concerning. Thucydides’s Trap, a concept popularized by political scientist Graham T. Allison (Allison, 2015, 2017), draws from the ancient Greek historian Thucydides, who noted that the rise of a new power often led to conflict with an established one. The idea has gained significant attention in contemporary international relations, particularly in the context of the perceived rivalry between the United States and China.

Historical accounts underscore the recurring nature of power transitions leading to conflict. For example, the rise and fall of British naval mastery, as discussed by Kennedy (2017), and broader analyses of war and change in world politics by Gilpin (1981) illustrate the Thucydides Trap.1 Allison (2015) refers to 16 historical cases over the past 500 years where a rising power challenged an established power, finding that 12 resulted in war. The two World Wars are also prominent historical cases. These historical perspectives highlight the potential for instability and conflict during significant power shifts.

This deterministic view has been challenged by scholars like Lee (2019) and Chan (2020) who argue that conflict is not inevitable and that other factors, particularly economic conditions, can influence the trajectory. This argument is further supported by analyses of historical power shifts, such as Britain’s response to its relative decline (Friedberg, 2021) and the dynamics of power transitions in Asia (Shambaugh, 2005).2 This opens the door to investigating whether economic conditions can alter the course toward conflict or cooperation in power dynamics.

Economic conditions are undeniably crucial in determining international conflicts. World War II, for example, was significantly influenced by the Great Depression. Economic prospects also influence domestic politics and conflicts. Collier and Hoeffler (2004) suggest that economic conditions largely determine the opportunity for rebellion in civil conflicts, while Blattman and Miguel (2010) and Ray and Esteban (2017) identify lower income levels and weak economic growth as strong predictors of civil wars. Gartzke (2007) and Mitra and Ray (2014) highlight the role of economic development in reducing war and mitigating communal violence. The role of economic factors in power transitions is more complex. Gilpin (1981) and Kennedy (2017) argue that disparities in economic growth can disrupt the balance of power, potentially leading to instability and conflict.

Building on this, we explore how economic prospects affect the likelihood of cooperation and conflict between rising and established powers. We hypothesize that growth prospects encourage cooperative strategies, as both parties stand to benefit from mutual gains. Economic interdependence driven by positive economic prospects can foster stronger trade relations, investment, and collaboration in technology and infrastructure, creating a stabilizing effect where both powers have a vested interest in maintaining peace. Conversely, bleak economic prospects can intensify competition over limited resources. An established power may perceive the rising power’s growth as a threat to its dominance, prompting preemptive actions. Similarly, a rising power facing economic difficulties may adopt aggressive strategies to secure resources and markets, escalating tensions.

Better understanding the interactions between the dynamics of power and economic trajectories provides valuable insights into the potential for cooperation or conflict on the global stage.3 However, numerous confounding factors make it difficult to isolate the causal effect of economic prospects on the natural occurrence of conflicts. It is also impractical to create real conflict scenarios in the real world to test these hypotheses. Therefore, we used a laboratory experiment to simulate interactions between two entities undergoing a power shift under varying economic prospects. While this experiment cannot capture the full complexity of international or commercial relations, it does allow us to study the causal relationship between economic prospects and conflict in a power-dynamic context under controlled conditions.

To achieve this, we designed a dynamic power rivalry game where two players in fixed pairs, A and B, simultaneously decide how to allocate a pie in each period by either choosing to “Maintain Status Quo” or “Challenge”. If both maintain the status quo, the pie is shared equally. If one or both challenge, the pie size shrinks by a social loss coefficient, and the remaining pie is distributed according to the players’ relative strength, which shifts over time. Player A represents the rising power, starting with low relative strength, which increases each period. Player B, the established power, starts with high relative strength, which declines over time. Across the 21 periods of the game, their strengths undergo a symmetrical reversal, with Player A starting at 0.2 and Player B at 0.8, each shifting by 0.03 per period. Players incur a cost when choosing to challenge.

We compared three economic prospect conditions across between-subjects treatments, independent from the players’ actions: in the Constant treatment, the pie size remains constant across periods at 20,000 tokens; in the Decline treatment, the pie size starts at 30,000 tokens and decreases by 1,000 tokens per period; and in the Growth treatment, the pie starts at 10,000 tokens and increases by 1,000 tokens per period.

The Nash equilibrium of the game predicts that Player B will challenge in the first eight periods, while Player A will challenge in the last eight, with both players maintaining the status quo in the remaining periods. Notably, the different economic prospects do not alter this equilibrium. In contrast, our results show that the proportion of challenges from both players, as well as the overall conflict incidence rate, is highest in the Decline treatment and lowest in the Growth treatment. The differences between these treatments are significant across various metrics. Only the Growth treatment reaches a conflict rate significantly lower than the Nash equilibrium. Specifically, Player A (the rising power) challenges significantly more than the equilibrium in both the Decline and Constant treatments but challenges insignificantly less than the equilibrium in the Growth treatment. Player B (the established power) challenges less than the equilibrium in all treatments but only significantly so in the Growth treatment.

Further analyses of the behavior of different types of players with absolute advantage, characterized notably as “money maximizers” who always challenge or “peace lovers” who never challenge, support the robust pattern that growth prospects reduce conflict. We also show that the initial action is crucial in determining subsequent behaviors. Though triggering a conflict is socially inefficient, growth prospects help enhance social welfare. Exploring the mechanisms driving the different impacts of decline and growth prospects, we reject potential explanations in terms of differences in wealth accumulation. A behavioral model with psychological costs for challenging and reciprocity helps rationalize why different economic prospects lead to divergent routes in terms of conflict and cooperation when relative powers shift. This model shows that an established power is less likely to challenge when expecting its rival’s reciprocity. Given its expectations of the rival’s psychological costs, an established power is less likely to initiate a challenge in the Growth treatment than in the other treatments.

To test the real-world relevance of the dynamics observed in our experiment, we conducted a preregistered online survey experiment in the United States with a representative sample of 813 individuals. After presenting each of two scenarios describing long-term global economic prospects –one optimistic and the other pessimistic –, respondents reported their beliefs about the probability that tensions between China and the United States would escalate into conflict over the next decade. In line with our laboratory experiment findings, respondents perceived a significantly higher likelihood of conflict in the slow-down scenario than in the growth scenario. Moreover, most respondents believed that major powers are most likely to engage in conflict when global economic prospects are declining and least likely under global economic prosperity and growth trends.

#### Only the plan makes the right to strike substantive and overcomes legal ambiguity that impedes bargaining.

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The strike has never fit easily within extant legal categories. According to Craig Becker, “the law has variously categorized strikes as criminal activity, as an invasion of property rights, and as a fundamental component of labor’s right to engage in collective bargaining.”77 Jurisprudentially, striking has been theorized as either an associational freedom upon which law cannot intrude, or in the alternative, conduct so coercive and disorderly as to be antithetical to the rule of law—industrial vigilante justice.78 Following enactment of the NLRA, strikes ostensibly became legal for the private sector workers covered by it. But especially after the 1947 Taft-Hartley Amendments to the NLRA, striking’s legality was tied to an increasingly narrow understanding of its purpose. In this Part, I provide a brief overview of how current law—shaped by its Progressive Era mortal weakness—codifies long-lasting legal ambivalence about striking, by constructing the strike as an “economic weapon,” and in so doing, as apolitical.

A. The “Right” to Strike

Under the NLRA, workers are generally understood to have a “right” to strike. Section 7 of the Act states that employees have the right to engage in “concerted activities for . . . mutual aid or protection,”79 which includes striking. To drive this point home, section 13 of the NLRA specifies, “Nothing in this [Act] . . . shall be construed so as either to interfere with or impede or diminish in any way the right to strike . . .”80 Note that it is a testament to deeply-held disagreements about the strike (is it a fundamental right which needs no statutory claim to protection, or a privilege to be granted by the legislature?) that the statute’s language is framed in this way: the law which first codified a right to strike does so by insisting that it does not “interfere with or impede or diminish” a right, which had never previously been held to exist.81

To say that a strike is ostensibly legal, though, is not to say whether it is sufficiently protected as to make it practicable for working people. Within the world of labor law, this distinction is often framed as the difference between whether an activity is legal and whether it is protected. So long as the state-as-regulator will not punish you for engaging in a strike, that strike is legal. But given that striking is protest against an employer, rather than against the state-as-regulator, being legal is insufficient protection from the repercussion most likely to deter it—job loss.

Employees technically cannot be fired for protected concerted activity under the NLRA, including protected strikes. But in a distinction that Getman and Kohler note “only a lawyer could love—or even have imagined,”82, judicial construction of the NLRA permits employers to permanently replace them in many cases. Consequently, under the perverse incentives of this regime, strikes can facilitate deunionization. Strikes provide employers an opportunity, unavailable at any other point in the employment relationship, to replace those employees who most support the union—those who go out on strike—in one fell swoop. As employers have increasingly turned to permanent replacement of strikers in recent decades, strikes have decreased.83 A law with a stated policy of giving workers “full freedom of association [and] actual liberty of contract” offers a “right” which too many workers cannot afford to invoke.84

It is not just that the right is too “expensive,” however; it is that its scope is too narrow, particularly following the Taft-Hartley Amendments. Law cabins legitimate strike activity, based on employees’ motivation, their conduct, and their targets. The legitimate purposes are largely bifurcated, either “economic,” that is to provide workers with leverage in a bargain with their employer, or to punish an employer’s “unfair labor practice,” its violation of labor law (but not other laws). A host of reasons that workers might want to protest are unprotected—Minneapolis bus drivers not wanting their labor to be used to “shut down calls for justice,” for instance. Striking employees also lose their limited protection if they act in ways that are deemed “disloyal” to their employer,85 or if they engage in the broad swath of non-violent activity construed to involve “violence,” such as mass picketing.86 Tactically, intermittent strikes, slow-downs, secondary strikes, and sit-down strikes are unprotected.87 Strikes are also unprotected if unionized workers engage in them without their union’s approval,88 if they concern nonmandatory subjects of bargaining,89 or if they are inconsistent with a no-strike clause.90 Independent contractors who engage in strikes face antitrust actions.91 Labor unions who sanction unprotected strikes face potentially bankrupting liability.92

The National Labor Relations Board—the institution charged with enforcing the policies of the Act—summarizes these “qualifications and limitations” on the right to strike on its website in the following way:

The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.93

The “right” to strike, it seems, is filled with uncertainty and peril.

