## K

### Impact – 2NC – V2

### T/C – Inequality

#### Inequality is structrually inevitable because of financialization and climate. We read gray.

1AC Parfitt ’20 [Claire and Tom Barnes; May 13; Ph.D. candidate in the Department of Political Economy at the University of Sydney; economic sociologist and Senior Research Fellow at the Institute for Humanities and Social Sciences, Australian Catholic University; Marxist Sociology Blog, adapted from an article in Critical Sociology, “Precarity and the Politics of Existential Crisis,” https://marxistsociology.org/2020/05/precarity-and-the-politics-of-existential-crisis/]

What new meanings does the concept of precarity adopt when society is suddenly plunged into a deep, prolonged, even existential crisis? While it has been used for decades, the publication of Guy Standing’s The Precariat in 2011 was critical to popularizing this concept. Today, precarity seems to be everywhere. The erosion of the 9-to-5 working day, the emerging gig economy, zero-hours contracts, rising self-employment and agency work are all signs that contingent work is the new normal. In Australia, where we write from, at least half of the workforce can now be regarded as contingent. This figure is much higher in many other places around the world.

But for many, there is nothing ‘new’ about this normal. Feminists in particular have pointed out that ‘standard’ employment relationships were always an exception enjoyed primarily by white men in wealthy economies. Arguments that hinge on the novelty of precarious work have unsurprisingly drawn criticism for their failure to acknowledge the diversity of economic lives across time and space.

In contrast to those who say that this concept has been stretched too far, our recent special issue in Critical Sociology emphasizes the value of a broad, multidimensional understanding of precarity. Following Nancy Ettlinger, we see precarity as a ‘condition of vulnerability relative to contingency and the inability to predict’. Although our work was compiled prior to the coronavirus pandemic, this broad orientation is useful in a context where lives and livelihoods are exposed to so many manifestations of risk. It invites us to think about what makes for vulnerability and resilience, the different types of risks we are exposed to, and how these can be negotiated individually and collectively.

What emerges through this kind of analysis is that exposure to risk and its social and economic impacts are widespread, even in wealthy economies and populations. Many of us find ourselves living in a ‘speculative life-world’ in which we are ‘condemned to decision making under uncertain levels of uncertainty, and to thus precarity and insecurity’. But just as we find exposure to risk in unlikely places, we also observe unexpected instances of resilience and collectivization of risk.

For us, a keynote example which preceded the coronavirus pandemic were the bushfires which ravaged Australia from September 2019 to January 2020. The destruction of forests released hundreds of millions of tonnes of carbon from the ground and increased emissions. In Australia, the coronavirus pandemic emerged on the back of the devastating experience of these bushfires, deepening a sense of widespread anxiety about the future.

Australia’s bushfires fires rendered material the existential threat of climate change in unprecedented ways. A textbook example of Ettlinger’s ‘condition of vulnerability relative to contingency and the inability to predict’, the fires revealed the limits of humanity’s control over nature, our inability to predict it, and the extent of our vulnerability to it.

The bushfires had a profound impact on the continent’s environment and population. Fires killed dozens of people, over one billion animals, and razed over 12.6 million hectares of forest. Around 3500 homes and countless livelihoods were destroyed while millions of people choked on smoke. The bushfires thrust the precarity of life to the forefront and generated a new national mood in which summer. Once a time to look forward to, it became a time to dread. This broader sense of fear intersected with the fields of work and education to generate new types of precarity. The fear of allowing children to play outdoors with hazardous air quality increased pressure on parents and educators. Outdoor-based workers in construction or horticulture were expose to the risk of respiratory illness from smoke haze. This reinforces the findings of one paper in our collection regarding the workplace as a site of ecological struggle.

Having endured the anxieties of the worst bushfire season on record, Australia was immediately drawn into the coronavirus pandemic. The full impact of this crisis is still being understood. But, like in many other countries, it has been met with an economic shutdown which has induced potentially the worst social and economic conditions since the Great Depression. Unemployment is predicted to triple to 15 percent, with some predicting a figure as high as 20 percent.

The depth of the crisis has brought about policy shifts which were unthinkable only weeks ago: the politically-conservative Australian Government has doubled the rate of payment for unemployment insurance, fully subsidised childcare for most households who need it, proposed a moratorium on evictions due to financial distress, and issued income support for businesses to continue paying their workers.

The policy response primarily defends capital from precarity by supporting on-going accumulation, while reinforcing established divisions within labor. The government has promised that the above measures are temporary features. A return to the old ‘normal’ is to be expected, including Australia’s punitive and workfarist model of unemployment insurance. There is no income support for more than a million migrant workers and short-term casual workers. Many migrant workers as well as international students have been denied access to healthcare. Refugees are confined to hazardous detention camps, as they are around the world.

For low-paid workers in Australia, the government’s asset-based approach to welfare is an empty gesture. Australia has a compulsory private pension system—known as superannuation – through which roughly ten per cent of workers’ wages is surrendered to financial institutions and held until retirement. This system enables those in secure, high-paid jobs to amass large savings with generous tax concessions, while denying low-paid workers cash when they need it. During the pandemic response, the Australian Government has encouraged workers to access their retirement savings. But those who are most in need of emergency funds, such as workers in tourism, hospitality and retail, tend to have some of the lowest savings balances. Furthermore, given the recent collapse in financial markets, superannuation accounts have been decimated. Workers who are required to draw on those funds will be forced to realize their losses rather than wait for a resurgence in the market.

The crisis is also generating precarity among seemingly stable sections of the population—so-called ‘Middle Australia’. Australia’s high levels of private home ownership are accompanied by unprecedented levels of household debt. Australia’s central bank has repeatedly warned of the risk these debt levels pose, not only to particular households, but to financial stability in the economy. Mass unemployment, and the prevalence of contingent work throughout the economy, has pushed millions of households to the brink of default on mortgages, rent and other debts.

While the financial dimensions of the crisis reflect familiar conflicts of interest between the wealthy and the poor, these interests manifest differently in an economy built on debt and financial assets. Several papers in our special issue consider the role of finance in a world of constantly shifting risks, exploring the ways in which finance can be both a tool for managing risk and a vehicle for its accentuation.

Perhaps unsurprisingly, those most able to manage the economic impacts will be those with access to household wealth, a conclusion that is brought into sharp relief by a paper in our special issue on the experiences of retrenched workers. At the same time, the social crisis of the pandemic, following the socio-ecological crisis of the bushfires, highlights different aspects of precarity. New iterations of vulnerability emerge and are filtered through familiar distinctions of class, gender and race.

**T/C – Entrepreneural Activity**

**AT: Perm – Generic – 2NC**

**1. Industrial peace link. Collective bargaining rights imposes the fictitious goal of industrial peace onto the working class where workers and managers strive to reach the golden compromise. That converts the working class into a political interest group in a plural society rather than a class that should attempt to polarize society on the axis of capital versus labor. [insert 1AC quotes from productivity/econ advantage]. The perm dampens worker power insofar as it threatens [hurt a firm’s productivity, threaten the AI race, etc.], which is where workers hold real leverage, that’s Klare and Tomlins.**

**2. Private-ordering link. Collective bargaining rights diguise the state as a guarantor of minimal, interest-neutral ground rules that grant rights to no more than a process, when in reality collective bargaining rights embody the state’s surrender to capitalist interests. They institutionalize private ordering by leaving dispute resolution to the free market which optimizes worker versus manager interests for profit. Managers will always dominate because markets are predistributively unequal, that was the overview.**

**3. Proves severance. Every link is to the concept of “collective bargaining rights.” The alt precludes that. Severance is a voting issue for argumentative irresponsibility.**

**4. Attempting to legislate worker power into existence produces precarious dependency on the state. Employer and legislative backlash is inevitable. The perm leaves workers defenseless while the alt builds the autonomous labor power to confront it.**

C.M. **Lewis 25**, editor of Strikewave and union activist in Pennsylvania, "Book Review: 'Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States'," Strikewave, https://www.thestrikewave.com/original-content/book-review-re-union-how-bold-labor-reforms-can-repair-revitalize-and-reunite-the-united-states

Power, politics, and the pushback that can occur through state action is a bitter lesson that organized labor has learned through struggle in the United States, and one which is curiously avoided by Madland. Employers immediately challenged the NLRA as unconstitutional, and were bitterly dragged into the post-NLRA system of labor relations. After a brief pause during the Second World War, Republican control of Congress in 1947 led directly to a legislative offensive against post-NLRA gains in the wake of 1946’s strike wave, setting up the foundation for an altered system of labor relations that slowly withered under legislative and legal attack. Business may not have seen the true benefits for decades, but they never gave up the hope of beating back the NLRA.

This strikes at a crucial point: despite Madland’s view of labor-management partnership (much of his book is spent arguing for cooperation and in an attempt to make a value proposition to capital), there has never been more than a tentative ceasefire between labor and capital in the United States. Whether there is a sectoral approach or a firm-level approach to labor relations is irrelevant to the basic dynamic that has always ruled American labor relations: employers will not cede power voluntarily, and have historically even been willing to defend their power through murderous violence.

American labor relations are notable for the historical intensity of violence and the open cooperation between business and government. Although overt violence has declined as a facet of labor relations in favor of sophisticated union busting, state support is still a major factor in combating unions, like changing traffic lights at the Amazon facility in Bessemer, Alabama. Republican politicians played a key role in defeating the United Auto Workers’ union drive in Chattanooga, Tennessee; indeed, politicians throughout the South have commonly worked closely with businesses to avoid unionization. Open high-level political support for union campaigns has been less common, though it has become more frequent in recent years.

The easy cooperation between business and government cautions against over-relying on external, state-determined mechanisms for our recruitment and organizing. In Ghent system countries, the removal of their monopoly on unemployment compensation has led to declines in membership. Securing a favorable policy environment, as Madland suggests, is desirable, but we should be wary of relying too heavily on specific policies. What can be given can be taken away.

The Thatcher era is particularly illustrative of how the state can turn against labor. Not only did Thatcher’s government wage a scorched earth campaign against government policies supporting organized labor, her government actively weaponized state action against trade unions. The 1984-85 Miners’ strike, which Madland does not mention, is commonly and correctly understood as an outgrowth of deliberate government policy designed to break trade unions. Likewise, Ronald Reagan utilized executive power to launch a withering assault on organized labor: one which set the tone for employers like the Phelps-Dodge company, who recognized that the political winds were in their favor.

There’s admittedly a balance to be struck between ignoring state power, and over-reliance upon it. Far too many unionists make the mistake of ignoring the value of seizing and wielding state power to support organized labor and American workers, relying instead on a romanticized vision of bottom-up direct action. Walter Reuther, although rightly criticized for his intolerance of dissent and autocratic tendencies, was correct that the ballot box is intimately connected to the bread box. If unions ignore the state, the state will be left entirely to their enemies.

