# 1AC---Round 2---DRR

## 1AC

### Militancy Adv---1AC

Advantage 1: MILITANCY.

#### The system of exclusive union representation has caused labor power to stagnate.

Marty Manley 24. Former Assistant U.S. Secretary of Labor, M.B.A. from Harvard Business School. "To Honor Labor, Rethink Unions." American Compass. 9-25-2024. americancompass.org/to-honor-labor-rethink-unions

Fragmented Bargaining Weakens Unions

The NLRA allows a union to bargain only for a subset of workers within a single company. The National Labor Relations Board (NLRB) decides which workers share common interests. They have no idea. Many bargaining units are gerrymandered compromises between unions and companies trying to win a representation election. This process is bureaucratic and often makes for silly decisions, as when the NLRB created a unit of perfume counter sales staff separate from the store’s other retail employees.

Fragmentation undermines solidarity, the virtue that unions prize above all others. Unions tolerate this because tiny bargaining units are easier to organize (half of all NLRB bargaining units last year contained fewer than 21 workers). Fragmented bargaining is poorly designed to address employee concerns, which occur at three levels: at work, company-wide, and by all companies in a sector. Scheduling and workplace issues need to be addressed on the job. Policies that govern multiple workplaces within a company need the attention of senior managers or boards. And wages, training, and skill standards that affect all companies in an industry are best worked out at the sector level.

The NLRA is not designed for this. It has declared workplace consultative arrangements like European works councils an unfair labor practice. It rarely lets unions bargain for all employees in a company like Starbucks that has many locations. It never enables unions to bargain for all workers in a sector. It has no ability to assign labor a seat on a company board.

Labor Monopolies Deny Worker Choice and Dampen Innovation

The NLRA not only fragments workers into tiny bargaining units, but also imposes one-size-fits-all representation. When workers vote for representation, the NLRB grants the union an exclusive bargaining right—meaning that no other union has a right to negotiate for these workers. Exclusive bargaining restricts worker voice and reduces worker choice. It has done serious damage to the cause of organized labor.

Workers vary a lot, and so do their preferences. Given a choice, many employees will want to join a large union in their industry. Some may value the training and networking offered by a professional association or craft union. Others may prefer an organization that advocates for women, veterans, parents, libertarians, or Muslims in all sectors. Some workers may simply want to get through their shift and go home. Exclusive representation forces one organization to be all things to all workers. It confuses solidarity with homogeneity and makes for weaker, less coherent unions.

Even a group of well-organized workers cannot necessarily choose their own union because the AFL-CIO is legally permitted to restrict how its affiliates compete for new members. After Lupe got fired, we asked the Service Employees to help us organize. But the AFL-CIO ruled that we could only work with the Hotel Restaurant Workers (now UNITE HERE). This is a solid union today, but at the time its leadership was under FBI investigation for corruption.

Preventing inter-union competition was the main reason that the AFL merged with the CIO in 1955. Until then, labor organizations competed for members. They fought each other as well as companies. After World War II, union leaders came to view these battles as “raids,” a fratricidal violation of class solidarity. So they created a cartel that could override worker preferences.

There are good reasons for unions to build federations, but forming a labor cartel was a profound mistake. Competition between unions prior to 1955 helped unions grow at the fastest rate in history. Union rivalries were not zero-sum. They forced unions to differentiate and experiment. They produced dynamic and important leaders. Recall what happened to organized labor’s market share when unions stopped competing.

**<Figured Omitted>**

By historic accident, schoolteachers took a different route, and their unions thrived. Two unions competed to represent teachers: the American Federation of Teachers (AFT) and the National Education Association (NEA, which never joined the AFL-CIO). They fought frequently and hard. The fights were often expensive, but competition forced both unions to replace ineffective local leaders and to absorb weak locals into stronger ones. Both developed impressive grassroots political operations and reputations for highly engaged members. Both grew strong in right-to-work states. Today, for better and sometimes for worse, 70% of public school teachers belong to unions. The NEA is America’s largest labor organization. There is little doubt that decades of competition helped to produce two of America’s strongest unions. Many factors drove labor’s decline, but to this day very few union leaders appreciate how competition and choice complement solidarity.

Exclusive bargaining rights are like fentanyl for unions—addictive and deadly. Unions now depend on dues revenue associated with exclusive bargaining. If workers were free to join any union they pleased (or none at all), unions would have to recruit more widely and develop new revenue models. This is tough for a union to do when NLRA organizing rules prevent it from growing, ban it from earning revenue from outside services, require it to represent non-members, allow only fragmented bargaining, and award only exclusive bargaining rights. The NLRA has unions trapped—and reforms that make organizing easier won’t help.

#### It’s a trap! Exclusive representation stifles widespread agitation…

Shaun Richman et al. 18. Organizing director at the American Federation of Teachers. Kate Bronfenbrenner, director of labor education research at Cornell University. Chris Brooks, staff writer and organizer with Labor Notes. "After Janus, Should Unions Abandon Exclusive Representation?" In These Times. 5-25-2018. inthesetimes.com/article/janus-unions-exclusive-representation-labor-right-to-work-supreme-court

Richman: The structure is a trap, and exclusive representation is part of that. I don’t think we have a crisis of leadership. I want to turn to the private sector because most of the potential hope in abandoning exclusive representation is in the private sector. Look at the UAW and their struggles at Volkswagen and at Nissan, which Chris is intimately familiar with. I think all three of us could find fault in their organizing strategy and tactics. Kate, I think you have more grounds than anyone in the country to be frustrated because you’ve scientifically proven what it takes to win and most unions have ignored that research for decades! But a third of the workers at Nissan want to have a union. To do so, they have to win an exclusive representation election where the entire power structure of the community comes down on their heads arguing keep the UAW out of the South.

If they had eked out an election win and managed to win a contract a year down the line, at the end of the day they get the obligation of having to represent everyone and probably the one-third of the workers who wanted the union all along are the only ones that join. That’s insane. Charles Morris threw out this theory a decade ago, in The Blue Eagle at Work, about how the NLRA was not intended to have these winner-take-all exclusive representation elections. The point of the NLRA was merely to say to employers anywhere there’s a group of workers that say hey we’re a union you must bargain with them in good faith. He argues that pathway is still open to unions. To the best of my knowledge a few unions politely asked the NLRB for their opinion on that a couple of times rather than all of us demanding that should be a valid pathway for union representation.

If you can win that exclusive representation election, you should win it, and you should also be saddled with the burdens of DFR. But why can’t, and why shouldn’t, the UAW file a petition at every auto factory in the country right now and say we have members here and you need to bargain with us over their working conditions? And why shouldn’t other unions jump into the fray and claim to represent their portion of the workers and drive those non-union companies nuts with a bunch of unions placing demands on them, and organizing to take action?

I think the work that Organization United for Respect (OUR) is doing at Wal-Mart is a good example of that. They by no means have a majority of the workers at Wal-Mart. They are in a few strategic locations. They are a nuisance to the company. They just won a right that workers are allowed to wear union buttons on the shop floor. Wal-Mart has given workers raises in response to their agitation. I’m not suggesting that that model is perfect or what we should all be doing, but I am saying that this should be an avenue open to us. And it only becomes open to us if we’re willing to experiment more with abandoning exclusive representation where it doesn’t work for us.

I would argue that in 90% of private sector workplaces where winning these elections is not possible it’s not working for us currently.

#### … and allows unions to be bought off.

James Gray Pope et al. 17. Professor at Rutgers Law School, Ph.D. in politics from Princeton University. Ed Bruno, union organizer with the United Electrical Workers and National Nurses United. Peter Kellman, member of UAW Local 1981-National Writers Union. "The Right to Strike and the Perils of Exclusive Representation." *Boston Review*, 2(107), 9-14.

So far, we have talked about rights, but not about the legally structured institutions that shape the exercise of those rights. In our view, those institutions are fundamentally flawed and need to be rebuilt from scratch. This is not just some academic problem. We need to confront it now, before we lose more ground defending institutions that are rotten to the core.

We propose that the unionism decreed by the NLRA is fatally flawed; that although we tend to think today of the thirty-plus per cent union density of the 1950s as the good old days, it wasn’t; and that if it becomes politically possible to amend the NLRA sufficiently to make possible union revival, then it will also be possible to jettison the Act’s crabbed definition of unions.

At the heart of the difficulty lies the system of exclusive representation. Unions that enjoy the government-conferred status of exclusive representative have little incentive and few legal avenues to build the movement as a whole.

As amended by the Taft-Hartley Act of 1947, the NLRA carves workers up into government-defined “bargaining unit” boxes, anoints a single union as the exclusive representative of the workers in any particular box, and restricts that union to bargaining over “terms and conditions of employment,” a category that does not include a host of issues of vital concern to workers, including plant closings, automation, and control of pension funds.36 Unions stand on relatively solid legal ground when they attend to the immediate self interest of workers in a single box, but risk employer retaliation and legal sanctions if they act on the view that the fortunes of all workers rise and fall together.37 This fits right in with the flat ban on secondary boycotts, which blocks the workers in each bargaining unit box from acting in solidarity with workers in other boxes.

But it gets worse. Unlike corporations, which must compete in the marketplace to retain their investors, Taft-Hartley unions enjoy government-conferred monopolies over their workers. (The fact that union busters repeat this point ad nauseum does not make it any less true.) Once a union establishes itself as the exclusive representative in a bargaining unit, it extinguishes the freedom of workers in that unit to shift their allegiance to another union except through an arduous process of “decertification” that presents the employer with a golden opportunity to dispense with unions altogether. Union democracy can provide workers with considerable control in some settings (especially single-facility local unions, sites of some of the most vigorous popular democracy anywhere in the United States), but the law gives national union leaders enormous latitude to suppress or avoid democracy.38

This kind of power presents union leaders with an almost irresistible temptation to offer, in Bob Fitch’s memorable phrase, “solidarity for sale” to employers and politicians.39 When a union achieves the status of exclusive representative, it takes ownership of the workers’ right to strike. From that point on, the union may trade the right away and – even if it doesn’t – the workers may be fired for striking without the union’s approval.40 (Compare France, where the right to strike belongs to workers, not unions, and is often exercised in support of class-wide demands.) Even the most militant labor leaders have difficulty resisting the temptation to accept a blanket no-strike clause in exchange for stability in their bargaining unit boxes, whence all dues flow. As a result, most union workers are prohibited by contract from striking during all but the window periods between contracts. Because contracts expire at various times, sympathy strikes and political strikes are effectively precluded.41

Exclusive representation encourages the sale of solidarity not only to employers, but also to politicians. For a vivid illustration, we need look no further than the response of labor leaders to Bernie Sanders’ presidential campaign. As Rich Trumka acknowledged after the fact, Sanders “elevated critical issues and strengthened the foundation of our movement.” In campaign season, however, the overwhelming majority of national labor leaders (not including Trumka, who remained neutral) bowed down to the candidate backed by Wall Street, Hillary Clinton. Given the system of exclusive representation, they could imagine that it would better serve their members to curry favor with the likely winner.

Exclusive representation also opens the door to special restrictions on labor rights. Unionists (including us) routinely complain that unions are denied constitutional rights enjoyed by other voluntary associations, for example the rights to engage in secondary picketing and political boycotts.42 But exclusive representation gives courts a plausible response, namely that because government confers the special privilege of exclusive representation on unions and not other associations, it can impose special restrictions as well.43

Finally, exclusive representation undermines organized labor’s claim that unionism serves as a vehicle not only for higher wages, but also for industrial democracy.44 At the time of Sweeney’s victory two decades ago, nobody imagined that anti-labor interest groups were about to launch a successful cultural offensive against unionism, presenting themselves as defenders of democracy in the fight over EFCA (Save our secret ballot!), and of workers’ constitutional rights in the combined legislative and litigation campaign for the “right to work” without paying union dues.45 Only the unexpected death of Justice Antonin Scalia stopped the Supreme Court from terminating the union shop in the public sector, an obstacle likely to be removed when Trump appoints Scalia’s successor.

For most unionists, resistance to the “right to work” is almost as instinctive as respect for picket lines. This is justified as necessary to solve the free-rider problem. But there are plenty of solutions to that problem that do not involve forcing workers to pay dues to a union that owns their bargaining unit box solely because it mustered majority support at some point in the past.46 It would be possible, for example, to require a payment but leave it up to workers to decide what union should receive it.47 Such a system would fit well with a collective bargaining structure modeled on those of France or Italy, where employers are required to bargain over wages at the national level with the most representative union in the industry, but other unions co-exist and compete with that union and can displace it if workers so choose.48

Given the current political situation, questioning exclusive representation might seem academic.49 But we need to be thinking long-term. In a recent book, for example, Tom Geoghegan suggested that the movement might consider bargaining away exclusive representation in exchange for rights protections like the Employee Empowerment Act.50 One might disagree about the particular quid pro quos, but this is the kind of discussion that the movement needs now, not only to shape the long-term campaign for legal reform, but also to inform present-day organizing.

If, as expected, the Supreme Court strikes down the union shop in the public sector, organized labor will be presented with the opportunity – and necessity – of developing new systems. In states where labor remains strong, it might be possible to experiment with alternatives, for example solving the free rider problem by requiring workers to pay a representation fee, but giving them a choice of organizations.

In the private sector, we might put more energy into members-only or non-majority unionism. As Charles Morris has shown, there is a strong legal case to be made that the NLRA requires employers to bargain with non-majority unions over the wages and conditions of their members only.51 Earlier this year, NLRB Member Kent Hirozawa endorsed this position in a concurring opinion.52 And for years, observers have predicted that the Board would reverse its current rule that, in the absence of an exclusive representative, a worker can be fired for insisting on bringing a representative into a disciplinary meeting. With or without assistance from the Board, non-majority unionism – already under way in some locations – offers promising opportunities to build unions while operating outside the system of exclusive representation. Prior to the NLRA, this was the standard path to union recognition. As the best organizers testify today, organizing is inevitably a process of building power in the face of employer resistance.53 What better way to accomplish that than to begin functioning as a union?

Conclusion

We have presented a simple argument: (1) Organized labor is being strangled to death by laws that block workers from exercising the rights to organize, to strike, and to act in solidarity; (2) unions should build a rights movement, placing the struggle for the rights to organize, to strike, and to act in solidarity front and center in all phases of movement activity including organizing, protest, civil disobedience, political action, administrative advocacy, and litigation; (3) in the process, we need to challenge the system of exclusive representation and develop an alternative that permits broad solidarity and promotes worker freedom. We offer this proposal as a contribution to what we hope will be a productive discussion about how best to move forward in this moment of crisis – and opportunity.

#### Worker militancy is vital to challenge inequality, but current unions entrench status quo imbalances.

Jason Vazquez 21. Staff attorney at the International Brotherhood of Teamsters, J.D. from Harvard Law School. "Democracy in the Union Movement." OnLabor. 5-12-2021. onlabor.org/democracy-in-the-union-movement

In a political economy characterized by private ownership of capital, transnational corporate consolidation, and immense concentrations of wealth, labor unions stand as uniquely democratic institutions. In sharp contrast to corporations — rigidly hierarchical, even tyrannical entities — federal law dictates that unions must be structured and operate democratically. In 1959, after a series of high profile hearings on criminal activities in the labor movement — in which Robert Kennedy and Jimmy Hoffa dramatically locked horns — Congress enacted the Labor Management Reporting and Disclosure Act (LMRDA) , which aims to purge corruption and racketeering from labor organizations. The Act mandates secret ballot elections for union officials, grants all members a legally enforceable right to vote, nominate candidates, run for office, and participate in union activities, protects members’ rights to speech and assembly, and requires that unions afford members a “full and fair hearing” before meting out internal discipline.