Collectively, these rules prohibit many of the strikes which helped build the labor movement in its current form. Ahmed White accordingly argues that law prohibits effective strikes, strikes which could actually change employer behavior: “Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities.”94

B. The Limits of Legal Categories

Legal scholars have long tried to make sense of the law’s ambivalent treatment of worker power and collective self-determination. Here, I emphasize one point. What makes striking, and the legal apparatus for it, so complicated is that the strike transcends easy legal categorization. In one respect, it is a form of protest, fundamentally normative and political. Yet, that protest takes place within an economic relationship where property and contract law reign supreme.95 To the extent a strike looks like protest, it approximates the kind of activity that should be a fundamental right. But because it takes place not in the public sphere, but at work—within these “authoritarian, private government[s],” as philosopher Elizabeth Anderson recently described them—such rights do not carry over.96

Our eighty-five-year-old labor-law regime circumnavigates these complex jurisprudential issues by conceptualizing the strike as economic activity. In the almost anachronistic language used by the Supreme Court, strikes are “economic weapons in reserve.”97 And “their actualexercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.”98

A full genealogy of the term “economic weapon,” and how it came to such prominence in legal discourse, is beyond the scope of this short Essay.99 But it is worth noting that in pre-New Deal labor discourse, labor activists used the term to emphasize voluntarism over electoral politics, material power over normative. In 1924, the AFL’s magazine, the American Federationist, reflected on the voluntarism of American unions:

[Electoral politics] is the fatal lure in other countries, the deadly trap, the rock on which labor goes smash, soon or late.

It has never fooled the labor movement in America. The American worker goes into politics and uses his ballot according to his convictions, but he does not tie his economic weapon into a bundle with his political power and then find he has made a slapstick at which in the end everybody laughs.100

The AFL’s view of the strike, as an “economic weapon” to use on the market battlefield, eventually became the legal understanding. Reflecting on the evolving law of the strike in 1920, Supreme Court Justice Taft proclaimed the strike an instrument “in a lawful economic struggle . . . between employer and employees as to the share . . . between them of the joint product of labor and capital.”101

Political scientist Josiah Lambert accordingly argues that law came to protect the strike as a “commercial right,” not a “citizenship right.”102 Legal scholars similarly highlight that a more expansive, quasi-constitutional view of striking as a “civil right” warred with the purely statutory conception of striking as an “economic[]interest.”103 The latter won the day, eclipsing early conceptions of a worker as more than “a factor of production” but “a self-governing citizen with rights and duties beyond those enumerated in the labor contract.”104 While visions of how else a strike might have been conceptualized within American law are varied and inchoate, the common thread is, again, that something else was possible.105 In 1914, the Clayton Act proclaimed that “[t]he labor of a human being is not a commodity or article of commerce.”106 By 1937, labor’s commerce-ness had become the source of its rights.

Consistent with the construction of the strike as economic (and not political), public-sector employees excluded from the NLRA largely lack a legally protected right to strike. Most federal and state labor relations laws prohibit strikes by public employees.107 Where strikes are prohibited by law, workers can not only be fired for them but can also face loss of government benefits, fines, and even jail time.108 Their unions face similar consequences.109 Within a world in which strikes are understood as “a legitimate aspect of the market or enterprise economy,” public-sector strikes lack comparable legitimacy.110 They are “deemed inappropriate because the government is not merely an employer participating in the economy, but is the lawgiver for the economy.”111 In other words, they are political. In Janus v. AFSCME, the Supreme Court finally ruled public-sector agency-fee laws unconstitutional, on the grounds that line drawing between the economic and the political in the public sector is untenable.112 And it is, but Janus does little to bring coherence to the law.113

To be clear, there is a way in which categorizing the strike as an economic act is radically pro-labor. According to labor law, the collective withholding of labor, facilitated by law, is neither an illiberal conspiracy nor an anticompetitive restraint of trade. It is a legitimate bargaining tactic.

C. Alternate Visions

And yet, the pre-New Deal history of the American labor movement reminds us that alternate visions for the strike once existed, and with them, for the role of organized labor in a democratic polity. Legal scholars of the first law-and-economics movement argued that corporations were akin to governments in their coercive power.114 They did so in order to politicize the private, to render it a legitimate site of democratic governance.115 Jurisprudentially, much was up for grabs at this point. Corporations might have been analogized to governments, rather than persons, owing constitutional rights to their constituents, rather than holders of those rights against government regulation. Consistent with this view of employment as a political relationship, the right to strike could have been a right of a different sort (political? civil? property?), not a commercial one.116

The labor movement which emerged from the Progressive Era, however, did not advance this vision of political economy. Fearing that any broadly conceived “public interest” would prioritize capital over labor, the AFL preferred to build worker-led institutions, organizations that would be corporations’ counterparts. It advanced a corporatist solution rather than a statist one. And within the world of industrial democracy qua collective bargaining, the strike became understood as an economic right, hard bargaining, a last resort in negotiations gone awry.117

The limitations of this understanding of the strike did not immediately become apparent. Among other factors, Keynesian political economy gave labor unions legitimacy as agents of a common good.118 Employers—constrained in part by law, and even more by institutional understandings of what was acceptable—pulled their punches. When the NLRA was first enacted, strike activity, union membership, and worker wages grew concurrently.119 And even after enactment of the Taft-Hartley Amendments—in the era of the so-called “labor-capital” accord—strikes continued to occur with some frequency, and to be associated with wage growth for workers.120

As I discuss further below, this changed in the 1970s, as the Keynesian political economic commitments that had bolstered labor law gave way. Between 1983 and 2015, total union membership declined by approximately 44%, and private sector union membership declined by 60%.121 Over a similar period, major work stoppages declined by 90%.122 And the few strikes that still did occur were qualitatively different. They were “desperate measures,” which failed to advance union objectives.123 They did not create wage growth, the “more” that Progressive Era labor leaders had envisioned.124 As an economic weapon, the strike malfunctioned.125

III. labor’s twenty-first century challenge to neoliberalism: striking in a new gilded age

A. Work Law in Political Economic Context

In analyzing labor’s current predicament, most legal scholarship emphasizes the limitations of law. “So it is,” Ahmed White concludes, “that workers have found themselves with a right to strike that equals little more than a right to quit work—and maybe lose their jobs or their houses and savings in the balance.”126 The unstated assumption in many of these pieces is that workers rarely strike because the law is bad. And there is little question that current legal impediments powerfully influence unions’ and workers’ calculus about whether striking is worth it. But if the massive labor unrest of the Gilded Age and Progressive Era tells us anything, it is that the relationship between bad law and worker action is not as direct as legalistic accounts suggest. In this Part, I draw from the experiences of labor in the Gilded Age and Progressive Era to discuss the relationship between law, political economy, and social change today, and how strikes may serve the labor movement and the polity—bad law, notwithstanding.

#### The plan solves---ending the prohibition on secondary strikes overcomes legal barriers that impede bargaining.

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Collectively, these rules prohibit many of the strikes which helped build the labor movement in its current form. Ahmed White accordingly argues that law prohibits effective strikes, strikes which could actually change employer behavior: “Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities.”94

B. The Limits of Legal Categories

Legal scholars have long tried to make sense of the law’s ambivalent treatment of worker power and collective self-determination. Here, I emphasize one point. What makes striking, and the legal apparatus for it, so complicated is that the strike transcends easy legal categorization. In one respect, it is a form of protest, fundamentally normative and political. Yet, that protest takes place within an economic relationship where property and contract law reign supreme.95 To the extent a strike looks like protest, it approximates the kind of activity that should be a fundamental right. But because it takes place not in the public sphere, but at work—within these “authoritarian, private government[s],” as philosopher Elizabeth Anderson recently described them—such rights do not carry over.96

Our eighty-five-year-old labor-law regime circumnavigates these complex jurisprudential issues by conceptualizing the strike as economic activity. In the almost anachronistic language used by the Supreme Court, strikes are “economic weapons in reserve.”97 And “their actualexercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.”98

A full genealogy of the term “economic weapon,” and how it came to such prominence in legal discourse, is beyond the scope of this short Essay.99 But it is worth noting that in pre-New Deal labor discourse, labor activists used the term to emphasize voluntarism over electoral politics, material power over normative. In 1924, the AFL’s magazine, the American Federationist, reflected on the voluntarism of American unions:

[Electoral politics] is the fatal lure in other countries, the deadly trap, the rock on which labor goes smash, soon or late.

