## Adv 1 – Labor Share

### AT: Circumvention – T/L – 2AC

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It is **costly** and **difficult** to prepare for and conduct collective-bargaining negotiations. The union’s demands must be reviewed by counsel, and their feasibility and ramifications must be analyzed from a practical standpoint. The employer’s side must develop its own position on what it would like to have in the collective-bargaining agreement. It must seek advice on whether (and how) those goals can be achieved with legal certainty and how the agreement would affect the company. It also needs to develop a strategy and narrative for both the interval leading up to the negotiations and the negotiations themselves.

As these activities crop up, a company or enterprise that manages its labor relations by means of firm-specific collective bargaining is required to **employ specialists** or resort to a **significant volume** of **external support**.28 Companies pursuing firm-specific collective-bargaining agreements, therefore, **incur expenses** and could require **additional hiring**.

Consequently, one advantage of sectoral collective bargaining, from the employer’s perspective, is that such negotiations need not be conducted in-house. Instead, these **tasks are unloaded** onto an association or federation of employers that bundles collective bargaining on behalf of all members so that the association or federation’s central collective-bargaining division will adequately represent the employers’ interests, while simultaneously managing the administrative tasks associated with bargaining. Even if the employers pay dues to the organization, this approach creates **cost savings**, because the **costs are distributed** across the entire membership. The more centralized the conduct of negotiations and the broader the scope of a collective-bargaining agreement, the **lower the transaction costs** for the employers.29

### AT: Circumvention – Firings/Fifth Circuit – 2AC

#### No impact to the president firing NLRB people.

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Last week, a federal district court in Texas preliminarily enjoined the National Labor Relations Board (NLRB) from initiating an administrative proceeding against SpaceX on the grounds that removal protections for the agency’s administrative law judges (ALJs) and five Board members are unconstitutional. Put simply, the agency’s current structure is unconstitutional because it contains rules that make it too difficult for the president to fire the ALJs and Board members.

As with most constitutional law, the underlying legal question here turns upon impossibly vague text. Specifically, the question is whether the Article II requirement that the president “shall take Care that the Laws be faithfully executed” means that the president must retain the power to fire, at will, certain kinds of administrative agency officials. The idea that this bit of constitutional text provides a clear answer to a question as precise as the one being raised is obviously absurd, and so the resolution of the case will depend on the political views of the judges, including their opinions on the unitary executive theory, judicial restraint, and the utility of federal labor law.

There are basically three possible outcomes to the eventual Supreme Court decision in this case, each with different practical implications.

The first possible outcome is that the Supreme Court, citing Humphrey’s Executor, decides that the removal protections for NLRB ALJs and Board members are not unconstitutional and that the agency can continue operating just as it always has.

The second possible outcome is that the Supreme Court, citing Seila Law and Collins v. Yellen, decides that the removal protections for these two groups are **unconstitutional** but that this can be remedied by **simply cutting** those protections out of the statute and allowing the president to fire NLRB ALJs and Board members at will.

The final possible outcome is the same as the second outcome except that the Supreme Court decides that it cannot simply cut these protections out of the statute and that instead the whole agency must be tossed out until such time as Congress can enact a new statute recreating the agency in a constitutional way.

Given how hard it is to pass legislation, the last outcome would obviously be the most challenging to organized labor. It would also generate a lot of confusing legal issues around what to do about the pieces of our economy that are currently organized under the National Labor Relations Act (NLRA) regime in the meantime.

But the last outcome is **pretty unlikely**. In Seila Law and Collins v. Yellen, the Supreme Court held that the removal protections for the heads of the **C**onsumer **F**inancial **P**rotection **B**ureau and **F**ederal **H**ousing **F**inance **A**gency were unconstitutional, but it did not strike down the entire agencies. It just made it so that, contrary to what the statute said, the president could **fire those heads**. This is what would **probably happen** with the NLRB as well.

Does it **really matter** whether the president can fire NLRB ALJs and Board members? For the most part, it **probably doesn’t**. The president can already fire the NLRB General Counsel, something Biden did on day one of his administration, and the president already appoints NLRB members in a way to ensure that they are mostly Republican or mostly Democratic, depending on the party that controls the White House. This currently comes at some delay because the president has to wait for the end of each Board member’s term, but it happens **fairly quickly** after a new president is sworn in.

Being able to fire ALJs would be fairly new, but would presidents even do this and why exactly? ALJs **apply Board law** and, if they don’t, their decisions end up **reversed by the Board**. Like any judge, ALJs have some ability to affect outcomes in the way that they decide to construe ambiguous or conflicting evidence. But the number of cases that are likely to result in different outcomes due to there being a different slate of ALJs seems **pretty low.**

And this is only for cases that actually make it to ALJs. The **vast majority** of NLRB cases — **more than 90 percent** — settle. Those cases would be **unaffected**.

## Adv 2 – Green Bargaining

## T – Rights

### AT: Trumping Power – 2AC

#### 1. We meet. ALL collective bargaining rights are pre-existing in international and natural law.

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We would submit that on the parallel freedom approach endorsed by Justice Rothstein and others, the freedom to strike (and the freedom to bargain collectively)99 must have some protection from legislative action rendering conduct legal for an individual illegal when done in concert. As alluded to above,'0° on this approach the freedom to withdraw labour may ultimately be the foundational labour freedom in the workplace context. While employers may not have a duty to bargain with individuals, individual employees still remain possessed of their freedom to cease work in the absence of terms to which they voluntarily assent. Thus, while Justice Rothstein objected to giving "individuals who are members of specific groups ... greater constitutional rights than those who are not," "' such as rights to a process of collective bargaining including a duty to bargain on the employer, applying the parallel liberty approach rectifies the converse deficiency. It serves to permit union members the same freedom to withdraw their services that all other individuals take for granted, and would prohibit the state from unjustifiably interfering with the individual freedom simply because the individual chose to exercise that freedom in concert.

D. Conclusion on Section 2(d)

While the jurisprudence on section 2(d) is in a state of flux since the Trilogy approach was first modified in Dunmore, we can see that each of the principal approaches to section 2(d) put forward in the jurisprudence-in Dunmore, BC Health and Fraser and elsewhere-provide strong support for the conclusion that restrictions on strike action run afoul of section 2(d). 112 Chief Justice Dickson's "universalist" approach-endorsed in Dunmore-involves protection for strike action, drawing heavily from international freedom of association norms in the workplace context. On this conception, whatever other collective activities "freedom of association" may protect, it at least protects workers' freedom to withdraw their services, absent a compelling justification under section 1. Likewise, taking a meaningful process of collective bargaining itself as a constitutional right falling within the scope of section 2(d)-as established in BC Health and confirmed in Fraser-also requires protection for a freedom to strike, given its overriding centrality to any notion of authentic or "meaningful" collective bargaining. Finally, the parallel liberty approach-never wholly abandoned by the Court"'3 but endorsed most recently by Justice Rothstein in Fraser-likewise requires strike protection, since individuals acting together in withdrawing their services to negotiate a new contract should be in no worse position than an individual doing so on his or her own. Indeed, other approaches still-be they based on a collective rights interpretation, a positive rights interpretation or some combination thereof°---are involved in the consensus. Ultimately, while the various approaches leading to protection for strike action may have very different conceptual and philosophical foundations, and different consequences as to the ultimate scope of protection, s it seems clear to us that on any definition of freedom of association accepted by Canadian courts to date, direct state interference with or prohibition of strike action constitutes a violation of section 2(d), and requires justification under section 1.

III. SECTION 1 CONSIDERATIONS

A. Introduction

As described above, we think there is a veritable consensus across the various conceptions of freedom of association that strike action should receive protection under section 2(d). A more difficult question is: what restrictions on that freedom are demonstrably justifiable as reasonable limits in a free and democratic society?"0 6 As governments will typically offer a wide range of different rationales for such restrictions-ranging from the compelling to the absurd0 7 we aim to identify what principles should guide courts in this context. What state objectives are sufficiently pressing and substantial to justify limiting the freedom to strike? What type of evidence should be required in order to demonstrate a rational connection to a pressing objective? Would the imposition of compulsory arbitration minimize the impairment of the freedom, and if so, what type of arbitration will suffice?

Below, we draw on the few decisions touching on section 1 in the context of strike action, as well as broader Charter jurisprudence in an attempt to sketch out some guidelines for adjudicators to consider. In this context, it is important to bear in mind that even if strike action is found to merit constitutional protection, an undue eagerness to find that state restrictions constitute reasonable limits under section 1 of the Charter will result in the Court giving with one hand what it takes away with the other.

B. Pressing and Substantial Objectives: Do Dollars Trump Freedoms?

Governments will frequently attempt to justify infringements on the right to strike in economic terms-either based on the impact on the wider economy (private sector) or government budgets (public sector). From the outset, it should be squarely addressed that, as acceptable as this may be as a political justification, purely economic interests can rarely, in and of themselves, justify limiting a Charter right or freedom."08 This general rule is sensible enough, as explained by Lorraine Weinrib, "[iut is inherent in the nature of constitutional rights that they must receive a higher priority in the distribution of available government funds than policies or programmes that do not enjoy that status. A different preference for allocation of resources cannot justify encroachment on a right."" 9

Different economic justifications will typically arise based on the context. With respect to strike action in the public sector, it is important to recognize that budgetary strictures and cost-saving measures have only once been accepted by the Court as the primary purpose of legally justifying an infringement of fundamental rights and freedoms, and even then only in the context of "financial emergencies when measures must be taken to juggle priorities to see a government through the crisis."' The default posture with respect to cost-saving and budgetary measures was discussed by the majority in BC Health, who made the following comments (despite finding that the government did have other viable objectives for the law in question):

The appellants' contention that cutting costs and increasing the power of management are also objectives of the legislation has merit. The record indicates that at least part of the government's intention in enacting the Act was to cut costs and increase the rights of management.... To the extent that the objective of the law was to cut costs, that objective is suspect as a pressing and substantial objective under the authority in N.A.P. E. and Martin, indicating that "courts will continue to look with strong scepticism at attempts to justify infringements of Charter rights on the basis of budgetary constraints"........

Indeed, the Court in BC Health went some way further, in casting doubt on whether "increasing management power" can constitute a viable objective, at least on the facts of that case.112 As such, courts should be presumptively wary of accepting any rationale for limiting the right to strike based on the economic impact of striking, particularly with respect to budgetary concerns.

Other economic rationales may be more compelling, but these too should be closely scrutinized. For instance, in PSAC and DairyWorkers, the companion cases to Alberta Reference, Chief Justice Dickson found infringements on strike action to be justified on the basis of anti-inflation measures and economic harm to third parties, respectively. According to the Chief Justice in PSAC, a "high degree of deference ought properly to be accorded to the government's choice of strategy" in addressing complex issues, "' such as inflation.1 14 The Chief Justice accepted that the government's objective was pressing and substantial, and that the wage restraint measures were (perhaps tenuously) linked to the objective of curbing widespread and serious inflation. Justice Wilson agreed that "controlling inflation was, at the time of the passage of the Act, of sufficient importance to warrant a limitation on freedom of employees generally to bargain collectively and to strike."" 5

However, it should be noted that the measures were designed to serve as an example to inspire mimicry, not to curb inflation directly, as federal public servants only made up approximately five percent of the total workforce. Thus, Chief Justice Dickson found that public sector wage restraint was justified due "[t]o the symbolic leadership role of government," noting that government initiatives often entail "a large inspirational or psychological component."" 6 Justice Wilson disagreed, pointing out in her reasons that "if both public and private sector employees are free to engage in collective bargaining ... then public sector employees should not be deprived of this freedom as a means of government getting across its message, no matter how worthwhile that message may be.""7 As such, it could be argued that a more faithful description of the actual purpose of the measures was "an attempt to inspire other employers to reduce wages," and the question then becomes whether this objective is sufficient to override Charter protected freedoms. Given the Court's subsequent reluctance to accept vague and symbolic measures as a pressing and substantial objective under section 1,118 it is not clear that the approach of the Chief Justice would or should be adopted today.

A different type of economic rationale arose in Dairy Workers, in which infringements on collective action were justified on the basis of potential economic harm to third parties. The purpose of the legislation prohibiting dairy workers from engaging in strike action was deemed to be the harm caused to dairy farmers by the disruption. That is, the infringement was justified on the basis of the (ordinary and natural) economic leverage that the workers were attempting to bring to bear through collective action. While Chief Justice Dickson found that the economic harm to third parties constituted a reasonable restriction on the freedom of workers to engage in collective action,' 9 Justice Wilson again disagreed, pointing out that "regulation is an important government function in today's society but, if it is to be done at the expense of our fundamental freedoms, then it must, in my view, be done in response to a serious threat to the well-being of the body politic or a substantial segment of it.""2°

While we might not go so far as to suggest that economic harm to third parties could never amount to a pressing and substantial objective under section 1, we believe that courts should be wary of succumbing to the temptation to justify limitations on strike action on the basis of economic harm or inconvenience. This will be particularly important in the private sector because collective action will almost invariably have some impact on the employer and third parties, and it is important not to cast the section 1 net so broadly as to leave no room to exercise the Charter-protected freedom.

In this respect, some guidance here may be drawn from the distinction between an exercise of freedoms that affect the rights of another, and one that affects the interests of another (here, an employer or third parties).' 22 While the protection of the rights or freedoms of third parties may in some circumstances constitute a pressing and substantial objective for the limitation on the exercise of Charter rights or freedoms, we would propose that mere inconvenience or economic disruption rarely will.