However, the opposite extreme—where Madland finds himself—is just as wrong. Madland contraposes “top down” and “bottom up” power, without understanding that “top down” power is secured in direct proportion to organized labor’s “bottom up” power. We secure from the state what concessions we can force through the power built on organized workers, and organized money. By ignoring this, and by focusing on an abstract question of policy regimes and market manipulation at a thousand foot level, Madland erases workers altogether. Ultimately, his vision is one in which unions are free to bargain without the workers, who are merely passive beneficiaries of outcomes determined by the maneuvering of elite actors.

This is the core danger in some proposals for sectoral bargaining, and one which experts have warned against. A joint letter issued by labor economists, lawyers, and scholars cautioned against the “shortcut” of legislating our way to worker power, or through securing benefits through favorable policy without independent power to secure it. As they note, the functional sectoral systems in Europe are all built upon a core bedrock of worker power and the credible threat of labor action. They function because labor is organized, and are an outgrowth of and sustained by that organization. We can’t reverse engineer our way to power.

Madland’s book is fatally weakened by failing to realistically grapple with the reality that a grand bargain between labor and capital is not practical, achievable, or desirable, and that the political environment in the United States has largely favored and continues to favor capital. Clever value propositions and policy proposals will not change the base reluctance of employers to cede control over their workforces or legislate in defiance of their desire to minimize labor costs and maximize profit. He is correct that we should think clearly about policy and take steps to secure favorable policy. However, we should think of it as an outgrowth of independent power, and as functioning toward the end of securing and reproducing that power.

One could be forgiven for reading Madland’s book through the lens of the Andy Stern era of labor-management partnership and “disrupting” unionism, itself an outgrowth out of panic over the unarrested decline of organized labor’s bargaining power and ability to shape the American economy. The energy of the movement is elsewhere: in organizing, in more militant confrontations with management and capital, and in expanding the arsenal of economic weapons available to American workers. There is no “wonk” fix to organizational and political problems, nor will clever policy make our class enemies like us.

A more pessimistic—and perhaps more accurate—read is that there is still a profound difference in how elements within the labor movement view the nature of “The Labor Question,” as well as its answer. With a shift toward a more politically friendly federal government and new-found public cachet for labor unions, holdouts of the Stern-influenced “growth at all cost” school of thought may be tempted to cut deals for short term gain at the expense of long term power. If they do so, we will have squandered a chance to fundamentally reshape the movement and reverse its decline.

**5. Turns case – the NLRA manufactures consent for state and managerial repression of worker power. Bureaucracy exhausts and dampens union leverage – they must go to the NLRB to get recognition, employers can stall bargaining sessions through procedural delays, and suing workers, and managers have unquestioned control over the goals of the firm itself, that’s Tomlins. Playing whack-a-mole fails. Managerial bad faith is inevitable because profit requires extracting surplus value from the working class.**

**6. Strengthening CBR quells the momentum necessary for genuine labor power. NLRA collapse creates the conditions for that now.**

Alvin **Velazquez 25**, Law at Indiana University, "The Death of Labor Law and the Rebirth of the Labor Movement," Legal Studies Research Paper Series, Research Paper Number 543, pp. 43-47

A. Strife as a Precondition for Worker Insurgency

It is easy to construct a narrative of valor from the struggles workers face getting employers to bargain in good faith or losing in court. This Article’s message is different. This Section recasts the aims of the defeated actors and encourages them to use the tools they still have available for constructing either “countervailing power”213 or, alternatively, a social movement to inform the reconstruction of labor unions and their relationship to capital.214 Strife is an unfortunate, but key component of labor law and labor organizing, and courts have been quelling labor strife and its role for an expanded understanding of labor peace.215 Duff aptly states that “[o]nly the passion engendered by [vigorous union] campaigns will produce a labor movement capable of developing and executing tumultuous economic weapons. . . . The potential for the creation of tumult is the sine qua non of a bona fide labor law.”216 LeClercq draws on movement theory to explain how strife starts in the workplace, and she joins Sachs and Rogers in noting that law changes the risk calculations for individual workers. The stronger the law is, the more likely workers are to act.217 LeClercq further argues for using a doctrinal framework to accommodate strife within modern labor law, including in nonunionized settings.218

The negative of this insight regarding risk is true as well. If law is too weak, then workers are likely to rebel against it and mobilize once they realize they believe they have nothing to lose. Similarly, if labor organizations such as unions have nothing to lose, then they too have plenty of incentive to act. Additionally, mobilizing youth is key to successful nonviolent movements.219 Polls concerning Gen Z demonstrate that they are less attached to the workplace as a source of identity than other generations.220 Moreover the Court striking down the NLRA may incentivize unions to change their tactics and their expenditure of organization resources because the NLRA will no longer inhibit actions such as peaceful recognitional picketing, and possibly secondary boycotts.221

#### 7. No political minority. Collective bargaining is not key to widespread participation. Political organizing solves.

Benjamin I. **Sachs 18**, Kestnbaum Professor of Labor and Industry at Harvard Law School, "The Unbundled Union: Politics without Collective Bargaining," Law Journal of Social and Labor Relations, vol. 4, 05/01/2018, pp. 16

The preceding Section provided reasons to predict that unbundling the union's political and economic fu nctions would increase the prospects for political organizing through the union form. Although there are no extant examples of the political unions this Essay envisions, this Section will offer some preliminary evidence that under an unbundled regime workers would in fact organize political unions. The evidence comes from recent organizing efforts in sectors of the labor market to which, for various reasons, traditional labor law does not apply. In these sectors, labor law does not require unions to bundle political and economic functions. Indeed, in some of these sectors, unions are legally precluded from collective bargaining but have nonetheless engaged in successful political organizing campaigns.

In the homecare sector, traditional collective bargaining has often been legally impossible because homecare workers are classified either as employees of the single clients for whom they work or as independent contractors. 197 Despite the legal impossibility of collective bargaining, unions have nonetheless led campaigns to organize homecare workers for political action. In Illinois, for instance, at a time when homecare workers were barred from collective bargaining, the homecare workers union led a campaign to enact a "Homecare Workers Bill of Rights." 198 Throughout the campaign, union members hosted meetings with state representatives, testified at legislative hearings, and lobbied on behalf of the bill.199 The homecare union also took an active role in more traditional electoral politics, running the field operation for Mayor Harold Washington's reelection campaign in two key wards on Chicago's south and west sides.200 Members participated in the union's door- to-door and onsite voter registration efforts, staffed phone banks that the union ran on Washington's behalf, and took a central role in the union's get- out-the-vote program on election day. 201

The Service Employees International Union's recent experience in the nursing home industry also offers some evidence of the potential of politics- only organizing. After years of unsuccessful attempts at traditional organizing campaigns in California nursing homes, the union sought to reorient its efforts away from collective bargaining and toward politics.202 This led the union to craft an agreement with several nursing home chains that granted the union access to employer property for the sole purpose of discussing political mobilization with the workforce. 20 3 The union's organizing efforts were thus strictly limited to political campaigns ones designed to increase the state's financial support for nursing homes-but the efforts were nonetheless successful in generating worker support and participation.20

It is worth noting that there is a strand of labor research suggesting employees are more likely to participate in a union's political program if the union is successful at delivering economic goods through collective bargaining. 205 This research indicates that a worker's "commitment" to her union predicts much about if, and how, the worker will participate in union activities. 206 And, as Herbert Asher and his colleagues report, commitment is highly correlated with the union's economic performance: a worker who believes that her union has successfully improved wages and benefits is more likely to have a high level of union commitment than is a worker who has not benefitted from the union in these ways.207 Asher et al. also find that the relationship between union commitment and participation holds with respect to the union's political activities. 20

Despite these findings, this literature does not imply that the loss of the collective bargaining function would preclude worker support for political unions. To start, even if it is a union's economic performance that fuels worker support for the union's political program, this does not entail a conclusion that collective bargaining is a necessary predicate for political participation. To the contrary, the union's political program can itself generate economic returns for the membership.209 Next, Asher et al.'s work suggests that economic performance is important to union commitment because, traditionally, unions are formed for the purpose of securing economic goods. Thus, they write: "Unions came into being to deliver material benefits to their members: better wages and benefits, and better working conditions. Not surprisingly, union members judge their union based on how it delivers on these promises."210 Accordingly, a political union formed initially for non-economic purposes-for example, to expand gun rights-would not need to deliver economic goods in order to secure member commitment.

Moreover, while it is true that union commitment is related to political participation, commitment is not the only explanatory variable. Asher et al. themselves report that several other factors are significant correlates of political participation: workers' agreement with the political positions taken by the union, workers' views of what the authors call the "appropriateness of union political activity," and whether union membership is voluntary or mandatory. 211 n fact, political agreement is as strong a predictor of participation as commitment is, and, when taken together, these three other factors have about three times stronger a correlation to participation than does commitment.212 This is relevant to our analysis because workers who join a political union will do so voluntarily.213 They will accordingly be quite likely to agree with the union's politics and to view the union's political activities as appropriate.

**9. Empirics prove. Every legal labor victory has been achieved through militant worker power. Legal dependency defangs strikes.**

Joe **Burns 15**, veteran union negotiator and labor lawyer, author of Strike Back and Reviving the Strike, "Labor Law Won't Save Us," Jacobin, 01/27/2015, https://jacobin.com/2015/01/unions-civil-right-strike-joe-burns/

Ellison’s legislation leaves untouched these judicially created impediments to union strength, which defang strikes and render collective bargaining virtually meaningless. Relying on reactionary federal courts — or hoping that electing more Democrats will make the judiciary less conservative — is not the answer to labor’s crisis.

With the labor movement on life support, it can’t engage in diversions with little chance of success. Even more troubling, however, are a set of concerns that go to the heart of what type of labor movement we are trying to rebuild.

Is There a Civil Right to Not Be in a Union?

For decades, employers have argued that workers have individual rights that trump the rights of workers acting collectively. This dispute is central to labor history because it touches on the fundamental issue of whether unionism can modify the terms of wage labor. While unionists argued labor is not a commodity, a central tenant of anti-unionism was the right of individual workers to willingly agree to the terms of their exploitation, whether that meant crossing a picket line or refusing to join a union.

In other words, trade unionists acting as a collective entity representing working-class interests prevented individual laborers from enjoying “liberty”: the freedom to sell their individual labor in the market. The alternate conception of labor liberty represented by unionism, in contrast, is rooted in solidarity and the necessity of workers joining together to prevent individual exploitation.