It has never fooled the labor movement in America. The American worker goes into politics and uses his ballot according to his convictions, but he does not tie his economic weapon into a bundle with his political power and then find he has made a slapstick at which in the end everybody laughs.100

The AFL’s view of the strike, as an “economic weapon” to use on the market battlefield, eventually became the legal understanding. Reflecting on the evolving law of the strike in 1920, Supreme Court Justice Taft proclaimed the strike an instrument “in a lawful economic struggle . . . between employer and employees as to the share . . . between them of the joint product of labor and capital.”101

Political scientist Josiah Lambert accordingly argues that law came to protect the strike as a “commercial right,” not a “citizenship right.”102 Legal scholars similarly highlight that a more expansive, quasi-constitutional view of striking as a “civil right” warred with the purely statutory conception of striking as an “economic[]interest.”103 The latter won the day, eclipsing early conceptions of a worker as more than “a factor of production” but “a self-governing citizen with rights and duties beyond those enumerated in the labor contract.”104 While visions of how else a strike might have been conceptualized within American law are varied and inchoate, the common thread is, again, that something else was possible.105 In 1914, the Clayton Act proclaimed that “[t]he labor of a human being is not a commodity or article of commerce.”106 By 1937, labor’s commerce-ness had become the source of its rights.

Consistent with the construction of the strike as economic (and not political), public-sector employees excluded from the NLRA largely lack a legally protected right to strike. Most federal and state labor relations laws prohibit strikes by public employees.107 Where strikes are prohibited by law, workers can not only be fired for them but can also face loss of government benefits, fines, and even jail time.108 Their unions face similar consequences.109 Within a world in which strikes are understood as “a legitimate aspect of the market or enterprise economy,” public-sector strikes lack comparable legitimacy.110 They are “deemed inappropriate because the government is not merely an employer participating in the economy, but is the lawgiver for the economy.”111 In other words, they are political. In Janus v. AFSCME, the Supreme Court finally ruled public-sector agency-fee laws unconstitutional, on the grounds that line drawing between the economic and the political in the public sector is untenable.112 And it is, but Janus does little to bring coherence to the law.113

To be clear, there is a way in which categorizing the strike as an economic act is radically pro-labor. According to labor law, the collective withholding of labor, facilitated by law, is neither an illiberal conspiracy nor an anticompetitive restraint of trade. It is a legitimate bargaining tactic.

C. Alternate Visions

And yet, the pre-New Deal history of the American labor movement reminds us that alternate visions for the strike once existed, and with them, for the role of organized labor in a democratic polity. Legal scholars of the first law-and-economics movement argued that corporations were akin to governments in their coercive power.114 They did so in order to politicize the private, to render it a legitimate site of democratic governance.115 Jurisprudentially, much was up for grabs at this point. Corporations might have been analogized to governments, rather than persons, owing constitutional rights to their constituents, rather than holders of those rights against government regulation. Consistent with this view of employment as a political relationship, the right to strike could have been a right of a different sort (political? civil? property?), not a commercial one.116

The labor movement which emerged from the Progressive Era, however, did not advance this vision of political economy. Fearing that any broadly conceived “public interest” would prioritize capital over labor, the AFL preferred to build worker-led institutions, organizations that would be corporations’ counterparts. It advanced a corporatist solution rather than a statist one. And within the world of industrial democracy qua collective bargaining, the strike became understood as an economic right, hard bargaining, a last resort in negotiations gone awry.117

The limitations of this understanding of the strike did not immediately become apparent. Among other factors, Keynesian political economy gave labor unions legitimacy as agents of a common good.118 Employers—constrained in part by law, and even more by institutional understandings of what was acceptable—pulled their punches. When the NLRA was first enacted, strike activity, union membership, and worker wages grew concurrently.119 And even after enactment of the Taft-Hartley Amendments—in the era of the so-called “labor-capital” accord—strikes continued to occur with some frequency, and to be associated with wage growth for workers.120

As I discuss further below, this changed in the 1970s, as the Keynesian political economic commitments that had bolstered labor law gave way. Between 1983 and 2015, total union membership declined by approximately 44%, and private sector union membership declined by 60%.121 Over a similar period, major work stoppages declined by 90%.122 And the few strikes that still did occur were qualitatively different. They were “desperate measures,” which failed to advance union objectives.123 They did not create wage growth, the “more” that Progressive Era labor leaders had envisioned.124 As an economic weapon, the strike malfunctioned.125

III. labor’s twenty-first century challenge to neoliberalism: striking in a new gilded age

A. Work Law in Political Economic Context

In analyzing labor’s current predicament, most legal scholarship emphasizes the limitations of law. “So it is,” Ahmed White concludes, “that workers have found themselves with a right to strike that equals little more than a right to quit work—and maybe lose their jobs or their houses and savings in the balance.”126 The unstated assumption in many of these pieces is that workers rarely strike because the law is bad. And there is little question that current legal impediments powerfully influence unions’ and workers’ calculus about whether striking is worth it. But if the massive labor unrest of the Gilded Age and Progressive Era tells us anything, it is that the relationship between bad law and worker action is not as direct as legalistic accounts suggest. In this Part, I draw from the experiences of labor in the Gilded Age and Progressive Era to discuss the relationship between law, political economy, and social change today, and how strikes may serve the labor movement and the polity—bad law, notwithstanding.

#### That unlocks a vital union tool.

Velazquez ’25 [Alvin; June 24; Associate Professor of Law, Indiana University Maurer School of Law; Mauer School of Law at Indiana University Legal Studies Research Paper Series, “The Death of Labor Law and the Rebirth of the Labor Movement,” no. 543]

Even though organized labor could use a potential Supreme Court decision gutting the NLRA to facilitate state-level experimentation bolstered by the NLGA, there are aspects of the NLRA that do not disappear simply because the Court declares that Congress did not properly delegate the ability to regulate labor in commerce to the Board. Most significant is the prohibition of secondary boycotts.258 As defined in Wex, “[s]econdary boycotts refer to boycotting actions taken against an organization or company that does business with another organization with whom the primary dispute exists. Secondary boycotts mainly arise in labor disputes where a labor organization or other entity unsuccessfully boycotts an employer, and in order to increase pressure, the groups pressure suppliers or buyers to discontinue business with the employer.”259

Historically, secondary boycotts were extremely effective tools for organized labor to obtain major concessions from employers at the bargaining table because the secondary would prevail over the primary entity with a labor dispute to settle the conflict.260 Congress enacted the ban as part of the Taft-Hartley amendments to the Act in 1947.261 Not only did Congress prescribe conducting or participating in a secondary boycott, but also inciting it.262 As discussed above, the Board is the only entity under the Wagner Act to bring forth complaints to prevent unfair labor practices and is deeply intertwined into the NLRA. That changed in 1959 when Congress granted damages and injunctive relief to anyone injured by a secondary boycott with the ability to bring a direct claim in federal court.263 Congress passed the Taft-Hartley amendments to the Act as a check on the power that unions had acquired, including through use of the secondary boycott. Upon Congressional passage of those amendments, labor scholars criticized the ban on secondary boycotts as being an improper infringement of speech and in violation of the First Amendment.264

That Congress wrested part of labor regulation from the Board and placed it with private parties and the federal courts in a reversal of policy has a major implication for this Article.265 As much leeway as the NLGA gives unions to engage in peaceful actions free from the threat of injunction, the NLGA’s provisions do not allow labor organizations to escape financial liability for engaging in secondary activities even if the Court eliminated the Act.266 States, for example, may pass their own prohibitions against secondary boycotts in the absence of a federal act prohibiting them, and several states in fact already have such prohibitions. The Court could conceivably hold that private actors could bring a secondary boycott action against a union. Even though the justification for the existence of the secondary boycott as a check on labor power post elimination of the NLRA, a court or a state legislature could continue endorsing its viability as a legal claim. Unions could consider bringing a renewed first amendment challenges to overturn the prohibition on secondary boycotts. Nonetheless, until those legal challenges are resolved union will have to manage their activities and mitigate the risk of becoming bankrupt from intentional tort claims that are non-dischargeable in bankruptcy, such as secondary boycotts.267

Some objectors to this proposal will argue that the secondary boycott prohibition presents a problem for organized labor in a post-NLRA world.268 That is true, but it was also problem for the pre-NLRA world. The only way to fix that problem is through congressional action as the PRO Act bill does.269 The benefits of the proposal set forth in this Article still outweigh the risks, and the next Part will explain why.

#### Allowing workers to leverage strikes to petition both employers AND the government is key.

Reddy ’21 [Diana S; January 6; Assistant Profesor at UC Berkeley School of Law, represented labor unions and workers at the AFL-CIO, Altshuler Berzon LLP, and the California Teachers Association, PhD, Jurisprudence and Social Policy, UC Berkeley, JD from NYU School of Law, MA in Sociology from Stanford University, and BA in Cultural and Social Anthropology from Stanford University; The Yale Law Journal, ““There Is No Such Thing as an Illegal Strike”: Reconceptualizing the Strike in Law and Political Economy,” vol. 130]

In recent years, consistent with this vision, there has been a shift in the kinds of strikes workers and their organizations engage in—increasingly public-facing, engaged with the community, and capacious in their concerns.178 They have transcended the ostensible apoliticism of their forebearers in two ways, less voluntaristic and less economistic. They are less voluntaristic in that they seek to engage and mobilize the broader community in support of labor’s goals, and those goals often include community, if not state, action. They are less economistic in that they draw through lines between workplace-based economic issues and other forms of exploitation and subjugation that have been constructed as “political.” These strikes do not necessarily look like what strikes looked like fifty years ago, and they often skirt—or at times, flatly defy—legal rules. Yet, they have often been successful.