While the Act was largely motivated by antilabor impulses, there are reasons to embrace its protections. Democratic engagement — by activating and harnessing the militancy of the membership — is the foundation of labor power. Studies have highlighted that contracts negotiated by thoroughly democratic unions systematically tend to be stronger, as “union democracy increases union effectiveness in representing members’ interests and in mobilizing these members to support its collective bargaining agreements.” A number of academics and progressive thinkers have thus suggested that deepening the democratization of labor unions could help regenerate the embattled labor movement.

The U.S. labor movement took shape as the economy industrialized near the turn of the 20th century. The emerging labor organizations were decentralized and participatory, and labor activists — many of them socialists or communists — mobilized the membership to unleash militant, disruptive tactics, which subjugated powerful employers and organized millions of working people. The Gilded Age judiciary sough to fiercely repress this activity, issuing hundreds of injunctions to block strikes, work disruption, and other protest activities, which only intensified labor’s radical orientation. During the New Deal era, in an effort to alleviate disruptive labor strife, head off labor militancy, and channel labor disputes into an impartial administrative body, Congress codified basic labor rights into federal law. In the following decades, with these protections in place, unions expanded their size and authority and deepened their professionalization and bureaucratization. Some began to prioritize entrenchment over expansion. Compounding the pressure, as the neoliberal regime has dismantled organized labor, national unions have increasingly merged and consolidated in recent years. These currents have forged a modern union movement that is highly centralized and institutionalized, dominated by a handful of national organizations.

While large labor organizations may be necessary to countervail the enormous concentrations of private capital, the reality is that, notwithstanding significant efforts in recent years to expand their participatory outreach, today’s union remain plagued by democratic deficiencies. Research suggests that national unions, while “firmly democratic,” exhibit tendencies of oligarchies or autocracies. Barely a handful of the largest unions use a direct voting system, and it is not uncommon that top officer elections in many major unions are barely contested or uncontested. In fact, a challenger has not toppled an incumbent president in any of the largest unions in decades. While unions ‘ federated structure means that local affiliates are often more closely engaged with the membership than the national organization, there are indications that the dearth of democratic engagement at the highest levels has given rise to a disconnect between leaders and members — and working people more broadly. In 2016, for instance, while many members supported Bernie Sanders’ populist message, the executive boards of most major unions endorsed Hillary Clinton in the Democratic primary. And in the general election, a significant share of union members in crucial swing states sidestepped leaders’ endorsements and voted for Donald Trump. Labor leaders subsequently conceded they had misapprehended the depth of disillusion and frustration among their membership.

At bottom, the struggle for organized labor is a struggle for working people to control their lives; a struggle, in other words, for democracy. In embracing participatory democracy, unions enhance their capacity to democratize not only the workplace but the broader political economy.

#### Inequality is rising, locks in sluggish economic growth, AND is only resolved by unions.

Veronica Nilsson et al. 25. General secretary of the Trade Union Advisory Committee, M.A. in political economy from Stockholm University. "Growth for whom? Addressing income inequality and the role of collective bargaining." Trade Union Advisory Committee. 5-2-2025. tuac.org/wp-content/uploads/2025/05/Inequality-and-growth-2.5.25.pdf

Trends in income inequality since the Global Financial Crisis

Income inequality started rising as far back as the 1980s, well before the GFC in 2008 (OECD, 2008) (Piketty, 2014). This prolonged period coincided with progressive deregulation of both financial and labour markets.

As observed by the OECD, ‘since the mid-1990s, more than half of all job creation was in the form of non-standard work. Many non-standard workers are worse off in many aspects of job quality, such as earnings, job security or access to training’ and ‘low-skilled temporary workers face substantial wage penalties, earnings instability, and slower wage growth. Households that are heavily dependent on earnings from non-standard work have much higher income poverty rates (22% on average), and the increase in the number of such households in OECD countries has contributed to higher overall inequality’ (OECD, 2015).

The GFC widened the gap between high- and low-income earners further, with stagnation at the bottom and rapid rise at the top of the earners’ distribution (OECD, 2011). By 2015, inequality levels were higher than in the early 1980s for most OECD countries with available data (Figure 1).

**<Figure Omitted>**

The OECD also found that the rise of income inequality in countries with available data between 1985 and 2005, knocked 4.7% off cumulative growth between 1990 and 2010 (OECD, 2015). Today, real median wages across the OECD are on average only 8% higher than twenty years ago, while in contrast, labour productivity increased by about 28%. Significant discrepancies between countries were also reported, as well as between the public and the private sector (Soldani, Causa, Nguyen, & Kozluk, 2024). This means that not only was economic growth subdued due to rising inequality, but that the economic gains over the years have not been fairly distributed between employers and workers, whose wages keep falling behind GDP growth.

As the large gap between the top and bottom rungs of the income distribution ladder persists and amplifies, aggregate productivity and economic growth are bound to slow further. Yet OECD data also shows that income inequality in the 2010s, as measured by the Gini coefficient, actually fell in slightly more than half of OECD countries, in the period between the GFC and euro debt crisis to the start of the COVID-19 pandemic.

How can these dynamics be reconciled? There is no one-size-fits-all explanation. Some countries, like Canada (Xuereb, Fisher-Post, Delorme, & Lajoie, 2023), Spain (Anghel, Bover, Hospido, Ortega, & Regil, 2023) and Portugal (Oliveira, Portugal, Raposo, & Reis, 2023) increased taxation progressivity and/or social transfers, and boosted minimum wages. Elsewhere, improved tax progressivity accompanied structural trends in the economy, such as an increase in total (female) employment and reduction in the size of households, as occurred in Ireland (Barra & Barrett, 2024). Employment growth and limited exposure to the financial crisis was the case in Israel (Dahan, 2017), while wages in the United States saw a relatively faster recovery in the second and third decile of the income distribution (health aides, retail sales workers, manual workers and food and hospitality workers), compared to those in the top 10% (Dey, Handweker, Piccone Jr, & Voorheis, 2022). Regarding Greece, the fall in inequality did not bring any relief at all in the aftermath of the debt crisis, but rather resulted from a widespread compression of incomes towards the lower end of the scale; a rising share of workers descended into poverty, while severe cuts to benefits and pensions particularly affected the upper levels of income distribution (Danchev, et al., 2024).

Overall, whether at its historic peak or not, income inequality across the OECD remains sizeable and significantly above levels prior to the 1980s (Cingano, 2014), a period characterised by sustained, prolonged growth and income convergence in OECD countries.

How inequality affects the economy and policy implications

Research shows that inequality hurts economic growth and social stability in multiple ways:

**•** High inequality depresses aggregate demand in the short term and productivity in the long. Since lower deciles of the income distribution have a higher propensity to spend, increased inequality negatively affects aggregate demand, first by reducing consumption and secondly by dampening investment. In the United States, increased inequality caused a 1.5% annual drop in aggregate demand between 1979 and 2018 (Bivens & Banerjee, 2022). In Italy, inequality was found to tangibly depress long-term growth prospects: a 1% rise in inequality reduces GDP growth by 0.13%, which is twice the negative impact on GDP compared to a 1% increase in inflation (Njindan Iyke & Ho, 2017). As for developing countries, the IMF associated lower levels of inequality with longer growth spells and suggested that tackling inequality improves sustainable growth prospects (Berg & Ostry, 2011). Among the potential reasons is the fact that countries with higher inequality levels and weaker social safety nets are more exposed to economic shocks and take longer time to recover in their aftermath (Stiglitz, 2013).

**•** Inequality of outcomes is associated with inequality of opportunity, meaning that today’s inequality entrenches and reinforces the inequality of tomorrow. Individuals who have less access to health and education end up contributing less to economic growth. Households struggling to get by have fewer means to invest in the education of their children. Meanwhile, parents’ precarious financial and working conditions negatively affect their children’s performance in education. In the long run, this leads to generational mobility decline and lower productivity. Parents’ wage levels correlate to between 40 and 70% of their adult children’s income levels, depending on the country. Hence, greater inequality not only harms the poorest, but decreases their chances of climbing the social and economic ladder (OECD, 2018b).

**•** High inequality increases opportunity for private interests to unduly influence the policymaking process, as it grants access to better networks, legal protection and capital to steer the outcome of political elections towards specific interests (i.e. excessive lobbying power). When voters perceive that policymakers do not work towards finding just and effective solutions to people’s problems, trust in public institutions is eroded, which can undermine democracy. With rising levels of inequality, rent-seeking behaviour by large private actors increases, together with market concentration and monopoly power, resulting in lower private investment. Combined with the shrinking of the middle class and decline in the provision of public services, the disillusion that arises from experiencing a political process perceived to be serving the interests of the wealthy undermines participation in elections and democratic governance, setting in motion a vicious circle of inequality increasing further again, weakened redistribution policies and slower economic growth.

With increasing evidence and clarity about the ways in which inequality affects growth, the OECD developed recommendations to governments to tackle the phenomenon. The Economic Policy Reform series, commonly referred to as Going for Growth, was the OECD key flagship publication to upgrade policy recommendations to address growth and inequality. The bi-annual publication, launched for the first time in 2005, is a compendium of country-specific structural reform priorities to boost productivity and economic growth. In 2017, the OECD revised the methodology for selecting country-specific policy reforms, in order to prioritise those that could deliver higher growth without fuelling inequality further (OECD, 2017). Yet the methodology behind the report did not clearly reflect a causal relation going from inequality to growth, instead adjusting its reform prioritisation process to privilege, other things equal, those measures for growth that would not worsen inequality outcomes further (TUAC, 2017).

To date, the OECD has found that growth is best served by implementing reforms on the supply side of the economy, i.e. by deregulating markets with the assumption that this process will drive private investment and promote market competition. By failing to recognise that i) economic expansion and firms’ propensity to invest are largely driven by demand (Ignaszak & Sedláček, 2021), and ii) that such demand is sustainable only when founded on adequate household incomes and a strong middle class rather than on private debt, the OECD keeps underestimating the consequences of high inequality on growth.

This is a fundamental misinterpretation of the mechanisms that drive economic growth, with one immediate and one potential implication. The immediate one is that in thinking that growth can be expanded without adequately sustaining demand, the OECD is bound to provide the same supply-side, structural policy recommendations from the past, no matter if considerations on inequality are introduced on the margins. The potential implication is that, in the same way that the GFC forced more consideration on the role of inequality in the economy, as time goes by and political priorities shift, the OECD could roll back to policy recommendations prioritising market deregulation and labour flexibilisation with no concern to inequality aspects at all.

Around the same time, in 2018, the OECD adopted a Framework for Policy Action on Inclusive Growth. While the aim of the Framework is to provide high-level policy guidance on how to integrate equity aspects from the outset in designing economic policy, its labour market recommendations stop short of this goal. In line with the Jobs Strategy, the Framework finds that the role of employment protection is ‘to stimulate labour mobility and opportunities for placement and retention of quality jobs for all. Employment protection legislation (EPL) would need to be properly designed in order to yield predictable contract termination costs and avoid creating different levels of job security across labour contracts, while protecting workers against possible abuses’ (OECD, 2018c). While the message highlights that quality of employment matters for inclusive growth, it does not specify how labour market duality should be overcome – that is, by taking the high road of curtailing precarious work and reducing the use of temporary contracts, or by dismantling employment protection for standard workers. The latter does not yield sustained growth and reduced inequality, but it is often the preferred choice of governments. The OECD tends to remind governments that ‘overly restrictive’ levels of employment protection discourage labour mobility, without the possibility of assessing where the exact boundary lies. While setting a clear empirical threshold is for many reasons impossible and would lead to overly prescriptive policy recommendations, the lack of clarity about what makes a labour system ‘overly restrictive’ leaves the door open to all kinds of interpretation. This ambiguity is rooted in the OECD Jobs Strategy, which on one hand brought some of the assumed benefits of labour market flexibilisation into question, while on the other still argued that flexibility remains crucial for achieving more efficient labour outcomes (Janssen, 2019).

To this date, despite finding that temporary contracts are associated with low wages and weaker wage growth (OECD, 2019b), and that while the effect of employment protection reduction on boosting growth is negligible, it lowers disposable household income for the poor and lowermiddle classes (Figure 2), the OECD never does unequivocally call for strong employment protection.

**<Figure Omitted>**

The role of collective bargaining in tackling inequality and growth

Policy recommendations for addressing inequality often focus on equality of opportunity rather than equality of outcome. Equality of opportunity ensures that individuals can compete on a level playing field, regardless of characteristics such as race, gender, age, or family background— factors beyond an individual’s control. If these characteristics can reliably predict whether someone will succeed or struggle in life (as is often the case), it indicates an underlying discriminatory element that must be eliminated to create genuinely equal opportunities.

However, this emphasis on opportunity rather than outcome carries significant risks. It suggests that while some factors are beyond a person’s control, everything else is within their reach— provided they invest sufficient effort to achieve their goals. Yet the distinction between inequality of opportunity and inequality of outcome is not always clear-cut(Wagstaff & Kanbur, 2015). Being born into a low-income household presents significant obstacles that extend far beyond childhood, shaping not only a person’s initial chances in life but also their adult choices and opportunities. Moreover, societal structures shape both individuals' self-perception and how they are viewed by others, further influencing and limiting their life choices. The distinction between equality of opportunity and broader economic conditions is largely theoretical and not entirely robust; addressing one without considering the other is insufficient to reverse inequality to a significant extent.

Furthermore, inequality is not merely an unintended market failure that can be corrected with isolated interventions; rather, it is a deeply entrenched system designed to preserve wealth and intergenerational privilege in the hands of those societal groups that are already at the top (Darity, Hamilton, & Stewart, 2015). This explains, among other things, why labour market outcomes are not solely determined by individual skills, experience, or qualifications. If they were, different groups of workers would be compensated equally once barriers to skill access and education were removed. As evidence from the US shows, this is not the case, for example with the black-white wage divide persisting even for individuals with advanced degrees (Wilson, 2016). At the macroeconomic level, labour would be rewarded at the level of its marginal contribution to productivity, and yet the persistent gap between labour productivity and wages persists in time (Figure 3).

**<Figure Omitted>**

Research has shown how employers hold excessive bargaining power over workers and have the ability to set wages below their fair value. By exploiting limited employment opportunities, firms are able to unilaterally dictate terms of employment that are not favourable to workers. This condition, known as monopsony, allows employers to set wages and employment at lower levels than in competitive markets. Estimates of the level of concentration in labour markets differ, but the OECD’s conservative findings place at least one in five workers in labour markets that are to some extent unjustly tilted in favour of employers (OECD, 2022). This disincentivises firms from investing in productivity-enhancing systems (technologies and processes), to the detriment of firms’ labour and capital productivity. Thus, strengthening collective bargaining is key to support the reduction of inequality and can boost economic growth at the same time.

#### Slow growth ignites hotspots through resource scrambles and fuelling radicalism.

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As we look ahead, one cannot help but wonder if this threat of long-term economic stagnation and decline will not be the catalyst for major conflicts in the future. For one, such economic troubles could fuel political radicalism, as it did in the 1920s and 1930s. At the same time, rising levels of protectionism and nationalism could lead to far worse trade disputes than we have seen in recent years, something that could also turn an economic dispute into a military conflict. Finally, the battle for control of strategic resources such as oil, water, land or rare-earth elements could intensify as economic growth slows, resulting in conflicts over the control of these resources.

There are many examples of potential conflicts between large economic powers that could erupt in the years and decades ahead, particularly if economic growth continues to slow over the longer-term. For example, tensions between the world’s two superpowers, the United States and China, have risen steadily in recent years, due in part to US concerns about China’s rising economic and military power. As there are a large number of flashpoints that could bring these two giant powers into conflict (Taiwan, North Korea, South China Sea, etc.), the likelihood of a superpower conflict is now greater than it has been at any time since the early 1980s.