Support for this approach can be found in the Supreme Court's decision in Pepsi-Cola, where it found that picketing activity should not be restricted by the common law-as informed by the Charter's freedom of expression guaranteeunless an independent tort has been committed (i.e. unless it constitutes an infringement of the rights of third parties). 2 ' The Court noted that while the protection of third parties from economic harm is an objective capable of justifying limits on freedom of expression,

to accord this value absolute or pre-eminent importance over all other values, including free expression, is to err. The law has never recognized a sweeping right to protection from economic harm. As this Court observed in KMart, at para. 43: "[iun the absence of independently tortious activity, protection from economic harm resulting from peaceful persuasion, urging a lawful course of action, has not been accepted at common law as a protected legal right " 124

An analysis based on whether "rights" to certain action are involved,' 2 ' as opposed to merely economic interests and convenience, dovetails well with the types of objectives that few would dispute are "pressing and substantial", such as the continued provision of essential services. For instance, where the interest in the provision of a service can be construed as a Charter right-a useful example may be to adequate and timely health care provision' 26-the need to provide a minimum level of service may well justify some proportionate limitations on the freedom to strike (this point will be taken up further in the sections below). We do not propose this as a hard and fast rule, but it may serve as a helpful heuristic in determining where the harm to third parties by strike action-as collective action will almost always have some effect on third parties-rises to a level of importance so as to constitute a pressing and substantial objective for the purposes of the Charter. 1

As always, courts should be attentive to the exigencies of the particular circumstances-for instance, interference with a public sector strike depriving society of an important public service may be more pressing than private sector strikes where individuals are free to obtain the services elsewhere.128 It ought to be kept in mind, however, that whenever workers legally strike in Canada, they are not bound by a collective agreement. The employer has no contractual right or entitlement, as such, to the worker's labour, nor does the public, in the absence of a collective agreement whereby the workers have agreed to provide that service. The fact that the employer may be economically harmed, or the public denied a service, flows directly from the freedom of all workers to choose to withhold services in the absence of agreed terms for employment.'29

Finally, there should be some evidentiary obligation on the government to establish that a pressing and substantial concern in fact exists. In Dairy Workers, for instance, Chief Justice Dickson found that a pressing and substantial objective had been established on the basis of scant evidence, including from biased news clippings, evidence which had been firmly, and in our view correctly, rejected by the Court of Appeal. 30 Of course, different evidentiary burdens will be required in different contexts;"' however, we would suggest that an overly deferential posture at this stage is not warranted, particularly where the government purports to raise the spectre of calamitous economic effects. We are reassured of the need for such evidence by the views of some government constitutional lawyers who, while advocating a more deferential approach than endorsed here, accept that the government should be required to tender "credible expert evidence" establishing a "real and substantial risk" of the adverse consequences contemplated.'32 It should not be enough, on the view presented here, for a government to simply avert to the economic disruption caused by all strike action, lest the freedom be entirely vacuous-there must be some extraordinary harm, and real reasons to think it will result.

C. Rational Connection: Proximate & Ultimate Objectives

These evidentiary concerns will often spill over into the rational connection stage, where the courts aim to ensure that the impugned law or measure is "carefully designed to achieve the objective in question."' At this stage of the proportionality analysis, the courts will require the government to "show a causal connection between the infringement and the benefit sought on the basis of reason or logic."" 4 While this does not always require proof that the objective will necessarily be achieved, it must be "reasonable to suppose that the limit may further the goal,"'1 and the courts often require the presence of at least some evidence that the means chosen are actually directed at the objective as stated." 6

Indeed, where there is no valid reason to believe that the measures adopted will tangibly relate to the mischief identified, there may be good reason to reject the government's stated objective. As the Chief Justice pointed out in PSAC, "although the constitutional validity of macro-economic initiatives ought not to depend upon their ultimate success or failure, it is relevant to establishing the sincerity of the legislative objectives to consider whether these objectives were in fact achieved."' 37 In this respect, while a pressing and substantial concern-i.e. widespread and serious inflation-was certainly present in PSAC, there remained some question as to whether the means chosen were actually directed at solving the identified harm.

Nonetheless, the deferential posture of the Chief Justice in PSAC led him to accept that wage controls on public servants "could reasonably have been expected to have a positive, albeit partial and indirect, impact on combating inflation in the economy in general" based on the "the symbolic leadership role of government.""' However, in PSAC, there appeared to be some ambiguity over the government's proximate objective in limiting collective bargaining and strike action. The Chief Justice accepted that the public sector wage restraint measures (including a prohibition on strike action over compensation issues) were not intended to impact inflation (i.e. the pressing and substantial objective) directly, but were rather a "partial and indirect" means to do so.' 9 He was not entirely clear on the logical link between the government measures and the ultimate objective of stemming inflation, but did note that the measures were "successful in promulgating temporary restraint programmes on the part of other public sector employers.""4

By contrast, Justice Wilson argued that the proximate objective-by which the government aimed to achieve its ultimate, "pressing and substantial" objective of controlling inflation-was to "to inspire voluntary controls through the example of the public sector's sacrifice." 4 ' However, for Justice Wilson, the lack of meaningful evidence that the federal government's public servant wage control measure actually served its intended purpose raised serious concerns about the rational connection between objective and means.' 42 This disconnect highlights the importance of a careful application of the Oakes test: there must be a rational connection between the means chosen and the pressing and substantial objective identified in order for the analysis to make sense. While the Chief Justice was surely right that managing outof-control inflation was a pressing and substantial objective, we think that Justice Wilson's reasons show that there was no real reason to believe the measure chosen would actually achieve that objective, even if one could speculate the measures effectively encouraged the promotion of some other related objective (i.e. similar mandatory restraint in provincial public sectors).

Of course, we recognize the concern of the Chief Justice that it is not within the "judicial role to assess the effectiveness or wisdom of various government strategies for solving pressing economic problems," and understand that definitive evidence in this regard may not be forthcoming in the context of certain government's objectives. 4 ' We also recognize that the "rational connection" stage of the Oakes analysis-like the pressing and substantial objective stage-has come to represent a relatively low bar for respondents.'" However, we believe it plays an important role in the proportionality analysis by ensuring a demonstration-by evidence, reason or logic-that the government's means are meaningfully directed at the pressing and substantial objective identified. In fact, an argument can be made that freedom to strike cases present a useful opportunity for the revitalization of the rational connection stage of the Oakes analysis. 4 ' As cases like PSAC illustrate, there may at times be an inclination to interfere with strike action to avoid inconvenience, mitigate budgetary ramifications or alleviate political pressure, instead of in a meaningful effort to respond to tangible harms which could more clearly justify the infringement of a Charter right or freedom.

As such, our point here is not to suggest governments must definitively establish beyond a shadow of a doubt that the stated objective will be achieved by the means chosen, as this is clearly not the test the Court has endorsed at this stage of the analysis. Rather, it is simply to suggest that courts should remain alert to the availability of and need for evidence demonstrating some link between the pressing and substantial objective and the means chosen to achieve it. If courts are to accept a broadly stated objective at a high level of abstraction in order to demonstrate that it is pressing and substantial (e.g. "protecting the economy" or "curbing widespread inflation"), they must be diligent in ensuring that there is a rational connection between the means and those specific objectives. Where there is no conceivable link between the proximate and ultimate objectives, or where there is no evidence to support the contention that the means chosen might achieve their stated ends, courts should be willing to find as such.

D. Minimal Impairment: Essential Services & Substituted Arbitration

This leads us to what is often the most salient proportionality factor: minimal impairment. It is impossible to canvass every possible circumstance in which a government may consider restricting strike action, and the various ways they may choose to do so. However, we can illustrate some general considerations by addressing one of the most prominent examples: prohibitions on strike action for essential services. By contrast to purely economic objectives, which should be rigorously scrutinized, prohibitions on strike for truly "essential services" will likely amount to a sufficiently pressing objective justifying impairment of freedom of association, and there is little doubt that reasonable restrictions on strike action are rationally connected to the continued provision of essential services.

However, given the gravity of impinging upon a fundamental freedom, any restrictions in this context should be minimally impairing in two ways. Such restrictions should, first, be limited in the number of people affected. Essential services designations should be scrutinized to ensure they only limit the freedom of those performing services that are properly regarded as essential-i.e. where the deprivation would represent a danger to the health and safety of a community, or otherwise serve to injure the rights (as opposed to just interests) of the public. Second, for those necessarily affected by an essential services designation, their freedom to engage in collective action should be limited in the least drastic way possible.

The first dimension was recognized by Chief Justice Dickson (joined by Justice Wilson) in the Alberta Reference, in finding that while the legislatures were justified in limiting the right to strike in essential services, it must carefully tailor the restriction to those necessarily affected. Prohibiting the right to strike across the board in hospital and government employment was:

[t]oo drastic a m'easure for achieving the object of protecting essential services. It is neither obvious nor self-evident that all bargaining units in hospitals [or covered by the Public Service Act] represent workers who provide essential services, or that those who do not provide essential services are "so closely linked" to those who do as to justify similar treatment.146

If this were not the case, the government would have complete discretion to negate the freedom to strike simply by declaring such services "essential."

Moreover, in order for prohibitions on strike action for essential services to be minimally impairing of workplace freedom, governments may also have some obligation to include worker associations in the determination of what positions are truly essential, which includes (as a last resort) providing for some independent oversight over that determination. This would at least preserve some semblance of collective action and agency among workers whose constitutional interests are to be sacrificed for the greater good. For instance, in Saskatchewan Federation of Labour, Justice Ball found that the impugned legislation-which permitted government employers to unilaterally determine which workers were considered essentialdid not minimally infringe the Charter freedom in question. While we will not get into the complex legislation in depth, one example should suffice to demonstrate the close scrutiny warranted at the minimal impairment stage when a Charter right is breach:

In my view the provisions of the PSES Act go beyond what is reasonably required to ensure the uninterrupted delivery of essential services during a strike. For example, the provisions of s. 7(2) of the PSES Act are not required to ensure the delivery of essential services to the community during a strike. As a reminder, s. 7(2) states that "... the number of employees in each classification who must work during the work stoppage to maintain essential services is to be determined without regard to the availability of other persons to provide essential services". The apparent purpose of s. 7(2) is to enable managers and non-union administrators to avoid the inconvenience and pressure that would ordinarily be brought to bear by a work stoppage. Yet if qualified personnel are available to deliver requisite services, it should not matter if they are managers or administrators. If anything s. 7(2) works at cross purposes to ensuring the uninterrupted delivery of essential services during a work stoppage.147

Similarly, Justice Ball found that the power to unilaterally declare workers essential was not minimally impairing, while sensibly adding that the framework "would be substantially less impairing of the right to strike protected by s. 2(d) of the Charter if in every case it made provision for an effective, independent dispute resolution process to address the propriety of public employer designations of employees required to work during a work stoppage." 4 '

As noted above, ensuring that only those truly providing essential services are burdened does not end the minimal impairment analysis; for those workers properly classified as essential by the process described above, it is critical for the government to only curtail the freedom as little as possible. The imposition of a fair and effective binding process of arbitration-including over which employees are in fact deemed essential-would often go a long way towards meeting the section 1 standard.

This is not to say that there is some independent constitutional entitlement to arbitration to be mandated by the Court, but rather that the provision of independent and binding arbitration for those required to forego their Charter freedom will serve to mitigate the impact of the infringement, while still serving the pressing and substantial objective of ensuring provision of essential services. This was emphasized by the Chief Justice in the Alberta Reference, in finding that "[if prohibition of strikes is to be the least drastic means of achieving this purpose it must, in my view, be accompanied by adequate guarantees for safeguarding workers' interests."' 49Thus, an effort should be made to restore employees to the situation in which they would have been in the absence of the legislative interference.' 50 As the Chief Justice held, "[ijf the freedom to strike were denied and no effective and fair means for resolving bargaining disputes were put in its place, employees would be denied any input at all in ensuring fair and decent working conditions, and labour relations law would be skewed entirely to the advantage of the employer."'' For this reason, he concluded that there must be a dispute resolution mechanism established, the purpose of which is to ensure that the employees' loss of meaningful bargaining by being deprived of the freedom to strike "[ils balanced by access to a system which is capable of resolving in a fair, effective and expeditious manner disputes which arise between employees and employers.""5 2 In determining the standard of a "fair and effective" system of arbitration, courts should consider that the process should-as much as possible-ensure that workers are not unduly penalized for providing essential services.

For example, while Chief Justice Dickson held that a section 1 analysis did not preclude a requirement that arbitrators consider certain specified criteria, such as government fiscal policy, he also noted that the requirement for a fair and effective substitute for the right to strike would not be met if legislation bound an arbitrator "[t]o take the stated fiscal policy as the conclusive measure of the employer's ability to pay."' Moreover, he found that the exclusion of certain subjects from the scope of bargaining and the arbitration board's jurisdiction

[c]ompromises the effectiveness of the process as a means of ensuring equal bargaining power in the absence of freedom to strike. Serious doubt is cast upon the fairness and effectiveness of an arbitration scheme where matters which would normally be bargainable are excluded from arbitration. i"4

The Chief Justice concluded that while it may (in certain circumstances) be necessary for the government to maintain complete control over specific aspects of employment, there should be a "presumption" against excluding topics from the bargaining table in order to ensure "[t]he effectiveness of an arbitration scheme as a substitute for freedom to-strike is not compromised. " 's

While there is not a universal formula that can be applied to all government limitations on the freedom to strike, and the analysis will depend greatly on the specific restrictions placed on the employees in question, our point here is to stress that where a fundamental freedom (including the freedom to strike) must be restricted in order to meet pressing and substantial societal objectives, there is an obligation on government and the courts to ensure that the scope of such deprivation is as narrow as possible. In order to ensure that the means are the least drastic available to accomplish the government's objective, the courts should require that the freedom is preserved for as many people as possible, and that the freedom for those necessarily affected is preserved as much as possible. For those employees necessarily affected by such restrictions, such as in the case of an essential services designation, there should be processes established to maintain the freedom and agency to engage in collective action as much as possible-for instance, through negotiations and (if necessary) independent determination of the scope of "essential services" and fair and effective binding arbitration to ensure the employees' interests are not entirely or unreasonably sacrificed.

E. Conclusion on Section 1

Whatever can be discerned from this survey, particularly the approaches taken by Chief Justice Dickson and Justice Wilson to assessing section 1 justifications for restrictions on strike action, one conclusion is clear: when it comes to determining whether restrictions on the right to strike can be justified, the courts will have a meaningful choice between judicial deference and more rigorous judicial scrutiny. While both Justices agreed that the section 1 justification analysis requires fair, independent and binding interest arbitration where the right to strike is eliminated for essential workers, their competing approaches to assessing the section 1 justification for wage control and back to work legislation suggest that the ultimate constitutionality of various restrictions on the right to strike will depend heavily on how the choice about deference at the section 1 stage is resolved.