Since 2012, tens of thousands of workers in the Fight for $15 movement have engaged in discourse-changing, public law-building strikes. They do not shut down production, and their primary targets are not direct employers. For these reasons, they push the boundaries of exiting labor law.179 Still, the risks appear to have been worth it. A 2018 report by the National Employment Law Center found that these strikes had helped twenty-two million low-wage workers win $68 billion in raises, a redistribution of wealth fourteen times greater than the value of the last federal minimum wage increase in 2007.180 They have demonstrated the power of strikes to do more than challenge employer behavior. As Kate Andrias has argued:

[T]he Fight for $15 . . . reject[s] the notion that unions’ primary role is to negotiate traditional private collective bargaining agreements, with the state playing a neutral mediating and enforcing role. Instead, the movements are seeking to bargain in the public arena: they are engaging in social bargaining with the state on behalf of all workers.”181

In the so-called “red state” teacher strikes of 2018, more than a hundred thousand educators in West Virginia, Oklahoma, Arizona, and other states struck to challenge post-Great Recession austerity measures, which they argued hurt teachers and students, alike.182 These strikes were illegal; yet, no penalties were imposed.183 Rather, the strikes grew workers’ unions, won meaningful concessions from state governments, and built public support. As noted above, public-sector work stoppages are easier to conceive of as political, even under existing jurisprudential categories.184 But these strikes were political in the broader sense as well. Educators worked with parents and students to cultivate support, and they explained how their struggles were connected to the needs of those communities.185 Their power was not only in depriving schools of their labor power, but in making normative claims about the value of that labor to the community.

Most recently, 2020 saw a flurry of work stoppages in support of the Black Lives Matter movement.186 These ranged from Minneapolis bus drivers’ refusal to transport protesters to jail, to Service Employees International Union’s Strike for Black Lives, to the NBA players’ wildcat strike.187 Some of these protests violated legal restrictions. The NBA players’ strike for instance, was inconsistent with a “no-strike” clause in their collective-bargaining agreement with the NBA.188 And it remains an open question in each case whether workers sought goals that were sufficiently job-related as to constitute protected activity.189 Whatever the conclusion under current law, however, striking workers demonstrated in fact the relationship between their workplaces and broader political concerns. The NBA players’ strike was resolved in part through an agreement that NBA arenas would be used as polling places and sites of civic engagement.190 Workers withheld their labor in order to insist that private capital be used for public, democratic purposes. And in refusing to transport arrested protestors to jail, Minneapolis bus drivers made claims about their vision for public transport.

Collectively, all of these strikes have prompted debates within the labor movement about what a strike is, and what its role should be. These strikes are so outside the bounds of institutionalized categories that public data sources do not always reflect them.191 And there is, reportedly, a concern by some union leaders that these strikes do not look like the strikes of the mid-twentieth century. There has been a tendency to dismiss them.192 In response, Bill Fletcher Jr., the AFL-CIO’s first Black Education Director, has argued, “People, who wouldn’t call them strikes, aren’t looking at history.”193 Fletcher, Jr. analogizes these strikes to the tactics of the civil-rights movement.

As Catherine Fisk and I recently argued, law has played an undertheorized role in constructing the labor movement and civil-rights movement as separate and apart from each other, by affording First Amendment protections to civil rights groups, who engage in “political” activity, that are denied to labor unions, engaging in “economic” activity.194 Labor unions who have strayed from the lawful parameters of protest have paid for it dearly.195 As such, it is no surprise that some unions are reluctant to embrace a broader vision of what the strike can be. Under current law, worker protest that defies acceptable legal parameters can destroy a union.

Recasting the strike—and the work of unions more broadly—as political is risky. Samuel Gompers defended the AFL’s voluntarism and economism not as a matter of ideology but of pragmatism; he insisted that American workers were too divided to unite around any vision other than “more.”196 He did not want labor’s fortunes tied to the vicissitudes of party politics or to a state that he had experienced as protective of existing power structures. Now, perhaps more than ever, it is easy to understand the dangers of the “political” in a divided United States. Through seeking to be apolitical, labor took its work out of the realm of the debatable for decades; for this time, the idea that (some) workers should have (some form of) collective representation in the workplace verged on hegemonic.

And yet, labor’s reluctance to engage in the “contest of ideas” has inhibited more than its cultivation of broader allies; it has inhibited its own organizing. If working people have no exposure to alternative visions of political economy or what workplace democracy entails, it is that much harder to convince them to join unions. Similarly, labor’s desire to organize around a decontextualized “economics” has always diminished its power (and moral authority), given that the economy is structured by race, gender, and other status inequalities—and always has been. During the Steel Strike of 1919, the steel companies relied on more than state repression to break the strike. They also exploited unions’ refusal to organize across the color line. Steel companies replaced striking white workers with Black workers.197 Black workers also sought “more.” But given their violent exclusion from many labor unions at the time, many believed they would not achieve it through white-led unions.198

#### Secondary strikes are successful and spillover.

Bahn ’20 [Kate and Corey Husak; Febuary 6; Research director of WorkRise at The Urban Institute, Ph.D. in economics from the New School for Social Research and her B.A. from Hampshire College; policy advisor to Sen. Bob Casey (D-PA), U.S. Senate, and research fellow at the Office of the Chief Financial Officer of Washington D.C. Previously, he was the senior manager of government and external relations at the Washington Center for Equitable Growth, bachelor’s in history and international relations from William Jewell College; Washington Center for Equitable Growth, “Factsheet: The PRO Act addresses income inequality by boosting the organizing power of U.S. workers,” https://equitablegrowth.org/factsheet-the-pro-act-addresses-income-inequality-by-boosting-the-organizing-power-of-u-s-workers/]

The PRO Act would broadly address the current power imbalance between workers and owners in the U.S. labor market.

The research: History demonstrates the important role of unions in balancing income inequality. Compiled new historical data shows that there has been an inverse relationship between union density and income inequality from 1936 to the present. Monopsony in particular is becoming an increasing concern in the labor market, where employers have the market power to undercut workers’ wages. Unions play a critical role in tempering this exploitation.

Government support for collective action by workers via unions is critical to reducing so-called rents to firms and ultimately will increase overall social efficiency, with more workers employed at higher wages that actually equal their productivity.

The PRO Act clarifies that workers have a right to strike under the First Amendment of the U.S. Constitution.

The research: Exposure to the 2018 Red for Ed teacher strikes made families of school-age children more likely to support teacher strikes subsequently and even to consider taking collective action in their own workplaces.

Strikes have had many benefits for workers, but their use has declined precipitously since the 1970s. Strikes are the leverage point to ensure that workers have the bargaining power to share in economic growth with their employers. The PRO Act clarifies that the First Amendment encompasses the right to perform a “secondary” boycott or strike in solidarity with another union and further, that striking workers cannot be permanently replaced by their employer.

The PRO Act makes it easier for interested workers to organize into a union through fair elections.

The research: A recent study examines what aspects of unions workers would value, finding that nonunionized workers are increasingly interested in union representation in their workplaces and that workers prioritize collective bargaining as a crucial role for unions.

The expansion of the ability of unions to organize would give more workers access to collective bargaining over their pay and working conditions. The PRO Act reinforces this by instituting proper restitution for workers when employers violate their rights, punishing illegal election interference, and by facilitating quick and efficient collective bargaining agreements once a union has been formed.

The PRO Act cracks down on employers misclassifying their workers as independent contractors and other abuses.

The research: Studies on domestic outsourcing and the fissured workplace shows that businesses subcontracting out their workforce leads to lower wages and fewer opportunities for workers and declining job quality.

Independent contracting lowers wages and allows large companies to retain control over their labor force without any responsibility to the workers, especially among franchises in the fast food industry. This has resulted in an unbalanced labor market, tilted toward large employers. The PRO Act would ensure that companies take responsibility for their employees or else make their contractors and franchises truly independent.

Measures such as the PRO Act are part of a broader movement to reform U.S. labor law so that rebalanced worker power ensures broadly shared growth.

Harvard University’s Labor and Worklife Program recently released its clean slate agenda, which puts forth principles for new labor laws that would support wage growth and ensure well-being for workers and their families. The research shows that expanding workers’ rights and giving unions more tools to balance power in the labor market would benefit the broader U.S. economy. Adapting U.S. labor policy for the modern context would support an equitable economy for everyone.

#### Labor rights advocacy is transformative and empowering even if the rights paradigm is historically fraught. Advocating for rights doesn’t require accepting the rights paradigm as good.

McCann and Lovell, 20—Gordon Hirabayashi Professor for the Advancement of Citizenship at the University of Washington; professor of political science, department chair, and the Harry Bridges Endowed Chair in Labor Studies at the University of Washington (Michael and George, “Theorizing Law and Legal Mobilization in Racial Capitalist Empire,” *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*, Conclusion, pp. 390-394, brackets in original, dml)

We now return to the fundamental question that began this chapter: What are the prospects for continued and future legal contestation “from below” amid the long-standing, recently recrudescent manifestations of racial capitalist hierarchy and privilege? Our answer may be surprising to some readers, as it significantly complicates the starkly critical portrayal of law and hegemony developed in the preceding pages. In our view, it would be a mistake to dismiss the possibilities for political and legal mobilization as empty quests, to accept fully Marx’s image of citizen rights status and participation in the public sphere as just a feeble political lion’s skin. We warily join other legal mobilization scholars in underlining that, even in the current era of retrenchment in the racial capitalist order, law still provides one of the most important institutionalized sites and discursive resources for subaltern group resistance to and contestation over hegemonic policies, practices, and relationships in both state and society. After all, our historical study chronicled not just the legally authorized exploitation of immigrant and nonwhite workers but, equally important, the latter’s persistent, creative struggles to challenge many forms of legally constituted hierarchy and to advance institutional change in more egalitarian, democratic, even socialist directions. It is important to recognize that most of the activists described in previous pages remained committed reformers all their lives, and many in the second generation remain so through the present period. Indeed, most of them continued to be progressive leaders in unions, local government, community organizations, immigrant and women’s rights groups, low-cost housing development, journalism, education, and the like. They all have continued to fight against the interconnected manifestations of repressive law—the penal-industrial complex, crimmigration, workplace injustice, inadequate and segregated housing, and more— and for transformative causes of social justice and human rights. And they have done so with clear-eyed understanding about the limits and costs of litigation as well as the most promising, if contingent, strategies of political action beyond litigation.