This is not the only potential great power conflict that the world faces today. For example, tensions between the United States and Russia have also been rising as the latter seeks to regain some of the geopolitical importance and influence that it lost in the wake of the dissolution of the Soviet Union. The growing rivalry between China and India is another flashpoint that has the potential to erupt into a conflict between two major economic powers, particularly in light of the numerous border disputes between those two Asian giants. In fact, there are a number of potential conflicts involving two or more major economies that could erupt in the near-future, any of which would not only be influenced by economic factors, but would also have a major impact on the economies of the combatants, as well as on the global economy as a whole.

#### Growth moderates hegemonic transitions, preventing great power war.

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1 Introduction

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

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

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

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

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

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

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

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

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

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

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

Our study contributes to the theoretical and experimental literature on conflict in the context of power shifts. Fearon (1995), Powell (1999, 2006, 2012), and Baliga and Sjöström (2020) discuss the strategic aspects of conflict with power asymmetries, emphasizing how shifts in relative power can lead to conflict despite both parties preferring peace. Similarly, Sieberg et al. (2013), Kimbrough et al. (2014), Herbst et al. (2017), and Schaller and Skaperdas (2020) explore how the balance of power influences conflict propensity. To our knowledge, only Tingley (2011), Abbink et al. (2023), and Comola et al. (2024) have conducted experimental studies on dynamic power shifts. Tingley (2011) examine a resource division game with infinitely repeated interactions and changing bargaining strength, while Abbink et al. (2023) provide a framework for understanding how perceived threats and power imbalances can provoke preemptive actions in a two-stage bargaining game with power shifts. Comola et al. (2024) study how power shifts between competitors modify which nodes to target in a network to maximize influence. Our study extends this line of research by explicitly incorporating economic prospects through the mechanism of a growing or shrinking pie within a new game that captures symmetric power shifts in a finitely repeated context.

We also contribute to the empirical literature on the role of economic conditions in conflicts. Studies by Hegre and Sambanis (2006), Blattman and Miguel (2010), and Ray and Esteban (2017) on the causes of civil wars suggest that low-income levels and slow economic growth are robust predictors of civil war onset. Martin et al. (2008) and McGuirk and Burke (2020) illustrate how economic variables can either exacerbate tensions or promote peace, depending on the context.4 The only experiment we are aware of that studied resource scarcity’s effects on inter-group conflict is Safarzynska and Sylwestrzak (2021) but this study does not consider future prospects and power shifts as we do. While much empirical research has explored economic factors in civil conflicts, fewer studies have examined these dynamics in the context of power transitions. By incorporating dynamic economic prospects into our design, we explore how future economic conditions influence the pathways toward conflict or cooperation between rising and established powers.

Finally, our study contributes to the literature on expectations and cooperation. The maintenance of cooperation through history-dependent strategies like tit-for-tat is well-documented (Dal Bó and Fréchette, 2018). The concept of the “shadow of the future”, introduced by Axelrod and Hamilton (1981), emphasizes how anticipated future interactions encourage cooperation. Kreps et al. (1982) suggest forward-looking agents can sustain cooperation even in finitely repeated prisoner’s dilemma games. However, in conflict games, Tingley (2011) demonstrates that a longer shadow of the future can exacerbate commitment problems when bargaining strength shifts. Based on historical case studies, the theory of trade expectations of Copeland (2014) suggests that positive expectations of the future trade environment trigger motives for peace while negative expectations promote motives for conflict. Though these studies did not examine conflict during dynamic power shifts as we do, they provide valuable insights into the importance of expectations on challenging behavior.

The AFF solves:

#### 1. Competition. Exclusive representation bureaucratizes unions.

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After Janus, public-sector labor law will need restructuring. Instead of trying to preserve as much as possible of a broken system, why not start experimenting with alternatives? Ever since the 1950s, organized labor has struggled to defend and tweak the system of “exclusive representation” established in the National Labor Relations Act of 1935. We believe it is time to step back, change course and scrap exclusive representation in favor of a system that would let workers join their union of choice. Such a move could also solve the free-rider problem posed by Janus, which held only that workers can’t be required to fund a particular union.

Under exclusive representation, jobs are grouped into various bargaining units. If a majority of workers in a particular unit want a union, then that union becomes the “exclusive” bargaining representative of all workers in the unit. Should some of the workers become dissatisfied and wish to join another union, they must file for a decertification election, in which “no union” is one ballot option. In the culture of American unionism, this move is widely regarded as scabbing, and proponents of an alternative union risk ostracism.

When exclusive representation was first proposed back in the 1930s, the ACLU, the NAACP and labor radicals condemned it. They feared it would make unions more unresponsive, exclusionary and conservative, and they were right. Exclusive representation has allowed union officials to sign concessionary contracts with little fear of competition from more militant unions. Majority-white unions can ignore the interests of workers of color, and majority-male unions those of women workers. (This exclusionary tendency was subsequently limited by law, but only where union discrimination could be proven—a difficult proposition now that overtly racist and sexist statements are infrequent.) Exclusive representation also allows lazy union officials to sit back and collect their salaries without doing much for workers. Union democracy legislation, enacted in 1959 over strenuous opposition from organized labor, ameliorated the problems of unresponsiveness and conservatism, but the law left enough loopholes that the overwhelming majority of unions continue to operate as one-party bureaucracies.

Exclusive representation also opened the door for the anti-labor “right-to-work” movement, which brought us Janus. Like the early 20th-century labor movement, which conducted a decades-long struggle to win the Norris-LaGuardia Anti-Injunction Act of 1932 and the National Labor Relations Act (NLRA) of 1935, right-to-work leaders plotted an ambitious strategy centered on a coherent vision of workers’ rights. Instead of taking on the entire system of exclusive representation, they targeted the power of unions to require dues payments. Beginning in the 1940s, anti-labor activists charged—sometimes with reason—that “labor bosses” were forcing workers to pay dues even to unions that engaged in corruption, promoted causes opposed by their members (ranging from Stalinism to white supremacy) or made sweetheart deals with the boss.

Also like the old labor movement, these anti-labor forces grounded their case in the Constitution. Workers, they claimed, enjoyed a First Amendment right to withhold financial support from unions they opposed. State by state, they have been eliminating mandatory dues payments in both the private and public sectors.

Meanwhile, organized labor today clings to the system of exclusive representation. Our most recent reform effort, the Employee Free Choice Act of 2007–2009 (EFCA), would have tweaked the procedure for certifying an exclusive representative, replacing elections with a “card check” system. Primed by the decades-long right-to-work campaign, EFCA’s opponents pounced and successfully presented themselves as the true defenders of workers’ rights. “Labor bosses,” they charged, were taking away the all-American right to “secret-ballot elections.” In both the right-to-work and EFCA struggles, anti-labor conservatives scored victories by seizing the moral high ground of labor freedom.

Exclusive representation also opens the door to damaging restrictions on labor rights. Courts can make a principled argument that, because government confers the special privilege of exclusive representation on unions, it can impose special constraints as well. For example, other organizations like worker centers enjoy the First Amendment right to stage secondary boycotts, a way to hold companies accountable for their subcontractors and supply chains, as in the Coalition of Immokalee Workers’ successful Taco Bell boycott. But courts have upheld statutes prohibiting unions from doing the same. Of course, today’s ideologically driven Supreme Court doesn’t need a principled reason to attack unions, but even liberal, generally pro-labor judges have signed onto opinions restricting labor’s free speech rights.

What’s more, exclusive representation is dated. Designed to fit the immobile facilities and monolithic corporations that were at the heart of Fordist mass production, the system makes little sense in today’s world of fissured workplaces and flexible production. Workers who go through the arduous process of establishing an exclusive representative in their bargaining unit may suddenly find that their work has been contracted out, that they have been transferred outside the unit, that the unit has been moved overseas, that it has ceased to exist, or that the company has been sold to another employer. Without a system of exclusive representation, such workers could simply commence members-only bargaining.

Notwithstanding all this, many good union people passionately defend exclusive representation (see “After Janus, Should Unions Abandon Exclusive Representation?”). They worry that, without exclusive representation, employers will divide and conquer workers. But systems of union competition elsewhere contain safeguards against divide-and-conquer tactics. In France and Italy, for example, employers are required to bargain over wages at the national level with the most representative union in the industry, while other unions co-exist and compete with that union, and can even displace it if workers shift their allegiances. As with any legislation, the devil is in the details. Tennessee, for example, provides for competition among teachers’ unions, but the system overall denies the right to bargain collectively and—as expected from a red state—otherwise disadvantages unions.

Defenders also contend that, without exclusive representation, unions will succumb to free riding by nonmembers—but the free-rider problem can be solved without forcing workers to finance the union that owns their bargaining unit. Law professor and former union organizer Brishen Rogers has, for example, proposed requiring a standard representation fee but allowing workers to choose which union receives it. Such a law would correct one of the flaws in the Tennessee system, namely that sweetheart unions undercut real unions by charging lower dues.

Some defenders caution that a system of union competition will open the door to employer-dominated unions. It should go without saying, however, that any labor law worth supporting will incorporate or improve upon the NLRA’s ban on company unions.

Finally, some people figure that because anti-labor conservatives want to terminate exclusive representation (see “How Corporations Plans to Use Janus to Turn Workers Against Their Own Unions”), it must be a good thing. We think that puts too much trust in the strategic judgment of conservatives. It was, after all, anti-labor conservatives who forced the union democracy reforms of 1959 which, to their dismay, enabled progressive rank-and-file caucuses to push unions toward more militant and inclusive policies.

Abolishing exclusive representation could, depending on the details, help to shape and sustain the kind of unions American workers need: democratically controlled, inclusive across lines of race and gender, and effective at countering corporate power. Imagine what having multiple unions within a workplace could look like. Workers could put immediate and effective pressure on union officials by shifting their dues payments to competing unions. Union officials would have to think twice before endorsing, say, Wall Street’s nominee for president over the strongest pro-worker presidential candidate since the New Deal.

#### Multi-unionism creates a race to the top.

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2. Inter-union competition: union rivalry and multi-unionism

Inter-union competition can be separated into two categories: rival unionism and multi-unionism. Rival unionism, “is the coexistence of two or more unrelated labor organizations actively competing for the control of the 7 workers employed … within a trade or organization.” Multi-unionism is the presence of two or more trade unions within a single workplace, organization, or industry. In either case, unions compete for members and workers have an opportunity to affiliate with an organization that best fit their desires, or to be non-affiliated.

Union rivalry is rare in the U.S. private sector. Only 2.4 percent of the National Labor Relations Board representation elections conducted in 2018 included more 8 than one union on the ballot. In contrast, in 1955—the year the AFL and the CIO merged— 20.9 percent of NLRB representation elections had at least two unions on the 9 ballot.

The decline in union rivalry can be attributed to two key factors:

1. While the National Labor Relations Act enshrines the right to unionize, its regulation of workplace elections meant unions had to organize each new factory or firm individually rather than organize by industry. As a result, during the post-World War II years of rapid job growth, union efforts could not keep pace with the increasing number of workplaces to organize. The “tremendous” power of exclusive representation conferred on a union which obtained a majority of votes rendered minority unions powerless, diminishing the attraction of minority unions.

2. As part of the merger the AFL and CIO completed in 1955, the two organizations agreed to a no-raiding pact and developed a framework to lessen competition among the unions for unorganized workers.

**<Figure Omitted>**

There is some evidence that competition between the AFL and CIO was associated with increased union membership. The CIO was founded as rival to the AFL in 1935. In the five years prior to the formation of the CIO (1930-1935), union membership as a share of total employment grew by one percentage point. In the five years following the founding of the CIO (1935-1940), union density more than doubled 10 from 8.5 percent of employment to 18.3 percent.

Similarly, there is evidence that the AFL-CIO merger was associated with a decrease in union membership. Figure 4 shows that 1954—the year prior to the merger—was the post-war peak in U.S. union membership. Since the merger, union membership has been on a steady decades-long decline. Research has found a similar pattern of decreased union density with the 1956 merger of the AFL and CIO in 11 Canada.

Multi-unionism is a relatively common feature of industries throughout the world, including the European Union and 12 New Zealand. In Belgium, workers can choose from among socialist, liberal, or Christian unions. In the U.K., unions are organized by occupation and commonly compete at the plant level. New Zealand legislation allows multiple unions to represent their members in the same workplaces for collective bargaining and grievance matters. But as previously noted, the implementation of exclusive representation under the NLRA and many state laws makes multi-unionism virtually impossible in the U.S.

To see why the distinction between single- and multi-unionism is important, consider some of the costs and benefits of multi-unionism.

**<Figured Omitted>**

When unions compete to organize the same pool of workers, they are likely to organize workers who are substitutes in production. Consider a hypothetical multiunion example of a school district with school bus drivers represented by both the Teamsters and the National 13 Education Association. School bus drivers organized by the Teamsters would be substitutes for school bus drivers organized by the National Education Association. Competition between the two unions would likely lead to a moderation in wages across the two unions. If the Teamsters negotiated above-competitive wages for its drivers, the demand for Teamsters would decrease while the demand for NEA drivers would increase. Knowing this, each union would moderate its wage demands to minimize substitution away from its members. On the other hand, the need to attract members motivates each union to demonstrate its ability to negotiate higher wages. This balancing act between the benefits and costs of demanding higher wages would tend toward a competitive wage rate.

Multi-unionism also allows workers with a variety of preferences regarding services provided by a union to self-select into the union that best fits their preferences, or select no union at all. Workers recognize there is a tradeoff between wage gains, benefits, employment opportunities, working conditions, and the nature of the political activities in which the union engages. Acknowledging this allows unions to specialize and provide better and fairer representation to the employees they represent.

The preferences of union leaders and rank-and-file members may be different. While ordinary members may seek higher wages and job security, the leadership typically seeks to increase its power and influence both in and outside the union. Additionally, the preference of more senior members may differ significantly from junior members. Because job security is often based on seniority, more senior members are more likely to pursue wage increases even if those higher wages lead to reduced employment among junior members. Multi-unionism allows rank-and-file members who may believe these conflicts are causing unions to underrepresent their interests to vote with their feet and select another union or method of representation.

It is possible that that multi-unionism would incur excessive bargaining costs for employers dealing with more than one union. A fragmented bargaining structure wherein each union negotiates a separate agreement forces both the firm and the unions to face the costs of negotiating, monitoring, and enforcing each contract. Fragmented bargaining also provides an opportunity for the employer to pit competing unions against each other, to pursue whipsawing strategies in bargaining, or to apply divide-and-rule tactics. However, a survey of New Zealand union leaders found that multiunionism was not associated with any significant inter14 union conflicts regarding negotiations. This suggests that a fragmented bargaining structure may not significantly increase the cost of negotiating.

#### 2. Leverage. Status quo collectives die to no strike clauses.

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Under a competitive multiple union model, I think no strike clauses become basically unenforceable. And these no strike clauses have become really deadly for unions in ways we don’t want to acknowledge. Currently, the workers who should be the most emboldened at work, because they’re protected by a union, have a contract that radically restricts their ability to protest. It’s not just strikes. It curtails the ability to do slow down actions, and malicious compliance, and it forces the union rep to have to rush down to the job and tell their members, you have to stop doing this. And they end up feeling bitter toward the union leadership as much — if not more — than the boss for the conditions that were agitating them still being in place. And then their ​“my union did nothing for me” stories carry over to non-union shops. Every organizer has heard them.

We need to bring back the strike weapon. And that’s far easier said than done. But it’s really hard to do when you’re severely restricted in your ability for empowered workers to set an example for unorganized workers in taking action and winning.