Employers have long been hypocritical champions of individual workers rights. In the modern era, employer groups explicitly adopted the lingo and litigation approach of the Civil Rights Movement. That’s why anti-union groups have names such as the National Right to Work Foundation and the Center for Worker Freedom (the right-wing group spearheading the effort against the United Auto Workers’ unionization drive in Chattanooga, TN). For anti-union employer advocates, labor truly is a civil right —the right of individuals to undercut the collective.

Employers rarely outright oppose union rights. Instead, they’ve created fictitious rights such as the “right to work” — the anti-collective idea that individual workers have a right to freeload by not paying dues — or the “right” of individual workers to scab by crossing picket lines.

This of course begs the question: if workers have a civil right to engage in union activity, do they have a corresponding civil right to refrain from such activity? Once you accept the individualist civil rights logic, it is hard to say they do not.

Yet without collective action there can be no labor movement. Traditional trade union economics asserted that individual workers lacked the right to sell their labor at a price which undercut the collective needs of workers. That, in a nutshell, is the point of unionization.

Labor history can be seen as the heroic attempt of workers to raise the price of their labor above “free market” levels. Mass picketing, sit-down strikes, anti-scab action, closed shops, secondary tactics — all were geared towards preventing individuals from undercutting collectively set labor rates.

Labor Law and Class Struggle

When a new workers’ movement develops, it will be imperative to directly challenge labor law as a system of control, especially the restrictions on effective strike activity. Whether it be industrial workers in the 1930s or public employees in the 1960s, the main action was in the streets, with lawyers and litigation playing a supporting role.

Ideas like “labor as a civil right” unwittingly push labor back into the law’s embrace while keeping its rotten core. ­­­­

This is quite different from the labor movement from the late 1800s through the 1930s, which vocally decried judge-made laws. Even conservative unionists like Samuel Gompers understood from experience that if elite judges were allowed to set labor policy, trade unionism would never flourish. That’s why the union movement spent decades attempting to keep labor issues out of federal courts, the exact opposite of the “labor as a civil right” approach.

Take the 1960s public employee strike wave as an example. This little-known period was one of the greatest examples of mass civil disobedience in the history of US labor. Hundreds of thousands of public employees struck, often openly defying anti-strike laws and judicial injunctions.

A key component of this upsurge was an idea that became widespread among public workers: that restrictions on public employees’ right to strike were illegitimate. The present-day movement should learn from them: attacking labor laws, rather than bolstering them, is the key to reviving unions.

What we also find from studying the 1960s (and indeed from earlier periods of US labor history) is that public workers won the right to bargain and strike by violating labor law. In the face of labor militancy, state legislators legalized bargaining and striking.

This is true of other periods of history as well, such as the passage of the Railway Labor Act after the great Railway Shopmen’s Strike of 1922 or the Wagner Act after the 1934 worker uprisings. The lesson of labor history is thus that if you want labor law reform, focus on developing grassroots labor militancy.

**10. Mass militancy delegitimizes backlash – the alt villainizes the elite few against millions of working class people, that’s Dimick.**

**11. Militancy converts backlash into employers pleading for the state to concede to movement demands.**

Laura **Flanders 25**, International President of the Association of Flight Attendants-CWA, AFL-CIO, "There Are No Illegal Strikes—Only Unsuccessful Ones: A Conversation With Sara Nelson," Nation, 09/01/2025, https://www.thenation.com/article/politics/sara-nelson-labor-afa-cwa-interview/

LF: You have union leaders like Shawn Fain, and a few others talking about a general strike. You have others talking about 2028 as a moment where contracts could be coordinated. What are you seeing as critical moments for people to be thinking about? The idea of a strike feels like something from the ’30s, and I’ve heard a lot of skepticism from people, like, “Nice pie in the sky, but will it ever happen? How would it happen?”

SN: You’re right, from the ’30s. In 1934, there was some of the highest amount of strike activity this country has ever seen. There were national strikes. The mine workers were on strike for nine months. There were general strikes in various cities, there was a textile strike across the South. There was massive unrest. That’s actually what brought the corporations crawling to FDR to ask for labor law, because they wanted some stability. It also gave FDR the power to sign the New Deal into law, because these were very clear demands coming from labor across the board.

These were not legal strikes. But as I always say, there are no illegal strikes. There are only unsuccessful ones. If you generate enough power, you can get resolution and protect everyone. You will learn so much by going to a picket line about how to be organized, about how to be very disciplined, about having nonviolent activity.

**12. Courts cannot enjoin mass picketing and strikes – it’s banned by Norris-LaGuardia.** The alt does not preclude the NLGA because it’s an example of removing state coercive power rather than creating channels for state intervention.

Alvin **VELAZQUEZ** Law @ Indiana **’25** “The Death of Labor Law and the Rebirth of the Labor Movement” Legal Studies Research Paper Series Research Paper Number 543 p.38-40

B. The Norris La-Guardia's Protections of Labor Insurgency

One of the most important protections that organized labor and workers would have available post-NLRA is the Norris LaGuardia Act (NLGA). Specifically, unions will have to rely on it as they and their allies rally and protest in support of collective bargaining rights at state capitals across the United States. Congress’s motive for passing it was simple. As Michael Duff describes it, “[a]ggressively ousting federal courts from labor disputes altogether was the legislative motive behind passage of the [NLGA].”184 Congress’s passage of the NLGA was in response to the trend of courts in the early part of the 20th century entering injunctions to quell peaceful labor strikes and pickets. The NLGA states that:

[n]o court of the United States, as defined in this chapter, shall have the jurisdiction to issue an restraining order to temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.185

The NLGA bars federal courts from enjoining private sector employees from peacefully engaging in picketing, leafletting, and strikes in labor disputes.186 The NLGA also outlaws “yellow dog” contracts, or agreements for employment in exchange for waiving any rights to collective bargaining. Its policy is to allow workers the full freedom to associate and self-organize to negotiate the terms and conditions of employment.187 Most importantly, the NLGA bars courts from enjoining the refusal to work or peaceably assemble, or “[a]dvising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified . . . .”188 The NLGA leaves employers with the ability to seek damages for strikes but does not allow them to stop strikes from happening.189

Organized labor may want to use the NLGA to keep courts away from it given the makeup of the current Supreme Court and its antipathy toward organized labor issues. In a recent blog post about the NLGA by the Law and Political Economy Blog, David Boehm and Lynn Ta provide language that appears to support the thesis of this Article, but they appear to hold less hope in the NGLA’s power. They are also concerned about what the Supreme Court may do in light of constitutional challenges to the NLRA. They caution that:

We should not, however, overstate its power: Norris-LaGuardia is ultimately an indirect law that advances only negative rights, prohibiting judicial interference with a worker’s “freedom of labor.” As scholars have argued in the housing rights context, workers will have greater power when they operate against a background of robust, universal protections that lend more substance to “freedom of labor,” protections that exceed the safeguards in the NLRA and that are tied to the fundamentality of this right. For now, however, workers must wield the power they have.190

The authors correctly point out that the NLGA will take on significant importance in a post-NLRA world, but they have doubts about whether worker power within the current context of the NLRA is a sufficient impetus to cause labor reform. That is a legitimate concern. The Fight for $15 and a Union campaign fought to expand union rights.191 Despite the campaign’s incredible success in changing the national conversation regarding the minimum wage, it did not lead to Congress or a state passing a new collective bargaining law.192

If history is any indicator, a new national labor insurgency will need to occur to provoke a congressional response or state action, especially if the Court issues a ruling gutting the NLRA. The first part of the road to insurgent success lies in the use of the NLGA to keep federal courts from enjoining labor related protests and activity. The power of the NLGA prevents federal courts from using the injunction to quell peaceful labor actions, nonviolent insurgency tactics, or semi-outlawry.193 It also allows labor unions to use tactics such as recognitional picketing that the NLRA has circumscribed. Recognition picketing is when unions engage in picketing to coerce employers to recognize them as collective bargaining agents.194 If the NLRA is set aside, then unions can engage in recognitional picketing free of federal court interference and receive the protection of the NLGA so long as the picketing remains peaceful.

### L – NLRA

**Alt – 2NC**

**1. The alternative is to fight for labor freedoms rather than collective bargaining rights. Rights restrict labor power by subordinating the working class to a capitalist-interested state, whereas labor freedoms restrict state coercive power by subordinating the state to the working class. The alt build autonomous worker power through militant organizing, acts of mass civil disobedience, and leveraging strategic chokepoints of capital even if that sacrifices productivity.**

**2. Only labor freedoms confronts the state as a non-neutral player commmitted to capitalist private ordering. Making the bargaining process fair and balanced cannot restore union power because it’s built out of a legal machinery that favors capital. Only developing autonomous labor power through other economic weapons better positions unions to drive a harder bargain, that’s Dimick.**

**3. Working class control of the state is key to solve climate and fascism. Only mass strikes on critical energy infrastructure force capitalists to cede to the demands of the working class for rapid green transition – the strength of the working class is in numbers, which is impossible to achieve within the narrow frame of industrial peace, that’s Huber.**

**4. Only freeing workers from the NLRA builds sustainable labor power.**

Gabriel **Nahmias 21**, MIT Work of the Future Initiative, "Innovations in Collective Action in the Labor Movement," Working Paper, MIT Work of the Future Task Force, 02/27/2021, https://workofthefuture-taskforce.mit.edu/wp-content/uploads/2021/03/2021-Working-Paper-Nahmias.pdf

Denied the protection and unencumbered by the limitations of the NLRA, agricultural workers, domestic workers, freelancers, gig workers, and graduate students have been forced and allowed to innovate. They have made use of secondary labor actions to pressure employers where they are vulnerable. They have developed selective incentives to recruit and maintain members. They have developed tools for coordinating and sharing information. They have interwoven strategies to help well-intentioned employers be fair, and by mixing comprehensive campaigns with strike actions, they have publicly sanctioned those who refuse to. They have brought energy and talent to the labor movement.

Due to their activism, many of these workers have won legal rights and protections at the state level. These workers live in the “wild west” of the labor movement, conditions somewhat similar to those for all workers a century ago. Without the structure and order provided by the NLRA,they have found other ways to organize and win.

Figure 1: Organizing Those Left Out: Lessons from organizing among workers not covered by the NLRA.

Agricultural Workers: The Secondary Labor Action in Action

Perhaps the most well-known union of agricultural employees is the United Farm Workers (UFW). Founded in 196218, the UFW has organized thousands of agricultural workers across the west coast. As a result of their work, by the 1970s, over 70,000 agricultural workers were covered by a union contract (Wozniacka 2019). Three key strategies were essential to the UFW’s success. First, UFW used existing shared identities, moral resources, and family networks to build their membership and develop the necessary commitment for long hard fights. Second, the UFW made active use of secondary labor actions to pressure employers for concessions. Third, after having already proven their ability to coordinate collective action, they fought for new labor laws at the state level, increasing their wins’ stability. Today, labor activists organizing and supporting agricultural workers have continued to use these tools, transforming them to reflect ever-growing supply chains.