Our general intellectual approach to understanding these quests again has taken its cue from the analysis offered by the sage historian E. P. Thompson (1975; Cole 2001). We agree with Thompson that law can be identified with both specific institutions, such as courts, and with specialized personnel, such as judges and lawyers, all of which may be closely linked to ruling classes or groups. But “law may also be seen as ideology, or as particular rules and sanctions which stand in a definite and active relationship (often a field of conflict) to social norms; and, finally, it may be seen simply in terms of its own logic, rules and procedures—that is, simply as law” (E. P. Thompon 1975, 263). Legal norms and ideas, we noted earlier, saturate society and the state alike, constituting relations at many levels of practice. Law as ideology can be viewed both instrumentally, as “mediating and reinforcing” as well as challenging hierarchical power relations, and structurally, as a metalevel intersubjective terrain for constructing and justifying those relations. Legal justification should not, Thompson insisted, be viewed primarily as mystification, as a mask obscuring material relations in the consciousness of ordinary subjects. Rather, legal ideology is routinely on display in the (racialized and gen-dered) “class theatre” but rife with contradictions, and it is law’s ideological tensions and indeterminacy that provide spaces and resources for contestation. To cite Thompson’s very famous but arguably underappreciated words, The rhetoric and the rules of a society are something a great deal more than sham. In the same moment they may modify, in profound ways, the behavior of the powerful, and mystify the powerless. They may disguise the true realities of power, but, at the same time, they may curb that power and check its intrusions. And it is often from within that very rhetoric (of law) that a radical critique of the practice of the society is developed. (265)18

We add, however, that the possibilities for and modes of strategic legal contestation tend to vary with the forms of law (discussed earlier) that govern specific institutional contexts and constructions of contending subjects. Much legal contestation takes place among recognized rights-bearing citizen subjects and groups, usually represented by legal or political elites, over means and degrees of legal enforcement or the authoritative meaning of general, often clashing, liberal legal principles, for example, between property rights and equal protection, between religious freedom and invidious racial or sexual discriminaton, between free speech and police power, or over the proper scope of police violence. This is the stuff of routine “liberal” legal mobilization policy analysis, and it is important. Scholarly study of variable institutional opportunities and unequal instrumental group resources thus makes sense, the legal analog of analyzing interest group politics (Epp 1998, 2010; Paris 2010). Yet other struggles are less over competing constructions of liberal principles than over challenges to practices that depart from or undermine officially promulgated liberal principles and rules. This is closer to Scheingold’s classic argument about how the “myth of rights” often is deployed through an aspirational “politics of rights” to close the gaps between principle and practice (Scheingold 1974; Epp 1998; Gould and Barclay 2012; Paris 2010).

But much contestation instead involves efforts by subaltern semifree or unfree groups to mobilize liberal legal principles of equal treatment to challenge the overtly repressive forms of institutionalized social control and domination in various zones of society, thus endeavoring to expand the promises of liberal legal equality to historically marginalized subjects and illiberally governed institutional spaces. The history of workers’ class struggles to supplant the feudal remnants of American employment law fit this characterization (Orren 1991). Contests over repressive legal management targeting minority racial, gender, sexual, immigrant, and other marginalized populations at work, in housing arrangements or in the carceral state, routinely take this more ambitious, systematically reform-oriented character as well (Smith 1997). For example, liberal equality principles have provided useful if limited resources for challenges to de facto as well as de jure racial segregation in public and workplace institutions as well as racially targeted police violence—a classic manifestation of repressive law—over the last century, from the early NAACP through the Black Lives Matter movement (Francis 2014; see also Epp 2010). Similarly, the appeals to liberal principles of equal rights provided unfairly compensated women in gender-segregated occupations grounds for potentially transformative challenges in the wage-equity movement during the 1970s and 1980s (McCann 1994). Efforts to expand and fortify rights for victims of domestic violence fit the tradition of activism as well (A.-M. Marshall 2016; Merry 2000, 2003). Finally, our historical story about how unfree, noncitizen Filipino nationals struggled to expand basic equal-protection rights and to challenge multiple manifestations of repressive law at and beyond work provides an especially important, if complex, historical model for rights “mobilization under illegality” today by undocumented immigrants (including DREAMers), day laborers, asylum seekers, deportees, felons, the homeless and generally poor, and other struggling workingclass and devalued people (Venkatesh 2016).

The types of struggles against hierarchy noted above are each different but important, and they all deserve sober, critical attention devoid of romance about law’s inherent principled inclusiveness. Most of these modes of contestation tend to privilege efforts to advance “resonant rights claims that stick close to familiar legal constructions and meanings in an effort to ‘win . . . popular support and elite allies’” (Ferree 2003, 305–6; see also Godoy 2013, 19; McCann 1994). 19 We underline further, though, that while enforcement of prevailing neoliberal ideology may be a formidable constraint, legal mobilization in practice does not require subaltern groups to completely accept prevailing liberal, process-based legal norms sustaining hierarchical order. After all, moderate claims that may be resonant at one moment can become more radical and potentially transformative at another juncture, and vice versa. This was E. P. Thompson’s core theoretical point. And it has been illustrated by our historical narrative regarding both generations of Filipino labor activists who persistently mobilized conventional rights for reconstructive purposes and reconfigured familiar rights into new, substantively radical visions for action. Indeed, previous pages have shown that struggles on behalf of transformative rights claims by defiant activists—including migrant noncitizens, semifree black labor activists, female workers, and their allies in our narrative study who eventually were granted citizen status and yet persisted in their transformative quests— have been commonplace in US history. In particular, legions of committed leftist activists in and beyond the United States have embraced the liberal principle of egalitarian citizenship to contest the proprietarian, profit-based principles of capitalism and to challenge the directly unequal material resource distribution and intersectional race/class/ gender exploitation at the heart of the liberal legal system (W. Brown 2002; Smith 1997; also Kelley 2015). Such “novel” egalitarian rights claims (Polletta 2000) express “radical ideas [that] are attractive to movement actors who seek a restructuring of hegemonic ideas and the interests they express and support” (Ferree 2003, 305– 6).

The latter types of novel egalitarian, class-based rights claims most often develop from a nomos born of cultural experiences distant from national legal institutions and centers of power (Polletta 2000). They may emanate from minority group experiences “below,” at local peripheries removed from central state power, as Cover imagined (Spade 2015). Or they may migrate from other national, transnational, or international traditions, including those committed to human rights. Immigrants and marginal communities thus are often the source of such potentially transformative visions (Apostolidis 2009; Cummings 2018). Filipino activists in particular, we have seen, drew on a mix of traditional Filipino cultural norms, appropriation of Spanish Catholic ideas, Marxist philosophical sources, Popular Front intellectual resources, and international human rights logics, plus more. Their hybrid oppositional legal consciousness was grounded fundamentally in experience-based understandings about the workings of class, race, and gender inequality. We reiterate that the authors of these claims were not privileged elites but were “ordinary” working-class activists enacting aspirations born of long-standing oppression and marginalization.

#### The mere existence of strong unions is liberatory, even if they’re never used.

Icelliler, 25—PhD Candidate in Political Theory at the University of North Carolina at Chapel Hill (Begum, “The necessity of labor unions for curbing domination,” Critical Review of International Social and Political Philosophy, July 2, 2025, DOI: 10.1080/13698230.2025.2520036, dml)

The fact that labor unions are fixtures of political life has a freedom-enhancing value in itself. In unionized workplaces, the common knowledge that unions have certain retaliatory powers can be enough to deter employers from exercising arbitrary power. What is less obvious is that even nonunionized workplaces benefit from the existence of unions. For one, unionization can boost the wages and benefits of nonunionized workers in the rest of the firm and the industry (Freeman, Citation1985, Chapter 10; Rosenfeld, Citation2014, Chapter 3). Beyond material benefits, the mere existence of unions can begin to shift the distribution of power between employers and workers. An organizing drive within a firm or industry can compel employers to meet workers’ demands in order to prevent unionization. Alternatively, one can imagine a workplace whose management has so far been benevolent, and refrained from abusing its power, so workers haven’t had the incentive to organize collectively. One day, management changes, and the new one considers using its powers in ways more extensive and arbitrary. The common knowledge that unions exist to protect the rights and interests of workers acts as the first line of defense against dominating power. Simply knowing that unions exist for this purpose is powerful, even if their institutional capacity has remained unutilized. Given that one of the major contributions of republican theory to our understanding of freedom is that it can diagnose unfreedom even before interference has been exercised, the anticipatory and defensive roles of labor unions should be seen as reasons why they are integral to a republican model of non-domination.