While we do not dispute that different standards of evidence and harm may be required depending on the interest sought to be protected, s6 and despite the highly political nature of labour relations generally, it should be acknowledged that strike action does not typically implicate the kind of complex and contentious moral, social science or public policy considerations that are not amenable to real evidence of harm. As a result, assessing restrictions on the freedom to strike is not the type of circumstance in which a deferential "reasonable apprehension of harm" standard should be employed.' The rationale for back-to-work orders and other ad hoc infringements on strike action is typically clear and often purely economic or logistic: to prevent any disruption or service deprivation to the community and economic hardship visited on employers or governments."' 8 To the extent that such harms are relied upon in section 1, and where facts can be expected to be available, the courts should require them. Where the harm is claimed to be something beyond the ordinary and inevitable effects of the disruption in services or production, evidence should be tendered to show a link between the Charter infringement and that wider economic or social objective. Finally, where the objective is sufficiently important and the means chosen demonstrate a meaningful link to that objective, governments and courts should still be mindful to limit the abridgment to those workers who are necessarily affected, and to maintain the greatest degree of collective action and agency possible for those whose freedom is sacrificed for the benefit of society.

In our view, these are the general principles that should guide governments and adjudicators in determining whether direct interference with freedom to strike can be demonstrably justified in a free and democratic society. Of course, prior to Dunmore and BC Health, the notion that section 2(d) protected a right to strike was effectively foreclosed by the Trilogy;"5 9 as such, there is not a wealth of Canadian jurisprudence to draw on in considering the appropriate approach to section 1 in the context of strike action. Fortunately, other sources may provide some guidance at this juncture. We have already noted the treatment of the European Court of Human Rights, where the justifiability of limitations on strike action have been considered in a number of contexts. 1 60 Similarly, given its tripartite orientation and global focus, principles developed by the ILO. 6 may also be helpful in delineating reasonable limitations on the freedom to strike in free and democratic societies. Indeed, the practical analysis engaged in by the ILO decision-making bodies may to some extent parallel the reasoning process normally employed under section 1, in seeking to adequately balance the legitimate needs of the various parties involved.162 As always, careful attention should be paid to the reasoning of these decisions and how those reasons might apply in any given case, but the principles and discussions may generally be considered informative at this stage of the analysis. 6

Ultimately, the core constitutional entitlement to strike-by whatever means you get there-has to mean something. Once this fundamental freedom is recognized, there will be many situations that will call for careful consideration of whether the freedom can be restricted, and if so, by how much. We think that the considerations identified above would go some way to ensuring that important community interests are safeguarded, while at the same time maintaining a meaningful scope for the exercise of freedom in the workplace context.

IV CONCLUSION: AVOIDING A RETURN TO THE "NO-GO" ZONE

Harry Arthurs, perhaps Canada's most respected labour law scholar, is famously pessimistic about the role of Charter in protecting workers rights. After the Labour Trilogy, he made a bold prediction:

Anglo-Canadian courts have been dealing with issues of individual and collective labour law for at least two hundred years. During that entire period, the courts virtually never, not on any given occasion, created a right which might be asserted by or on behalf of working people. Nor have they since the enactment of the Charter. Nor, I conclude, is it likely that they ever will."M

His point was in part that workers cannot rely on courts, or for that matter the law or the state, to advance their interests, but only on their own collective strength, organization, mobilization and militancy.

Then came the Supreme Court's ground-breaking decision in BC Health, which confidently asserted that "to declare a judicial 'no go' zone for an entire right on the ground that it may involve the courts in policy matters is to push deference too far." 6 ' While subsequent assessments of the wisdom of the Court's decision were not unanimous, a great many agreed-contra Arthurs 66-that at least placing labour relations within the sphere of the Charter's protection was a step in the right direction. While caution and careful thought is always required, the courts have not shied away from protecting the fundamental rights and freedoms in other highly complex, highly political contexts, and there is no reason to cordon off such a ubiquitous institution as the world of work, leaving it entirely in the pre-Charter era. We think that on any reasonable approach accepted by the court to date, section 2(d) must provide protection for the freedom to strike, subject only to demonstrably necessary and minimally intrusive limitations. When the issue eventually reaches the top court-and we have no doubt that it will-its determination as to whether the freedom to strike is constitutionally protected, and also as to how readily restrictions on the freedom can be justified, will go some ways towards either confirming, or rejecting, Arthurs' Charter-skepticism.

V. POST SCRIPT: SFLATTHE COURT OF APPEAL

As noted above in Part II, Justice Ball's decision at the Court of Queen's Bench in Saskatchewan Federation of Labour, referenced above, was recently overturned by the Saskatchewan Court of Appeal. ' 67 In a nutshell, the Court of Appeal found that because the Supreme Court had expressly found in the Labour Trilogy that the right to strike was not protected under section 2(d), the doctrine of stare decisis operated to bind lower courts, notwithstanding subsequent Supreme Court jurisprudence. We will briefly address two aspects of the decision: the Court of Appeal's approach to stare decisis in the context of freedom of association, and the substantive (if speculative and unfinished) comments on the possible avenues for finding 2(d) protection for strike action.

A few observations are in order on the Court of Appeal's approach to stare decisis in the context of section 2(d). First, some will regard the decision as insufficiently attentive to the shift in section 2(d) jurisprudence. Of course, lower courts should not blithely abandon the precedents of superior courts. However, in our view, the Court was not being asked, as the Court of Appeal characterized the case, to "depart from a Supreme Court precedent on the basis that the Supreme Court would overrule it if invited to do so." 68 Rather, the Court was being asked to apply to the case at hand new Supreme Court precedent, which has unearthed any pretense of precedential stability in the context of 2(d). If the Supreme Court has "shifted the approach to s. 2(d),"'69 which the Court of Appeal accepted, the task of the courts is to identify whether this shift in the meaning of the constitution affects past precedents, and how. Indeed, the Court of Appeal acknowledged that there were "uncertainties as to how, on any future appeal, the Supreme Court might choose to characterize the right to strike for purposes of a s. 2(d) analysis." 7 ' With respect, it is difficult to understand how a lower court can be bound by precedent if no clear precedent can be identified, and when the Supreme Court itself has recognized its "shift away from the Trilogy in favour of a broader and more contextual understanding, of freedom of association." 7 ' The fact that the Supreme Court may subsequently agree or disagree with the lower court's assessment of the state of a law does not, in our view, mean that the latter should avoid its obligation to assess the law as it currently stands.

Second, subsequent decisions of the Supreme Court have expressly rejected the very reasons provided in the Trilogy and PIPSC upon which the finding that section 2(d) did not protect strike action was premised. In BC Health, the Court confirmed that the doctrinal approach endorsed in the Trilogy was no longer an appropriate def'mition of section 2(d), as the "reasons evoked in the past for holding that the guarantee of freedom of association does not extend to collective bargaining can no longer stand."'72 Those reasons, it must be recalled, were provided in the Alberta Reference case, where the specific issue was whether the strike action was protected under 2(d). On this view, BC Health did not simply cast doubt on how the Supreme Court may decide the issue in the future, it expressly pulled the doctrinal rug out from beneath the feet of the Court's holding in the 1987 Labour Trilogy. 73 Indeed, Justice Rothstein's attempt to have the court revert to the precedents set in the earlier cases (the Trilogy and PIPSC) as the proper defintition of section 2(d) was soundly rejected.

Moreover, even if the Trilogy conclusion with respect to constitutional protection for strike action remained viable, it must still be acknowledged that the Court identified a supplementary doctrine in Dunmore, which may independently support a breach of section 2(d). In that case, it found that there is a "collective dimension" to section 2(d) beyond that established in the Trilogy and PIPSC, on the basis that "[tlo limit s. 2(d) to activities that are performable by individuals would ... render futile these fundamental initiatives".' 74 A useful analogy is at hand. In Fraser, no one seriously disputed that the legislation in question was consistent with the Court's decision in Dunmore, which was the Supreme Court precedent directly on point (i.e. what positive obligations are on the state to protect associational freedom in the private sector). Nevertheless, the litigation proceeded, and the lower courts ruled, on the question of whether meeting the criteria outlined in Dunmore remained constitutionally sufficient in light of the changes in 2(d) doctrine ushered in by BC Health. ' In our view, the Court of Appeal should have applied the entire body of the law, including that laid down following the Trilogy, in determining whether a freedom to strike was covered by section 2(d).

Separate and apart from the Court of Appeal's approach to stare decisis, we note that while the Court of Appeal felt itself bound by the holding in the Trilogy, it did recognize that there are at least two approaches upon which the freedom to strike could be found to fall within the constitutional guarantee of freedom of association. These approaches closely map on to the approaches outlined in Part II of this paper:

First, strike activity might be seen as being, in effect, an aspect or a dimension of collective bargaining and, more particularly, as being a mechanism for giving employees the economic muscle necessary to make collective bargaining meaningful ....

Second, and on the other hand, the right to strike might be seen as conceptually independent of collective bargaining and, as a result, seen as something which must be analysed on its own terms ... [on this approach] strike activity is seen simply as the coordinated withdrawal of labour by employees for the purpose of obliging an employer to make concessions with respect to matters of workplace concern.'V

We recognize that, with respect to the first approach, 78 the Saskatchewan Court of Appeal suggested that Fraser leaves open the possibility that all s. 2(d) requires in order to make collective bargaining "meaningful" for workers is to have their collective representations considered in good faith.' 9 However, for the reasons discussed above, any suggestion that the mere requirement that an employer consider employee representations in good faith is in itself sufficient to permit workers to exercise a constitutional right to "meaningful collective bargaining" is naive (and contrary to the real-life experience of anyone involved in collective bargaining on either the union or employer side). The Court of Appeal may turn out to be correct about the Supreme Court's conception of collective bargaining; however, we would submit that if it is, the notion that there is a constitutional right to meaningful collective bargaining must itself be abandoned.

This brings us back to a point identified in the introduction: the Court's approach in Fraser was dealing with the scope of the legislature's affirmative constitutional obligation to extend statutory protections to a process of collective bargaining. The Court was not commenting on the scope of freedom of association when invoked as freedom from government or legislative prohibition or interference. "0 Thus, while the Court in Fraser may have limited the constitutional obligation to protect freedom of association by ensuring a process of good faith bargaining, it does not follow that the government can therefore proceed to directly interfere with all other constitutionally protected associational activities not captured in the narrow range of affirmative protections it must provide. As an analogy, while a court might find that the state has no affirmative obligation to provide a platform for criticism of the government, this cannot tell us anything about the constitutionality of directly prohibiting criticism of the government.

With respect to the second approach,'81 the Court of Appeal raised the concern that the right to strike as it exists today is so bound up with other statutory features of the Canadian labour relations regime (including certification and majoritarian exclusivity) that it cannot be regarded as a fundamental freedom."' Thus, on the basis of the Supreme Court's caution in Fraser that 2(d) "does not contemplate any particular sort of labour relations regime," constitutional projection was deemed to be an uncertain proposition.183 However, this very concern has already been explicitly rejected by the Supreme Court of Canada in the BC Health decision, in the context of collective bargaining. 84 [FOOTNOTE 184 BEGINS] 184 See BC Health, supra note 1 ("[t]he first suggested reason was that the rights to strike and to bargain collectively are 'modern rights' created by legislation, not 'fundamental freedoms' (Alberta Reference, per Le Dain J., writing on behalf of himself, Beetz and La Forest JJ., at p. 391). The difficulty with this argument is that it fails to recognize the history of labour relations in Canada. As developed more thoroughly in the next section of these reasons, the fundamental importance of collective bargaining to labour relations was the very reason for its incorporation into statute. Legislatures throughout Canada have historically viewed collective bargaining rights as sufficiently important to immunize them from potential interference. The statutes they passed did not create the right to bargain collectively. Rather, they afforded it protection. There is nothing in the statutory entrenchment of collective bargaining that detracts from its fundamental nature" at para 25). While the Saskatchewan Court of Appeal specifically acknowledged this passage (at paragraph 64 of its reasons), it was seemingly unprepared to accept that its reach and logic extends to the right to strike. [FOOTNOTE 184 ENDS] While the right to strike may also be a feature of modern labour relations legislation, this does not detract from the separate constitutional status of the freedom to strike under section 2(d).

#### 2. The strength of a right is measured by its remedy. That’s distinct from the right’s underlying content or subject matter.

Kai Yi Xie 17, Articles Editor, Volume 164, University of Pennsylvania Law Review; J.D., 2016, University of Pennsylvania Law School; M.Eng. & B.S. in Biomedical Engineering, B.S. in Mathematics, University of Maryland, "Improving the Patent System by Encouraging Intentional Infringement: The Beneficial Use Standard of Patents," University of Pennsylvania Law Review, vol. 165, 03/01/2017, pp. 1019-1022

In proposing to adjust patent strength, I must emphasize that I do not mean adjusting patent scope. Adjusting scope by, for instance, varying the amount of underlying matter the patent seeks to protect is not the aim of this proposal. Changing how much an issued patent's claims cover is antithetical to efficiency because doing so would heighten uncertainty over the scope of a patent and would defeat the public-notice function of patent claims. 10 In terms of what it means to vary patent strength, I proceed from the notion that the strength of a right ultimately lies in the right's redressability. As Chief Justice Marshall said, "[E]very right . . . must have a remedy, and every injury its proper redress." 11 So the strength of the patent right lies in how violations of that right are to be rectified (or not rectified, as the case may be).