The UFW built solidarity by activating identities and relying on resonant values. The movement was framed as “Mexican people” coming together to help themselves (Ganz 2000). It relied on the “moral resources” of this community, such as a Roman Catholic commitment to sacrifice and shared stories of struggle. “Mexican history came alive [during the struggle] as slogans appeared on walls that read: Viva Juarez! Viva Zapata! Viva Chavez!” (Ganz 2000, 1034). Organizers recruited members through family networks and then structured their organization using the model of “mutuality” that existed within these extended families (Ganz 2000). However, while this type of solidarity building can attract members and develop leaders, it can often be challenging to maintain across generations. Today, the UFW’s membership is just 10,000 agricultural workers, a far cry from its 1970s’ peak (Flores 2018)

The UFW used this active and dedicated membership to broadly pressure their emplo ers. Along with strike actions, the young UFW made regular use of secondary boycotts to force agribusiness to negotiate with them. For example, in 1966, the UFW coordinated a boycott of stores selling liquor produced from farms at which UFW workers were striking. Given agricul ture is seasonal work, this had the added benefit of maintaining campaign momentum during the winter. The “Schenley Boycott” lead to UFW recognition at these farms and a contract for the 500 workers employed there (Ganz 2000). The solidarity boycott was deemed so useful that workers potentially covered by the NLRA were excluded from the UFW bargaining unit to pro tect the organization’s legal right to take these actions (Gordon 2005). UFW leader Cesar Chavez commented that if farmworkers were to be covered by the NLRA, it would be “a glowing epitaph on our tombstone” (quoted in Pope, Bruno, and Kellman 2017).19

After more than a decade of organizing and bruises from a bloody turf war with the Team sters, the UFW turned to legal reforms as a way to codify its victories. In 1975, with an ally in the governor’s mansion, the UFW won the California “Agricultural Labor Relations Act” (CALRA), extending labor rights to the state’s farmworkers (Gordon 2005). While primarily importing the rights and limitations of the NLRA, the CALRA made sure to protect the right of agricultural workers to use the secondary boycott.

Today, agricultural workers’ associations are using similar strategies to unite farmworkers around the country. For example, the Pineros y Campesinos Unidos del Noroeste (PCUN) in Oregon and the Farm Labor Organizing Committee (FLOC) in North Carolina and Ohio both incorporate the shared Latinx culture of workers in order to build solidarity among them. PCUN describes itself as “based in the heart of the Oregon Latinx community... we fight for low-wage workers, and Latinx families” (PCUN 2020). FLOC has created “FlocMigos” to organize youth into the movement. These organizations further make sure to connect the union with the immi grant experience common among their members: “The Union runs in the family. It is no secret that many Mexican families migrate and work in the fields of the United States to sustain them selves...” (FLOC 2020).

Farmworker associations have continued to make good use of the secondary boycott. Founded in 1993, the Coalition of Immokalee Workers (CIW) has successfully pressured four teen national food retailers20 to improve the working conditions and pay for farmworkers in their supply chain through secondary boycotts (Greenhouse 2014). CIW institutionalized this strategy into the Fair Food Program (FFP)21, which requires participating buyers to sign a legally enforceable contract mandating they purchase certain produce only from growers who do not violate a stringent code of conduct (Bowe 2020). Importantly, growers are responsible for vio lations regardless of whether or not they were intentional, meaning that farms that use brokers for hiring workers are still accountable for the workers’ labor conditions on their farm (Bowe 2020). Immokalee workers have effectively ended wage theft in the FFP network by targeting supply chains, and more than 50 supervisors have been disciplined for sexual harassment (Bowe 2020). Moreover, during the Coronavirus Pandemic, farms within the FFP network have been more responsive to workers’ safety concerns than those out of network (Bowe 2020) during a period when farmworkers overall have faced widespread retaliation for demanding Covid-19 protections (Miller 2020).

Finally, as UFW did before them, advocates have been pushing for labor laws to protect workers at the state level. On July 17, 2019, the Justice for Farmworkers coalition, spearheaded by Rural Migrant Ministry, a faith-based organization, won the “Farmworker Fair Labor Prac tices Act” in New York. This bill set standards for working conditions and gave New York farm workers the right to collective bargaining (Pawel 2019), undoing an 80-year-old state law that specifically banned agricultural workers from joining a union (Whittaker 2019). The fact that it was their religious institutions that mobilized this campaign shows the value of recognizing the whole worker– and appealing to all the institutions they inhabit– in organizing collective action.

Domestic Workers: Innovating to Connect and Protect Workers

In the 1960s, Atlanta’s black domestic workers riding the bus for long hours to and from their workplaces- middle-class white homes- shared their frustrations with long hours, low pay, and lack of worker protections. From these informal “union halls” was born the “National Domestic Workers Union” (NDWU) in 1968. Organizing around 10,000 workers at its height, NDWUwasprimarily a political education and advocacy organization, requiring all members to register to vote. While mainly a local organization, it developed a national voice for domestic workers, consulting multiple White Houses in the 1970s and 1980s. Nevertheless, it had its most voice in the decisions that affect their lives and to eliminate the longstanding abuses that have plagued agriculture for generations” (FFP 2020). 13 significant sway in Atlanta and Georgia politics, where the organization won higher wages and greater worker protections (Slotnik 2019).

The NDWUdidnotsurvive its founder Dorothy Bolden’s retirement, ultimately closing up shop in the 1990s (Slotnik 2019). Today, the torch of representing America’s more than 2.5 million nannies, house cleaners, and care workers has been picked up by the National Domestic Workers Alliance. Founded in 2007, NDWA is an association of over 75 affiliate organizations and chapters and more than 250 thousand members.22 Unlike the aforenoted agricultural worker organizations, but keeping with the NDWU tradition, NDWA has not attempted to replicate the business union model. Specifically, it does not work to negotiate collective bargaining agreements directly.23 Instead, it emphasizes its role in providing services to members, advocating for workers’ rights through direct action, and providing tools to facilitate good jobs (NDWA 2020c).

As with membership organizations like AARP, NDWA provides personal benefits to their members- in this way, incentivizing individuals to join, side-stepping the problem of free riding. Dues-paying members receive services like skill-training, life insurance, and discounts on dental and vision (NDWA 2020c). Importantly, they also receive information on their legal rights as workers, helping them advocate for themselves. Nevertheless, while NDWA has dues-paying members, as with many “alt-labor” organizations, it raises money primarily through grants and donations. As will be discussed in the subsection on worker centers, while this funding model benefits from short-circuiting the free-rider problem, it diminishes the imperative to recruit and develop members (Skocpol 2003).

Members are embedded in networks of advocacy and direct action. NDWA “venue shops” (Kingdon 2014) their policy-making efforts, taking advantage of the US government’s federalized structure to win where they are best organized and have the strongest allies. These victo ries then spillover across localities, inspiring advocates and changing expectations. Thanks to NDWA’s political agitation, along with that of partner organizations, New York passed the first state “Domestic Worker Bill of Rights” in 2010 (Le 2015) and, in 2015, domestic workers were finally added to the national “Fair Labor Standards Act,” correcting an eight-decade old injustice (Catauro and Wann 2016). Overall, as of October 2020, NDWA has won new domestic workers’ rights in nine states and two cities (NDWA 2020c).

While it has fought hard for protections, NDWA does not necessarily assume hostile em ployers. NDWA’s “Social Innovations Initiative” aims to provide private employers with stan dards by which to assess whether the domestic workers they are hiring from a third party or app are being fairly treated and compensated. Airbnb is one of the largest firms to adopt NDWA’s “Living Wage Pledge” (AirBnB 2020).

Domestic workers often have many individual employers, making standardized negoti ations with these “part-time bosses” difficult. NDWA provides workers with tools to negotiate individual relationships, such as “Contracts for Nannies,” which helps workers draft agreements with these micro-level employers. Similarly, it can be difficult for workers to earn benefits from these disparate employers (NDWA 2020a). NDWALabs (the “innovation arm” of NDWA) de veloped “Alia,” an online platform that allows multiple employers to contribute to a workers benefits program (NDWALabs 2020).

Another product of this decentralization is that, without a shared workplace, it can be difficult for many domestic workers to share their experiences. It is not easy to recreate Dorothy Bolden’s bus-based organizing. To compensate for this decentralization, NDWALabs built La Alianza. This Spanish-speaking chatbot allows NDWA to communicate with members through Facebook messenger and gather their stories to reach these workers. In the wake of the Covid crisis, this allowed NDWA to produce a report documenting the impact of the crisis on domes tic workers informed by nearly 30,000 survey responses recruited through Le Alianza (NDWA 2020b).

Freelancers: A Ghent System Light

According to one study, nearly all of the US’s job growth between 2005 and 2015 was from “alternative” jobs: temporary help agency workers, on-call workers, contract workers, and independent contractors or freelancers (Katz and Krueger 2016). These alternative jobs, which approximately 1 in 6 workers are in (Katz and Krueger 2016), have proven more challenging to organize, thus alienating them from traditional opportunities for economic voice (Standing 2011). However, the Freelancers Union is no traditional union. Founded in 1995, it has recruited 15 half a million freelancers into their ranks (as of October 2020, “Freelancers Union” 2020), primar ily by acting as an insurer for these unprotected workers.

The Freelancers Union asks for no membership dues or fees, and the Freelancers Union does not negotiate any contracts with employers. However, that does not mean that the union does not bargain collectively. The Freelancers Union uses its large member pool to bargain with insurance providers for health, dental, term life, disability, and liability insurance. Because free lancers usually do not get insurance through their employer, freelancers’ associations are in a unique position to use these benefits as a selective incentive to encourage membership. This practice is reminiscent of the Ghent system, standard in Scandinavia, in which unions manage unemployment insurance, thereby incentivizing membership (Matthews 2017).

Like NDWA,the Freelancers union further provides technical and solidary support. By providing tools like “contract creator” and “freelance 101,” the Union becomes a resource on which many freelancers depend. Moreover, it has also developed strategies to connect dispersed workers, which it does through its digital network and “SPARK” meetings in 25 cities (“Free lancers Union” 2020). In doing so, it can connect those working in this sometimes lonely profes sion.

The Freelancers Union then uses the resources it gets from members, and its voice as a representative of the freelancer community, to advocate for freelancers. Their major policy vic tory is the “Freelance Isn’t Free” Law in New York City. This law protects freelancers from clients whorefuse to pay for services rendered by mandating contracts, setting required payment terms, providing legal assistance in ensuring payment, and establishing monetary penalties for clients whorefuse to pay (“Freelancers Union” 2020).