#### Only collective, solidaristic organizing around labor rights can successfully overcome crackdown.

Taylor and Hunt-Hendrix, 24—co-founder of The Debt Collective; senior advisor at the American Economic Liberties Project, founder of Way to Win and Solidaire (Astra and Leah, “Solidarity Beyond Borders,” *Solidarity: The Past, Present, and Future of a World-Changing Idea*, Chapter 7, pp. 221-224, dml)

This battle is not new, and the forging of a new framework is far from guaranteed. Capitalists have long proven themselves more than willing to collaborate with despots to maintain their advantage. While we can barely scrape the surface of that history here, the twentieth century is indelibly marked by struggles to establish competing international orders—struggles that the Left tended, for the most part, to lose. As Quinn Slobodian argues in Globalists: The End of Empire and the Birth of Neoliberalism, neoliberals sought to create a new “economic constitution for the world.”[12] Capitalism required international laws and institutions that could protect markets, property rights, and profits. Instead of cooperation, they promoted competition; in the place of economic planning, they promoted the spontaneity of the price system. They viewed any kind of protectionism of domestic industries as an unacceptable hindrance to international trade. Neoliberal governance is supranational, safeguarding markets from domestic or democratic encroachment.

But there have been repeated attempts to construct alternative international orders based on the recognition of interdependence, pluralism, historical truth, and the principle of reparative justice. Over the decades, many movements and coalitions have made inspiring efforts toward this horizon, often despite overwhelming resistance. In this chapter, we look to a few key examples, while simultaneously tracing the evolution of neoliberalism in their midst, and its concomitant war on solidarity. First, we begin with the worker-led visions of international cooperation that began in the industrial age, calling workers around the world to unite for economic rights, as well as against the prospect of the Great War; though they were unable to halt Europe’s descent into violence, their demands for labor rights were instrumental in the postwar creation of the International Labour Organization. Next, we turn to the valiant struggles by newly independent nations to develop a democratic, decolonial, global economic system —the New International Economic Order (NIEO)—which aimed to strengthen the United Nations General Assembly as a binding source of authority and give independent nations sovereignty over their natural resources. The NIEO was defeated by the United States, but it offers a viable template we can learn from today. Then we come to the global justice movement of the 1990s, which pursued a grassroots-led strategy to counter the neoliberal free trade regime of the Washington Consensus and succeeded in derailing the Multilateral Agreement on Investment in 1998 and defanging the World Trade Organization and International Monetary Fund at the dawn of the millennium. Finally, we discuss some of the recent democratic uprisings in countries like Greece and Chile, which set out to pave new, post-neoliberal futures, only to be impeded by resistance from within and without—proving that struggles for solidarity on the domestic and global fronts cannot be severed. There is no way to construct a solidarity state without simultaneously building solidarity beyond borders, and the reverse holds true as well.

As these examples all demonstrate, the push for a more solidaristic world has involved both battles of ideas and battles in the streets. Time and again, we see efforts by civil society to create inclusive and democratic international systems followed by countervailing efforts to consolidate power. Time and again, the high priests of neoliberalism have conspired with authoritarians to ensure profits are protected at a human cost that has never been accurately tallied, acknowledged, or grieved. Movements and countries trying to break with the economic status quo have faced devastating backlash and violence—ranging from suppression and assassinations to capital flight to violent coups. Much the way the American War on Poverty was militarized and morphed into the War on Crime, condemning millions to mass incarceration and racist police violence, so in the international arena, leaders of movements who fought for more egalitarian economic orders were imprisoned and assassinated, while millions of men and women were disappeared and tortured.

Thanks to the opposition’s relentless politics of division, and the natural tendency of human beings to prioritize people they are already close to (both culturally and geographically), internationalism has proven a uniquely challenging ideal to put into practice. Marx was one of the co-founders of the First International labor federation in 1864, and millions of people since have been inspired by his insistence that worker power must extend beyond borders in order to challenge the transnational power of capital. But nearly two centuries after Marx and Engels made their famous injunction to the workers of the world— unite!—a concrete strategy to unify the global proletariat remains frustratingly elusive. Nevertheless, communities around the world continue to dream of and fight for more expansive and inclusive arrangements, aware that the alternative is mutually assured destruction.

Benedict Anderson was right that the nation is an “imagined community” of belonging, and his insight applies to the international realm as well.[13] The task ahead involves both imagination and institution building. We must imagine a community that stretches across borders that can develop collective responses to global problems, and we must create institutions that reflect and reinforce our fundamental interdependence and that aim to cultivate solidarity at scale. International institutions already exist, though they currently serve a very different purpose. The challenge is building a border-crossing movement that can divorce them from their colonial and neoliberal past in order to help usher in a livable future grounded in economic justice and ecological realism. A new international order is necessary and possible, and solidarity must be at the center.

#### Working within economic systems is necessary.

Fleming and Banerjee, 16—Professor of Business and Society and Director of the Modular Executive MBA programme AND Professor of Management and Director of the Executive PhD program at Cass Business School, City University London (Peter and Subhabrata Bobby, “When performativity fails: Implications for Critical Management Studies,” human relations, 2016, Vol. 69(2), 257–276, dml)

In their influential analysis of Critical Management Studies (CMS), Fournier and Grey (2000) argue that CMS scholarship is driven by three basic principles: denaturalization, reflectivity and non-performativity. Denaturalization deconstructs the seemingly immutable ‘realities’ and ‘rationalities’ of managerialism while exposing the wealth of alternatives that reside in the shadows of organizational life. Reflectivity challenges the dominance of positivism in the methodologies of mainstream management research, revealing how all social scientific investigation is underpinned by political assumptions. Drawing on Lyotard’s (1984) notion of instrumental performativity, the principle of nonperformativity rejects the means-ends rationality that governs many organizational situations, especially under neoliberal capitalism characterized by a brazen cost-minimization/ profit-maximization logic (Fournier and Grey, 2000).

The principle of non-performativity has recently been questioned in a number of articles published in this journal and elsewhere. These authors suggest that by critically distancing themselves from the concrete activities of managers, researchers may miss opportunities to intervene and make a difference for the better. For example, in their influential article, Spicer et al. (2009: 538) argue that the principle of non-performativity needlessly isolates CMS from organizational practitioners. This in turn fosters a corrosive ‘cynicism and negativism’ whereby scholars ply grand critical theories that have little relevance to everyday organizational challenges. Others similarly maintain that the principle of non-performativity fails to offer ‘practical’ guidelines for managers (King and Learmonth, 2014); misses crucial opportunities to ‘collaborate’ with middle-managers and stubbornly objects to becoming ‘more relevant to practice’ (Wickert and Schaefer, 2014: 7); is elitist in how it ignores practitioner management texts in favour of ‘canonical perspectives’ associated with Marx, Foucault and the Frankfurt School (Hartmann, 2014: 619, also see Clegg et al., 2006).

These scholars recommend a renewed commitment to performativity so that critical knowledge can have an impact on the practices of managers and lead to emancipatory change. Most assertive in this regard are Spicer et al. (2009) and Wickert and Schaefer (2014) and their respective notions of critical performativity and progressive performativity. Both articles draw upon wider philosophical studies of performativity to discern its potential for CMS researchers hoping to make meaningful interventions. In particular, they apply Austin (1963) and Butler’s (1990, 1993) influential insight about the way language creates reality (rather than just describe it). Armed with this insight, it is claimed that CMS researchers can change organizational practice (for the better) by altering how language is used by managers. Modified speech may lead to modified and thus emancipatory behaviour. Such critical performativity ‘involves active and subversive intervention into managerial discourses and practices’ (Spicer et al., 2009: 538). Instead of worrying about emancipation on a grand scale, more modest microemancipatory practices might ‘stimulate the performative effects of language in order to induce incremental, rather than radical, changes in managerial behaviour’ (Wickert and Schaefer, 2014: 1). This means getting closer to managers rather than critiquing them from afar.

We agree that CMS scholars should be reflecting on how their critical findings might translate into concrete change. Otherwise why bother being critical in the first place? Moreover, we applaud recent efforts – including the advocates of critical and progressive performativity – to rethink how CMS research might make a difference to organizational practices. Our motivation for entering this discussion, however, derives from a nagging doubt. We are concerned that the emphasis on discursive performativity as a change mechanism risks presenting an overly optimistic view of (a) the power of language to alter institutionalized organizational practices associated with neoliberal capitalism and (b) the capability of CMS scholars alone to reorder in situ how managers make sense of governing imperatives like profit-maximization, shareholder value, consumer responsiveness and so forth. While there may be situations in which critical and/ or progressive performativity may ‘talk into existence new (counterbalancing) behaviours and practices’ (Wickert and Schaefer, 2014: 3), we also propose that, realistically speaking, such attempts would just as likely fail given the preponderant pressures of economic rationality in many business contexts. Missing in the aforementioned calls for a wider appreciation of (discursive) performativity, therefore, are the strict boundary conditions that Austin (1963) and Butler (1990, 1993, 2010) themselves place around the notion.

Our article contributes to the ongoing discussion about the challenge of making CMS performative by addressing two central questions. First, rather than automatically assume their success, how might discursive performative approaches (such as critical and progressive performativity) fail to enact desired material changes and for what reasons? Answering this question will provide a better understanding of the practical contingencies that can determine whether these new performativities are the best method for endeavouring to influence organizations. Second, in light of the constraints on the performative potential of language, what other possible avenues are available to the CMS community for having an impact (however modest) on organizational practices and routines?

The article is structured in four parts. First, we provide an overview of the founding CMS principle of non-performativity and analyse recent calls for critical research to become more performative, giving particular attention to the two articles that have recently appeared in this journal. Second, we identify the circumstances under which it is more realistic to expect discursive performativity to fail rather than succeed. Corporate Social Responsibility (or CSR) is here highlighted as a failed performative in managerial and mainstream discourses. Third, the article posits alternative methods that the CMS community might use to help make organizations less exploitative and more equitable. Fourth, we conclude by discussing the broader role of critique in management studies at this juncture. Our overall aim is to continue the ongoing dialogue about performativity in the CMS community and hopefully inform new avenues to achieve its stated objectives in business and society.