#### Prefer it:

#### A) Predictability. Xie has intent to define.

#### B) Overlimiting. No policy proposals for bumping a right from level 4 to level 5.

#### C) Aff ground. Enforcement affs are key to beat circumvention.

#### AND, It’s impossible to quantify a right’s strength.

James G. Dwyer 11, Arthur B. Hanson Professor of Law, College of William & Mary, "The Good, the Bad, and the Ugly of Employment Division v. Smith for Family Law," Cardozo Law Review, vol. 32, 05/01/2011, pp. 1781-1786, Lexis

A somewhat more plausible, but still inaccurate, way to interpret Yoder to make it support the hybrid rights idea would be to view it as resting on an assumption that neither substantive due process nor free exercise alone triggers heightened scrutiny, but the combination of the two does so. In other words, both parents' rights and free exercise [\*1786] rights might be "weak rights," as against laws of general applicability, but when combined collectively constitute a "strong right." Commentators considering this understanding of Smith's hybrid rights language were predominantly derisive of this idea for two primary reasons: (1) it is quite difficult to make sense of and justify an additive notion of rights; and (2) it is about as clear an instance as one could imagine of an exception swallowing a rule. 28

The additive view of rights is difficult to justify conceptually because it appears to presuppose a quantification of a right's strength. One would need, in at least a rough sort of way, to assign some value to each single right, establish some threshold value for a right's triggering heightened review, and assume that the value of each single right is below this threshold, but then find that adding the values of two such rights together creates a sum that is above the threshold. It is difficult to know even where to begin with such quantification and calculation.

#### D) Reasonability. They could find an interpretation that excludes any aff.

## Aspec

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#### 2. Market mechanisms facilitate absolute decoupling; the alternative derails it.

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Introduction: the problem of decoupling

To keep global temperature increases to no more than 1.5°C above pre-industrial levels, net global carbon dioxide emissions must be reduced to zero by mid-century (IPCC, 2018). If emissions do not decline sharply during this decade, carbon neutrality will need to be reached even earlier to keep cumulative CO2 emissions within the same carbon budget (IPCC, 2021). Meanwhile, other greenhouse gas (GHG) emissions must be similarly slashed (IPCC, 2018).

Economic growth has so far driven emissions mainly because higher levels of economic activity require more consumption of energy, of which 79% globally is still produced by burning fossil fuels (IEA, 2021c). The energy sector accounts for nearly all CO2 emissions and around 73% of global GHG emissions, making it central to solving the climate crisis (Ritchie and Roser, 2020).

This poses a problem best explained by Holdren and Ehrich’s (1974) ‘I=PAT’ identity:

GHG emissions = population \* (GDP / population) \* (GHG emissions / GDP)

If one considers population growth as a given, then cutting emissions boils down to either reducing gross domestic product (GDP) per capita – as proposed in a vigorous literature on ‘degrowth’ (eg, Kallis et al, 2018; Wiedmann et al, 2020) – or accelerating the decarbonisation of GDP, in other words ‘decoupling’ GDP growth from emissions. A decline in emissions per unit of real GDP can be driven by improvements in energy efficiency, by behavioural change or an economic shift towards more services, or notably by a push for renewable energy that decreases the carbon intensity of energy.

Governments and international organisations have long argued that suitable policies that support green investment and technological progress will permit taking the second path to net zero, sometimes even while boosting GDP growth (Bowen and Hepburn, 2014). Examples of such policies are carbon prices or taxes that discourage fossil fuel consumption, subsidies and investments in renewables, industrial policies to accelerate technological change combined with tax reductions or compensations for poor households (eg European Commission, 2019; OECD, 2011; IMF, 2020). This narrative is referred to as ‘green growth’.

On the other hand, degrowth proponents argue that the material size of the global economy and therefore GDP must be scaled down to reduce emissions. This means acting on the second factor in the identity above, particularly in rich countries (it is important to note here that degrowers generally do not consider population control as an option, see Cosme et al, 2017). To do so, radical economic reforms are needed that limit and redirect the supply of labour, natural resources and capital through work sharing, ‘cap-and-share’ systems and possibly the abolishing of interest and limitations to saving and property rights, which should eliminate the logic of accumulation (Kallis, Kerschner and Martinez-Alier, 2012). Large scale national and international redistribution is needed to protect the most vulnerable people, especially in developing countries. A focus on quality of life through more spare time, ‘conviviality’ and social justice reflects an alternative look at prosperity (Kallis et al, 2018).

2 Green growth or degrowth?

Green growth has clearly not materialised to date. That would require a fast ‘absolute decoupling’ of global emissions and GDP, meaning that GHG emissions decline while real GDP continues to grow. Instead, there is only ‘relative decoupling’, whereby global emissions continue to rise but at a slower pace than global GDP, because the carbon intensity of GDP is declining. This is illustrated in Figure 1, which shows that over the last 100 years energy-related CO2 emissions have risen tenfold despite a steady decline (about two thirds) in emissions/GDP. This is simply because global economic growth has outpaced the speed of decarbonisation.

Chart, line chart

Description automatically generated

If humanity wants to continue pursuing economic growth while reducing emissions, unprecedented and urgent efforts will need to be made to accelerate decoupling. Degrowth proponents do not think such a change is possible, and they rightly highlight the gap between current actions and available technological tools on the one hand and what limiting climate change requires on the other hand (see IEA, 2021a), as well as policy uncertainties regarding the existence of rebound effects from energy savings, failing compliance with environmental regulations and burden-shifting whereby one environmental problem is replaced by another (eg GHG emissions by natural resource depletion for renewable energy infrastructure) (Hickel and Kallis, 2020; Antal and van den Bergh, 2016).

However, degrowth proposals are as much plagued by uncertainty as green growth policies, if not more. For example, it is impossible to know how technologies will evolve. Successive technological breakthroughs have disproven alarmist rhetoric about imminent economic collapse, going from Malthus to Paul Ehrlich’s (1968) ‘population bomb’ and ‘Limits to Growth’ (Meadows et al, 1972). Degrowth may therefore not be necessary to begin with. Moreover, one could ask whether the systemic changes prescribed by degrowth theory are conducive to technological progress, which will in any case be needed to reduce emissions, or whether poorer societies will revert to cheaper, less efficient technologies, thus offsetting emission savings through a higher third factor in the I=PAT identity (van den Bergh, 2011). Most importantly, it is unlikely that either advanced or developing economies would accept and implement the radical and often ideologically driven propositions embedded in the degrowth literature, which some degrowth authors themselves acknowledge (Kallis et al, 2018). We are also concerned that, while GDP is a flawed measure of wel fare, alternative conceptions do not diminish the very real welfare effects of a GDP decline through problems with debt sustainability and social security financing. Because the world is interconnected, it is unclear what the external implications would be for countries that went down a degrowth path alone. It therefore seems that, while green growth policies are indeed not guaranteed to result in timely decarbonisation and unprecedented efforts are required to accomplish it, there might not be a feasible alternative for the world, bar coercion. It may therefore be better to think about what must be done to maximise the odds of success.

3 Green growth policies needed

Fortunately, there are good reasons to believe that much faster decarbonisation of global energy production is increasingly feasible. Over the last few decades, the EU, the US and other developed countries put in place substantial incentive schemes for renewable energy deployment, such as feed-in-tariffs schemes (IEA, 2020a). These measures have spurred a large-scale deployment of solar and wind energy technology, which pushed their costs down by 85% and 68% respectively over the last decade, ultimately making them cost-competitive vis-a-vis traditional energy sources even without subsidies (Figure 2). Both economies have achieved absolute decoupling, even when accounting for ‘consumption-based emissions’ abroad, albeit not yet at a sufficient speed (Friedlingstein et al, 2020). This success story now provides an opportunity to emerging and developing economies to power their economic growth also on the basis of competitive green technologies (IEA, 2021b).

[FIGURE 2 OMITTED]

Still, massive investment will be needed to decarbonise the energy system and to improve energy efficiency and accelerate decoupling. The International Energy Agency (2021d) estimated the investment need to be around 5 tn USD per year by 2030 (in 2019 prices), with similar levels for decades after. This is a jump of 2 percentage points of real GDP from today’s levels, in line with other estimates (European Commission, 2020; Darvas and Wolff, 2021). To make such an investment increase happen, public investments and rigorous policy measures such as carbon pricing and enabling financial regulation will be necessary.

Degrowers argue that while investments have to decline in a degrowth scenario, this does not exclude that sustainable investment grows at the expense of other, unsustainable investments (Kallis et al, 2018). However, it is difficult to see how a global economy several times smaller than today can generate this sort of investment alongside other increasing investment needs such as in education, health care or adaptation to climate change. Moreover, the private sector will have to mobilise most of the required investments, as government budgets are too limited (Darvas and Wolff, 2021). Undermining property rights and financial stability by defaulting on debt hardly sounds like a good way to make that happen.

It will also be necessary to accelerate breakthrough innovation to reduce the costs of green technologies in areas where they are currently not price competitive and economic actors continue to rely on fossil fuels. Most of the technologies needed in the short term to accelerate decoupling are available. After 2030, however, only 54% of the necessary emission reductions can be accomplished with current technologies (IEA, 2021d). Green hydrogen, advanced battery storage capacity and, more controversially, technologies that extract CO2 from exhausts or straight from the atmosphere will be key instruments for decarbonisation but remain insufficiently developed or prohibitively expensive. More research funding, public-private cooperation, better functioning capital markets for risk capital and green industrial policy may trigger the much-needed breakthrough innovation (Aghion et al, 2016; Tagliapietra and Veugelers, 2020). Our criticism of degrowth applies here as well.

Finally, we do agree with degrowers that behavioural change will be needed. This must be encouraged through regulation and pricing. Air travel, for example, will not be carbon neutral any time soon, nor will agriculture and land use, which emit other greenhouse gasses such as methane. New ways of travelling and providing nutrients will have to be adopted. This could also make the transition to climate neutrality significantly cheaper (European Commission, 2018).

#### 5. Perm do both: Labor law should be the starting point for emancipation. It can shape collective class struggle that transforms the structural hierarchy of capital.

VladimirBogoeski 23- Assistant Professor in European Private Law at University of Amsterdam. “Nonwaivability of Labour Rights, Individual Waivers and the Emancipatory Function of Labour Law,” March 2023, Industrial Law Journal 52(1), pg. 179–213.

Emancipation is a broad notion that requires clarification and specification in order to be applied in a labour law context. Could we at all centre a discussion as the one here around ‘emancipation’—one of the most political of all concepts—in the context of labour law? Is the notion of ‘human emancipation’ in the Marxist tradition, recently revived by scholars identifying themselves with the Frankfurt School,20 not too powerful and too broad to be associated with a ‘project’ such as labour law, with clear limitations regarding its scope of application and the forms of work to which it applies? After all, labour law is law, and thus is part of the structures of our capitalist social order, which might raise the question if any kind of law, including labour law, can ever be emancipatory.21

While some labour lawyers and labour law scholars might think that their field of legal practice or scholarly discipline self-evidently has an emancipatory function, it has rarely been articulated in those terms. One exception has been Blackett, who, for example, has discussed labour law through the lens of emancipation, referring to **emancipation** as a crucial starting point for the idea of labour law, reminding us where labour law comes from as the language of emancipation ‘evokes historical, structural inequality – forms of unfreedom’.22 According to her,

To the extent that labour law helps to resist commoditization, its regulatory response should not only be protection, but emancipation. In other words, it recognizes resistance and creates/preserves space (capabilities) for the effective exercise of agency.23

This statement by Blackett offers a valuable starting point for our enquiry into the meaning of emancipation in the context of labour law. Through this, she already brings in five definitional concepts related to emancipation in the context of labour law, namely ‘commoditization’ (hereinafter referred to as ‘commodification’),24 protection, resistance, capabilities and agency. In her view, the role of labour law should be understood as more than merely offering protection to working people,25 but emancipating them from the commodifying structures of the capitalist mode of production and moreover, **capitalism as a social order**.26

Within the capitalist mode of production, any work relationship based on wage labour will **inherently be hierarchical**, where labour is structurally subordinated to capital and is thus just another commodity ‘free to circulate to the highest bidder’.27 This formal freedom for labour power to be sold or exchanged on a market by its owners, circulating freely according to the economic rationality of capitalist markets, does not allow labour to impact the ‘bid’ itself, as the structural and existential dependence of labour on capital yields the imbalance of negotiating power that renders labour **systemically subordinated to capital**.28 In the words of Offe and Wiesenthal, ‘asymmetry of power and freedom emerges between the supply and demand sides as soon as labour power is allocated through markets, i.e., as soon as it is institutionally treated as if it were a commodity’.29 The structural subordination and overall dependence of workers on their employers arises from labour’s exclusion from access to the **means of production** owned exclusively by capital and results in the subsistence of waged workers being **existentially dependent** on the award they receive in return for their labour power traded with capital owners.30 The essence of the formality of this freedom of working people to sell their labour power within the capitalist mode of production is reflected in the formal freedom of workers to choose to renounce their labour rights through invoking individual labour rights waivers.

Against this background, the question is what labour law can do for working people given the structural conditions underpinning labour and work in our capitalist social order, where exploitation is innate to the wage relation allowing employers to always extract surplus from the value that labour has produced. These conditions and the structural extraction of surplus labour have only been further exacerbated through financialisation, racialised production processes spanning throughout obscure global value chains, imperialism, colonialism and digital disruption. In Blackett’s view, for example, labour law intents to **resist such structures** through **creating (collective) capabilities** and opening up space within the capitalist social order, enabling labour to exercise some agency collectively and individually.31 Contrary to such a primarily emancipatory vision of labour law, the conventional labour law narrative centred around the employment contract sees labour law’s purpose in ‘protecting workers from the injustice that is sure to arise from the contract of employment given the inequality of bargaining power between an employer and an employee’,32 inherent to a relationship resting on subordination, domination and exploitation.33 In contrast to this, ‘**emancipation through labour law’** is a **broader approach** that goes beyond the inequality of bargaining power in relation to the individual employment contract. In this broader understanding, labour law’s role as an emancipatory project consists in providing **resistance** to the **structural process of commodification** of labour through the very mode of production, capital accumulation and capitalist (labour) markets, which has an impact on the overall human condition and the capacity of working people (through creating/preserving space/capabilities)34 to **effectively exercise agency**, both at the workplace and beyond. This is not merely a wishful thinking and solely a normative vision about what labour law should become, but it is an invitation to reflect on what labour law has historically striven for and what possibilities it currently offers when perceived beyond the contractual framework.