During the Covid pandemic, the Freelancers Union sought to act as a hub for information on public unemployment benefits. The CARES Act included a provision allowing independent workers to qualify for unemployment insurance, including $600 of additional support from the federal government. It also allowed for loans to the self-employed and independent contractors. Navigating the systems dispersing these resources often proved quite arduous and confusing. The Freelancers Union provided support in this process, helping members find what they qual ify for and connecting them to the right resources to get it (“Freelancers Union” 2020). 16

Finally, like many groups, the Freelancers Union tapped its network to provide mutual support during the crisis. The union gave members up to $1000 in support to cover food, utili ties, and income loss (“Freelancers Union” 2020). As will be discussed more below, mutual aid is an essential tool in building solidarity and which historically played a vital role in constructing American unions over a century ago (Webb and Webb 1907).

Gig Workers: Overcoming Information Asymmetry in the Platform Economy

In May2019, the NLRB ruled that Uber drivers are “independent contractors” and, there fore, not eligible for NLRA union rights (Pasternak 2019).24 This likely applies to all workers in the “gig economy.”25 While legally placed in the same category as freelancers, gig workers are unlike traditional freelancers in that there is a single firm acting as a broker, through a digital platform, to negotiate the short-term contracts these workers take on (Bajwa et al. 2018). As a result, gig workers are deeply dependent on the platforms to manage their activities, having minimal control over which contracts are available to them and at what price. Therefore, one source of worker collective action is to try to subvert this asymmetry by sharing information. With this collective knowledge, workers can then act together to demand better conditions.

We saw withdomestic workers how the bus rides of the 1960s and today’s Facebook-bots some structures that can facilitate sharing information. For gig workers, who are well-acclimated with online platforms and are by the nature of their work, physically isolated and dispersed[ˆ106], technology is a natural venue for that information sharing. For example, specialized tools like Turkopticon and, more recently, TurkView, allow workers on Amazon’s MTurk platform to re view the people who make contracts on the platform and avoid those that abuse the system to avoid paying workers (Silberman and Irani 2015). This reputation-based tool makes it possible for workers with many “bosses” to solve the information asymmetry problem, much like banks use credit scores. Similarly, Uber drivers use texting groups and Facebook to share information about Uber policies, features that the Uber app is piloting, and shared safety concerns (Ghaffary 2019) as well as creating dedicated tools like the uperpeople.net online forum. However, while isolation is the norm, it is not always the case. For example, specific locations, especially airports, have allowed rideshare workers to meet, coordinate, and organize (Wells, Attoh, and Cullen 2020).

Once connected, workers can engage in collective action. Gig workers share information to try to understand and then maneuver within these platforms that govern their employment. For example, Uber and Lyft drivers have collaborated to be offline simultaneously to force surge pricing (Brown 2019). These everyday forms of resistance (Scott 2008) can be extremely frus trating to consumers, yet they are more symptomatic of the power-imbalance between drivers and platforms. As one scholar put it, “Being managed by an app, a black-box algorithm, that (drivers) don’t understand, they attempt to reverse-engineer it, understand the mechanism and regain some position of power” (Zalmanson quoted in Brown 2019). Like worker organizing through the ages, gig workers are resisting dehumanization. This “gaming the system” is as much about gaining control and autonomy as it is about wages (Mohlmann and Zalmanson 2017).

After all, the black-box of the algorithm is far more often manipulated for the firm’s benefit. For example, one of the main aspects of their job that gig workers often lack information about is the share that the platform is taking of their pay for each task they perform. Indeed, given the lack of transparency in that process, the platforms often take a share far exceeding their stated fee. For example, while Uber’s official rate is 25% of the cost of any ride, studies f ind Uber pockets closer to a third on average and often more than half (Gordon and Mehrotra 2019; Mishel 2018). Similarly, Instacart used to count tips towards the “guaranteed minimum payments” the company offered workers. In a process opaque to both workers and customers, Instacart effectively expropriated these tips rather than passing them on to the worker as expected (Roose 2019).

Instacart workers noticed. After coordinating on Reddit forums and Facebook groups (Roose 2019), over 3,500 Instacart employees signed a petition condemning this practice. The petition was picked up by the media and stirred public outrage (DiNatale 2019). As a result of this reputation-focused campaign, Instacart changed its policy and compensated maligned em ployees. This reform spread to other platforms, with DoorDash also agreeing to give workers 18 their tips after coordinated public condemnation (Newman 2019). Having once summoned the strength of collective action, it becomes easier to conjure again. For example, with the coron avirus pandemic’s onset, delivery workers, like Instacart shoppers, became even more essential, and their jobs became even more dangerous. In March 2019, Instacart workers went on strike de manding better safety protections and hazard pay. This wildcat strike demonstrated gig workers’ collective power, as it caused Instacart to provide workers with health kits, hazard bonuses, and extended sick leave (Rodrigo 2020).

Gig Workers Collective organized the March Instacart strike. It is just one of many groups of gig workers coming together to represent this community. For example, Rideshare Drivers United, an LA-based organization specifically for Uber and Lyft drivers, organized a strike and picket on May 8, 2019, coinciding with Uber’s IPO (Wamsley 2019). Gig Workers Rising, which organizes across platforms, mobilized for a protest of an investor meeting (Pena 2019). Occa sionally, this has even led to unionization. In February 2020, 15 Instacart voted to affiliate with United Food and Commercial Workers (Statt 2020).26 These organizations are building public pressure on gig platforms through direct action, which has sometimes led to a political response.

In May2019, California’s legislature passed a law classifying gig workers as employees and thus eligible for rights and protections as employees (Conger and Scheiber 2019) This lead to the most expensive state proposition fight in California’s history, in which platform compa nies paid through the nose to overturn the law (O’Brien 2020). While a setback for gig workers, during the battle Gig Workers Rising, We Drive Progress, Mobile Workers United, and Rideshare Drivers United rallied over 55,000 gig workers across the state (Paul 2020). Moreover, despite this loss, other policy reforms and legal actions are being mustered across the country. In Seattle, the city council made gig delivery workers eligible for hazard pay in response to the pandemic in response to advocacy from worker advocates like Working Washington (Woodman 2020). Workers of color filed a class-action lawsuit against Uber regarding structural discrimination in the “deactivation” [firing] of workers (Sandler 2020).

Another case of this is the Boston Independent Drivers Guild (BIDG) is lobbying the Mas sachusetts legislature for a bill of rights guaranteeing gig workers, among other things: a min imumwage, benefits, the right to dispute deactivation, protections from harassment, and, of course, the right to a union (BIDG 2020). As will be discussing in section five, worker advocacy rarely ends with the workplace. To build a strong coalition in Massachusetts and represent their workers’ interests broadly understood, BIDG further advocates beyond working conditions. Their demands include environmental just (e.g., green vehicle requirements and solar panels) and immigrant rights (e.g., driver’s license for all regardless of citizenship/documentation sta tus) (BIDG 2020).

Graduate Students: Re-Imagining the Union Worker

As discussed with gig-workers, one of the significant loci of struggle in the labor move ment today is the very recognition of an employer-employee relationship. Despite many differ ences, this is one apparent similarity between gig workers and graduate students. In countries like Sweden and Finland, with high unionization rates and sympathetic labor laws, graduate student workers have long been considered employees and are unionized (Woldegiyorgis 2018). This is not, however, usually the case in the US, where NLRA protection has been repeatedly granted and deprived of workers at private universities. Despite this, graduate student union ization campaigns have flourished over the last decade, making good use of comprehensive campaigns,27 industrial solidarity, crisis momentum, and a young and energetic bargaining unit.

Graduate students at public universities in labor-sympathetic mid-western states began to unionize in the late 1960s and early 1970s. For example, the University of Michigan’s Graduate Employees’ Organization (GEO) won its first contract in 1975 after a month-long strike, sup ported by undergrads who boycotted classes and Teamsters who refused to make deliveries to campus (GEO 2020a). However, by 1990, graduate students at only five schools nationwide had unionized. This situation changed in the 1990s, during which graduate student workers at 13 additional public universities won union recognition (Rhoades and Rhoads 2002). In 2000, NYU became the first private university to unionize after the NLRB unanimously ruled that graduate students constitute employees because they perform services for the university in exchange for payment and under the university’s control and direction (Truesdale 2000).

The 2000 ruling was not the end of the fight for recognition. In the two decades since, the NLRB has reversed itself twice- coinciding with the partisan make-up of the board: in 2004, Bush’s NLRB denied graduate students NLRA protections, but Obama’s reinstated them in 2016. Since that time, graduate student unions have systematically avoided taking cases to the NLRB for fear of another reversal under Trump’s NLRB. Instead, they have used their power as work ers to strike and conduct broader comprehensive campaigns to pressure universities to “volun tarily” agree to recognize their unions. Thus, despite aggressively avoiding the NLRB, graduate students at four private universities won contracts in 2020: Brown, American, Harvard, and Georgetown (Marcus 2020).28 By 2019, more than 80,000 graduate students across the country were in a recognized union– a 31% growth since 2013 (Hunter, Apkarian, and Naald 2020)– and more than 75 schools have graduate students at some stage of organizing a union (Marcus 2020).

Even once graduate students have a union, perhaps due to their youth29, graduate stu dents have often proved themselves militant organizers. One notable example is at the Univer sity of California Santa-Cruz, where graduate students launched a wildcat strike in early 2020 over a perceived imbalance of wages with the rising cost of living (“We’re California Graduate Students, and We’re Not Taking Poverty Wages Anymore” 2020). As this was an “illegal strike,” the university dismissed 41 of the strike’s organizers. However, due to widespread protests, these workers were re-appointed (Gurley 2020b). As one of the reinstated workers put it: “This is a testament to the power of collective action. We were on the picket line for five weeks. We withheld grades for five months. We had a national boycott going, email campaigns, and re ceived letters from around the world, and now we have our jobs back” (strike organizer quoted in Gurley 2020b). 28In total, eight private universities have contracts with their graduate student workers. The remaining four are Brandeis, Tufts, the New School, and New York University (Marcus 2020). As with most union campaigns, these wins have often been an uphill battle. At Harvard, the unionization process included two elections– as the NLRB threw out the first one due to the administration’s use of “unfair labor practices” to influence the result (Marcus 2020). Similarly, Harvard graduate students launched a 29-day strike during the lead-up to final exams in their fight for a contract (Marcus 2020). 29While young people are less likely to engage in “conventional” forms of political engagement such as voting, they are more likely to engage in “unconventional” or “militant” forms of participation such as protests (Melo and Stockemer 2014). 21

Campus organizing has come to the fore with the coronavirus pandemic. With univer sities making costly life-and-death choices for their employees, graduate student unions have worked to ensure their members had a voice in those decisions. Graduate students across more than 75 universities in the US and Canada protested on May Day 2020 for better conditions dur ing the pandemic (Retta 2020). Moreover, after a 10-day strike at the University of Michigan, which violated a no-strike commitment in their contract, graduate student workers won pan demic childcare options, support for international graduate students, transparent COVID-19 test ing protocols, and a commitment to review campus policing (GEO 2020b). As the other workers discussed in this section have also shown– graduate student workers prove that being left out of the NLRA does not mean they cannot win.