And, Kate, I have considered the DFR. I can’t imagine a world of multiple competitive unions in a workplace where there wouldn’t be at least one union that says we’re going to be the anti-racist union, we’re going to be the feminist union, and we’re the union for you. Without DFR, you’re right, there’s no legal guarantees. But someone steps into the vacuum and my hope is that at least creates the potential for militancy when militancy is called for in the workplace. With all the other messiness.

#### That cements a culture of solidarity AND generates momentum for ulterior progressive organizing.

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Cultures of Solidarity

We need to restore cultures of solidarity in working-class communities. Nothing accomplishes that quite like living through an intense period of putting your livelihood, dignity, and self-respect on the line and needing the support and protections of your friends and coworkers, knowing that they need the same of you.

Strikes do that. The Chicago teachers I know still feel a residual sense of accomplishment and pride in that 2012 strike. They have more-than-skin-deep loyalty to their co-workers. They are much more likely to join another union or community group’s rally or picket line.

Union organizing campaigns—well-run ones, at least, with empowered rank-and-file organizing committees—similarly foster a culture of solidarity. The charter school teachers I keep in touch with also still keep in touch with their fellow OC members. Everybody might have switched schools two or three times, but they’ll always remain brothers and sisters, quick to offer supportive words if not money, time, and muscle if an old comrade is in distress.

I’m not a sociologist, but I’ve got a theory about the culture of solidarity that the “Greatest Generation” built up, and how successive generations of union leaders and organizers coasted on an era of good feelings that they did not earn or successfully reproduce. The strike waves of the 1930s and the immediate postwar years meant that millions of workers experienced the kind of intense period of mutual aid and self-defense that fosters solidarity. It helps that most of those strikes were successful in materially raising workers’ wages and standard of living. It’s also worth noting that those strike waves bookended a war that put millions of workers into literal life-and-death situations where they depended on their comrades having their backs.

What developed was a culture of solidarity in which it was generally accepted that you just don’t cross a picket line or buy a scab product. It’s a culture that understands that poverty and want are threats to those of us who have. It’s an environment where people cheer on workers fighting and striking for a new benefit or right, hoping that their example can help everyone win it everywhere. It’s the kind of political culture in which massive new welfare programs like Medicare and Medicaid could be instituted.

The opposite of a culture of solidarity is one where workers can be goaded into slashing the social safety net to lower taxes. Or where minimally decent public employee pensions are vulnerable to scape-goating political attacks like, “You don’t have that; why should they?”

Millions of baby boomers were raised by their parents to not cross a picket line or buy scab products. Of those baby boomers, many wound up in non-union jobs and non-union industries, as union growth was artificially closed by the trap of our system. Though many others did wind up in factory jobs or government employment, a far smaller proportion of them lived through the kind of life-altering organizing campaigns and strikes that their parents did.

Still, many of those baby boomers imparted the “don’t scab” lesson to their kids, either drawing from their own experiences or those of their parents. And so on and so forth, and in this way, the Greatest Generation’s culture of solidarity became faded like a Xerox of a Xerox of a Xerox. People gave it lip service, but if it wasn’t a lived experience, it became a platitude too often dropped at the first sign of adversity.

I can’t recall how many organizers I’ve seen strike out in an organizing conversation, digging for a change that a worker wanted to make at work through a union, only to lean on the intellectually lazy one-two combo of “Do it for your co-workers” (which is charity, not solidarity) and “The union was good for your family, so why not for you?” (which is nostalgia for a thing you didn’t personally experience).

I think some union leaders have come to see this problem, albeit very late in the game. If we’re going to revive a culture of solidarity, we’re going to need more worker-led job actions. The unions, of course, have a role to play. I have more to say on that below. But, first, let’s grapple with what the proper role of the political left is.

First of all, it’s completely amazing and a potential game-changer that we even have a left to speak of. Tens of thousands—and I have no reason to doubt it will soon be hundreds of thousands—of people have embraced some version of the socialist project in the wake of the dispiriting Clinton campaign and the horrific Trump administration.

One of the most urgent needs is some basic trade union education so that new socialists don’t, as Bill Fletcher Jr. says, “treat the labor movement as a panacea or as some sort of hideous creature.”98 This requires studying the history of both labor and the left, as well as the law. Leftists must have a structural critique of the labor relations system in addition to their complaints about union strategy and politics as they weigh their own role as organizers.

I’ve seen some talk online of a rank-and-file strategy, which is certainly well intentioned. I do think it’s a mistake for leftists to seek out careers as union staffers. Although I would also argue that a year or two as a union organizer, if you are young and footloose, can provide a valuable education.

In general, our place is where the workers are. However, as much as I’ve seen proponents advocate for a variety of rank-and-file approaches to organizing, what seems to translate most clearly and embraced most eagerly is the idea of taking a union-represented job and getting involved in the union with an eye toward contesting for power. I think this might be a waste of our opportunity. It’s another example of how many in the labor left have become the new traditionalists, just instinctively following the same formulas that have been tried and failed for the last forty or fifty years. Finally, thinking of Stanley Aronowitz’s personal account of his experience in Death and Life of American Labor, any leftists who did manage to take the reins of leadership would find themselves just as trapped by the system as everyone who has come before.99

I find a bit more promise in the work that some smart activists in the extant Industrial Workers of the World are doing. Within that would-be historical society, there are also some thoughtful comrades who spin off new organizing projects—like Brandworkers, the Burgerville Union, and the Jimmy Johns union—and support the workers in organizing something new while experimenting with protest tactics like quickie strikes and innovative boycotts.

If class-conscious left-wing activists intentionally took jobs in industries and at companies that are politically essential to be organized, but that no union is currently focused on—much as the Trade Union Education League (TUEL) activists of the 1920s “salted” the auto and steel industries—well, we might have the start of something.

With no union treasury to be sued and no clearly identified “leaders” to pin the blame on, cells of activists would have a much freer hand to get creative in their organizing and protest planning. Perhaps the least intimidating way to go about organizing at Amazon or within Google is to think small. Taking on the entire company all at once is too daunting a task, though we obviously have to get there. But what about your immediate co-workers in your department, your unit or team, or your building? What are small protests you can take to win the issue of the day, whatever the issue of the day is, be it bathroom breaks or building a database of faces for law enforcement?100

#### Multi-unionism is the only way to channel worker militancy into broader organizing.

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Exclusive representation is one of those areas where we have the power to make change. Exclusive representation is always in management’s interests. Now, it might be in many—if not most—current unions’ interests as well. But think of what it gives management: peace. Now ask yourself: Do most bosses deserve peace?

Exclusive representation forces unions to mediate innumerable workplace disputes in order to curate a smaller, prioritized list of changes that workers would like to see.

Exclusive representation allows an employer to settle the items on the whittled-down list of demands and let them stay settled for years. They remain settled because every worker is bound to the terms of a no-strike clause that is only enforceable through the principle of exclusive representation. And, ultimately, most employers don’t have to deal with any union at all because of the rigged rules of NLRB certification elections—elections that are only necessary if a union is seeking to be the exclusive representative of all the workers in a bargaining unit.

Our movement needs some leftist experimentation with minority unionism, be it in new organizing campaigns or in breakaway rebellions within legacy bargaining units. And, thankfully, we finally have a left that is worth speaking of! That, in and of itself, was the other major impetus I had for writing this book.

I became a teenage socialist in the 1990s, when a couple hundred younger workers joining left organizations was considered a B.F.D. Today, that many join the movement every couple of days. For the first time in forever, we have a socialist left in the United States that is growing, dynamic, and contains the potential to change the world for the better.

The last thing that these new comrades should do is surrender to the “it is what it is” way of thinking about unions and the labor movement. I don’t only mean following the rigged rules of the “official” NLRB-sanctioned labor relations system or succumbing to “business unionism” as usual. I’m also worried about too many of us following old formulas of salting traditionally organized industries, waging opposition caucus fights within the too-few surviving unions, or simply following the best practices (as they are currently known) of comprehensive strategic campaigns driven by union staff. All of that has its role, but none of it adds up to the complete solution to the labor movement’s woes.

The opportunity of the moment calls for activists to take (or remain in) jobs in the unorganized industries and to experiment with new (or abandoned) forms of worker protest, like sabotage and quickie strikes. The opportunity of the moment calls for bolder demands for workers’ rights and workplace governance. The opportunity of the moment demands a program of popular education to get the working-class majority to see that our power is rooted in the work we do and our occasional refusal to do it.

#### 3. Enforcement. Normal means includes reforming the NLRB and patching loopholes.

Shaun Richman 20. Organizing director at the American Federation of Teachers, Ph.D. in American Studies from the University of East Anglia, M.S. in labor studies from the University of Massachusetts Amherst. "And We Have to Fix the Labor Board…" *Tell the bosses we're coming: a new action plan for workers in the twenty-first century*, ch. 10.

It’s clear that policies, rules, procedures, and staffing are crucially important “minor” details that deserve major attention when we finally get to amending the National Labor Relations Act. Veterans of the NLRB and other experts should certainly weigh in on any reforms of the Act, but here are a few thoughts I have about what should be under discussion.

For starters, there is an asymmetry between management’s ability to force their objections into the courts and that of workers. Unions are generally dependent on getting the support of the progression of NLRB staffers, administrative law judges, regional directors, the NLRB general counsel, and finally the National Labor Relations Board itself, before finally getting into federal court to compel a boss who has refused to voluntarily settle or comply with the NLRB’s orders. Compounding this is that all levels of the NLRB bureaucracy are massively understaffed, which means the process moves at an excruciatingly slow pace and involves increasing pressure on unions and workers to take a weaker settlement for expediency’s sake. A boss, on the other hand, has to simply keep saying, “No. We disagree,” and the entire NLRB process glides its way into the courts where employers will argue against the very constitutionality of the Act.

So, one strategy is to find some language, like the instructions to the NLRB to ignore Supreme Court precedent, that sets a higher bar for the federal courts. Another is to give unions a clear shot at taking their challenges to employer lawbreaking directly to the federal courts. One model to look at is California’s Private Attorney General Act. By the time you’re reading this, there may be other states that have passed similar statutes. It allows private individuals—often, groups of individuals organized by workers’ centers—to sue companies for wage theft or discrimination using the power of the state. It does require some sign-off by the state that the case has merit so that the Attorney General is justified in “deputizing” the plaintiffs.

A private enforcement mechanism in the NLRA would still require some investigation by the NLRB’s staff, as well as hearings and briefs that provide an employer an opportunity to defend its position within an NLRB process. But once, say, a regional director has issued a decision, the union would have the option of taking the employer to court at its own expense but with the legal powers of the NLRB to win speedier justice.

This would also likely lead to quick settlements of more cases. Employers that know an unfair labor practice charge has merit and that the union is willing to pay to go to court over it are going to be more willing to cut their losses and make reasonable settlements. It could significantly free up resources at the NLRB as fewer appeals would be lodged within the system. Nevertheless, it is essential to increase funding and expand the staff of the NLRB if we’re going to reform the organization itself. There should be enough investigators working at the agency to not just get to the cases that come before them in a timely manner, but also to go out and find unfair labor practices that are taking place at non-union workplaces all the time.

An agency that in some corners of the country can be a bit moribund requires an infusion of fresh blood. There are thousands of union organizers who have burned out and no longer work for unions. They are subject-matter experts on the ways that employers break and evade the law, and they are passionate advocates for justice. Swelling the ranks of the NLRB with crusading investigators would change the culture of the agency for the better.

The Board is tied up in knots over three-quarters of a century of precedent. They’re supposed to retain legal consistency, but that is simply impossible with the way the economy has totally reordered itself and how Republican appointees have consistently tried to hamstring the Board’s mission to encourage collective bargaining.

Does fixing the National Labor Relations Act’s preamble to return it to an active and unqualified statement of workers’ rights, with a mission to encourage collective bargaining, free the Board from bad or useless anti-worker precedents? Does the “not bound by a previous decision of the board or any court” language do it?

Because the NLRB needs a freer hand to restrain employers from conducting unfair labor practices, from issuing bargaining orders, from certifying unions through card-check elections, and from recognizing micro and minority bargaining units, we need an NLRB that will embrace whatever it takes for workers to have a voice. This includes the power to issue financial penalties to union-busting employers that should serve not just as remedial justice but as a powerful disincentive for employers to break the law. The law should be amended to give the NLRB the explicit authority to issue penalties as it sees fit, No guidelines, no hard dollar limits, just their expertise and their charge to protect workers’ rights and encourage collective bargaining.

#### Imagining an end to exclusive representation is the first step toward actualizing it.

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Back to the Future of the Past

Let’s do some more sci-fi thinking and imagine a world in which the National Industrial Recovery Act (NIRA) was never declared unconstitutional by the Supreme Court. The Act was the signature initiative of Franklin Delano Roosevelt’s first New Deal, and it was the administration’s first stab at labor law. The law’s major goal was to get companies to stop their race to the bottom on prices and wages, which was worsening the economic crisis. Those that complied displayed a Blue Eagle on their products and advertising.

Again, this law is where that Section 7 “right to organize” originated. But it’s the tripartite industrial boards that are of interest in this section.

The National Labor Relations Act is often misunderstood as the “replacement” of the NIRA. Roosevelt signed the labor act a few weeks after the Supreme Court—which simply abhorred any federal intervention in the magic of the broken and depressed marketplace—overturned NIRA. But the bill was drafted by Senator Wagner with the expectation that the new law would exist side by side with the federal industrial labor boards, as well as the state-level wage boards that had proliferated in the first New Deal. It was meant to be an enforcement mechanism for Section 7’s “right to organize,” by outlawing pervasive union-busting techniques and threatening the power of the state to restrain “unfair labor practices.” Significantly, all it demanded was that employers bargain in good faith when workers declared themselves to be a union.

In our alternate universe, John L. Lewis still signs a members-only collective bargaining agreement on behalf of the Steelworkers with the massive US Steel corporation the day after the Supreme Court rules the NLRA constitutional.112 The union could then have used that base of power to pressure the steel industrial board to extend their wage and hour gains to the “little steel” companies. In any universe, “little steel” would violently resist unionization for years until they were forced into collective bargaining by the federal government’s need for smooth wartime production.113 At least with the wage board, the workers would have made tangible gains earlier, joined the union in greater numbers, and taken on the steel industry as a class.

Some of these vestigial state wage boards still exist. For the same reason that the National Labor Relations Act was rooted in Congress’s authority to regulate interstate commerce—that reason being to try to find an argument for constitutionality that the conservative Supreme Court would accept—so too was the minimum wage. But until the civil rights era, interstate commerce had a much narrower definition. A hotel, for instance, sitting entirely within the boundaries of one community, was not considered to be under federal jurisdiction. So progressive states passed baby Wagner Acts and created tripartite wage boards to deal with minimum wage and overtime protections.

University of Michigan law professor Kate Andrias has tried to shine a light on the extant wage boards still on the books in states like California and New Jersey. She proposes that they could be used to pioneer a new form of social bargaining in the here and now. This is not pie in the sky. Governor Andrew Cuomo dusted off New York’s wage board system in response to the Fight for $15. He was looking to take some heat off himself, and it was by no means assured that the public and industry representatives on the fast-food wage board would approve a full wage increase to $15 an hour. But the union ran a smart campaign and won.

Toward Federal Industrial Labor Standards

So how about bringing back the Blue Eagle for labor relations? We need a new federal system of tripartite industrial labor boards that cannot just raise the minimum wage for particular job categories and economic sectors but also settle big ticket work rules and benefits across entire industries and take those issues out of competition entirely.

It’s easy to be cynical about Democratic politicians and their willingness to break a sweat on behalf of the legal rights of the American worker. The phrase that’s perhaps most commonly mumbled under the breath of union lobbyists on Capitol Hill is “The Democrats don’t love us as much as Republicans hate us.” And, yes, that kind of lazy lesser-evilism has freed two decades of political hacks from having to engage in the kind of nitty-gritty details I’m trying to draw out in this book, or from working particularly hard to free us from this trap that they had no small role in baiting.