Critical Management Studies and the question of performativity

We will not provide a detailed overview of CMS as that has been done extensively elsewhere (see e.g. Adler et al., 2007; Alvesson et al., 2009; Banerjee, 2011a; Fournier and Grey, 2000; Spicer et al., 2009). CMS is characterized by a diversity of theoretical and philosophical perspectives. For instance, the 2013 Critical Management Studies conference held in Manchester comprised of 25 streams involving a wide range of topics such as critical perspectives on strategy, globalization, international business, diversity, feminism, race theory, human resource management, marketing, accounting, postcolonialism, sexuality, gender, postmodernism and environmentalism. CMS was established as a division in the Academy of Management in 2008. The domain statement of the CMS division describes its mission:

CMS serves as a forum within the Academy for the expression of views critical of established management practices and the established social order. Our premise is that structural features of contemporary society, such as the profit imperative, patriarchy, racial inequality, and ecological irresponsibility often turn organizations into instruments of domination and exploitation. Driven by a shared desire to change this situation, we aim in our research, teaching, and practice to develop critical interpretations of management and society and to generate radical alternatives. Our critique seeks to connect the practical shortcomings in management and individual managers to the demands of a socially divisive and ecologically destructive system within which managers work. (CMS, 2014)

Thus, CMS challenges the fundamental normative assumption that managerial notions of efficiency are universally desirable, and that pursuing profit motives can only lead to positive outcomes for the workforce and society. Moreover, CMS is driven by the desire (even if it does not always articulate the means) to transform existing power relations in organizations with a view to encouraging less oppressive practices that do not harm social and environmental welfare. As Fournier and Grey (2000: 16) argue, ‘to be engaged in critical management studies means, at the most basic level, to say that something is wrong with management, as a practice and body of knowledge, and that it should be changed’.

Along with de-naturalization and reflexivity, Fournier and Grey (2000) suggest that the principle of non-performativity is crucial to the CMS project: What exactly do Fournier and Grey (2000) mean by non-performativity? Let us imagine a CMS researcher studying changing employment practices in the United Kingdom. S/he gains access to a subsidiary of a multinational enterprise that has started to use zero-hours employment contracts to maximize profits for its parent company. These contracts have been widely condemned as exploitative and unjust since they insist employees always be on call but guarantee zero-hours of paid work (see Guardian, 2013). Our non-performative orientated CMS researcher would not be interested in generating knowledge that enables the efficiency and instrumentalization of this new employment system. Nor would s/he be overly sympathetic to the operational manager’s ‘point of view’ because employees are so obviously disadvantaged and suffering as a result. So what is our CMS scholar seeking to achieve in undertaking this research? Generally speaking, change hopefully. But here is the nub of the problem. How can critical researchers make an effective intervention while tenaciously remaining aloof (both ideologically and practically) of the concrete activities being described? What aspects of performativity, whether critical or progressive, can engage with this clearly exploitative practice to create a fairer outcome? If zero-hours contracts are practices created by the language of neoliberal capitalism, what other utterances have the power and agency to counter these practices?

Towards a performative Critical Management Studies?

Recent commentators have addressed questions like these by suggesting that CMS scholars must stop being so negative about the idea of working with managers to help bring about practical change. In their strident critique of Fournier and Grey (2000), Spicer et al. (2009) maintain that,

. . . a potential consequence of holding strong to the credo of anti-performativity is that CMS withdraws from attempts to engage with practitioners and mainstream management theorists who are at least partially concerned with issues of performativity . . . an anti-performative CMS satisfies itself with attempts to shock the mainstream out of its ideological slumber through intellectually ‘pissing in the street’. (Spicer et al., 2009: 542)

Critical scholars should instead become actively involved with everyday practitioners and engage with the language they use in an attempt to construct new realities and opportunities.

Following Spicer et al. (2009), Wickert and Schaefer (2014: 20) also implore the CMS community to have ‘greater impact on what managers actually do’. They are concerned that critical scholars fail to provide ‘knowledge for dealing with those aspects of managerial life that have been identified as problematic . . . and overlooks potential points of engagement with managers’ (Wickert and Schaefer, 2014: 5). Middle-managers in particular ought to be enlisted by CMS researchers because they are likely to be less aligned with organizational elites and potentially more sympathetic with frustrated subordinates to trigger progressive social change. For this reason too, Hartmann (2014: 626) argues the CMS community could also engage with managerial texts that are often dismissed in favour of critical theory, Marxism and feminism, in an attempt to subvert mainstream approaches and shift the discourse towards more emancipatory objectives instead. At least managerial texts provide a non-alienating ‘vocabulary to think progressively about alternatives without setting itself against the goals of organizations (i.e. it is not directly opposed to performative ends)’.

Critical and progressive performativity

To rectify the pitfalls of non-performativity, Spicer et al. (2009) posit ‘critical performativity’ as a practical alternative for CMS scholars. This model of impact can be achieved through an affirmative stance (getting close to the object of critique to reveal points of revision), an ethic of care (providing space for management’s viewpoint and collaborating with them to achieve emancipatory ends), pragmatism (being realistic about what can be achieved given structural constraints), engaging potentialities (leveraging points of possibility for changing managerial practices in an incremental rather than radical ‘revolutionary’ manner) and asserting a normative orientation (ideals for ‘good’ organizational practice).

Three implications of this approach are noteworthy. First, Spicer et al. (2009) move beyond Fournier and Grey’s (2000) Lyotardian conceptualization of performativity (i.e. input/output maximization) by drawing on other philosophical traditions that highlight how language/speech might count as social action (see Gond and Cabantous [2015] for an extended overview of this literature in the social sciences and philosophy). Austin (1963) and Butler’s (1990, 1993) notion of performative utterances (i.e. words that are also deeds) is considered especially important in this regard. Rather than functioning only as a secondary descriptor, language can also perform reality, as when a judge utters ‘I sentence you to . . .’ CMS researchers might thus create equitable organizational practices by intervening in management discourse and experimenting ‘with metaphors that might be floating around in the organization’ (Spicer et al., 2009: 547). Second, an ethic of affirmation and care implies that CMS ought to listen to management’s side of the story and engage in a ‘loving struggle’ (p. 548) with their language rather than simply criticize: ‘CMS needs to appreciate the contexts and constraints of management . . . from this follows some degree of respect and care’ (Spicer et al., 2009: 545). Third, CMS must be less ‘utopian’ in its emancipatory ambitions. Incremental and piecemeal change is more doable given the economic pressures managers confront in their daily routines and practices.

A similar set of reforms are outlined by Wickert and Schaefer (2014) in their notion of ‘progressive performativity’. The weakness of CMS for them is that it ‘provides only limited guidance on how (counterbalancing) values could be embedded into organizational practices and procedures in collaboration with, rather than in opposition to, managers’ (Wickert and Schaefer, 2014: 7, emphasis in original). They too advance a broader understanding of performativity related to language: ‘The performative element, we suggest, requires researchers to “activate” the language that managers use . . . In that way, CMS scholars may support managers to “talk into existence” new (counterbalancing) behaviours and practices’ (Wickert and Schaefer, 2014: 3). Two elements of progressive performativity follow from this proposition. First, through micro-level engagement CMS researchers can actively ally themselves with selected managers (preferably middlemanagers) to raise awareness and identify alternative speech acts. Second, this may lead to reflexive conscientization, whereby scholars help create discursive spaces ‘in which managers are gently “nudged” to reflect on their actions and the organizational processes to which their actions relate . . . [it seeks to] raise the critical consciousness of managers’ (Wickert and Schaefer, 2014: 3).

This can only be credibly achieved, according to Wickert and Schaefer, if scholars put aside the classical emancipatory ideals of CMS since they discourage micro-collaborations with managers, introduce concepts that alienate practitioners and ultimately make progressive change seemingly impossible. Utopianism, in particular, according to Wickert and Schaefer, introduces ‘complex problems [that] fill people with anxiety and limit their capacity to think and act creatively’ (Wickert and Schaefer, 2014: 14). They recommend non-utopian and ‘small-win’ initiatives instead, ‘moving forward by actively working towards incremental, rather than radical transformation of unfavourable social conditions’ (Wickert and Schaefer, 2014: 9–10).

Limitations of the new performative turn in Critical Management Studies

Space does not permit a full elaboration of the critical and progressive models of performativity being recommended to CMS researchers. But it is no exaggeration to suggest that the argumentation involved presents a rather caricatured image of the CMS community when exhorted to ‘overcome its often hypocritical and unproductive claims that its output has no performative intent whatsoever’ (Spicer et al. 2009: 554). As Alvesson et al. (2009: 10, emphasis in original) argue, non-performativity ‘emphatically does not mean an antagonistic attitude to any type of performing’. CMS only refrains from instrumentally contributing to the mean-ends rationality of corporate managerialism. It is not against all impact, since that would render its criticism something of a self-serving exercise that rightly ought to be admonished. Having said that, advocates of a new performativity do have a good point when they highlight the vagueness and ambiguity around what mechanisms of impact CMS actually does favour. How can the community help make a practical difference to organizational life so that they are less exploitative and more equitable?