Graduate student workers are also challenging conceptions of who should unionize. Traditional ideas of the working-class focus on the “blue-collar” identity forged in factories and mines. The organizing of “white-collar,” relatively high status, graduate student workers shows that even those employed in professional workplaces want unions to manage the power-imbalances and the precarity in their employment relations.30 This is not the first time this has happened. In the throes of the Great Depression, many workers who had seen themselves as “individual ists,” especially news reporters, unionized (Tiku 2018).31 Journalists are again unionizing today (Greenhouse 2019). Organizing these “professional” workers presents the possibility (though indeed not the inevitability) of broader solidarity among different types of workers.

**Impact – Climate – AT: Markets Solve**

**1.** **Market discipline and inequality lacks political legitimacy. That causes populism, inequality, and disillusionment which both reproduces fascism AND prevents a just transition. Trump will certainly double down on deregulation.**

**2. Asset-manager capitalism destroys market solvency because profits, not prices are the key to investment. Market signals are too slow. Only our alternative is realistic and feasible because public investment doesn’t require short-term profit.**

William **DAVIES** Politics & Int’l Relations @ Goldsmith’s Co-Director Interdisciplinary Political Economy Research Centre **’24** https://www.lrb.co.uk/the-paper/v46/n07/william-davies/antimarket

The​ words ‘market’ and ‘capitalism’ are frequently used as if they were synonymous. Especially where someone is defending the ‘free market’, it is generally understood that they are also making an argument for ‘capitalism’. Yet the two terms can also denote very different sets of institutions and logics. According to the taxonomy developed by the economic historian Fernand Braudel, they may even be opposed to each other.

In Braudel’s analogy, long phases of economic history are layered one on top of another like the storeys of a house. At the bottom is ‘material life’, an opaque world of basic consumption, production and reproduction. Above this sits ‘economic life’, the world of markets, in which people encounter one another as equals in relations of exchange, but also as potential competitors. Markets are characterised by transparency: prices are public, and all relevant activity is visible to everyone. And because of competition, profits are minimal, little more than a ‘wage’ for the seller. Sitting on top of ‘economic life’ is ‘capitalism’. This, as Braudel sees it, is the zone of the ‘antimarket’: a world of opacity, monopoly, concentration of power and wealth, and the kinds of exceptional profit that can be achieved only by escaping the norms of ‘economic life’. Market traders engage with one another at a designated time and place, abiding by shared rules (think of a town square on market day); capitalists exploit their unrivalled control over time and space in order to impose their rules on everyone else (think of Wall Street). Buyers and sellers on eBay are participating in a market; eBay Inc. is participating in capitalism. Capitalism, in Braudel’s words, is ‘where the great predators roam and the law of the jungle operates’.

On this account, ‘economic life’ was already established in early modern societies, but ‘capitalism’ triumphed late, becoming fully dominant only in the 19th century, once it had conscripted the state as its ally. A range of legal, financial and managerial constructs emerged to protect capitalists – and their profits – from the kinds of equality and competition that continued to constrain the petite bourgeoisie and local traders. ‘Intellectual property’, limited liability, a ‘lender of last resort’, colonial expansion and new techniques of disciplining the working class created conditions apt for extraction and exploitation, not mere exchange. The moral and political virtues of markets, as they had appeared to the likes of Adam Smith, were overwhelmed in the capitalist era of Rockefeller and Ford.

Why then have ‘capitalism’ and ‘markets’ so often been conflated? One explanation is that capitalism undoubtedly requires markets. But they are peculiar ones, which smuggle in forms of inequality under the veneer of free exchange. According to Marxists, the one market that capitalism cannot do without is the labour market, the institution which magically turns innate human powers into a thing to be bought and sold like apples and oranges. Others, influenced more by Keynes, emphasise the dependence of capitalism on financial markets, in which pieces of paper (bonds, equities, derivatives etc) change hands on the expectation that they will rise or fall in value in the future. Neither of these is a normal market. What both of them make possible is for a class of people – capitalists – to get rich without doing very much, in the first case by underpaying their workers, and in the second by tinkering with balance sheets. Markets for labour and financial assets might appear to be like markets for bread or socks, but they belong firmly in – and indeed enable – the murky, hierarchical world of ‘capitalism’, not the transparent, egalitarian space of ‘economic life’.

A second explanation for the conflation is that capitalism, unlike the existence of markets, is extremely difficult to justify on its own terms. A simple market transaction has the social value of bringing strangers together for some mutual benefit, with neither having got the better of the other. ‘Fair trade’ is a contemporary appeal to this principle. But by what moral logic does the owner of company shares, a piece of real estate or a care home have the right to become 10 or 15 per cent richer over the course of a year, despite not having expended any effort or ingenuity increasing the value of the ‘asset’ concerned? Liberal economists would respond by distinguishing profits that reflect productivity enhancements (and are therefore good) from those that reflect market power (and are therefore bad), but in practice the distinction is extremely hard to draw, and even harder to police. The most vigorous defenders of capitalism will typically accept the charge that it is monopolistic, exploitative and opaque, but will also claim that these conditions are required in order that a heroic minority, namely entrepreneurs, can emerge and thrive. This story just about holds together when we’re talking about such rare cases as Steve Jobs, but falls apart when it comes into contact with the ordinary reality of MBA-wielding CEOs and asset managers who earn a hundred times the average wage and call it their ‘compensation’.

Liberal ideology has tended to duck the problem of capitalism altogether, opting instead to imagine that ‘economic life’ (i.e. competitive egalitarian markets) still rules the roost. This myopia is manifest in the economics curricula of major universities, which despite the best efforts of various campaigns and the Soros-funded Institute for New Economic Thinking have continued to exclude theories which emphasise power, uncertainty, monopoly and instability, and clung to an orthodoxy in which economic activity is chiefly determined by prices and incentives. Politicians, meanwhile, cleave to liberal fairy tales about making work pay, social mobility and ownership for all, which are increasingly divorced from a reality of in-work poverty, unearned wealth and spiralling rents. And financial services masquerade as just another ‘sector’ among many, selling their wares in a marketplace like humble shopkeepers.

Brett Christophers, in The Price Is Wrong, adds to this list a potentially more drastic symptom: a failure on the part of policymakers to understand the energy transition on which the future of the planet hinges. The operating assumption of energy economists over the years has been that the key obstacle to the growth of renewable energy is its higher cost, which renders it unable to compete against fossil fuels in the energy market, and hence reliant on government subsidy. It was a moment of great excitement, therefore, when in 2015 the International Energy Agency reported that, finally, renewable technologies (primarily solar and wind farms) were ‘no longer cost outliers’ relative to gas, coal, oil and nuclear power generation. According to policy orthodoxy, that should have been a turning point. It should have been the moment when governments could withdraw their subsidies for the renewables sector and stand back as the price mechanism worked its magic. If coal, gas and oil were now the less price-competitive option, the laws of supply and demand would suggest that they would soon be left for dead. But none of this has happened. Why?

In a word, profitability. As Wael Sawan, the CEO of Shell, put it only last year, ‘Our shareholders deserve to see us going after strong returns. If we cannot achieve the double-digit returns in a business, we need to question very hard whether we should continue in that business. Absolutely we want to go for lower and lower and lower carbon, but it has to be profitable.’ Companies such as Shell expect to make at least 15 per cent returns on their investments in fossil fuels, but only 5-8 per cent returns on their investments in renewables. The appeal of fossil fuels, from the vantage point of the ‘antimarket’, is that they continue to offer the kinds of monopoly rent that the far more competitive, more marketised industry of renewables does not. This, as Christophers sees it, is the awkward reality that the paradigm of market economics has hidden from view. He shares the fear expressed by the New Yorker cartoon in which a man explains to three children sitting by some future campfire: ‘Yes, the planet got destroyed. But for a beautiful moment in time we created a lot of value for shareholders.’

Decarbonisation must be carried out on many fronts, but electricity generation is arguably the most important of them. In 2019, 37.5 per cent of global CO2 emissions resulted from electricity generation, the remainder from activities such as transportation, industrial production and heating. The decarbonisation of these activities depends heavily on the promise of electrification (cars, for example), so the need to transform electricity generation is clearly the priority.

The challenge is daunting. In 2022, 61 per cent of the global electricity supply came from fossil fuels, the majority from coal, compared to just 12 per cent from wind and solar combined. To keep pace with rising demand, new coal-fuelled power stations are being built all the time – an average of two per week are approved in China alone. The IEA’s plan to reach net zero by 2050 involves a rise in the contribution of wind and solar to 68 per cent, and the virtual eradication of fossil fuels in electricity generation, with the remainder made up by other renewables such as hydropower and bioenergy, as well as nuclear. Given that global electricity demand is likely to double over the same period (thanks especially to the electrification of other technologies), the task would appear almost impossible. But to the extent that there is any hope at all of preventing a rise in global temperatures of two or more degrees, it hangs on the rolling out of new wind and solar farms at extraordinary speed.

Whether or not that can be achieved depends on the capacity of existing political and economic institutions to facilitate it. The economics and regulation of electricity generation are extremely complicated, but a few germane elements can be identified, each of which has a bearing on the prospects for rapid decarbonisation. First, there is the regulatory environment that has become the norm across most of the global North since the 1980s. Policymakers, influenced by the revival of neoclassical economics and free-market ideologies, have set about restructuring their energy sectors in the hope that market competition will drive down prices, benefit consumers, and force producers to invest in superior technologies and services in order to sustain their market share and profitability. This is a win-win vision of ‘economic life’, in which markets are sovereign, transparency reigns and nobody gets to bully anybody else.

In pursuit of this dream, regulators have begun to unbundle the various parts of the energy sector (splitting wholesale from retail) so as to reduce monopoly power, and to install market mechanisms in the rest. As a result, electricity generation has become a business that operates in a highly competitive and volatile market. The main ‘customers’ in this market are electricity retailers. The wholesale price of electricity is affected by a range of factors, including financial speculation and the difficulties of predicting where and when electricity will be needed. Further volatility is injected by the fluctuating price of fossil fuels (especially evident since the invasion of Ukraine), though this represents an inbuilt hedge for non-renewables: if electricity prices slump, that’s partly because the cost of fuel has slumped as well, so profit margins hold up – renewables do not enjoy that benefit.