But something has changed. There have been too many election nights that went drastically against Democrats’ expectations. Centrist politicians and shapers of public opinion who have hardly been friends to the working class are slowly waking up to the role that unions play in political education and voter turnout. The Trump moment was particularly disastrous. By around March of 2017, when the dust settled and it was clear that while Trump might be too stupid and lazy to overthrow our democracy a lot, Democrats on Capitol Hill finally had their “Oh shit” moment (to quote one staff member of a U.S. Senator and 2020 Democratic candidate I spoke to). Trump might be temporary, but if Democrats begin to grasp that if they can’t assemble a robust and durable coalition of voters, centered on working families of all races and deliver real wins for working families, they are doomed to get turned out of office all over again in 2022 by a racist and demagogic death cult.

How do I know? Because I started getting calls from staffers of marquee progressive names in the House and Senate. And I’m nobody! That’s how desperately they’re casting about for good ideas. And that’s how cautious and conservative unions had gotten about proposing reforms. At least that was a few years ago. Watching even the centrist candidates in the Democratic primary endorse reforms like just cause and wage boards have opened some unions to the possibility of demanding more.

So what to do with this realization? Well, let’s stop nibbling at the edges of workers’ legal rights with narrow technocratic “fixes.” Consider the Employee Free Choice Act, for example. The basic theory of the Act, as best as I can understand it, was that card check and compulsory arbitration of first contracts would somehow lead to rapid increases in union density and put unions in a position of power to demand greater improvements in the labor law regime.

Apart from how little sense that makes from anyone who’s been in the trenches on new union organizing campaigns, the theory also suffers from a basic political miscalculation.

In our current system, unions organize from a position of strength. That means that in our winner-take-all system of exclusive representation on the enterprise level, unions will tend to focus on non-union firms in already heavily unionized industries and markets. And that means that card check would lead to union organizing gains in a handful of deep blue states like New York, New Jersey, Illinois, and California.

There are states where right-wing media stoke popular resentment toward unions as islands of privilege. This gave the space for accidental Republican governors like Wisconsin’s Scott Walker or Michigan’s Rick Snyder to gut public sector collective bargaining and to sign private sector right-to-work laws. These are states where milquetoast Democratic governors like New Jersey’s Jon Corzine and Illinois’s Pat Quinn slashed hard-earned public sector pension and health care benefits and then lost office to otherwise unelectable schmucks like Chris Christie and Bruce Rauner because they had thoroughly demoralized their base by slashing their benefits and campaigning on the threat that the next jackass would do worse.

So let’s embrace partisan cynicism. What sense does it make to add thousands more new union members merely to the handful of states where unions are still powerful and exercise an inordinate amount of influence that seems to engender resentment from our purported political friends?

So if this “oh shit moment,” as we might call it, has any political force, it’s twofold. First, any political ask that we have of the Democratic political establishment needs to put thousands of new union members in every state of the union as quickly as possible. If there were a new industrial labor board that could raise wages in the hospitality industry overnight, then it would make sense for UNITE HERE to deploy full-time organizers to, say, New Orleans, to build a base of support to win those wage gains. And if there was an education labor board that could shore up pension obligations and force school boards to enact reasonable paid family leave policies, then it would make sense for the two major teachers unions to double down on their organizing investment in Louisiana. And if there were a telecommunications labor board, then maybe the Communications Workers of America (CWA) would see fit to send another half-dozen organizers into the small towns of Louisiana where various subcontracted call centers have set up shop, secure in the belief that they are beyond the reach of unions under our current labor relations model. Having a couple dozen full-time organizers from just those four unions would create an unforeseen multiplier effect as neighbors who had good organizing conversations with staff organizers or co-workers would have more good organizing conversations with neighbors, co-workers, and family members.

**<Condensed>**

Louisiana was a swing state until neoliberal Democrats teamed up with G. W. Bush Republicans to fire all the teachers in New Orleans public schools. That busted one of the biggest unions in the state—and, not coincidentally, one of the biggest institutional legacies of the civil rights era—the United Teachers of New Orleans. They had around 10,000 members before Hurricane Katrina. Are 10,000 new union members enough to turn Louisiana back into a swing state? How many new union members could four international unions deploying a few dozen organizers gain in a system where they’re agitating for immediate wage and benefit gains on an industry-wide basis with immediate access to payroll dues deduction? And what if we repeated that experiment in every state of the union? Secondly, a system of industrial labor boards creates the possibility to make real wage and hour gains for workers quickly. Like, before-your-reelection fast. Do you want to win office and stay in office and have a bigger voting bloc in the next legislative session? Well, put money in workers’ pockets. Right now. Yesterday. Give them free stuff, sure, but also give them the power to take what they deserve—what they earned—from the boss. Two Against One? American trade unionists might hear “tripartite” and think, “Oh great. Two votes to one against the workers.” But think of it this way: what do you call a group of decision-makers who could vote to give you and your peers a wage increase or fairer scheduling practices or the right to several weeks of paid family leave but resists doing so? I call that a boss—a big one that we can run campaigns against. Except unlike in our current system, where workers are siloed in their bargaining relationships with individual employers, unions could take on entire industries as a class. As this idea gets bandied about among union leaders and think tankers in Washington and up and down the Acela corridor, there are many people who struggle mightily to keep it within a two-party bargaining framework (or “bipartite,” if you’re curious). Let me just say something slightly heretical: What if surrendering bargaining power is a step toward freedom? I don’t mean to give up on collective bargaining entirely. Again, I think a reformed structure of NLRB-certified collective bargaining still has a role in the economy, and there are a great many workers who want to be able to bargain over shift assignments, uniform dry-cleaning allowances, and health and safety initiatives. As discussed in the first two chapters, there are political dynamics of collective bargaining within a framework of exclusive representation that are in the bosses’ interests, far more than they are in those of the unions. The dynamics of our routine of collective bargaining are such that bosses get way more credit for workers’ contract wins than they deserve, and unions take way more blame for concessions than they deserve. The unions are the ones that take the deal. They’re the ones that settle. And as soon as the ink dries on that bottom-line signature they have a political need to go out and sell that deal to their members as the best they could get. This dynamic is the same regardless of whether it was some sweetheart deal cut in a back room or a hard-fought win after a long drawn-out strike with no shortage of rank-and-file input. The boss? He just gets to endlessly badmouth the deal. He can immediately turn around and complain that what he voluntarily agreed to is going to bankrupt him and might lead to layoffs. He can grouse that he wanted to do more for certain categories of workers—merit pay or targeted raises—but the stupid union leaders wouldn’t let him. In the non-bargaining scenario of industrial labor board rule-making, this script is flipped. The unions demand, say, $15 an hour. Hell, let’s demand $25 an hour. If the labor board votes to increase an industrial minimum wage by anything at all—a dollar, fifty cents—the unions can claim a win. It’s money that workers wouldn’t have made if the unions hadn’t pressed the demand and if they hadn’t waged a campaign. But the unions are also free to charge that those cheap greedy bastards still aren’t giving us what the workers deserve. It’s more grist for the mill for a membership drive. We need your support so that next time we can win the minimum wage that we deserve. Join us, wear this button, pay your dues. It’s important that these industrial labor boards do much more than establish minimum wages. First of all, Congress can do that. (I mean, technically they can. Obviously their track record of doing so has been less than stellar.) Let’s tap into the expertise of a worker representative who has done the work and an employer representative who has 20,000 incredibly specific fears about unintended consequences of any new policy or regulation. More important, let’s give workers issues to rally around that could not be solved by bosses alone and that are put into competition by companies who try to gain an edge over each other by exploiting their employees. How about paid family leave for teachers? There is considerable inequality in such leave between suburban and big city school districts. Some provide paid leave, but not all. In many places, a new mother has to take an unpaid leave of absence. Charter schools are driving down what standards exist, treating new parents like thirty-year-olds in Logan’s Run. If there was an education labor board that could make a minimum enforceable standard of paid leave for new parents, there would be many teachers who rush to build the campaign to win it. And that raises some questions: How do you carve up the economy into distinct industries? How many industries? How many boards? Would an education labor board also cover higher ed? Would it go from pre-K to postdoc? Would bus drivers be under its jurisdiction or a transportation labor board? I don’t know. It seems to me that there would need to be some flexibility built into this system. Perhaps the boards have the authority to create subcommittees or to designate authority for a subset of workers to another board for questions where that other board might have more technical expertise. Regardless, the principle has to be that we’re all in. Whatever your craft or profession, regardless of part-time or temporary status, regardless of whether you work for a Fortune 500 firm or a subcontractor of a subcontractor, there is an industrial labor board that can vote to raise your wage and a union that wants you as a member. Let’s Spitball a Few More Scenarios Let’s imagine a hospitality industry labor board. What kinds of companies are covered by the hospitality board? Well, hotels and restaurants for sure. Maybe fast food is under the jurisdiction of a retail industry board, or maybe it’s spun off to a subdivision of hospitality. Is airline catering here, or under transportation? Again, I would expect a certain degree of forum-shopping by the employers as some industrial boards prove to be particularly deft and aggressive in improving standards for workers, while others might be less aggressive on sectors that are outside of their bread and butter or have weaker unions. For now, let’s think about hotels and restaurants where there is a long history of worker organizing efforts and some pockets of union strength. This labor board could do anything from raising the minimum wage of hotel housekeepers to abolishing the practice of tipping in restaurants. It could, and should, take on more than mere paycheck issues. It could ban “clopens,” which is the practice—more prevalent in fast food and retail—of assigning an employee to work the first shift of the day after she just finished the last shift of the night before, leaving little time for rest between closing and opening. It could take on issues of harassment in the workplace like granting cocktail waitresses the right to refuse to wear “uniforms” that are too sexually exploitative. Or it could extend a standard that unions have managed to win here and there through collective bargaining, but is a necessary right and a fight that would resonate across an industry. A good example would be mandating that all hotels—not just the union shops that have won it so far—install “panic buttons” for housekeepers to call for help when a customer is being creepy or aggressive. The workers’ representative on the board—nominated by the secretary of labor or the White House or anybody with the appropriate authority and picked from among the handful of organizations that represent hospitality workers—could force a vote on any of these issues. Maybe it’s on a schedule, maybe it’s on demand, maybe there’s a limit of how many new issues can be raised in a year. Regardless, once a vote is scheduled on an issue of importance to the workers in the industry, every union and workers’ center with an organizing stake in the industry would agitate for a yes vote. What would this look like? Surely there would be a lot of petition-signing (on paper in the shops, as well as online) and asks to call or email the industry and public representatives on the board. Hopefully, there would be some visibility actions—buttons and T-shirts and that kind of stuff. Rallies and hand-billing in key locations. Every union and worker center campaigning on the issue should definitely be organizing workers into dues-paying membership. One would expect the unions would have an analysis of which major employers would have the most outsized influence on the other two board members and target them for disruption—including slowdowns, consumer boycotts, and rolling strikes. When the industrial board finally votes, maybe the unions win their demand. Maybe the board goes for a compromise measure—a $1-an-hour wage increase where the demand was for $3, for instance. Or maybe the worker representative gets outvoted and the workers get nothing. The unions have still gained members in new shops, and there might be enough activist energy at some of those shops to run an organizing campaign to win collective bargaining through the NLRB or some other method. Let’s consider a more concentrated industry. What if there was a telecommunications industrial labor board? Again, this could have jurisdiction over everything from whoever owns Ma Bell’s ancient network of copper landlines to cable and satellite TV providers to whatever the hell gets Netflix in front of people’s eyeballs that isn’t Ava DuVernay. But let’s narrow our focus to cellular phone companies, of which there are basically four that dominate the industry: AT&T, Verizon, T-Mobile, and Sprint. I type these corporate names fully convinced that I’ll have to revise this section before this book is published, or else this will be the first handful of paragraphs to be hopelessly outdated a few years later, given how rapidly this industry is consolidating and transforming. But, as of this writing, only one of those major cell phone providers is—within the limits of our peculiar union shop—more or less fully unionized. That’s AT&T. The union that represents AT&T—the Communications Workers of America (CWA)—also represents much of Verizon’s hard-line phone and cable business, and has had a doggedly persistent organizing campaign among the corporation’s wireless workers for well over a decade. They’ve also tried a number of approaches to organize T-Mobile’s workers, including a voluntary associate membership program that is still ongoing. So let’s imagine a world where CWA can leapfrog their AT&T Wireless collective bargaining demands (and wins) into campaign demands against the telecommunications industrial labor board. Should CWA demand that the telecom board set a wage scale for the entire industry that’s at least as high as the AT&T contract? Sure, but why not demand higher? Why should the AT&T workers care about what particular mechanism—bargaining over a soon-to-be-expired contract or a wage standard set by some public board—got them more money in their pockets? How about pressing the industrial board for a rule that all customer service workers should be based in the United States and also subject to an industrial minimum wage scale? Or abolishing sales quotas in the stores? So again with the petitions and buttons and dues authorization cards and consumer boycotts and rolling one-day strikes. But here’s where the fun starts. When does CWA hold back a demand on the industrial labor board in order to line it up with the AT&T contract expiration? When does it take a demand to the AT&T bargaining table first, and concentrate its protest activity on one of the other three companies while making a recent AT&T settlement the new demand before the industrial board? Win, lose, or draw, the workers in cellular are fighting for their demands as a class against the entire industry. Regardless of outcome, we’ve turned what is currently an inexact and opaque process—the “spillover effect” of union contract gains being matched by non-union firms—into something more direct, and far more obvious and worthy of solidarity activism. Beyond that, how many cycles of leapfrogging the contract bargaining at AT&T with the targeted protest actions at the other big three before, say, Verizon starts feeling out CWA about a neutrality agreement so that they can get in on some of the sweet, sweet no-strike action that AT&T has enjoyed for two or three years at a time?

**<Integrity Returns>**

Betriebsverfassungsgesetz

Industrial labor boards would be an all-in system of labor relations, but it’s very much a macro-economic representation. Workers need, want, and deserve micro-economic representation. They want representation that is focused on the nitty-gritty, day-to-day decision-making at their individual workplaces. Moving toward an all-in system of workplace representation—one where employees in every workplace simply enjoy representation on day one with no debate or vote on the fundamental democratic principle that all workers in all workplaces deserve representation—might require slaughtering the sacred cow of exclusive representation.

Unions must be political organizations. We shouldn’t run away from that fundamental necessity. Unions need to have and express viewpoints about the work that members do (or refuse to do), the priorities, products, and business practices of corporations, as well as the politicians that those corporations buy and sell.

#### The employment relationship is key. Bosslessness dooms productivity.

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The book’s second half explores when, why, and how managers and hierarchy work to create value, even in networked and knowledge-based organizations. Foss and Klein draw on academic titans like Max Weber, Chester Barnard, Ronald Coase, Alfred Chandler, Herbert Simon, and Oliver Williamson to unpack what is really going on here. Collectively, the accumulated science of organization developed by these academics and others illuminate that much of the benefit of hierarchy—and, hence, managers—comes from its ability to facilitate coordination and cooperation.

To explain this benefit, Foss and Klein draw attention to two factors about competition in our modern economy. First, knowledge is a key competitive resource. Second, innovation is a central feature of this competition. Combined, the authors claim that these factors create “strong elements of surprise and firms must be quick to react in the face of major, potentially disruptive changes” (p. 136). Here, I emphasize a third and additional factor, which is more about how value is created in modern organizations than about competition: people, tasks, and processes are often highly interdependent or tightly coupled. This tight coupling implies that adaptation (reactions in response to a surprise) is needed at the person, task, or process level, then many other adaptations throughout the organization also need to be made, generating high demand for coordination and cooperation to facilitate these changes. These three factors are so important to understanding the rest of the book and I introduce an extended example to illustrate them.