What can then labour law do in order to **effectively resist** such commodifying forces and injustice that arises from them? According to Marxist (inspired) critique of capitalism, in capitalism as a social order, ‘experiences of injustice emerges along three trajectories of domination’, namely structural, relational and systemic domination.35 The structural domination rests on class structure as a basis of capitalism as a system of institutions and social relations, shaped by the private ownership of productive assets secured via property rights.36 In Azmanova’s words, ‘relational domination consists in the subordination of one group of actors to another due to power asymmetries’, which are usually addressed through strategies of **redistribution and inclusion**.37 One could argue that labour law could partly be considered such a strategy, ‘returning to workers **bigger share** of the **value they produce** in the form of higher wages and other benefits’, which would reduce but not terminate exploitation (employers/capital will continue to appropriate a disproportionately bigger chunk of surplus labour), therefore not sufficiently tackling structural domination in a way that might lead to full (human) emancipation.38 Such full human emancipation will require breaking with exclusive ownership of the means of production by capital and the inherent subordination of labour deriving from there. Finally, ‘systemic domination is the subordination of all members of society to the operational logic of capitalism … including those who escape structural and relational domination (owners of means of production and well-paid labour market insiders)’.39

Within this framework, one might argue that current labour law’s emancipatory efforts would likely remain trapped in what Azmanova describes as the ‘paradox of emancipation’.40 This paradox means that the emancipatory effort of seeking equality and inclusion validates the model within which the emancipation is being sought in the first place—accepting systemic domination for the sake of reducing structural and relational domination.41 The growth foundation of the capitalist economic model, based on profit maximisation through competitive production, extraction, exploitation and capital accumulation, remains intact, further producing social harms.42

However, recognising this ‘paradox of emancipation’ does not mean that labour law holds no emancipatory potential that can be **progressively developed** beyond its current dominant imaginary. The multitude of labour movements that coproduced labour law across national contexts and the different kinds of labour and social struggles which historically found support in labour law and **transformed societies** improving living and working conditions for many, are the evidence of labour law’s historic origin as a product of emancipation struggles as well as of its current **emancipatory potential.**43 Moreover, reducing present labour law’s emancipatory efforts to its protective dimension and systemic complacency as part of the ‘industrial peace agreement’44 fails to capture this history and labour law’s presence as a legal discipline emanating from and continuously evolving as a **result of a class struggle**.45

The most robust emancipatory achievement that labour law has to offer in the present capitalist social order is its capacity to **carve out spaces** for **collective action** and endow collectively organised labour with real political agency to set, regulate and define social objectives that often have a **decommodifying effect**.46 Thus, by constituting labour as a collective political actor with real agency, labour law **intervenes and disturbs** the innate systemic tendency of the capitalist social order to conceptualise the relationship between labour and capital as an interpersonal contractual relationship,47 constituting labour power as a commodity.48 While labour law admittedly assumes the same commodity form of law in capitalism that is constitutive of labour power as commodity49 and it thus has clear limits when it comes to tackling the structures behind capitalist social relations, it does more than addressing the ‘surface-level conflicts’ that those structure generate.50 Namely, a significant part of labour law beyond the employment contract **exposes** the structures that constitute labour as a commodity and the **illusion of formal inequality** under law. Addressing those through constituting labour as a collective political actor able to at least partly influence material outcomes of the structures in place, leads to at least a partial emancipation and constitutes a **starting point** for developing further more **progressive imaginaries** of emancipation that might ultimately question labour law’s legal form itself.

We need to bear in mind, however, that aside from Azmanova’s ‘paradox of emancipation’, at least three additional caveats stand in the way of further exploring the emancipatory potential of labour law. While addressing these caveats in-depth remains beyond the scope of this article, they at least need to be briefly mentioned. First, most workers globally fall outside the domain of regular labour law as understood in the Global North.51 Even in the global North, workers falling outside the scope of labour law already belong to vulnerable societal group such as migrants, people of colour or other minority groups (Blackett’s ‘South within the North’).52 Second, labour law remains foreign to a big portion of workers in the Global South,53 in addition to the regular insiders-outsiders divide yielding a North-South division line.54 Third, the traditional labour framework fails to account for reproductive labour and reinforces the artificial separation of productive and re/non-productive labour which forges different layers of gender and racial injustice.55 These three caveats might leave us in a somewhat defensive position when arguing about the emancipatory strength of labour law, particularly when it comes to achieving human emancipation in a broader sense and emancipation of society at large. Most of these concerns are captured in this framing by Hardt and Negri:

Gone are the days – and thankfully so – when the working class or, more specifically, the segment of the class most central to capitalist production could claim to represent the others in struggle. Gone are the days when industrial workers could claim to represent peasants, when male workers could claim to represent women in the reproductive sphere, when white workers could claim to represent black workers, and so worth.56

In this regard, any attempt to search for further emancipatory potential in labour law shall account for the possibilities of overcoming its shortcomings to emancipate societal groups other than employees within the standard employment relationship. Nevertheless, while these recognitions reveal current challenges for labour law and demand different strategies from organised labour, scholarship and overall labour law and regulation, they still do not invalidate labour law’s potential to emancipate working people through various degrees of decommodification of labour.57 Thinking of labour law as an emancipatory endeavour is to see emancipating working people not as the end goal but rather a **starting point**, which shall then **spiral ‘social unionism’** (creating alliances and hybrid structures between working people’s unions and social movements in the broadest sense, economic and political struggles),58 fostering emancipation **throughout polities and societies** more broadly.

A. Emancipation as Decommodification: Confronting Commodifying Market Forces Through Labour Law

The previous section argued that labour law has historically had and currently has an emancipatory function. While over the past decades under neoliberal ideology59 that emancipatory function has been significantly overshadowed by discursive and political centring of the individual employment relationship as an interpersonal contractual relationship at the cost of labour law’s collective dimension, the article seeks to switch the attention to labour law’s current emancipatory role and its future potential.

The destructive effects on working populations of the previously described relations of exploitation due to labour’s structural subordination to capital and the allocation of labour power through capitalist labour markets have become evident during nineteenth-century industrialisation at the latest. It has become clear that labour power, being inseparable from the working person and thus always under the physical control of the worker,60 can be a commodity for sale only in a fictitious sense.61 As labour power has little use-value to its propertyless ‘owners’ with no access to the means of production, they are forced to enter into a wage contract with capital owners.62 However, because of this structural inequality in position and negotiating power between the two sides of the transaction concerning selling, i.e. buying labour power, **individual working people** have **no meaningful leverage** on deciding on the conditions under which their labour power is being traded for wages. This results in subordination of labour to capital and subjugation of the owners of labour power to the rationality of capitalist markets, expressed in imperatives of profit maximisation and constant economic growth. This structural position of labour in the capitalist social order does not only affect working people within the employment relationship, but in the entirety of their livelihoods.63 Contemporary production coproduces and influences the multitude of social relations and is thus central to the human condition of the working person.64 It determines one’s working as much as non-working existence, as time off work is inherently related to and influenced by the conditions of the working process itself.65

The developments of the industrialisation period unveiled the human being as the object of the employment contractual transaction,66 which gave impetus for the emergence of organised labour movements seeking to partly insulate or decommodify the labour process from the effects of mere market rationality. For Polanyi, for example, the subjugation of working people to the rationality of capitalist markets was a process of disembedding labour from social relations and institutions in which it is inherently embedded.67 The market expansion into the social sphere of society, to which labour belongs, triggered, according to Polanyi, a countermove as a self-defence of society against the market.68 In this sense, the organised labour movement of the nineteenth and twentieth centuries has yielded ‘**non-market’ institutions** such as trade unions and labour law with purpose to not only protect lasbour from the effects of commodification, but to subject it to a **different kind of rationality** than the one of the supply-demand mechanism of the market.69

In this sense, the article advances the argument that labour law’s emancipatory function consists of improving labour’s **structural position** in capitalism as a social order, constantly seeking to reduce the commodity properties of labour power. While labour law can’t escape the commodifying effects of the legal form as such,70 labour law’s own form embodies consciousness about capitalism’s structural and systemic injustices that its emancipatory function seeks to address. Emancipation as decommodification starts from a **gradual transformation** of the labourer from a seller of the commodity labour power into a political actor with **collective agency** to democratically set and regulate social objectives with material effects both at the workplace and in general.71 This **collective political power** earned by labour and its capacity to be part of **law-making processes** at and beyond the workplace is the starting point towards envisioning greater individual emancipation of the working person and subsequently society as a whole.72

Moreover, at the interstice between private and public regulation,73 relying on nonwaivable rights and institutional apparatus of collective bargaining and collective action, labour law develops into its own legal discipline at the beginning of the twentieth century.74 Labour law, in this sense, as a recognised discipline itself has sought to ‘emancipate’ from the narrow premises of private law underlying the market rationality of formal equality and interpersonal contractual relations, establishing rules and principles that would otherwise be seen as contradictory to that rationality, as opposed to, for example, private property and contracts.75 In this regard, the role of labour law is not to merely legitimise the social order that it claims to change, as it cannot be understood as only a correction of the imbalance of power in interpersonal contractual relations, but as an intervention in class relations as structural social relations.

Against this background, the article sees the emancipatory function of labour law as threefold. The first one is labour law’s own emancipation from the liberal private law logic that sustains the illusion of formal equality and frames the relationship between labour and capital as an interpersonal contractual relation.76 While neoliberal politics globally has increasingly narrowed labour law’s focus on the individual contractual relationship, in its gradual constituting as a sui generis discipline labour law has initially **overcome the liberal understanding** of the institutes of contractual liberty and market freedom.77 This could be understood as the societal dimension of labour law as an emancipatory project, which directly, by regulating work and employment conditions in a way that recognises the structural position of labour in capitalism, influences and shapes the **ordering of the market** and overall its relationship to society.78 Second, labour law’s individual emancipatory potential consists of (partially at least) reversing the full subjugation of working people to the selling logic of capitalist markets, through constituting **‘non-market’ institutions** such as unions, work councils and legislation that address the **structural unfreedom** of working people and increase their agency. Third and most importantly, as elaborated earlier in this and the previous section, labour law has a collective emancipatory dimension. Labour law’s **collective emancipatory function**, aside from its protective function, consists in its role of constituting organised labour as **political actor**.79 This transforms the labourer from an individual seller of labour power into an industrial citizen,80 increasing its chances for having influence over the conditions under which labour power is being traded and the overall work process is being materialised. One might argue that all this still remains within Azmanova’s ‘emancipation paradox’ and labour law’s co-optation in industrial peace compromises, but as Horgan notes, ‘while these rights are fragile and are sometimes ignored by employers even if they would be held up at tribunals, they are **much better** than having **no possibility of legal recourse**. As such, many current labour campaigns are focused on fighting for the legal recognition of certain activities as work’.81 Hence, through its three emancipatory dimensions labour law offers a strong starting point for an emancipation of the working person and emancipation of society at large through building alliances with other social and liberation movements, that might ultimately overcome the structures constituting the commodity labour power.

## Federalism

### AT: federalism

#### Federalism bad. prompts irreparable complexity, causes race to the bottom, and results in pro-employer policy.

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It is perhaps counterintuitive to respond to a call for papers on new developments in state law by arguing that there should be no developments at all. With regard to one area of law, however, that is exactly what I am going to do. More precisely, I argue for one general development—the elimination of state authority to regulate the workplace.

Current governance of the workplace originates from local, state, and federal governments. In some areas, such as private-sector labor law under the National Labor Relations Act (NLRA),1 there is a single source of law supported by a unified enforcement scheme. Yet much of the time a given workplace dispute will fall under the laws of different jurisdictions, each of which gives rise to multiple causes of action. I argue elsewhere that the unjustifiably complex nature of this workplace governance system undermines its own goals.2 Of more immediate concern is a recent movement to make this problem worse by increasing states’ power to regulate the workplace. This argument, which is the latest iteration of a long-running federalism debate, has gained more traction recently because of the justified perception that recent enforcement of federal workplace laws has been inadequate.3 I agree that enforcement is a serious problem, but draw the opposite inference. If the goal is to increase enforcement of existing workplace protections, we should not only resist giving states more power; we should take away the power that they currently possess.

Harvard economist Richard Freeman is among several recent advocates of enhanced state authority over the workplace, specifically with regard to labor law.4 Freeman argues that, overall, state regulation will be more favorable to unions than the current federal scheme. He cites, for example, the possibility that states might implement quicker union elections or require employers to recognize unions with a card-check majority.5 Although states possess significant authority to regulate many aspects of the workplace, extending state authority over labor matters would represent a significant shift from the NLRA’s robust federal preemption doctrine.6 The motivation for such a dramatic change is understandable. Anyone who takes seriously the right of employees to unionize or to engage in collective action has not enjoyed the last several years. In an extensive series of decisions, the current National Labor Relations Board (NLRB) has systematically dismantled decades of precedent, always in favor of employer interests.7 It is little wonder, then, that many look to states as an alternative.

Despite sharing concern over the NLRB’s recent decisions, I am skeptical that transferring authority to states would be an effective strategy to promote unionization—and outright hostile to the idea as a matter of principle. Part of the disagreement is likely a difference of geography. The union perspective of state regulation looks much better when viewed from Cambridge than from Knoxville. Proponents of state regulation dream of the pro-union changes that Massachusetts and similar states would implement.8 My dreams, however, envision the nightmarish pro-employer changes that other states would adopt. Freeman suggests that such fears are exaggerated because the situation cannot get much worse in states with already low levels of unionization. I am not so optimistic. It is difficult to imagine that politically powerful employers and sympathetic state legislators would do nothing when presented with new authority over the workplace. Indeed, states have already shown what they would do when unencumbered by federal labor law. A large number of state employers, which are not covered by the NLRA, have no duty to recognize unions, and their employees lack any right to engage in collective action free from employer interference. If those states regulate labor at all, it is not to restrict employer action, but to prohibit employee activity—including one of the most fundamental rights under federal labor law, the right to strike.9

A further problem with expanding state authority over the workplace is that it is extraordinarily short-sighted. Freeman’s own paper is illustrative. When he released it in January 2006, the NLRB’s pro-employer tilt had no end in sight. Things look much different today, as the prospect of a Democratic President and Congress are very real.10 Things could shift, of course, but that is the point. Expanding state authority is a major change and not something one can reverse easily. Why, then, all the focus on near-term politics? Why not, instead, ask which jurisdiction is best-suited to regulate a given area and let the political chips fall where they may?