Then there are the material idiosyncrasies of how electricity is actually generated. Wind and solar farms have comparatively high upfront construction costs, but comparatively low running costs, since their power source is free. The upfront costs may not be recovered for ten or twenty years. This schedule, plus the fact that renewables are still something of a novelty, makes such projects unusually vulnerable to the whims and sentiments of investors. ‘Financing represents the ultimate chokepoint,’ Christophers writes, ‘the point at which renewables development most often becomes permanently blocked.’ Investors aren’t choosing between ‘clean’ and ‘dirty’ electricity generation, but judging opportunities across a wide range of asset classes. Capitalists’ sole concern, as Marx observed, is how to turn money into more money, and it’s not clear that renewables are a very good vehicle for doing this, regardless of how cheap they are to run.

The problem, from the perspective of investors, is ‘bankability’. Investors want as much certainty as possible regarding future returns on their investments, or else they require a hefty premium for accepting additional uncertainty. The challenge for the renewables sector is how to persuade investors that they can make reliably high returns in a market with highly volatile prices, low barriers to entry and nothing to stabilise revenues. The very policies that were introduced to bring electricity costs down – marketisation and competition – have made the financial sector wary. Whenever renewables appear to be doing well, new providers rush in, driving down prices, and therefore profits, until investors get cold feet all over again.

What investors crave is price stability, or predictability at least. Risk is one thing, but fundamental uncertainty is another. Industries characterised by a high degree of concentration, longstanding monopoly power and government support are far easier to incorporate into financial models, because there are fewer unknowns. Judged in terms of decarbonisation, the most successful policies reviewed in The Price Is Wrong are not those which reduce the price of electricity, which would be in the interest of consumers, but those which stabilise it for the benefit of investors. Meanwhile, the extraction and burning of fossil fuels remains a more dependable way of making the kind of returns that Wall Street and the City have come to expect as their due. This is an industry with more dominant players, much higher barriers to entry, and which was largely established (and financed) long before the vogue for marketisation took hold.

Despite the exuberance over the falling costs of solar and wind power, Christophers doubts ‘whether a single example of a substantive and truly zero-support’ renewables facility ‘actually exists, anywhere in the world’. What’s especially galling is that, to the extent renewable electricity remains hooked on subsidies, this isn’t money that is ending up in savings for consumers, but in the profits of developers and the portfolios of asset managers. Paradoxically, the ideology that promoted free markets and a culture of enterprise (against conglomeration and monopoly) has enforced this sector’s reliance on the state. The lesson Christophers draws is that electricity ‘was and is not a suitable object for marketisation and profit generation in the first place’. Ecologically speaking, neoliberalism could scarcely have come at a worse time.

What can be done? It is clearly no good hoping that electricity markets will drive the energy transition, when it’s financial markets that are calling the shots. The option that has come to the fore in recent years, led by the Biden administration, is the one euphemistically called ‘de-risking’, which in practice means topping up and guaranteeing the returns that investors have come to expect using tax credits and other subsidies. The Inflation Reduction Act, signed by Biden in the summer of 2022, promises a giant $369 billion of these incentives over a ten-year period. This at least faces up to the fact that much of the power to shape the future is in the hands of asset managers and banks, and it is their calculations (and not those of consumers) that will decide whether or not the planet burns. There is no economic reason why a 15 per cent return on investment should be considered ‘normal’, and there is nothing objectively bad about a project that pays 6 per cent instead. The problem, as Christophers makes plain, is that investors get to choose which of these two numbers they prefer, and no government is likely to force BlackRock to make less money anytime soon. Where ‘de-risking’ continues to fall short is in moving from ‘carrots’ to ‘sticks’: there are precious few conditions imposed on the beneficiaries of green tax credits, let alone adequate penalties for those continuing to invest in fossil fuels.

The more ambitious, if politically unpalatable, option is a wholehearted Green New Deal, in which the state takes vast amounts of cost and risk onto its own balance sheet. Once it is accepted that electricity does not behave like a typical commodity, and that the urgency of decarbonisation exceeds all narrow cost-benefit calculations, then it makes sense to abandon reliance on markets altogether. Something akin to a wartime mobilisation might then take place, in which the state stretches its financial credibility to the absolute limit to invest in renewables at the pace that the climate emergency demands. Just so long as nobody expects this to make money for the state in the process, as Keir Starmer’s proposed Great British Energy project assumes it will be able to do.

Christophers’s​ The Price Is Wrong might be seen as the third part of a trilogy, following Rentier Capitalism (2020) and Our Lives in Their Portfolios (2023). What links these books is an effort to understand profit in the wake of Thatcher and Reagan, and to challenge the terms on which privatisation and marketisation have been sold. The mechanics of the electricity sector have some things in common with other cases that Christophers has picked through in recent years, including housing, public service outsourcing, care homes, land and infrastructure.

In all these cases, the goods on which society depends have been privatised in the name of encouraging market competition, but with results that look nothing at all like a ‘free’ market, and with predictable beneficiaries. These goods haven’t just been privatised, but ‘assetised’, in the sense that they have been packaged up, quantified and managed in ways that suit the calculations and interests of financiers. (The difference in the case of renewable energy is how unusually treacherous the assetisation project has been, to the point where it has often proved impossible to get the necessary turbines and solar panels built in the first place.) The financial sector deals in the language of risk, but it seeks out situations in which profitability is effectively guaranteed, a certain level of return baked in. Sectors with minimal competition or which the state cannot abandon altogether fit the bill perfectly. The derogatory term for this is ‘rent-seeking’, which is supposed to be an unusual and illegitimate mode of profit, but the disquieting implication of Christophers’s recent work is that this is simply how capitalism – at least in its current guise – likes to work.

The effects of this economic settlement are all around us, in the spiralling wealth of financial elites, the dilapidated public realm, unaffordable housing and continued investment in technologies – such as coal-powered generators – that harm us. Attributing all of this to ‘the market’, as if nobody designed it and there are no centres of power within it, prolongs the failure to understand it. Capitalism, unlike markets, has command centres. Capitalism, unlike markets, shrouds itself in complexity. On the other hand, the implication of The Price Is Wrong is that, contrary to its own subtitle, some version of state capitalism could save the planet, and indeed might be our best hope. But too many policymakers still have a mental block when it comes to abandoning the liberal ideal, in which the market gets us there without having to plan anything.

Keynes famously hoped for the ‘euthanasia of the rentier’. He was a liberal first and foremost, but was also uncommonly alert to the threat that capitalism posed to liberal ideals. The Price Is Wrong illustrates a central problem of capitalism from the Keynesian perspective, which is that it features not one price system, but two. There is the price of goods (such as a megawatt of electricity) which is set by supply and demand today, and there is the price of financial assets (such as the right to a windfarm’s revenue stream) which is set by expectations for tomorrow. Those expectations are determined by sentiment, convention, politics and culture. All of these are malleable, but adjusting them requires centralised authorities willing to step up and shape them. The myths of the ‘free market’ and ‘entrepreneurship’ have been a gift to rentiers, enabling inordinately high profits to be presented as an accurate reflection of innovation and courage, rather than a political settlement that nobody dares challenge. There is no shortage of financial capital available to support the energy transition, just a debilitating insistence on the rewards demanded for doing so.

Capitalism in this nakedly ‘antimarket’ form is beyond justification. At various points since the global financial crisis, leaders on the political left have attempted to point this out. Jeremy Corbyn and Bernie Sanders used their respective platforms to name and denounce a system that extracts without promising anything in return. Ed Miliband hung his 2011 Labour Party Conference speech on a Braudelian distinction between economic ‘predators’ and ‘producers’, which proved too much for Britain’s predator-aligned newspapers, and too nuanced to survive very long in the Westminster hubbub. He remains the last outpost of this kind of critical thinking in the shadow cabinet (following Starmer’s U-turn on his £28 billion a year decarbonisation spending commitment, a Conservative Party website led with the taunt ‘Where’s Ed?’), and the one front-bench politician who is receptive to analyses such as Christophers’s, which continue to be funnelled in his direction by the post-Corbynite think tank Common Wealth.

One curiosity of this critique is how much it owes to Keynes, and how little to Marx. It is precisely the lack of industrial exploitation of labour, and the absence of technological innovation, that are considered the central defects of contemporary capitalism. Instead, capitalism appears dominated by financial expertise, which floods and reconfigures everything from housebuilding to universities, public infrastructure investment to healthcare. The productive economy stagnates, while profits are wrung out of every available social and public utility by alliances of elite legal and financial services firms, sweating assets and expanding property rights. Liberal economists and pundits have latched on to the idea that Western capitalism is beset by ‘secular stagnation’, but Christophers goes further in setting out the way capitalism still manages to thrive despite the absence of productivity gains or prosperity.

Perhaps there is some hope to be found in the ingenuity of those who find the antimarket intolerable, and fashion their own escape routes. Academic publishing, for example, is one of the most egregious rent-grabs around. Scholars, editors and reviewers work for free, so that large copyright-protected conglomerates can charge libraries several thousand pounds a year for digital access to journals they can’t do without. The profit margins of the big scientific publishers run as high as 40 per cent, enough to make the boss of Shell blush. Hence the enthusiasm for projects such as the not-for-profit Open Library of Humanities, set up by Birkbeck academics in 2013, which now publishes 33 open access journals per year. When it’s capitalism that’s the problem, and not markets, the only alternative is post-capitalism.

But the central fact of the climate crisis is that there is very little time, and the scale of the political challenge increases with each passing day. The importance of acting as swiftly as possible scrambles our usual political and moral coordinates, forcing us to look beyond the political and economic solutions we might usually hope for, and more favourably on those which are considered ‘realistic’. Waiting for solutions to emerge in a bottom-up fashion, whether from activists or from markets, is not sufficient. Only the state has the power, the money and the coordinating capacity to direct capital investment at sufficient scale and speed towards the renewables sector. In practice, the distinction between a ‘de-risking’ state (which tops up private sector profits) and a Green New Deal (which builds new public infrastructure) may be less clear-cut than it appears on paper. The priority, as it has been now for decades, is to go as big and as soon as possible.

**3. Diffuse market actors can’t incorporate specialized ecological information – planning key to incorporate scientific information.**

Cedric **DURAND** Political Economy @ Univ. of Geneva **’25** “The Problem of Knowledge in the Anthropocene. Hayekian Environmental Delusion and the Condition of Ecological Planning” Working Paper p. 4

The second sub-argument is crucial for the rest of our discussion since it includes major concessions regarding the limits of dispersed knowledge. Hayek indeed explicitly accepts that « there are some facts concerning probable future developments which the government is more likely to know than most of the individual owners of natural resources” (Hayek, 1960, p. 494). He also notes, speaking about the peasantry, that since “most individuals do not even know that there is useful knowledge available and worth paying for, it will often be an advantageous investment for the community to bear some of the costs of spreading such knowledge”. Adding that “We all have an interest in our fellow citizens’ being put in a position to choose wisely” (Hayek, 1960, p. 489). Nonetheless, he insists 1) that the store of knowledge of special circumstances only known to individuals on the spot will always exceed the centralized expert knowledge and 2) that this knowledge can never be concentrated in any single authority while 3) it is always easier to disperse expert knowledge than to centralize dispersed knowledge (Hayek, 1960, p. 494).