Consider an organization comprising two people working together diligently on a project in which all tasks are tightly coupled. Assume that the tasks and process are wellplanned, and each person’s time is fully allocated. These workers are coordinated (they have a plan and process that lists, sequences, and allocates all tasks that each must complete) and collaborative (they have good working relations and are primarily committed to the joint goal of finishing the project on time).

Now assume that one worker discovers that one of their tasks will take longer than planned, and that heretofore unplanned tasks are needed to complete the project. Or consider a customer now wants additional unplanned features in the project, or another urgent project comes along demanding time and attention. Call these unanticipated situations “disturbances” or “mini-shocks” to the worker. Not only must the worker create a new plan of tasks and process but also the other worker will be affected by the new plan and therefore needs to do the same if the project is going to be completed efficiently. With tight coupling of tasks, a disturbance in one job creates ripples that affect other jobs requiring coordination and collaboration from both workers. The ex post (after the disturbance) time, effort, and opportunity costs of replanning of people, tasks, and process can be thought of as governance costs. In my view, managers matter because under many conditions they minimize these governance costs which would be substantially larger without them. Let’s explore these governance costs further.

Suppose these two workers are organized as a flat and bossless organizational structure. In such a case, a disturbance will require them to explore all the unplanned adaptations needed and negotiate and plan a revised set and allocation of tasks and process between them. The workers are likely to adapt effectively to this unplanned work with relatively low governance costs if they have the same goals, display an ability to effectively communicate with each other, and possess sufficient cognitive abilities and training to identify challenges and plan, sequence, and negotiate task and process allocation. This replanning of unplanned work implies substantial governance costs even when the illuminated conditions exist.

If, instead, the workers have different goals, have poor communication skills, use differing terminology, or cognitively view the situation differently, then conflict may obtain greatly increasing the governance costs of adaptation. How can these governance costs be reduced? A manager imbued with decision rights and conflict-resolution, problem-solving, and leadership skills could quickly resolve this conflict or perform all the replanning themselves to improve the effectiveness of adaptation so long as proposed adaptations are accepted by the workers. In essence, employing a manager could reduce governance costs compared to the flat, bossless structure, which could result in the organization to be far more adaptive to disturbances.

To embellish the example, now assume that the disturbance and needed ex post adaptation involves ten tightly coupled workers. A disturbance sparks the need for unplanned work that requires replanning of the allocation of tasks and process for all coupled workers. Anyone who has worked with a large group intimately understands that to develop a new list of tasks and their allocation along with a revised process in a ten-way negotiation is very difficult and costly. In some cases, replanning is practically impossible because of conflict among workers, which causes governance costs to soar in such situations. This conflict over replanning is more likely when (1) the tasks are complex, complicated, and coupled (lots of mutual adjustments among the ten workers are needed to adapt efficiently to a disturbance); (2) workers are boundedly rational and have different ideas on how to respond to the disturbance creating a source of conflict; and (3) at least some workers might be opportunistic in the sense that they could strategically use this replanning to pursue their own goals like getting out of tasks they do not want to do or capturing tasks they do want to do. These three attributes of the work environment make overcoming conflict a substantial challenge. Furthermore, the more frequently unanticipated disturbances arise, the greater can be cumulative governance costs. Therefore, as these attributes of the work increase, so too does the likelihood of maladaptation and excessive costs if the organization is flat and bossless. Management clearly matters and is organizational and economically valuable in such situations.

My extended example provides the foundation for the second half of the book which explores the conditions for which hierarchy is superior to bossless organizational structures for adapting to disturbances. Foss and Klein offer several questions that resonate with my example and respond with penetrating insights about when, why, and how leadership, authority, and hierarchy are useful.

Question: Why organize workers in a firm at all, especially when firms are criticized for accumulating too much power and for being a source of inequality, financial crises, environmental unsustainability, social disintegration, political and international conflict, and workplace disempowerment? Answer: Management, executive authority, and hierarchy facilitate efficacious adaption to the dilemmas and challenges of integrating complex activities and getting people with different motivations and interests to cooperate, especially when disturbances are common. Without these adaptations, the value created through products and services would be far more expensive if available at all.

### Plan---1AC

We think that:

#### The United States federal government should eliminate exclusive representation for workers in the United States and substantially enhance enforcement capabilities for collective bargaining rights.

### Compelled Speech Adv---1AC

#### Advantage 2: COMPELLED SPEECH.

#### The AFF strikes down exclusive representation on the basis that it compels speech.

Alexander T. MacDonald 24. J.D. from the William & Mary School of Law. "Union membership is now political. So can the government still require people to associate with a union?." Federalist Society. 7-8-2024. <https://fedsoc.org/commentary/fedsoc-blog/union-membership-is-now-political-so-can-the-government-still-require-people-to-associate-with-a-union>

The Webbs saw this coming. Writing in the late 19th century, Sidney and Beatrice Webb predicted that labor unions would evolve from private groups into quasi-governmental entities. At the time, the economy was industrializing, speeding up, and growing more complex. And that complexity was drawing government deeper and deeper into market regulation, especially in labor markets. The Webbs thought this regulation would eventually displace unions from their traditional roles. Unions would no longer be needed to bargain over wages and working conditions. Instead, they would act as the government’s eyes and ears. They would feed the government information and help it design new work standards. They would, in short, no longer represent workers; they would represent the state.

The Webbs were British economists; they were writing about late 19th-century England. But they could just as easily have been writing about the 21st century United States. Today, U.S. unions do less bargaining and more politicking. They fund campaigns, sponsor laws, and run political action committees, and they serve on quasi-governmental boards, where they write and implement sector-wide regulations. They have, in short, transformed from private bargaining agents into public interest groups.

That change could affect their legal status. Today, unions represent every person in a certified bargaining unit—even people who don’t want their services. But the U.S. Supreme Court has said that the government cannot force people to associate with political organizations. And unionism is, today, essentially a political cause. So it is no longer clear whether the government can still force people to accept union representation. Change has come to the labor movement; and a corresponding change may have to come to the law.

Political Evolution

Though it’s hard to imagine today, unions were once apolitical. The modern labor movement took shape in the late 19th century, when radical groups like the Knights of Labor gave way to more practical groups. Chief among them was the American Federation of Labor. The early AFL preached less revolution and more pragmatism. It knew that workers joined unions because they wanted to improve their material stations. They wanted better wages, shorter hours, and more benefits. They didn’t want to destroy capitalism, but to thrive in it.

That view was embodied by the AFL’s longtime president, Samuel Gompers. Gompers was the face of “voluntarism”: the idea that unions were better off when left to their own devices. Gompers said that if unions relied on government, they would become complacent, even weak. Political winds would inevitably turn against them. And then they would be exposed, powerless to stand on their own feet. So they would be stronger, he thought, if they held government at arm’s distance. They could recruit their own members, negotiate their own contracts, and earn their own advancement. They could find security not in city hall, but at the bargaining table.

That idea persisted long after it stopped reflecting reality. The New Deal brought favorable labor legislation and explosive membership gains. In 1932, just before the first wave of New Deal legislation, about ten percent of non-agricultural workers belonged to a union. Two decades later, after passage of the NIRA, FLSA, and NLRA, that percentage had tripled. Labor expanded into new territories, new professions, and new industries. And that growth changed not only its membership, but also its outlook. Some labor leaders started to see voluntarism as outdated—even a hindrance. If pro-union laws could boost membership so dramatically, was the government really so bad? When times were tough, why not turn to politics?

Later events only reinforced that view. Unions reached their peak in the 1950s, when they represented more than a third of all workers. But mid-century reforms—especially 1947’s Taft–Hartley Act—tilted the law back toward management. And at the same time, union membership began to erode. By the 1980s, labor’s share of the workforce fell to twenty-one percent. And by the turn of the century, it was scraping just ten. The percentage continued to creep down, hitting six percent of private-sector workers last year. So now, unions represent a smaller slice of the private-sector workforce than they did before the New Deal.

The causes of this decline are complex. Since 1950, the economy has come under pressure from competition, globalization, and trade. It has also been swept by technology and given birth to new industries—industries with no tradition of unionization. And it has moved steadily away from manufacturing and toward professional services. All these changes, especially the shift to services, have made unions’ jobs harder. It was far more efficient to organize one plant with four thousand workers than it is one restaurant with fourteen. So unions now spend more time and money to organize fewer and fewer new members.

Labor leaders often disagree about how to reverse the trend. Some have called for more organizing; some want to block international trade; some want to stand athwart the world and yell “stop!” But whatever their differences over tactics, they agree that the road back to power runs through politics. Since the 1990s, they have become some of the most country’s active political interest groups, now making up almost half of the top-twenty donor list. They have also run their own members as candidates, placing ideological fellow travelers in office. And they use their political leverage to pass a bevy of pro-union legislation. In recent years, this legislation has included sector-specific minimum wages, “labor peace” requirements, and bans on so-called captive audience meetings. It has also included “labor standards” boards, which give unions a place to “bargain” with employers and the government for sector-wide standards. The new laws have cost unions time, energy, and vast amounts of money. And increasingly, they are no longer a sideshow to traditional bargaining; they are the main attraction.

In fact, this emphasis on new laws and politics has bled back into what is left of traditional bargaining. Unions now engage in what they call “common good” bargaining. They bargain not only over wages and working conditions, but also broader social and political concerns. For example, some unions have demanded to bargain over affordable housing, tax reform, and Medicaid expansion. Others have demanded to bargain over warrantless searches, tuition assistance, and defunding the police. These demands expand bargaining beyond its historical confines—deliberately so. Unions think that they can gain more political leverage if they build a bigger political tent. And to do that, they have embraced openly partisan ideologies. They have become, in effect, just another color in the progressive political rainbow.

Constitutional Reverberation

That change is more than just a social curiosity; it also has constitutional implications. In Janus v. AFSCME, the Supreme Court held that the First Amendment barred public-sector unions from extracting “fair share” fees from nonmembers. A fair-share fee is a fee paid by a non-member to cover the costs of bargaining. The Court reasoned that bargaining with the government is always political, and the government cannot force a person to fund political positions. So fair-share fees were an impermissible political exaction. The Court added that because public unions were effectively political bodies, union representation itself burdened employees’ freedom of association. The Court did not, however, address whether that burden was constitutional, as no one in the case raised the issue.

Since then, employees have argued that exclusive union representation does violate the First Amendment. Exclusivity saddles them with the “services” of nakedly political bargaining agents. Lower courts have turned those arguments aside mostly because of an older case, Minnesota Board for Community Colleges v. Knight, which suggested that exclusive representation was okay in the public sector. Knight seemed to say that when the government bargains about working conditions, it can choose its own bargaining partner. And if it chooses one exclusive union to bargain with, that choice burdens no one’s associational rights.

But whether or not that’s what Knight meant, the decision has no bearing on private-sector bargaining. In the private sector, the government does not choose its own bargaining partner; it imposes one on private parties. And some of those parties object to their unions’ political views—views that are increasingly central to unionization itself. So private-sector bargaining raises a different question: can the government force private citizens to associate with a union when that union’s core purpose is increasingly political? (Elsewhere, I have argued at greater length that it cannot.)

That question will only grow more urgent. Unions show no sign of abandoning politics anytime soon. They routinely endorse candidates, fund campaigns, adopt policy platforms, and even bargain for political goals. Indeed, those activities have become their main focus. They are less like private bargaining agents, more like political action committees.

This is the labor movement the Webbs envisioned. Voluntarism is dead, and traditional bargaining isn’t so far behind it. The future of the labor movement is laden with politics. And given that political weight, it is no longer clear whether our old legal structures can stand.

#### Compelled speech jurisprudence specifically in the context of labor spillsover.

Alexander T. MacDonald 22. J.D. from the William & Mary School of Law. "Secondary Picketing, Trade Restraints, and the First Amendment: A Historical and Practical Case for Legal Stability." *Hofstra Labor & Employment Law Journal*, 40.1, 1-6.

The point is that no constitutional rule stays in its box. Judicially created rules morph and spread beyond a given case. Pro-picketing academics might want to limit their exemption to secondary labor picketing. But constitutional rules don't work that way. There is no constitutional right to picket; there is a constitutional right to free speech. And once we say that secondary picketing is protected speech, we have to explain why other trade restraints are not. Businesses can invoke the constitution just as well as unions can. And the results may not be the ones the pro-picketing advocates intended.

CONCLUSION

Legal change is by definition disruptive. Every time we change the rules, we upset someone's expectations. That doesn't mean that the law should stand still. But it does mean that before we make a change, we should understand why we have a rule in the first place. We should understand its place in history and be sure that we can account for the costs of the change.

And to be sure, there will be costs. As Thomas Aquinas wrote so many centuries ago, every change diminishes the law's power. Change itself costs us something in legitimacy. So it is incumbent on those who want the change to show how they will contain the fallout.

To date, the pro-picketing advocates haven't done that work. They haven't shown how their theory squares with history. Nor have they offered any plan to contain their rule to secondary picketing. More likely, their rule would reverberate throughout labor law. And it might even shake the foundations of the law of trade restraints. That's a big risk, and justifying it is a tall order. Until the pro-picketing advocates meet their task, courts should resist their calls.

#### And the plan’s scrutiny ripples through First Amendment doctrine.

Thomas A. Berry 25. Director of the Cato Institute's Robert A. Levy Center for Constitutional Studies and editor in chief of the Cato Supreme Court Review. "The Supreme Court Grapples with Free Speech Scrutiny." Cato Institute. 1-16-2025. https://www.cato.org/blog/supreme-court-grapples-free-speech-scrutiny

Justice Elena Kagan elegantly summarized the two options, noting that “there are possible spill-over dangers either way.” First, there is “the spill-over danger of you relax strict scrutiny in one place, and all of a sudden, strict scrutiny gets relaxed in other places.” Alternatively, “you treat a clearly content-based law as not requiring strict scrutiny, and all of a sudden, you start seeing more content-based restrictions that don’t have to satisfy strict scrutiny.” So, if courts are to leave the door open to upholding some laws that place barriers on access to adult content, “Does it happen by notching down the strict scrutiny standard, or does it happen by saying, for some reason … this set of restrictions comes outside it?”

Justice Kagan wasn’t the only justice with strict scrutiny on the mind. When a US government attorney argued that strict scrutiny should apply but that some state laws that age-gate adult content online could potentially satisfy strict scrutiny, Justice Clarence Thomas asked, “So do you think that it’s appropriate in this context of protecting children to compromise the strict scrutiny standard?” And Justice Amy Coney Barrett remarked that she “share[d] some of Justice Thomas’s discomfort with watering down strict scrutiny.” Echoing the conventional wisdom that strict scrutiny is nearly always insurmountable for the government, Barrett observed that even though the Texas law’s challengers had “left open the door to the possibility of [an age-gating law] satisfying strict scrutiny … you know, come on, fatal, in fact.”

The lawyer representing Texas and defending the age-gating law similarly invoked the “fatal in fact” truism as a reason for the Court not to impose strict scrutiny, remarking, “There’s a whole bunch of law on strict scrutiny, and a whole bunch of different judges across this country are going to apply it. There’s a bunch of cases that say fatal in fact. And we’re going to have a lot of [preliminary injunctions] and a lot of emergency litigation. That’s a problem.”

Which is more dangerous for the future of free speech: adjusting legal doctrines so that fewer laws are subject to strict scrutiny or adjusting strict scrutiny itself so that more laws can survive it? In my view, the more significant risks would come from holding laws like those at issue in TikTok and Free Speech Coalition to not even trigger strict scrutiny. The legal doctrines that determine which scrutiny to apply are intentionally general and wide-ranging so that courts can predictably adapt them to novel cases. Creatively interpreting these doctrines to exempt one law from strict scrutiny could cause unintended side effects that eventually result in a wide range of other laws escaping strict scrutiny review. (As I note today on the Cato Daily Podcast, a decision holding that TikTok has no right to collaborate with a foreign company could be used to justify a ban on American film companies collaborating with foreign effects studios.)