Critical and progressive performativity may hold promise in this regard. However, we feel these models of influence carry overtly optimistic assumptions about the power of language to change certain structural realities as well as the capabilities of CMS scholars to perform emancipatory change through discourse and micro-level engagement. There may certainly be some cases where getting close to managers, empathizing with their constraints and manipulating their language may indeed yield the (micro) fulfilment of aspects of the CMS mission. For example, scholars have engaged with managers in developing critical perspectives on leadership (Cunliffe, 2009; Cunliffe and Eriksen, 2011) and promoting reflexivity in managerial practice (Barge, 2004). However, we are concerned that the conceptualizations of performativity proposed lack a realistic appreciation of the accumulated social forces guiding organizational behaviour in these institutionalized contexts, including the profit motive, shareholder value, cost externalization, means-ends efficiency and so forth. While these forces are no doubt social and linguistically constructed too (e.g. see Callon [2010] in relation to the economy), they have also been politically and institutionally embedded over time and cannot simply be talked away. It is these conditions, we argue, that need to be taken into consideration when assessing the impact of CMS scholarship. Without a wider political analysis of organizations, institutions and markets, the capacity to perform economic rationality differently will be limited, which in turn restricts the scope for politics, political subjectivity and dialogue (see Cochoy et al., 2010). Hence, we would expect the mechanisms recommended by critical and progressive performativities to frequently fail rather than succeed.

#### Imperfect but pragmatic solutions are critical---epistemic purity is an impossible burden.

Vickers ’20 [Edward; 2020; Professor of Comparative Education at Kyushu University; Comparative Education, “Critiquing coloniality, ‘epistemic violence’ and western hegemony in comparative education – the dangers of ahistoricism and positionality,” vol. 56 no. 2]

The empirical and theoretical flaws of this approach are intertwined with the problematic language in which its arguments are typically couched. Historical and anthropological scholarship on East Asia and other regions amply demonstrates that colonialist or neo-colonialist attitudes and strategies of domination are not and have never been a Western monopoly. But decolonial theory posits the more or less uniform victimhood of non-Western ‘others,’ deriving claims for the moral superiority of ‘authentically’ indigenous perspectives. Debating the validity of such claims is complicated by an emphasis on ‘positionality.’ Readers are exhorted to judge an argument less by standards of evidence or logic (often portrayed as camouflaging a Western ‘will to power’) than on the basis of the writer’s self-identification or ‘positioning.’ The language of ‘epistemic violence,’ ‘secure spaces,’ ‘epistemological diffidence,’ ‘border thinking’ and ‘location’ suggests an image of the critical scholar as revolutionary guerrilla, valiantly sniping at Western hegemony from his or her [their] marginal redoubt. In so far as this reflects a desire for a more just, tolerant and sustainable society – one that values diversity as a resource for mutual learning – it is admirable. However, if we seek to combat oppression, in the educational sphere or beyond, it is incumbent on us to pick our enemies, and our language, carefully. Aiming a blunderbuss at the supposedly illegitimate or self-serving ‘universalism’ of ‘modern Western social science,’ while ignoring how calls for indigenisation and ‘authenticity’ are used to legitimate highly oppressive regimes across Asia and elsewhere, is to risk undermining those universal social and political values (freedom of expression, civil liberties, rule of law) upon which critical scholars themselves rely.

An embrace of ‘opacity’ or ‘epistemological diffidence,’ advocated by several of the CER contributors, threatens to be similarly self-defeating. While they share an admiration for the Argentine theorist of ‘decoloniality,’ Walter Mignolo, the work of his brilliant compatriot, the writer, poet and essayist Jorge Luis Borges, is far worthier of attention. Borges’ famous fondness for ‘labyrinths’ and the paradoxical was combined with a sharp eye for gratuitous obfuscation and circumlocution (see, for example, his story The Aleph, in Borges 1998, 274–286). Offering his own critique of the fashion for opaque jargon in mainstream social science, the émigré Polish sociologist Stanislav Andreski wrote acerbically that ‘one of the pleasures obtainable through recourse to confusion and absurdity is to be able to feel, and publicly to claim, that one knows when in reality one does not’ (1974, 95). ‘Opacity’ in imaginative literature may intrigue or entertain, but in interpreting and explaining unfamiliar societies, cultures and education systems, comparativists especially ought to write in clear, accessible language. And while all social scientists can understand the lure of the sweeping generalisation, we should generalise with extreme caution, especially when categorising large swathes of humanity.

Borges’ earliest collection of stories is entitled A Universal History of Iniquity. This appeared in 1935, when there were already rumblings in both East and West of the conflict that would soon engulf Eurasia. Implied in his title was a truth painfully obvious to many contemporaries: that iniquity is indeed universal. The conflicts of the mid-twentieth century starkly illuminated another truth: that iniquity in the modern world, especially (though not only) that associated with totalitarian societies, often consists in essentialising and de-humanising ‘the other’. Hannah Arendt – a thoroughly Eurocentric thinker, but one who addressed, in ‘totalitarianism,’ a theme with global ramifications – wrote of how, through ‘the murder of the moral person in man,’ totalitarian systems transform their citizens into ‘living corpses’ capable of any outrage (2017, 591). But ironically, in the very act of attacking essentialism as applied to ‘non-Western’ cultures, the CER contributors propagate an essentialised view of ‘the West’ itself. Iniquity in the form of coloniality is in their account attributed solely to Western modernity. This view is both inaccurate and dangerous.

The irony in this approach extends to the attribution of agency. Claims to champion the dignity of subaltern, ‘non-Western’ actors are in fact undermined by assertions of their uniform victimhood. This reproduces the very Eurocentrism that ‘decolonial’ scholars quite rightly seek to challenge. In fact, privilege and victimhood have many dimensions, by no means all traceable to the ‘phenomenon of colossal vagueness’ that is colonialism (Osterhammel 2005, 4). One group or individual can plausibly be portrayed as victim, or perpetrator, or both, depending on context and perspective. Were post-war German civilian refugees from Eastern Europe, or Japanese civilians fleeing Manchuria, victims or perpetrators? Or today, is a privately-educated, English-speaking, upper-caste South Asian scholar more accurately to be seen as privileged or under-privileged, in terms of access to power (‘epistemic’ or otherwise) within South Asia or the global academy? ‘Location’ or identity are not reducible to neat labels or discrete categories. As the Anglo-Ghanaian philosopher Kwame Anthony Appiah emphasises, according dignity and agency involves recognising that our identities are not just socially given, but also actively chosen. Culture is ‘a process you join, in living a life with others,’ and ‘the values that European humanists like to espouse belong as much to an African or an Asian who takes them up with enthusiasm as to a European’ (2018, 211). The same applies with respect to value systems we have reason to regard as iniquitous, such as those associated with colonialism or neoliberalism.

What, then, are we to make of the traction that totalising anti-Westernism appears to be gaining within the CIE field? On one level, this may tell us more about the state of campus politics, and politics in general, across contemporary America and the broader ‘Anglosphere’, than about the wider world. The worldview that the CER contributors espouse, even as they strain at the shackles of Western epistemology, is redolent of America’s peculiarly racialised identity politics. And notwithstanding claims to marginal positionality, the increasingly widespread currency of such arguments in North American and Anglophone CIE circles reflects their status as an emergent orthodoxy that in key respects mirrors the very ethnocentrism it rejects.

Although the ideas in the CER special issue are presented as challenging both the scholarly mainstream and a wider neoliberal or neocolonial establishment, the seriousness of this challenge is doubtful. Exhortations to embrace ‘opacity’ or to ‘think otherwise’ in the name of ‘contesting coloniality’ imply no coherent programme, and suggest an overwhelmingly negative agenda. Meanwhile, far from risking ostracism, the contributors can expect warm endorsement of their views from regulars at the major international conferences. For many in the CIE community in North America and beyond, sweeping critiques of Western ‘hegemony’, ‘coloniality’ and so forth hold a strong appeal; it is those seeking to question the balance or accuracy of such theorising who risk opprobrium. As Merquior wrote of Foucault, Derrida and their postmodernist or ‘deconstructivist’ followers, their ‘skepsis’, ‘highly placed in the core institutions of the culture it so strives to undermine,’ has come to constitute an ‘official marginality’ (1991, 160).

The potential – and actual – consequences of this are troubling. Takayama et al call for the WCCES in particular to embrace the agenda of ‘contesting coloniality,’ but one conclusion to be drawn from recent events is that this is already happening, with damaging consequences for civility within the Comparative Education field, and for the wider credibility of its scholarly output.15 Reducing scholarship to the projection of the scholar’s own positionality can only lead to fragmentation and irrelevance. To quote Merquior again (paraphrasing Hilary Putnam), ‘to demote rationality, in a relativist way, to a mere concoction of a given historical culture is as reductionist as the logical positivist’s reduction of reason to scientific calculus’ (160). What he calls the ‘Elixir of Pure Negation’ (159) is an intoxicating brew, but it is unlikely to inspire coherent or constructive contributions to addressing the pressing problems of our age: climate change, poverty, inequality and the ethical crisis that underpins them all.

Indeed, it is very likely to do the opposite. The neoliberal cadres of the OECD or World Bank, along with nationalist autocrats from Beijing to Budapest, will be more than happy for ‘critical scholars’ to fulminate against a vaguely-defined ‘West’ while embracing ‘epistemological diffidence’ (Takayama, Sriprakash, and Connell 2017, S18). As one critic of ‘postmodernism’ has put it, the promotion of ‘epistemological pluralism,’ combined with rejection of any ‘settled external viewpoint,’ means that, ‘so far as real-life ongoing politics is concerned,’ postmodernists, along with de-constructivists, decolonialists and their ilk, tend to be ‘passively conservative in effect’ (Butler 2002, 61). If ‘decoloniality’ promotes a balkanisation of the Comparative Education field into identitybased cliques that prize ‘opacity,’ the risk is that in practice this will only serve to buttress the status quo.