The crucial objections have been raised by John O’Neill who writes that “there is good reason to assume that the dispersal of generic knowledge is as intractable as the centralisation of special knowledge” (O’Neill, 2012, p. 1084). In his view the key element is the tacit and practical dimension of knowledge that concerns as much everyday knowledge as expert knowledge. Scientific and technical knowledge rests on a wide set of tacit know-how and a large background body of practical knowledge that could only be gained via long and difficult training. This implies that there is a high likelihood that the distribution of a propositional expression coming from a specific field of expertise will not be helpful as persons outside the field do have not the capacity to understand it. As O’Neill insists, “Science itself relies upon a division of knowledge in which different specialists need to rely on the testimony of others. The attempt to resolve the problems of the division of scientific and expert knowledge in society by distributing it to individual market actors to use in their economic activities is, on Hayek’s own assumptions, open to the same objections as the centralisation of all knowledge to a single planning authority.” (O’Neill, 2012, p. 1084).

He also notes that even if it was possible to articulate the relevant facts in a propositional form, most people could understand, that « solution would in any case place informational burdens on market actors that they could not be rationally expected to bear” (O’Neill, 2012, p. 1084). It suffices to think about the endless revisions that would imply any individual attempt to incorporate consistently safety, social, and ecological criteria in one’s consumption decisions to understand why more traditional forms of public regulation, relying on centralized expert knowledge, plays such a prominent role.

## Case

**Circumvention – T/L – 2NC**

**1. No NLRB enforcement. The Board lacks a quorum because Trump fired Wilcox. That greenlights unimpeded employer violations, that’s Meyerson.**

**2. Backlog and lackluster penalties disincentivize compliance.**

Matt **Bruenig 25**, American lawyer, blogger, policy analyst, commentator, and founder of the left-leaning think tank People's Policy Project, "The NLRB Can't Punish Employers Strongly Enough," Jacobin, 2/19/2025, https://jacobin.com/2025/02/nlrb-labor-law-compliance-backlogs

Over the past few years, our dedicated and talented staff have worked diligently to process an ever-increasing workload. Notwithstanding these efforts, we have seen our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing.

Cowen is right that having a huge case backlog that makes it impossible to resolve unfair labor practices quickly makes the NLRB process essentially pointless. Most workers cannot wait for years to be reinstated to their job after being illegally fired, which also means that employers do not need to concern themselves with following the law.

Yet, simply refusing to enforce the law in certain ways also makes it so that employers do not need to concern themselves with following the law. A long queue denies justice to those who need a timely resolution of their unfair labor practice. But culling the queue denies justice to those subjected to the culling and to those who wind up victimized by changes in employer behavior that result from the relaxation of NLRB enforcement. The cure is worse than the disease.

The question we really should be asking ourselves is: Why is there such a backlog in the first place? One possible answer is that the NLRB’s budget is too small. I certainly agree that the agency should be allocated more funding to hire additional board agents, administrative law judges, and other staff needed to process cases.

But the problem goes much deeper than the NLRB budget. Case backlogs occur because many employers violate the law. And many employers violate the law because the penalties for doing so are so weak that breaking the law is the profit-maximizing choice. Most legal compliance, especially in these areas of employment regulation, is achieved, not through enforcement actions, but by employers deciding it is better to comply than to face penalties. This does not happen with the National Labor Relations Act (NLRA).

Consider the example of employers that insert non-disparagement or confidentiality clauses in severance agreements, company handbooks, or employment agreements. This is one of the areas of enforcement that Acting General Counsel Cowen is signaling that he wants to roll back, ostensibly because the agency has received so many charges from employees who are subject to these illegal clauses.

These clauses were explicitly illegal between 2004 and 2017 (the Lutheran Heritage era) and then again from 2023 to present (the Stericycle and McLaren Macomb era). If these clauses have been illegal for now two years, why haven’t employers simply rewritten their handbooks and standard agreements to remove these clauses? After all, if employers would just comply with the law, then the NLRB would not have a huge backlog of these cases.

The answer is that there is no real penalty for noncompliance. If an employer inserts an illegal non-disparagement or confidentiality clause into a company handbook or an employment agreement, the worst thing that can happen to them is that an employee will file a charge at the NLRB (already improbable) and that the NLRB will order them to remove the clause. Thus, the penalty for not complying is simply that you are ordered to comply.

It is not hard to see why employers conclude that it makes more sense to use these illegal clauses to discourage workers from engaging in protected activity than to comply with the law. From there, it is easy to see how, if virtually every employer decides to break the law this way, the NLRB will become overloaded with charges, even if only a small fraction of affected workers are actually bold enough to file charges with the agency.

As I argued in my Starbucks piece, all of this underscores how crucial it is to pass new laws like the PRO Act or the Employee Free Choice Act if you want to actually make labor law functional. Appointing labor-friendly NLRB members and NLRB general counsels simply cannot move the needle that much given the inherent limitations of the NLRA.

**Less than 0.1% of contract violations are prosecuted.**

Anna **Stansbury 24**, PhD, assistant professor of Work and Organization Studies at the MIT Sloan School of Management, "Why CEOs should want better enforcement of labor law," The Hill, 9/19/2024, https://thehill.com/opinion/finance/4875111-why-ceos-should-want-better-enforcement-of-labor-law/

Perhaps the starkest contrast is with property theft — a crime that is routinely punished by imprisonment. Shoplifting goods worth $2,500 or more, for example, can lead to felony charges and imprisonment in every state. Failing to pay workers what they are legally owed — wage theft — can in theory also lead to criminal charges, but almost never does.

From 2005 to 2020, the Department of Labor identified more than 90,000 cases where a firm underpaid its workers by $2,500 or more — with total underpayment across these cases of $570 million. Only 26 cases from this time led to criminal convictions, with three fines and no prison sentences.

When people steal from companies, they pay a heavy price. When companies steal from their workers, they don’t.

That is, if a violating firm gets caught at all. The Department of Labor’s inspection resources simply can’t stretch as far as their remit: for every federal wage-and-hour division investigator, there are about 175,000 workers covered by the statutes they enforce. The Labor Department targets its enforcement activity on sectors with high violation risk, but even in these cases research estimates the chance of a random inspection in any given year is less than 2 percent.

The troubling reality is that it’s more profitable for many firms to break minimum wage and overtime laws than to comply with them — and indeed they do, in droves. Companies illegally underpay workers in this way to the tune of several billion dollars each year.

This is striking enough, but for certain other worker protections, the incentive for employers to comply is even weaker. Look at the union protections in the National Labor Relations Act. The NLRA imposes no financial penalty for illegally firing a worker for union organizing — it merely requires the offending firm to reinstate the dismissed worker with compensation for lost earnings. And even once workers have voted for a union, a firm may simply stall to avoid reaching a contract. Failure to bargain in good faith is illegal, but carries no financial penalty.

For firms unconcerned with ethics or reputation, this means there is essentially no deterrent to breaking the law. Is it any wonder, then, that at least one worker is illegally fired in an estimated 20 to 30 percent of union elections, and that more than half of newly certified unions don’t get to a first contract within a year?

**3. Court injunctions. The Fifth Circuit just nullified the Board’s power to simply investigate allegations. Workers were fired for writing a letter condemning Musk, that’s Meyerson.**

**Circumvention – AT: Fiat – 2NC**

**1. Fiat can’t solve. The plan only requires strengthening thru [contextualize]. No part of the plan guarantees that the NLRA is enforced or that penalties are increased. You know this because if we read a PIC out of increased NLRB penalties or fair elections they would go for PDCP.**

**2. Even if they fiat [plan] is enforced, employers will backlash by violating a slew of other rights, that’s Meyerson.**

**3. Our ev assumes a friendly NLRB.**

Michael **Fong et al. 25**, Fong is Associate Director of the Center for Work and Democracy at Arizona State University, "Beyond the NRLB," Kindle Edition

Indeed, the possibility that the labor movement can rebuild its strength simply through the NLRB recognition process is vanishingly small, even in the context of a friendly NLRB like President Joe Biden’s.11 The NLRA, as amended by the Taft-Hartley Act in 1947, places severe restrictions on labor organizing and allows employers to aggressively fight union drives.12 Political administrations hostile to labor’s interests can significantly lengthen the representation election process.13 Even when unions win, the gains are limited: 44% of successful elections do not lead to a contract within the first year, because of weak enforcement mechanisms in the NLRA and minimal penalties for employers who obstruct the process.14 Given all of this, it is difficult to imagine the current NLRB certification process as a viable channel for unionizing millions of workers. Creating a functional NLRB would require politicians to fundamentally alter the NLRA, or replace it with new legislation, but even Democrat-controlled congresses have failed to pass reforms.

**4. Not topical. Enforcement of rights is distinct from strength.**

Jim **Staihar 17**, Assistant Professor, Robert H. Smith School of Business, University of Maryland, Associate Director, Center for the Study of Business Ethics, Regulation, and Crime, University of Maryland, "Income Inequality and Pay Ratio Disclosure: A Moral Critique of Section 953(b)," University of Pennsylvania Journal of Business Law, vol. 19, Winter 2017, pp. 457-494, Lexis

Even if workers possess some collective bargaining rights, those rights could be too weak to provide them with enough bargaining power to make the pay-setting process fair. For example, sufficiently strong collective bargaining rights might deny an individual worker the right to enjoy the benefits of a collective bargaining agreement without paying his fair share of the union costs required to negotiate the agreement. 141 Some jurisdictions might make it too easy for individual workers to avoid paying their fair share of what is required to negotiate a collective bargaining agreement with their company. 142 More generally, jurisdictions might deny workers the collective right to protest effectively against management decisions that they find objectionable. Jurisdictions could unfairly limit the rights of employees to organize a strike, boycott, or other forms of effective protest against a company. 143

[\*494] And even if workers have sufficiently strong collective bargaining rights, there can still be impediments to exercising those rights. Various forms of corruption can prevent workers from effectively exercising collective bargaining rights. Companies might coerce workers not to unionize. At one extreme, companies can use violence to break up any attempt among employees to form a union. 144 Union leaders can also fall prey to corruption, violating their fiduciary duty to bargain effectively on behalf of workers in the pay-setting process. At another extreme, union leaders might accept bribes from companies they are negotiating with in exchange for accepting lower wages or benefits for union workers. 145