#### The compelled speech doctrine is key:

#### 1. Associational freedoms solve nuclear war.

Zsombor Rezsneki 24. Ph.D. in outer space on geopolitics from the Doctoral School of Military Science, J.D. from Ruhr University Bochum. "The Employment of Nuclear Weapons, Constitution and Society." *Hadtudományi Szemle*, 17.1, 98-99.

My second hypothesis exists together with the first. People are key players in this. The people has the right to know the imminent danger. The question is whether the people can take part in the decision-making procedure on launching nuclear attack.

If we think about a common solution to the first hypothesis, including ’No First Use’, we could regulate the use of nuclear weapons, and thus the legislative power could establish a channel to keep the people informed. From the perspective of the individual, if we decided that the use of nuclear weapons should not be regulated at constitutional level, then an independent part of the legislature should establish a system deprived from constitution in accordance with the persons concerned. Nuclear weapons are not just weapons of mass destruction. No other chemical, biological or powerful weapons cause as much direct harm to the people as nuclear weapons. The affect refers to physical destruction and the mental health of mankind or small groups. Their use or threat of use can harm the integrity of our society. So we cannot leave people out of the decision-making process.

At present, due to constitutional regulation, the application of the atomic bomb is under the remit of the president who is the Commander in Chief of the Army and Navy according to the United States Constitution in Article II, Section 2 and the Supreme Commander in Chief of Armed Forces on the Russian Federal Constitution in Article 87. It means that the people has no power on nuclear issues. The Presidency decides the apply of nuclear weapons without the active consent of the people. Based on my hypothesis, the people should get more rights to take part in using a weapon which is capable of killing every known living creature within one hour after its launch. These rights also involve the knowledge of the situation step by step, which are leading to dangerous circumstances like this. The only thing that immediately affects every people is decided only by a few people.

The logical way the constitution delegates the use of nuclear weapon to the president is the question of the military aspect. In a democracy, everything is for the people and by the people. So, every single citizen have the right to know the integrity of the environment where they live. The Russian Federation Constitution involves it in Article 42 saying “[…] have the right to […] reliable information on the state of the environment”. And the United States Constitution can not secure the achievments set out in Preamble without the security of environment itself. Both constitutions are committed to protect human rights, particularly involving setting the right to life. By the way, it is not possible for the leader of any state to use nuclear weapons in the knowledge that a counter-attack could destroy lives and cause ecological catastrophe. The need for special knowledge possessed only by governments can no longer be supported by the militarian aspect of understanding the atomic bomb. Based on the above, the aftermath of a nuclear strike is the most trivial outcome for everyone. There is no excuse for leaving out those most affected. The use of a nuclear strike needs no tactics or consideration if the consequence is lethal. At present, I do not have in mind a direct referendum or anything like that, but the constitution should set out regulations on how to inform the people concerned.

On my second hypothesis, forged with the first hypothesis, I suppose that if the constitution regulates the launching issues of nuclear bombs such as “No First Use”, then the people automatically has the right to enforce the conditions of fulfilment of these issues. If the constitution concludes that the nuclear issues belong to the Presidency or to military decisions, the legislation has to ensure the people letting their own local agencies to be created to help the collection of informations on it. In the Amendment X of the Constitution of the United States and the Section 2 in Article 3 of the Russian Federal Constitution, local governments might be established. It means that every small group has the right to merge into their own self governments. The constitutions must be amended with the phrase of “people who has a right to know the state of situation which can escalate the use of nuclear weapons as totally suicide’. The people in a country or peoples interconnected among countries can maintain a channel to inform each others. I concluded that the secondary application, ’individually’ of my second hypothesis, is more consultative than the primer application ’together’ of my second hypothesis. Latter’s means on constitutional regulation the people can ask and interprete the leaders on federal and state levels. However, the decision remains to Presidency as right of exlusivity. Former’s means the people can intervene into the deceision making procedure of military. The question of nuclear arsenal will be a shared competency.

We have to clarify why the leaders should introduce the people into the decision-making procedure. To a further extent, we have to check the constitutions which establish the fundamentals of rebellion. The First Amendment to the U.S. Constitution gives people the right to peaceably assemble and petition governments to redress their grievances. The Russian Federal Constitution sets out the same on peaceful assembly in Article 31. People have the opportunity to express their concerns about nuclear weapons. They can also take actions against their government if it makes a decision with disastrous consequences.

#### 2. It drives effective social media moderation.

Henry Meyer 23. J.D. from the Mitchell Hamline School of Law. "Twitter Pill to Swallow: Compelled Speech Doctrine and Social Media Regulation." *Tulsa Law Review*, 58(155), 164-166.

III. CAN THE GOVERNMENT PREVENT SOCIAL MEDIA COMPANIES FROM CENSORING USERS?

This Part discusses whether, and to what degree, the First Amendment protects the right of social media companies to ban and censor their users. The goal is not to assess the constitutionality of every law or legislative proposal on the subject-no doubt there are certain proposals, both real and hypothetical, which would change or complicate the analysis. Rather, the purpose of this Part is to broadly examine how the compelled speech doctrine applies to laws regulating how social media companies police content on their platforms. For years, many politicians and commentators on the political right have accused social media platforms of anti-conservative bias in their content moderation policies. 94 To address this alleged bias, Republican lawmakers on both the state and federal level have introduced legislation designed to limit the ability of social media platforms to moderate content.95

At the federal level, these proposals generally involve amending 47 U.S.C. § 230 ("Section 230").96 Section 230 grants online platforms and providers civil immunity from (1) claims based on content posted by third-parties and (2) the platforms' decisions on how to moderate that content. 97 For example, lower courts have consistently held that Section 230 shields social media companies from liability for third-party posts that advocate for, or celebrate, violence. 98 Courts have also held that Section 230 protects online platforms from suits based on their decisions to remove or censor content that the platforms deem harmful. 9 9 Even if Section 230 were amended or repealed, the First Amendment may still protect social media companies from congressional attempts to regulate their content moderation policies. 100 As for state proposals, there is a question as to whether Section 230 would preempt state laws restricting social media platforms' ability to moderate content. 10 1 Again, that topic is beyond the scope of this Article, which is primarily concerned with the narrower question of whether such state laws violate the First Amendment.

Perhaps the best example of a law that clearly implicates the compelled speech doctrine is Texas' HB 20, which prohibits social media platforms from censoring user content based on viewpoint. 102 The statute provides, in relevant part, that "[a] social media platform may not censor a user, a user's expression, or a user's ability to receive the expression of another person based on: (1) the viewpoint of the user or another person; (2) the viewpoint represented in the user's expression or another person's expression." 10 3 In Netchoice, L.L. C. v. Paxton, the Fifth Circuit Court of Appeals upheld the constitutionality of HB 20 after an industry group brought a First Amendment challenge. 104 The court held that the statute neither "forces the Platforms to speak [n]or interferes with their speech." 105

HB 20 does not define "viewpoint," and so encompasses several types of expression that social media companies routinely censor. 106 For example, Twitter prohibits users from expressing certain bigoted viewpoints. 10 7 By preventing social media platforms from excluding speech that they do not want to be associated with, the bill compels the platforms to host third-party speech. 108 In applying the compelled speech doctrine to HB 20, I will use the six factors described in Section II.E as a guide.

#### Companies screen out extremist content globally in the absence of regulation.

Bennett Clifford 21. Senior research fellow at the Pgoram on at George Washington University, M.A. in law and diplomacy from the Fletcher School of Law and Diplomacy. "Moderating Extremism: The State of Online Terrorist Content Removal Policy in the United States." The George Washington University Program on Extremism. December 2021. extremism.gwu.edu/sites/g/files/zaxdzs5746/files/Moderating%20Extremism%20The%20State%20of%20Online%20Terrorist%20Content%20Removal%20Policy%20in%20the%20United%20States.pdf

Norms and Online Terrorist Content Removal Policy

As U.S. government officials consider methods of direct intervention to manage how social media companies use ToS enforcement against terrorist content, it must account for the growing role of intra-industry norms in company decision making. One important development of the past few years is a growing consensus among major American social media companies that they have a normative, collective responsibility to address terrorist content on their own platforms.26 It would be easy to dismiss this norm as an effect of another source of regulation, such as the market or the law, if it were not for several decisions made collectively by major social media providers that support this norm without furthering the companies’ economic interests or complying with legislation.

A growing consensus among major social media providers is that they have a collective responsibility, independent of legal, market, and architecture requirements, to remove terrorist content from their platforms and from the internet as a whole. This consensus is evident in efforts by the major providers towards intra-industry collaboration, coordination, and sharing of best practices amongst competitors large and small. They are also legally codified within the 2019 Christchurch Call to Eliminate Terrorist and Violent Extremist Content Online.27 The Christchurch Call, launched by the government of New Zealand in the wake of a 2019 terrorist attack against a mosque in Christchurch, New Zealand in which the perpetrator live-streamed his attack online, includes signatories from government and the tech industry who pledge to:

take transparent, specific measures seeking to prevent the upload of terrorist and violent extremist content and to prevent its dissemination on social media and similar content-sharing services, including its immediate and permanent removal, without prejudice to law enforcement and user appeals requirements, in a manner consistent with human rights and fundamental freedoms.28

Interestingly, when the Christchurch Call was launched in May 2019, the U.S. government was not among the initial signatories; the Biden Administration only recently signed the document in May 2021.29 Instead, the first U.S. entities to sign the pledge were Facebook, Twitter, Google, Microsoft, and Amazon.30 This timeline signifies the development of an industry-wide norm two years prior to a governmental norm, and is important because it establishes the fact that major social media providers made the decision to codify the norm even though there were no explicit requirements to do so issued by the U.S. government.

Two aspects of the Christchurch Call are exemplars of the norms shaping companies’ behavior in the field of terrorist content removal. First, normative guidelines tend to have the lofty objective of completely eliminating terrorist content from the internet as a whole, across websites, applications, and platforms. This goal is logistically impossible at the tactical level, but creates a linkage between terrorist content and other types of harmful content for which existing norms promote total elimination.31 Analogies between terrorist content and child sexual abuse material (CSAM) are especially common in this regard; the latter type of harmful content is subject to a tech industry community-wide consensus that it should be prohibited and completely removed from the internet.32 The argument from tech companies is less that the two types of content are analogous in their moral harm or in the demanded response, but instead that they are analogous in terms of the responsibilities that major companies have to remove them from the internet.

Moreover, by signing the Christchurch Call, major social media providers recognize that terrorist content online is a tragedy of the commons. Larger platforms have the ability to hire review teams, deploy top-of-the-line algorithmic detectors, and procure terrorism-related expertise.33 If implemented solely among individual companies, the individual responses may be sufficient to remove terrorist content from the larger platforms, but in so doing, may displace it onto smaller platforms. Smaller entities may lack the will, resources, or wherewithal to employ removal efforts, creating the commons problem.34 The Christchurch Call also binds companies to “support smaller platforms as they build capacity to remove terrorist and violent extremist content, including through sharing technical solutions and relevant databases.”35 This norm-based regulation encourages companies to share best practices in large, international fora that bring together large and smaller companies alike, in the hope of evenly distributing capacity to remove terrorist content.36

#### Unrestricted content unleashes far-right extremism.

Julie Chernov Hwang 25. Associate professor of political science and international relations at Goucher College, Ph.D. in political science from the University of Colorado-Boulder. "The Online Radicalization of Youth Remains a Growing Problem Worldwide." The Soufan Center. 9-9-2025. thesoufancenter.org/intelbrief-2025-september-9/#:~:text=Social%20media%20platforms%20like%20TikTok,these%20has%20a%20radicalizing%20effect.

Bottom Line Up Front

**•** The online radicalization of youth worldwide is a growing problem that policymakers and government officials continue to grapple with.

**•** Youth radicalization is not only a problem in the United States and Europe but also in Asia, particularly in South Korea, India, the Philippines, and Singapore.

**•** Social media platforms like TikTok, X, and Facebook enable violent extremists to recruit youths more expediently than in-person; algorithms channel those youths to more emotionally charged content; and online gaming enables both isolation and community building; each of these has a radicalizing effect.

**•** A public health approach where practitioners work to “inoculate” youths against extremism by providing knowledge, alternative narratives, and community is beginning to bear fruit, but funding cuts could challenge the initiatives.

Online radicalization of youth is a problem with global reach. A radicalization process that once unfolded over months or years now typically takes days or even hours, largely due to the prevalence of extremist short-form online propaganda. Right-wing extremism, left-wing extremism, nihilistic and “salad bar” extremism, and Islamist extremism all make use of social media to target and radicalize youths. According to the Global Terrorism Index, in the West, far-right extremism alone has risen 250% over the last five years.

Social media has enabled recruiters to bypass parents, educators, and community members who may have previously protected vulnerable youths. Platforms like TikTok, X, and Facebook enable extremists to access younger audiences, and algorithms channel impressionable youths to ever more emotionally charged content in order to maximize clicks and stays. While youth radicalization has been widely reported on in the U.S. and Europe, it is not only a Western problem. South Korea, Singapore, the Philippines, and India all report problems with rising far-right extremism. There is an extensive network of far-right extremist groups online in Southeast Asia that share appropriately contextualized content across social media. For example, the Philippine Falangist Front (PFF) is an online community of Filipino men that blends Spanish fascism with Catholicism; they meet on TikTok, Facebook, and Discord to lament the Philippines as a nation “in crisis” and share propaganda.

#### White supremacist terror causes extinction. Moderating online content is key.

Sneha Nair et al. 23. Former research analyst at the Stimson Center, M.A. in geography and international relations form the University of St Andrews. Anna Pluff, former junior fellow at the Stimson Center, M.A. in history from the University of Chicago. Christina McAllister,senior fellow at the Stimson Center, M.A. in international relations and international economics from the School of Advanced International Studies at Johns Hopkins University. "The Threat from Within: An Overview of the Domestic Violent Extremist Threat Facing US Nuclear Security Practitioners." Stimson Center. 11-2-2023. stimson.org/2023/the-threat-from-within-an-overview-of-the-domestic-violent-extremist-threat-facing-us-nuclear-security-practitioners

Executive Summary

The events of the 21st century have required a reimagining of how nuclear security practitioners perceive threats in the United States. With the rise of terrorism concerns over the last two decades came the increase in the security risk posed by non-state actors to nuclear facilities. Insider threats and non-state actors are the most persistent concerns facing nuclear security practitioners – but the notion of who or what constitutes a threat is so deeply rooted in antiquated understandings of an adversary, that the U.S. nuclear security regime as a whole has struggled to address the risks posed by domestic violent extremists.

The emboldening of non-state actors through the proliferation of accelerationist ideologies among domestic violent extremist (DVE) groups pose a threat, not only to national security, but to the nuclear facilities that make up part of the nation’s critical infrastructure. Compounding these risks are intersections of insider threats and accelerationism that demonstrate the shortcomings in the protective frameworks designed by the traditional national and nuclear security decision-makers in the United States. Traditional assumptions informing security priorities are no longer sufficient to address emerging threats and evolving operational environments, because they fail to adapt to new actors and shifting environments.

Illustrating the risk posed by DVE actors and the vulnerabilities that can be exploited by insiders is a crucial step towards redefining ‘threat’ and understanding why the status quo is insufficient in the current threat landscape. The January 6, 2021, insurrection at the U.S. Capitol revealed the flaws in a system designed to weed out unsuitable candidates for sensitive work protecting nuclear materials, weapons, facilities, technology, and personnel. Understanding the limitations of the current system and the efforts underway by federal agencies to mitigate the DVE threat to nuclear and national security is a critical first step in creating a more sustainable and resilient national nuclear security regime.