These problems are typical of most federalism debates—which often involve politics more than principle11—and represent the crux of my objection to increased state authority over the workplace. The focus on politics is particularly unfortunate in this instance because principle—specifically, the effect of the allocation of power between state and federal governments on workplace regulations—weighs heavily in favor of federal control over labor law and other workplace issues.

For much of our country’s history, it made sense for states to regulate a workplace that was truly local in nature. The modern workplace, however, looks far different. Most employers are at least regional, if not national and international, in scope. Even many small businesses either compete or have a presence in numerous jurisdictions. States’ current authority over much of the workplace fails to acknowledge this reality, and this failure comes at a cost. At best, multiple layers of regulations create complexities and redundancies that increase compliance costs and make enforcement more difficult. At worst, inconsistencies or outright conflict make compliance and enforcement nearly impossible. Exclusive federal regulation would eliminate many of these problems and produce a more effective and economically competitive workplace governance regime.

State regulation of the workplace also appears to have created a selfdefeating race-to-the-bottom in which certain states compete against each other on the basis of labor costs. Although this strategy could be successful in the short-term, its long-term prospects are doomed by the fact that no state will be able to compete internationally on the basis of labor costs. States should instead try to compete by increasing and promoting their supply of skilled workers, which represents the U.S. comparative advantage in the global labor market. A national regulatory approach is uniquely suited for this reality, as the federal government is in the best position to look beyond interstate rivalries and implement a strategy to maximize workers’ global competitiveness.

The advantages of national policymaking also include structural differences between state and federal government. Most state policymakers lack the time, resources, and expertise of their federal counterparts. Many state governments also tend to look more like a secret club than an elective body,12 while the federal government is relatively transparent and accessible. Although federal policymakers are far from perfect, this transparency and accessibility provide employee-side advocates a more even playing field—or at least one that is less uneven. Employers will always have the resources to lobby every governmental unit affecting their interests. Employee advocates, in contrast, are on a much tighter financial leash. By focusing policymaking in one jurisdiction, both sides will have political resources available when the need arises. Those resources may not be equal, but both sides will at least be in the game.

To be sure, eliminating state authority over the workplace may come at a cost. For example, federalism is often justified on the ground that states can act as laboratories that test the effectiveness of various policies.13 With a few exceptions, however, states are not experimenting with new workplace policies. They are instead picking from a menu of well-known options, and there is little evidence that state regulation has or will result in more effective workplace policies. Alternatively, state regulation is promoted as a check on federal governance. Thus, federal workplace laws could act as a floor that would allow states to provide additional protection.14 Although this model would be especially useful when federal officials are hostile to workplace rights, it comes with costs of its own—primarily the costs associated with increased complexity. Given the difficulty in quantifying the effects of this approach, it would not be unreasonable to conclude that the costs of complexity are outweighed by the benefits of an additional layer of regulation. Yet it seems to me that the opposite is true, particularly in the long-term. The costs of complexity will last indefinitely. In contrast, the benefits of state regulations, which exist only in states that provide more protection than federal regulations, are dependent on the actions of an ever-changing array of federal policymakers. State regulation may be beneficial at times, but its costs will always be present.

More fundamentally, our approach to federalism needs to be more disciplined. Although the Constitution gives a great deal of authority to state governments, we should not maintain that authority blindly. We have provided the federal government with exclusive regulatory power in many instances—labor law is one—and we should be willing to do so again if good reasons exist. “Good reasons” do not include ephemeral political strategies. Rather, we should adopt a pragmatic approach to federalism that asks which jurisdiction is best equipped to govern a particular area and that recognizes that the answer has a powerful effect on policy outcomes.

This pragmatic approach is lacking in today’s fragmented system of workplace regulations, which often appears to interfere with its own goals. It is time, therefore, to shift governance of the workplace to a single jurisdiction, and the only government adequately equipped to take on that task lies in Washington, D.C., rather than state capitols.

## Midterms

### AT: Midterms DA – Reps Win – 2AC

#### 1. Trump’s appeal to workers during 2024 already solidified a GOP shift.

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After Donald Trump carried most counties in western Pennsylvania by decisive margins, one Republican county chair to whom we spoke saw the region’s current conservative proclivity as a culmination of political changes over the past several decades. “Democrats can say it was Trump, but no. It was a whole lot of things over the years,” she told us in an early 2021 interview. “As the Republican Party, we were historically a nonissue here. We couldn’t get anybody elected to anything except the offices that were required to go Republican by law.” This began to shift in the 1990s, she told us, and electoral change accelerated until, in the 2000s, it seemed to her as if everyone in her county was voting Republican. Trump’s distinctive version of GOP appeal simply sealed the partisan shift, she explained. By that time, previously pro-union Democratic strongholds, which included many counties in western Pennsylvania, moved decisively into the red column.

In this chapter, we consider the political reverberations of the changes in social and community ties discussed in the previous chapters. By developing this line of analysis, we further probe and pull together the underpinnings of the momentous Rust Belt political realignment that has played out so dramatically in western Pennsylvania.

NEW POLITICAL REALITIES IN FORMER STEEL COUNTRY

Let’s begin by clarifying where and when electoral upheavals have happened—especially in presidential party politics. The GOP county chair quoted above did not have the timing quite right when she offered as an aside that GOP presidential contender Ronald Reagan “won this county in the eighties” because “Reagan won all over, everyone loved him.” This was not correct. Despite the Gipper’s broad popularity, he did not carry her county, let alone all of western Pennsylvania—not in 1980 and not in 1984. Although 1980 was a year in which more union households across the United States voted Republican than ever before in modern times, eight counties in western Pennsylvania voted for Democrat Jimmy Carter over Republican challenger Reagan—and those western counties added up to eight of just ten Keystone counties statewide that went for the Democratic presidential candidate that year.1 Four years later, in 1984, ten western Pennsylvania counties voted for the Democratic candidate, Walter Mondale, leaving Philadelphia County in the southeast as the only other Pennsylvania jurisdiction that went blue. Despite erosions, what American studies researcher Taylor E. Dark calls “an enduring alliance” between “the unions and Democrats” persisted through the mid-1980s and, as figure 5.1 shows, even to the close of the twentieth century.2

Following Democratic erosions in the 1980s and 1990s, dramatic shifts away from blue candidates accelerated in the early 2000s. By 2016, only one western county—Allegheny, home of Pittsburgh—supported Democrat Hillary Clinton, and in 2020, only one additional western county joined Allegheny in the blue column, when Erie County in the state’s northwest corner tipped for Biden. Looking more broadly across the entire twenty-county western region of Pennsylvania in 1984, nine counties, almost half, supported Democratic candidate Mondale. Those included

[FIGURE 5.1 OMITTED]

not only relatively industrialized Beaver, Cambria, Washington, and Westmoreland counties but also the smaller counties of Armstrong, Fayette, Greene, Lawrence, and Mercer.3 By 2020, however, all nine of those counties weighed in for Republican Trump by margins ranging from 17.7 to 52.3 percentage points, with an average of a whopping 32.3-percentage-point margin.4

In the mid-twentieth century, quite a few rural western Pennsylvania counties were already consistently or occasionally voting Republican—so such counties have just become more red since 2000. But recent partisan U-turns have happened more broadly. Heavily unionized, industrial western counties that voted blue even during the early phases of steel’s decline started shifting toward the GOP in the 1990s and then moved faster in that direction after the turn of the twenty-first century. Writing in 2014 for the Beaver County Times, J. D. Prose observed that Beaver County, which was “long the home of labor strength and true-blue Democrats,” had “two GOP state senators, two GOP state representatives, and a Tea Party–backed Republican congressman who easily won the county.”5

The upshot is that, beyond Pittsburgh and its immediate environs, most of western Pennsylvania is by now red. Only Erie is truly a swing county. Although we will not provide all the details of political campaigns and elections below the presidential level, the strong swing to the political right has happened up and down the ballot in virtually all western counties—and by now, pro-GOP margins are not close. Nor is any partisan reversion back to the Democrats on the current horizon. Almost everywhere, public animus toward government, cities, and liberals is visibly emblazoned on flags, yard signs, and pickup trucks. Displays of loyalty to Trump and his version of the Republican Party can literally be over the top, as you can see in figure 5.2, which shows a display on a house in northwestern Pennsylvania.

[FIGURE 5.2 OMITTED]

MAKING SENSE OF WORKING-CLASS REORIENTATION

Voters in many groups have shifted right across vast stretches of nonmetropolitan America, within and well beyond the Rust Belt. Working-class families have played an important role in that shift—including still-unionized workers in western Pennsylvania. To explain how and why unionists are involved in the march toward GOP loyalties, we rely necessarily on qualitative as well as quantitative evidence. As we discussed in chapter 1, when long-running national and statewide polls ask about the partisan loyalties of “union members,” most ignore consequential distinctions between public versus privatesector unions, and they fail especially to pinpoint variations among union members employed in different specific industries or enrolled in particular international unions. That matters because union membership, even as it dwindles overall, has shifted toward public-sector unions enrolling whitecollar employees who tend to be more politically progressive. The varied trades and industries represented by today’s large industrial unions, such as the United Auto Workers (UAW) and United Steelworkers of America (USW), would make it difficult to parse political support among trade-specific union subgroups, such as steelworkers. To get at the finer distinctions that matter for our arguments here, we use quantified data about specific sets of union members when we can find them, but otherwise we offer insights and tentative conclusions based on news reports and—above all—the many interviews we have conducted.

Our union interviewees, active and retired, underlined consistently what must have occurred in many places to contribute to the aggregate voting transformations we have just described. “Absolutely” the politics of USW union members has changed, one retired Steelworker and former president of a union local told us. “When I grew up, the Steelworkers were all Democrats. . . . Now I can honestly tell you, from firsthand experience, . . . the majority of Steelworkers are not on the Democratic side anymore. Between Hillary and Trump, 90 or 95 percent [of members in my local] supported Trump. And that’s a fact.” Although the percentages mentioned by this retired leader cannot be confirmed, other USW members—including officials at the International— agreed on the underlying truth of this and other statements. They acknowledge that many union members went for Trump over Clinton in 2016 and that Trump did almost as well against Biden across western Pennsylvania in 2020. Tim Petrowski of USW Local 1900 was quoted by WBUR radio as saying that, while union management supported Biden, the rank and file in his South Lyon, Michigan, local was divided. “Twenty years ago, this place would have been 95 percent Democrats, and now it’s really split. . . . I’d probably have to say something like 60–40 Republican over Democrat now,” he said.6 Such a realignment also held for the United Mine Workers of America (UMWA), with members expressing enthusiastic support for Trump in both 2016 and 2020. One UMWA interviewee had access to some systematic intraunion data but, on the record, was only willing to be quoted saying that “a lot” of his members support Trump, adding “because it’s true.”

Republican leaders know about the support their candidates get from rank-and-file union members. One of the county political chairs we spoke to estimated that “75 to 80 percent” of the “union people” in his county voted for Trump in 2020. “People are scared,” he added. Not only did this Republican chair say that most union people in his county voted for Trump, but he also said that many believed that the election was rigged. “We all know the [2020] election was stolen. I don’t have to be a believer to sit back and look at the facts. It doesn’t take a brain surgeon to figure it out, they had four years to plan it.”

Multiple factors have played out for years to account for the regional electoral change—including aftershocks from the collapse of the steel industry and subsequent economic shifts, the brute shrinkage in union membership and resources, population and demographic changes, and overall shifts in U.S. politics toward highlighting the cultural clashes that most scholars stress as motivating workers who vote for Republicans. Our contribution here is to acknowledge yet go beyond these factors to focus on the growth of status resentments among workers, including many still unionized, who feel left behind by Democrats, even as they are also attracted to right-leaning causes and GOP loyalties.

To aid our analysis, we extend insights about place-based divisions of the sort political scientist Kathy Cramer developed to explain urban versus rural clashes in Wisconsin.7 Even in still industrialized areas of western Pennsylvania, we see analogous worker resentments grounded in a sense that they have been “left behind” and are looked down upon by urbanites. Such perceived divisions have partisan implications because, for many remaining Rust Belt workers, unionized or not, the Democratic Party seems increasingly wedded to metropolitan constituents and no longer locally present or attuned to the concerns of other groups once loyal to the party. Along with growing resentment of today’s Democratic Party, new ties to right-wing aligned groups and organizations propel many workers into Republican ranks. This happens even though international union leaders continue to argue, as they long have, that Democrats favor public policies more likely to help workers and unions.

#### 2. 2026 results are impossible to predict – redistricting efforts, black swans, and Trump’s political exceptionalism.

Pergram 8-23-2025 [Chad, senior congressional correspondent for FOX News Channel; "Midterm elections are as unpredictable as ever, as 2026 looms"; Fox News; https://www.foxnews.com/politics/midterm-elections-unpredictable-ever-2026-looms//ekc]

Determining the political landscape for next year’s midterm elections may prove to be impossible.

At least right now.

Midterms have become increasingly challenging to decipher in recent cycles. A learned, Democratic Capitol Hill hand told me after the historic, 63-seat bloodletting by House Democrats in 2010 that the election was "un-modellable."

Midterms are usually a problem for the party of the president.

That said, Democrats only lost a few House seats in 1962 – immediately following the Cuban Missile Crisis – which nearly brought the U.S. and Soviet Union to nuclear blows.

Democrats lost a staggering 47 House seats in 1966 – the first and only midterm of late President Lyndon Johnson. But the electoral rapture barely dented the robust House majority. Democrats controlled 295 House seats before the 1966 midterms, 248 seats afterwards. Still a comfortable margin.

Very few political observers expected Democrats to lose control of the House in the legendary 1994 midterms – mainly because the party held the House for 40 consecutive years. It was nearly unthinkable that Democrats could lose the House – simply because it had not happened in decades. Democrats and other political observers excoriated the brilliant Michael Barone when he was the lone commentator to forecast that a Republican flip of the House could be in the offing come the fall of 1994.

Barone was right, as Republicans collected 54 seats.

Republicans nearly lost control of the House in the 1998 midterms – after they impeached former President Clinton. Republicans then bested the historic norms in 2002 and held the House, boosted by pro-GOP sentiment following 9/11.

Democrats managed to win back the House in 2018 – following a similar playbook they deployed in 2006 when they also captured control of the House. Democrats ran a number of moderate ex-military or "national security" Democrats – often in battleground districts. The relative unpopularity of President Donald Trump didn’t help Republicans, either.

Former House Speaker Kevin McCarthy, R-Calif., and former House Speaker Newt Gingrich, R-Ga., boasted that Republicans may capture anywhere from 40-60 seats in the 2022 midterms. Republicans did win the House – but barely.

Which brings us to 2026.

The party of the president historically loses around 25 seats in their first midterm. Since President Trump is only the second commander in chief to return to office after a hiatus (late President Grover Cleveland was the first), 2026 serves as a de facto "first midterm." Trump and the Republicans lost 41 House seats in 2018 – his true first midterm. But calculating what to expect next year is nearly impossible.

Republicans now hold a 219 to 212 majority in the House with four vacancies. Three of those seats are solidly Democratic – for now. So for the sake of argument, let’s say the breakdown is 220 to 215. Democrats must only flip a net of three seats to claim the majority.

It’s not that easy.

First off, we barely understand the 2026 playing field.

In baseball, it’s 90 feet between the bases. 60 feet, 6 inches to the pitcher's mound. Major League Baseball even standardized the size of the dirt infield a couple of years ago.

As we head to the playoffs, we know the Milwaukee Brewers and Detroit Tigers are excellent. The New York Mets and New York Yankees should be really good., but they’ve stumbled. The Philadelphia Phillies are excellent – but just lost starting pitcher Zack Wheeler to a major injury. Who could surprise down the stretch? The Cincinnati Reds and Kansas City Royals are hardly out of it. Everyone understands the general variables of Major League Baseball as October nears.

That is not the case with the 2026 midterms.

Texas Republicans are now determined to redraw congressional districts to favor a GOP pickup of five seats. President Trump has endorsed similar efforts to tilt the field in favor of Republicans in GOP-strongholds like Missouri, Ohio and Indiana. California Gov. Gavin Newsom is threatening to upend the present maps in favor of Democrats in the Golden State. New York Democrats may try the same in the Empire State.

So, we don’t even know the basics. How far from the plate to the mound in the 2026 midterms? How large is the strike zone? Five balls for a walk or the standard four? Twelve players in the field or nine?

Redistricting could also hamper Republicans – forcing the party to suddenly defend a number of more competitive seats. Democrats could suddenly have more opportunities where none existed in 2024.

But we aren’t sure.

Maybe everything is status quo and Democrats only need to flip those three seats.

We also don’t know how the relative unpopularity of President Trump may impact voters. He historically defies political gravity. Plus, the Democratic brand remains utterly toxic. Party registration is down for the Democrats – big time.

That said, could Republicans reap the benefits of passing the hallmark of their legislative agenda – the One, Big, Beautiful Bill Act? Some conservatives doubt that the GOP has sufficiently sold the public on that legislation, especially during the August recess. Democrats are banking on the possibility that the legislation will backfire on the GOP in next year’s midterms. We also don’t know if President Trump not being on the ballot in 2026 is similar to the Republican midterm performance in 2018. It’s clear that not having Mr. Trump on the ballot in 2018 undercut the party at the polls.

Republicans could also face a backlash from moderates and swing voters if they are dissatisfied with the performance of the president. We certainly saw that after voters tired of the polices of former Presidents George H.W. Bush in 1990, Bill Clinton in 1994, George W. Bush in 2006 and Barack Obama in 2010.

And, we have an entire 15 months before voters head to the polls next year. There could be another foreign policy crisis involving the Middle East. Tensions with Russia over Ukraine are volatile. There are a host of potential events – ranging from health policy to the economy – which could set the table for the midterms.

Lots to consider.

It’s all in play.

"Everything changes everything," observed the sage Earl Weaver.

Or perhaps we should turn to New York Yankees legend Yogi Berra:

"In baseball, you don't know nothing."

#### 3. Dems can’t win populist voters anyway.

Christian Cullen 25, Staff Writer, "The Democratic Party Must Embrace Progressivism," Xavier Newswire, 03/25/2025, https://xaviernewswire.com/2025/03/25/the-democratic-party-must-embrace-progressivism/

Since President Donald Trump spoke to Congress a couple of weeks ago, the Democratic Party has been in disarray. Some wore pink and others held signs. Yet only one actually used their voice to speak up: Representative Al Green of Texas. Despite weeks of unpopular and dangerous governance from the new Trump administration, all the Democrats could muster was a single individual taking a stand, for which he was censured.

After the election defeat, thinkpiece after thinkpiece was published about what happened to the Democrats. Some felt that the Party needed a better social media presence, while others felt that this was just an inevitable result. Here’s what the real issue is: the Democrats are ultimately just a party of the status quo.

Despite the descent into fascism feeling like a slide in recent weeks, this is actually a moment the Democrats can pounce on. Republican representatives are getting grilled left and right at their town halls. People are unhappy with how the United States is being governed and we are barely into the new administration’s time in Washington.

This is a moment where the Democrats could really make some gains, but the Party leadership keeps falling on its face. Senate Minority Leader Chuck Schumer acquiesced on a budget proposal vote that will likely lead to essential agencies being gutted. There has been no change in the messaging in a way that would matter.

Democratic representatives have also been dealing with angry constituents. Despite a chance to really make a change and gain some of their voters back, the Democrats seem content to sit in the middle while nothing changes. Instead of making things as difficult for the Trump administration as they can, they seem content to grease the political wheels, likely in the hope that Trump’s actions will backfire on him come the midterm elections.

The Party leadership is entirely out of touch, despite the clear signals that the Party is in desperate need of a youth movement. While mainline Democrats are hearing but not listening to angry constituents at town halls, the progressives of the Party are rallying support. Bernie Sanders and Alexandria Ocasio-Cortez have been on a tour of the US and are commonly drawing 10,000+ attendees at their events.

What also went somewhat under the radar this election cycle was the popularity of progressive legislation. Maternity leave and a minimum wage increase won in states where Kamala got trounced. Missouri and Alaska are not exactly liberal bellwethers. This is the time where the Democratic Party needs to adapt.

There is real anger at the Democrat’s inability to do seemingly anything. Government agencies that provide real and essential services are on the chopping block, the Trump administration has jailed individuals that hold certain opinions on Gaza, and prices continue to rise. Instead of listening to their voters and adjusting themselves, Democratic leadership refuses to change.

The Democrats don’t need their own version of Joe Rogan. They need to show that they can actually help people. When they have been in power, Democrats have been seen as ineffective; when they are out of power, they remain in the same place, just waiting for a chance to disappoint their voters again.

It does not have to be this way. The progressives have made some real gains, and more importantly, they can show how they would provide real change, rather than continued stagnation. To survive, the Party must embrace its progressive flank to provide an effective alternative to the Republicans.

As they stand right now, the Democratic Party is entirely unable to meet the political moment. As America inches closer and closer towards authoritarian governance, I for one do not trust the Democrats to make the right decisions.

#### 4. Trump will rig the election, deny results, or suppress votes to ensure victory.

Kilgore 8-6-2025 [Ed, policy analyst at the Democratic Leadership Council; "Four Ways Trump Could Rig the 2026 Midterms"; Intelligencer; https://nymag.com/intelligencer/article/how-trump-could-rig-the-2026-midterms.html//ekc]

Suppressing votes

While it hasn’t been quite as overt as his map-rigging attempt, Trump has not lost interest in a variety of old-school methods for reducing the number of “undesirable” people allowed to cast votes. Indeed, he has persuaded MAGA-land to subscribe en masse to conspiracy theories about Democrats opening the borders to tens of millions of vicious criminals who will instantly be herded to the polls to seize power for their “radical left” benefactors. The absence of any evidence whatsoever for significant levels of voting by noncitizens has not kept Trump and his supporters from proposing and enacting a variety of barriers to election participation by people too old or poor to show up on Election Day with a wallet full of identification documents. Most of these were incorporated into a Trump executive order issued in March, in which the president sought to usurp a variety of congressional and state powers over election administration in the guise (ironically) of vindicating voting rights.

One big theme is to enforce a “National Election Day” by restricting early voting systems, particularly those in states that allow for receipt and counting of mail ballots after Election Day if they’re postmarked earlier. But as the Brennan Center documents in a report on this order and its implications, three additional Trump ideas are to impose unnecessary identification requirements, to create federal supervision over state-financed and locally administered voting machines, and to give the Trump administration access to private data contained in voter files.

The potential for havoc in giving this particular administration greater control over the rules, machinery, and data involved in voting should be obvious from previous Trump/GOP efforts to discredit election results they don’t like. Another likely result of presidential interference in voting systems is an acceleration in the exodus of local election workers fearful of intimidation or attacks based on spurious fraud claims.

Lying about results

Perhaps the most predictable feature of any postelection period during the Trump era has been unsubstantiated claims of votes being illegally cast for Democrats or illegally taken away from Republicans. Trump claimed illegal voting robbed him of a popular-vote plurality in 2016, though he won the election. Congressional Republicans claimed fraudulent mail ballots in California cost them the House in 2018. And most famously, virtually the entire GOP has now bought into the Trump fable of the stolen 2020 presidential election.

If control of the House in 2026 comes down to a relative handful of close contests, and particularly if most of them are in states where Democrats control the election machinery (which is almost guaranteed to be the case, considering the importance of marginal seats in California, New York, and Pennsylvania), Trump will certainly claim Democrats have stolen or are in the process of stealing the election. Anyone who remembers late autumn 2020 can easily imagine the wave of White House-generated protests, lawsuits, investigations, “audits” and conspiracymongering in store for us in late autumn 2026.

Changing the results of the midterms

In December 2020 and January 2021, Team Trump sought to prevent the naming of electors and their confirmation by Congress. In a midterm election, the key pressure points would be state certification of congressional results and then the seating of new House members. In the case of contested House races, Team Trump might discourage the certification of Democratic winners in Republican-controlled states and then fight it all out in the courts as judges seek to adjudicate the results.

The real election coup could happen when Democratic and Republican House-election winners present themselves in Washington as members of the U.S. House of Representatives. It’s the House itself, not the states, that ultimately decides on the qualifications and credentials of its members. If the House and the trifecta hangs in the balance in January 2027, does anyone think Mike Johnson will pull a Mike Pence and resist demands by Trump that Republicans in contested races be seated while Democrats are sent home? No, I don’t either.

Democrats better work like hell to win a House margin in 2026 that cannot plausibly be overturned.

### 2AC – Turn

#### Congressional oversight structurally can’t inhibit Trump. Letting him win in midterms and do what he wants until 2029 prevents lashout.

Ed Kilgore 25 – “Trump Bets He Can Have His Extremism — and the Midterms, Too,” 9/14, https://www.msn.com/en-us/news/opinion/trump-bets-he-can-have-his-extremism-and-the-midterms-too/ar-AA1McsIe

This was a particularly fraught decision for Trump because his idea of “policy accomplishments” involved a vast expansion of presidential power, an inevitably controversial mass-deportation program, a return to protectionist economic strategies, and relentless threats of Mafia-style retribution against his enemies and critics. Given his incredibly high regard for his own uniqueness and his history of disdain for the Republican Party, it would have been the most natural thing in the world for Trump to write off the midterms and plan to leave the White House in 2029 after infuriating and betraying as many allies and voters as possible.

Within moments of his second inauguration, Trump pursued a course of unprecedented extremism that suggested he would be fine with vast midterm losses, deliberately alienating voting blocs (Latinos, younger voters, inflation-sensitive voters) that had moved in the GOP’s direction in 2024 and exhibiting indifference to public opinion generally (a bit disguised by his habit of asserting vast popularity absent, or even against, any evidence).

But then something surprising began happening: Trump started showing considerable personal interest in his party’s midterm prospects, interfering in Republican primaries to promote the most electable options (notably by shoving Marjorie Taylor Greene out of a Senate race) and making sure the White House is as focused on 2026 as he is.

The standard take on Trump’s motivation for this sudden decision to care about his party’s fate is that it’s actually all about himself: He’s worried about being investigated or even impeached by a Democratic House. But given the absence of any evidence that past Democratic House investigations or impeachments inhibited him even a bit, there’s a more lurid possibility: He’s convinced a rabid pursuit of a maximalist agenda is compatible with a successful midterm win and long-term Republican success.

This is consistent with Trump’s longtime belief in a base-first political strategy. If the GOP base wasn’t already completely under Trump’s thrall coming out of the 2024 elections, he’s probably heat-seared his bond with them by the audacity and thrilling hatefulness of his conduct since returning to the White House. You can debate all day long whether the second Trump administration bears the characteristic marks of an authoritarian regime. But without any question, the 47th president’s relationship with his supporters is ducelike. His biggest power grabs please them most, as is evidenced by the rapturous GOP rank-and-file reaction to the idea of sending troops into major U.S. cities to combat a nonexistent crime wave.

But even Trump seems to understand that this might not be enough to reverse the historic pattern of the White House party losing House seats in midterms. And that is why a big part of his own “pivot to the midterms” has been an effort to skew the results with a national gerrymandering effort that effectively increases the GOP House majority from a few seats to perhaps a dozen. To be very clear, this is something that would not have happened without Trump’s personal intervention; in some cases, he’s had to drag state-level Republicans kicking and screaming into this effort, and there will be collateral damage among Republican U.S. House members (especially in California, where Gavin Newsom’s retaliatory gerrymander could extinguish five GOP incumbents) who are sacrificing their own careers to the Leader’s cause.

If changing the geographical landscape isn’t enough to maintain the Republican trifecta, Trump is clearly planning to shift the issue landscape as well by doing everything possible to keep the public focus on topics he believes favor him and his party, including immigration, crime, and national security (or rather “war-fighting”). This last topic remains quite literally an unfired bullet in his chamber. A Wag the Dog scenario of preelection wars or rumors of wars is an ever-present possibility.

Trump has resolved the second-term president’s dilemma by refusing to choose at all between chewing up political capital to get things done and trying to win the midterms. He’s riding two horses past a fork in the road he refuses to acknowledge. After violating almost every existing political (and legal) norm since his reelection, he’s now seeking to extend the wild MAGA party for at least two more years by revving up his base to a state of great excitement, cheating as much as he can, and lying about conditions in the country in order to give himself additional opportunities to keep the opposition (and the courts) off balance.

The scarier question is what Trump will do if (as still appears likely) his efforts fall short. Will he simply reject the midterms results as fraudulent, as he did in 2020? Will he seek to overturn a Democratic House victory via the courts, state-election certifiers, or mass disturbances? Or will he turn to his faithful subaltern Mike Johnson and instruct the outgoing Speaker to refuse to seat every Democrat who’s won a close race? And will the U.S. Supreme Court again look the other way? The 2026 midterms could be Trump’s wildest ride yet.

#### That causes great power World War III.

Leon E. Panetta et al. 25 – former Secretary of Defense, former Director of the CIA, former White House Chief of Staff, Director of the Office of Management and Budget, Co-Founder of the Panetta Institute for Public Policy, J.D. from the Santa Clara University School of Law, "It's Trump's Messy, Dangerous World Now," The New York Times, 01/20/2025, https://www.nytimes.com/2025/01/20/opinion/trump-foreign-policy-defense.html

We live in an increasingly dangerous and threatening world. There are more flashpoints in today’s global geopolitics than we have seen in decades, presenting a generational challenge to the incoming administration of Donald Trump and all of America’s elected leadership.

At the Panetta Institute for Public Policy, I tell students that in our democracy, we govern either by leadership or by crisis. If leadership is there and willing to take the risks associated with responsibility, we can avoid, or certainly contain, crisis. But if leadership is absent, we will inevitably govern by crisis. The same is true when it comes to foreign policy.

As President-elect Trump is about to be inaugurated for his second term, a fundamental question being asked around the world is whether he will repeat the unpredictable and chaotic approach to foreign policy that defined his first term or embrace the idea that he stressed repeatedly during his campaign of “peace through strength.”

President-elect Trump cannot adopt that foreign policy concept, which holds that a strong military can prevent conflict, without also embracing the definition that President Ronald Reagan so eloquently gave it in his speech marking the 40th anniversary of the Normandy invasion. “We in America have learned bitter lessons from two world wars,” said Mr. Reagan, who made the idea famous. “It is better to be here ready to protect the peace than to take blind shelter across the sea, rushing to respond only after freedom is lost.” He also made clear that “the strength of America’s allies is vital to the United States.”

The world that awaits Mr. Trump is far different from and more threatening than what he had to confront in his first four years. Autocrats that once operated in their own spheres of influence have now joined together in an axis of mutual support and aggression: Vladimir Putin of Russia is not just a temperamental bully but also a tyrant who invaded the sovereign democracy of Ukraine and continues to threaten democracies in the West; Xi Jinping of China has made clear that he is prepared for a potential Taiwan invasion and wants to compete with the United States as a leading military power; Kim Jong-un of North Korea is not just threatening democracy in South Korea but has also sent drones and thousands of troops to Russia to fight Ukrainians; Iran, weakened by Israel, continues to enrich uranium and is ever closer to developing a nuclear weapon; and ISIS has once again raised its ugly head by inspiring a lone-wolf attack in New Orleans.

Mr. Trump has always prided himself on being a dealmaker, pledging in his campaign that he would resolve such conflicts in the first few days of his presidency. But precisely because it is a more dangerous world, that’s unlikely to happen. And if he tries and fails, the United States will appear weak. There is concern that Mr. Trump may have already started off badly by threatening Greenland, the Panama Canal Zone and Canada. Those are the kind of careless and disruptive comments that only undermine American credibility when it comes to dealing with real-world crises.

This is, however, a time when “peace through strength” could actually work. It will require strong, serious and stable leadership to turn the current multipolar crisis into an opportunity for America. The incoming president can be a dealmaker, but it must be from a position of strength. And strength begins with the United States remaining the strongest military power on the face of the earth.

To ensure that, the new administration must be willing to increase military investments in recruitment, training, readiness, nuclear weapons systems, the U.S. defense industrial base and research and technology. To accomplish all of this, the defense budget cannot rely on the unpredictability of continuing resolutions. There must be a five-year budget that makes clear our defense priorities and achieves savings in duplication, procurement and bureaucracy.

On Ukraine, it is becoming clear that Ukraine and Mr. Putin must find a way to a negotiated settlement to the war. Mr. Trump must make clear that the United States will continue to work with NATO to support Ukraine and that Mr. Putin will not be allowed to succeed. If that message is clear to Mr. Putin and if Ukraine can gain traction against Russia, President Volodymyr Zelensky will have the leverage to negotiate a settlement that provides for Ukraine’s sovereignty and security, allows Russia to remain in Crimea and other limited areas and achieves an end to the war. That would be peace through strength.

Mr. Trump should tell China that it will help Taiwan defend itself, that the South China Sea will remain open pursuant to international law and that the United States will support a strong alliance of Japan, South Korea, Australia, India and other Asian countries to protect the freedom of the seas and commerce in the Pacific. From a position of greater military strength, the United States would have leverage for a more productive dialogue with China on trade, cybersecurity, fentanyl, satellites and other economic issues. To simply expand tariffs on China and start a trade war will result in an economic backlash among unhappy consumers in the United States. Retribution is not dealmaking.

Iran is yet another opportunity. Tehran has been weakened by Israel both militarily and economically; it could very well be open to negotiations on limiting nuclear enrichment and stopping support for proxies in exchange for relief from economic sanctions. Since the previous Trump administration was critical to the establishment of the Abraham Accords, Mr. Trump could work with Israel to bring Saudi Arabia into the deal, along with other moderate Arab nations. Building a Middle East alliance would be important to dealing with Iran and terrorism, and establishing an approach to peace in the Middle East.

The president, as commander in chief, has the power and responsibility to determine America’s future security. If he is careless with that awesome power, the United States could very well find itself in another world war. But if the president understands his power, as Mr. Reagan did, he can provide strong leadership and build alliances that steer the world out of war. The key to peace is strength, and the key to strength is leadership.

## Cities

#### 3. No smart cities AND they fail.

Kendra **Smith 17**, writer @ wired, “The Inconvenient Truth about Smart Cities,” Scientific American, 11/17/17, https://blogs.scientificamerican.com/observations/the-inconvenient-truth-about-smart-cities

A big reason for the disconnect between smart city potential and reality is the fact that smart cities are where the digital world blends, but can also collide, with the non-digital world. Non-digital issues such as legacy governance, social justice, politics, ideology, privacy and financial elements that are not so smart, efficient or resilient when smart-city planning starts can become large factors. Any one of these elements can pose a challenge in and of itself and grow to monstrous proportions when combined with other longstanding problems in a city. Imagine the entanglements that existing public and private industries must go through to implement a single smart city project, let alone numerous projects such as smart lighting, smart transportation, smart buildings and the like to actually make a more complete smart city. Bill Gates’ effort is notable because Belmont is a blank slate to be built from the ground up.

**4. Sectoral bargaining solves productivity – presence reduces turnover and increases efficiency.**

Damian **Grimshaw 24** – King’s College London; Bernd Brandl; Durham University Business School; Fabio Bertranou and Sonia Gontero; ILO Subregional Office for the South Cone of Latin America; International Labour Review, “Tracing the potential benefits and complex contingencies of multilevel collective bargaining,” vol. 163

In its influential state-of-the-art study, the OECD (2019a) demonstrates that countries with multilevel bargaining systems (varying by the type and degree of their coordination) have experienced stronger labour market performance than countries with decentralized bargaining in recent years. Both the unemployment rate and the employment rate register stronger performance, especially for countries with strongly coordinated multilevel systems.

Co-ordinated bargaining systems are associated with higher employment and lower unemployment relative to fully decentralised systems […]. This is particularly the case for predominantly centralised systems, while for organised decentralised systems the result on unemployment is somewhat smaller and less robust. Centralised but weakly co-ordinated systems and largely decentralised systems hold an intermediate position, with better employment outcomes than in fully decentralised ones but similar unemployment outcomes. (OECD 2019a, 112).

This result of better labour market performance is confirmed by other studies that analyse similar or different groups of countries (for example, Brandl 2023a; Eurofound 2023; Visser 2013). Moreover, these indicators are inclusive of all groups of workers, which refutes claims made in earlier studies that strong unions necessarily advantage “insiders” at the expense of “outsiders” (Lindbeck and Snower 2001). The OECD data show that countries with multilevel bargaining systems are also associated with better labour market outcomes for relatively disadvantaged workforce groups. Figure 2 shows that the unemployment rates of youth, women and low-skilled workers are either significantly lower than, or no different from, countries with decentralized bargaining.

2.3.  Economic performance

There is a long-standing body of theoretical and empirical work that focuses on the economic effects of different collective bargaining structures. Ideas and evidence have shifted over time from positive support for more centralized bargaining systems in the 1970s to a questioning of the macroeconomic performance effects of multilevel systems in the 1980s, followed by a divergence of viewpoints in the early 2000s (for a review, see Grimshaw and Hayter 2020). Today, there is near consensus that bargaining systems have limited influence on macroeconomic performance (compared to capital investment and systems for innovation and skill development, say), but positive effects on firm and sectoral performance, including productivity and innovation (Brandl and Braakmann 2021; Doucouliagos, Freeman and Laroche 2017; Grimshaw, Koukiadaki and Tavora 2017). The OECD’s view, consistent over the last two decades, is illustrative of the mainstream viewpoint regarding macro-level effects: “The overall fragility of the evidence linking collective bargaining to macroeconomic performance suggest[s] that great caution should be exercised when attempting to draw guidance for making policy choices from this research” (OECD 2004, 133).

In their comprehensive European study of inter-country productivity effects, Brandl and Braakmann (2021) find that multilevel bargaining is a necessary condition for delivering productivity growth. They show that:

(i) Enterprise bargaining and coordinated multilevel bargaining both generate higher productivity growth than either absent collective bargaining or uncoordinated bargaining; and

(ii) Strongly coordinated multilevel systems have superior productivity effects. Three types of vertically coordinated systems are especially effective: enterprise-sector systems, sector-national systems and enterprise-sectornational systems.

The OECD’s (2019a) analysis of firm-level productivity effects confirms the classic study by Freeman and Medoff (1984), namely that union presence (a key determinant of collective bargaining) tends to impact positively on organizational productivity by reducing voluntary worker turnover and increasing tenure and firm efficiency. Evidence for Latin America is also mostly supportive. Drawing on World Bank Enterprise Survey data, Rios-Avila (2014) finds that the impact of union presence on firm productivity in the manufacturing sector is positive in Chile, Mexico, Panama and Uruguay, but neutral in Bolivia and negative in Argentina. The most recent meta-analysis, covering 111 studies on union and productivity levels (mostly from the United States and the United Kingdom), found that, overall, unions have a small but positive effect on productivity (Doucouliagos, Freeman and Laroche 2017). Except in the case of the United Kingdom, the findings “reject the neoclassical economics view that unions are invariably harmful to productivity” (ibid., 70). A summary of selected empirical results from this research shows that:

(i) Where unions are autonomous, organized at industry level and nonparochial (that is, not focused on defending job territories), they are more likely to have positive productivity effects;

(ii) The presence of multiple unions at establishment level may be adversely associated with productivity levels;

(iii) Countries with sectoral bargaining structures display a positive relationship between union strength and productivity growth, while this relationship is neutral for countries with enterprise-level bargaining.

Sectoral bargaining can be particularly beneficial for companies that are technology leaders. As less innovative and unproductive firms are pushed out of the market by standardized sectoral wages, more innovative firms can capture their market share. These positive incentives for management to compete on organizational and/or technological innovations, rather than labour costs, are beneficial for the long-run productivity and competitiveness of industries and countries (see, for example, Bloom, Sadun and Van Reenen 2017; Doucouliagos and Laroche 2003; Scarpetta and Tressel 2004; Wachsen and Blind 2016; Willman 1986).

**5. The plan boosts worker training. That improves skills and investment.**

David **Madland 21** – Senior Fellow and Strategic Director of the American Worker Project at the Center for American Progress, PhD in government from Georgetown. “Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States,” 2021, ILR Press.

Enterprise-level bargaining also makes it hard to develop a top-notch workforce training system. The United States does too little workforce training, and the training we do is often not very good and does not always lead to a good job. Employers, who pay for the majority of workforce training, spend significantly less than they used to and have pared back internal career ladders.105 Governments have also pulled back, mirroring broader trends of disinvestment in public goods like infrastructure.106 As a result, the United States spends less on workforce training than other rich countries—and the gap is growing as other countries increase their investments.107 Too often training is firm-specific, fostering skills that are not necessarily valuable to other employers. Worse, some training that individuals seek on their own produces credentials that are not particularly valuable to any employer. One need not look further than the for-profit college industry for countless examples of programs that produce little labor market value but put students deep into debt.108 All told, the average skills of the US workforce are in the middle of the pack of economically advanced countries and well below those of the highest-ranking countries.109

Enterprise-level bargaining contributes to problems in the US training system in several ways.110 It helps lead to widely varying labor costs across firms, which means that executives at firms that train workers worry that they will fail to recoup productivity gains because their newly trained workers will be hired away by higher-paying competitors. This leads to less investment than is optimal because employers have an incentive to poach workers from other firms rather than train their own. In other words, under enterprise bargaining, firms have an incentive to underinvest in training. This is especially true as jobs that once were part of a central firm are increasingly contracted out, outsourced, franchised, or reclassified to independent contractor status.

Further, the enterprise-level bargaining structure is not well suited to providing a forum to discuss regional or industry training needs. In contrast, broader-based bargaining naturally brings together groups of employers and workers, providing an opportunity to discuss the broader needs of the industry. This is especially important for small-and medium-sized employers that may not be large enough to create training programs on their own. The training programs in the United States that that operate on a sectoral level or across several sectors lead to good results for participants.111 But this kind of training—where training is broad-based and leads to a good job—is relatively rare in the United States and quite hard to create without broad-based bargaining.

**6. Inequality turns the DA. Unequal income distribution causes financial crises by causing consumption decline and collapse city revenue – that’s Domash.**