**<Condensed>**

Introduction In the aftermath of 9/11, the bulk of U.S. national security efforts – and subsequent nuclear security initiatives – were oriented towards protecting the country against a jihadist foreign terrorist organization and their efforts to cultivate homegrown violent extremists in the United States. These acts of terror were pivotal for the resurgence of nuclear security. The international community banded together against the proliferation of weapons of mass destruction with the adoption of UN Security Council Resolution (UNSCR) 1540 – acknowledging the devastating potential of non-state actors with malign intent acquiring nuclear, radiological, chemical, or biological weapons – supported further by UNSCR 1373 and the International Convention for the Suppression of Acts of Nuclear Terrorism.1 Initiatives like the Global Initiative to Combat Nuclear Terrorism and the G7 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction (Global Partnership) aimed to strengthen global norms to prevent, detect, and respond to nuclear terrorism through multilateral activities and assistance. 2 In the United States, this commitment to the physical protection of nuclear materials, weapons, facilities, technology, and personnel was no less salient – and the U.S. has proven itself a leader in nuclear security in light of the vulnerabilities it has faced at home. This led to nuclear security experts, national security advocates, and policymakers calling for stronger leadership and initiative to combat the threat of nuclear terrorism as not only a national security issue, but a regional and international security priority – and to place focus on the threat posed by insiders, rather than the traditional purview of external actors who could be deterred by ‘guns, guards, and gates.’3 Through the Nuclear Security Summits, 52 countries and international organizations produced over 1000 new nuclear security commitments over six years – resulting in the Amendment to the Convention on Physical Protection of Nuclear Materials entering into force, the creation of the International Atomic Energy Agency’s International Conference on Nuclear Security series, and the Fissile Material Working Group (now the International Nuclear Security Forum) for civil society advocacy and participation in nuclear security work. 4 However, attention on nuclear security has waned. And today’s shifting threat landscape challenges the nuclear security concepts of the early 2000s. Since 9/11, the nature of the threats facing the U.S. has evolved. Rather than focusing on international extremists with foreign ideological motives, federal agencies and law enforcement have begun to recognize the prevalence of domestic violent extremist threats to national security and critical infrastructure, including the nuclear sector. In 2021, U.S. Attorney General Merrick B. Garland and Homeland Security Secretary Alejandro N. Mayorkas identified the greatest domestic threat facing the United States as “racially or ethnically motivated violent extremists,” specifically highlighting white supremacists.5 While anti-government, white supremacy and neo-Nazi ideologues have long existed within the fabric of U.S. society, before 9/11, many of these extremist groups or individuals were mostly rejected or were confined to the fringes of the social order. Online extremism and the January 6, 2021, attack on the U.S. Capitol have raised these groups’ visibility, while social media tools have helped them to proliferate their ideology and coordinate effective messaging and tactics. This paper will examine how the events of January 6, 2021, have shifted understanding of U.S. national security threats, explore strands of DVE ideology that specifically target the nuclear sector, and present case studies of DVE actors relevant to nuclear security before laying out U.S. government approaches and challenges in addressing this type of threat. We conclude by positing that the security community has not sufficiently redefined threat and present case studies of DVE actors. The Domestic Violent Extremist Threat Post-January 6th and the Current DVE threat Many scholars have pointed to January 6th as the catalyst for renewed attention on insider threats and domestic violent extremism as national security priorities.6 Both the FBI and the Department of Homeland Security have since recognized the evolving threat landscape since 9/11 and national and nuclear security priorities have slowly shifted from its long-time focus on international jihadists and foreign radicalization, towards domestic terrorists. In the aftermath of the 1995 Oklahoma City bombing, the issue of “insider threats” was at the forefront of U.S. counterterrorism efforts, but failed to evolve in the post-9/11 environment.7 In the weeks following the siege, a new picture of the threat landscape emerged as the Department of Justice and FBI launched a nationwide effort to investigate the participants of January 6th. The investigation revealed that most participants were adherents of extremist ideology, many of whom were radicalized online and mobilized to take part in the insurrection. Some also adhered to a DVE ideology of concern for nuclear security, accelerationism, which is described in more detail later in this paper. What is concerning, however, is the original failure of the FBI to anticipate the Capitol attack in the first place. Before the end of the 2020 presidential race, a team of intelligence analysts tried to game out the worst potential outcomes of a disputed election. But they never thought of the one that transpired: a violent mob mobilizing to overturn the election in support of Donald Trump.8 Adam Goldman and Alan Feur write that the FBI was “[a]pparently blinded by a narrow focus on ‘lone wolf’ offenders and a misguided belief that the threat from the far left was as great as that from the far right,” thus, officials at the bureau did not anticipate or adequately prepare for the attack.9 This confirmation bias also failed to account for actors such as militia groups or white supremacists, who took a leading role in the Capitol siege. In May 2021, Attorney General Merrick B. Garland and Homeland Security Secretary Alejandro N. Mayorkas identified the greatest domestic threat facing the United States as “racially or ethnically motivated violent extremists,” specifically, white supremacists.10 White supremacist extremists pose the primary threat among all domestic violent extremists. The Department of Homeland Security (DHS) provided data showing that white supremacists were responsible for 51 out of 169 domestic terrorist attacks and plots from 2010 through 2021, the highest number among domestic terrorist ideologies.11 In October 2022, the FBI and DHS issued a report titled “Strategic Intelligence Assessment and Data on Domestic Terrorism,” which put forth the most significant threat facing the U.S. as being posed by “lone offenders and small groups of individuals who commit acts of violence motivated by a range of ideological beliefs and/or personal grievances.”12 The report also contended that of these actors, “domestic violent extremists represent one of the most persistent threats to the United States today.”13 The January 6th Capitol riot compelled the Biden Administration to prioritize the issue of domestic extremism. FBI Director Chris Wray condemned the January insurrection as “domestic terrorism” and described in stark terms the threat domestic violent extremists posed to the United States.14 While not every individual involved in the attack was part of a militia or right-wing group, many shared common beliefs.

**<Integrity Returns>**

DVE, Accelerationism, and Critical Nuclear Infrastructure

Domestic violent extremism (DVE) is an all-encompassing category that includes a variety of ideologies, including anti-government extremists, anarchists, anti-abortion extremists, white supremacists, involuntary celibates, ecoterrorists, and a smattering of other assorted extremists from across the political spectrum.15 While DVE represents a range of threats, the interest in nuclear terrorism by accelerationist white nationalist groups represents a particular security concern for the nuclear policy community.

Critical Infrastructure

One commonly shared feature of DVE adherents is the focus on attacking critical infrastructure – including nuclear power plants. Attacks on U.S. energy infrastructure are increasing.16 Recent incidents on infrastructure include six “intrusion events” at Florida substations in September 2022; six attacks on substations in the US Northwest in November and December of 2022; four substations vandalized in Washington State cutting power to 14,000 on Christmas Day, 2022; and a December 2022 North Carolina “targeted attack that left thousands without power.”17 Attackers often seek to attack regional power substations in order to cause economic distress and civil unrest. Leftist, anti-statist, accelerationist groups have also emerged on Telegram, to espouse their views that the U.S. electrical grid must be systematically attacked and dismantled. Telegram has attempted to remove much of the content but has been ineffective at regulating its content to filter extremist messaging.18 As laid out in detail in the Case Studies section below, white supremacists Brandon Russell and Sarah Clendaniel were arrested in February 2023, on federal charges of plotting to shoot up a ring of subpower stations in Baltimore. The intent was to “destroy” Baltimore, a majority Black city.19 Greg Harman writes that the “arrest reflects a sustained mobilization of homegrown neo-Nazi networks, whose members are seeking to disrupt the nation’s power supply in hopes of ushering in economic collapse and race war.”20

DVE and insider threats thus represent a particular area of concern for nuclear security, as evidenced by the Institute of Nuclear Management’s (INMM) exploration of the intersection of homegrown violent extremism and the security of nuclear facilities at its 63rd Annual Meeting. Indeed, prior to targeting the Baltimore grid, Brandon Russell had expressed interest in taking out a Florida nuclear plant.21 Russell’s case is not an outlier. Other domestic violent extremist actors have illustrated the vulnerabilities in how security practitioners identify threats to nuclear security across the ideological spectrum – from other far-right actors like Matthew Gebert and Ashli Babbitt in recent years, to the jihadist radicalization of Sharif Mobley following the 9/11 attacks. The Case Studies section of this paper presents more detail on each of these cases.

Accelerationism

Accelerationist ideology, which holds that the modern, Western democratic state is so mired in corruption and ineptitude that true patriots should instigate a violent insurrection, ultimately allowing a new, white-dominated order to emerge, presents additional concerns for the nuclear security community as some groups advocate for the use of nuclear weapons to achieve the new order.22 Accelerationist dogma is often adopted by adherents who subscribe to an ‘alternative history,’ one that usually serves as a foil to the increasing racial diversity of American society. Accelerationists have created a historical narrative that utilizes stock footage, still images, and classical literature to assemble a romanticized image of an American past that valued whiteness, marriage, family values, and religiosity to claim that these values are in decline and to recruit membership from involuntary celibates (incels) and young, white men who wish to return to a manufactured past.23

One accelerationist group that caught the attention of the nuclear community is the Atomwaffen Division (AWD). AWD was organized as a series of terror cells advocating for the use of nuclear weapons to yield the collapse of civilization. Unlike some other white power activists, accelerationists believe modernity “has reached such a level of degeneracy and corruption that it cannot be rescued through mass movements or other political means.24” Many of the most violent manifestations of domestic violent extremism in the U.S. are encouraged by “mobilizing concepts.9”Mobilizing concepts are different from traditional ideological frameworks, which are rooted in more clearly articulated beliefs or theories about how political or economic systems should work (anarchism, communism, fascism, etc.). An understanding of these neo-fascist accelerationist groups as a fluid network with broader goals of social destruction, rather than individual units with distinct ideological perspectives helps understand the continued relevance of AWD and its mission even after its dormancy in 2017.25 The effectiveness of these mobilizing concepts and the fluid nature of the ideological network can be seen in how AWD has inspired similar neo-fascist accelerationist groups such as The Base, which unlike AWD, has tried to veil its desire to spark a “nuclear civil war” behind claims that it is focused on maintaining a “survivalism and self-defense network” in an effort to recruit broader membership.26

Another offshoot of the now-defunct neo-Nazi terror group Atomwaffen Division recently undertook a propaganda push to capitalize on the December 2022 power grid attack in Moore County, which resulted in widespread power outages affecting 40,000 customers.27 The morning after the attack, neo-Nazi accelerationists on a private Telegram channel began to speculate about the involvement of the National Socialist Resistance Front (NSRF).28 NSRF represents another rotating face of a network of neo-fascist groups that seek to use terror to promote their ideological goals of a new white-led order. In weeks leading up to the Moore County power grid attack, members of Uncle Ted’s Cabin channel distributed multiple terror manuals that encourage mass shootings and industrial sabotage.29

While not all accelerationist or DVE groups have nuclear ambitions, examining AWD and its ability to influence other extremist groups provides a clearer understanding of the threat landscape. Insights into membership mobility can inform preventative actions by governments and emphasize the importance of examining the ties between accelerationist groups, to ensure that DVE groups remain unable to acquire nuclear materials, weapons, technology, or information that would advance their cause.

U.S. Military and DVE

Studies have found that far-right extremist groups intentionally target recruitment towards veterans and active military personnel in an effort to gain military training and insider knowledge of how institutions of power operate.30 Furthermore, online radicalization is the most common form of indoctrination into an extremist belief system. White-nationalist groups now outperform ISIS in nearly every social metric and notably, there was 600% increase in followers of American white-nationalist movements on Twitter between 2012 and 2016.31 The targeted recruitment of veterans by extremist groups on social media platforms poses an evolving risk for national and nuclear security practitioners. While individual groups can be targeted by governments, and in the case of Atomwaffen Division, dissolve, the threat posed by individual members does not wane.32 Recent studies of the 2020 collapse of AWD found that neo-fascist accelerationist groups, thanks in large part to their use of the internet, exist more as a fluid network with broader goals of social destruction, rather than individual units, demonstrating the continued relevance of the AWD, its mission and potential acts of violence, despite the group’s formal dissolution.33

Extremism in the military has manifested in a number of ways—from attacks and/or hate crimes against fellow service members and civilians, theft of military equipment, security breaches, and broader harm to morale, unit cohesion, personnel retention, recruiting efforts, and mission success.34 When considered in the context of nuclear security, extremism unchecked poses a threat to organizational security culture by creating a toxic workplace in which individuals are less likely to share concerns about abuse, hostility, or incivility on the basis or race, gender, or other characteristics.35 The military plays a critical role in protecting our nation’s nuclear materials, thus extremism poses a significant risk to nuclear security.

January 6th became an important focal point for examining extremism trends in the military. Individuals with a military background were around four times more likely to be members of a domestic extremist organization.36 Individuals with experience in the Marines (47.8%) and the Army (41.3%) made up the vast majority of military arrestees (89.1% combined).37

With tightened focus on DVE, security and policy experts can assess the growing risk of DVE insider threats. Public-sector employees, notably former State Department employee Matthew Gebert and including at least one employee at Los Alamos National Laboratories, have been linked to an anti-government militia group, and dangers of extremism in the military have been highlighted as a threat among both active duty servicemembers and veterans.38 While data on extremism in the military is limited, in 2021 6.4% of all U.S. domestic terrorist incidents were linked to active-duty and reserve military personnel – an increase from 1.5% in 2019.39

An additional point of concern emerges when this trend of online radicalization of military personnel is placed in the context of hiring practices for nuclear power plants. All holding companies that own five or more nuclear power plants in the U.S. have veteran-specific hiring initiatives.40 Veterans are attractive hires given their military experience, security expertise, and the fact that they are ‘pre-vetted’ by the nature of their previous employment.41 Legislative approaches, policy prescriptions, and public discussions have tended to focus on extremism as a recruitment problem or for those currently serving. Focus on veterans and extremism tends to be neglected.42 Indeed, as noted below, there are flaws in the military personnel fitness systems that may be allowing extremists to slip through the cracks, thus creating the potential for radicalized ex-military hires to gain access to sensitive roles at nuclear facilities and exacerbate the risk of these individuals becoming threats to nuclear security.

Access and Participation: Reflecting on Who Makes it Through

When considering the DVE threat posed to nuclear security, situating the threat within the larger national security framework is important to understand how the threat manages to proliferate. Beyond the well-documented SF-86 for security clearance applications, the U.S. government employs the Trusted Workforce 2.0 Program to continuously evaluate cleared individuals’ backgrounds to ensure they continue to meet security clearance requirements and remain eligible to hold positions of trust.43 However, through internal audits and external reports, it has become evident that these barriers to entry and participation in nuclear and national security are disproportionately applied to historically marginalized groups.

Reports show that qualified applicants with foreign ties or from certain racial or ethnic groups have been discouraged from applying to sensitive national security positions and faced barriers to obtaining a security clearance, in part due to preconceived biases held by investigators about certain racial or ethnic groups.44

This ‘othering’ of applicants at the first barrier of entry to participation in the nuclear security field also reflects a bias of preference towards candidates who fit a stereotypical ‘American’ image – suggesting that white applicants face less scrutiny during fitness investigations, as 55.2% of background investigators are white.45 Similarly, when applying continuous vetting to applicants it is important to recall that not all groups perceive threat in the same way, and the disproportionate representation of white people in the investigator workforce creates risk that threats or behaviors that don’t appear to pose a risk to white communities may slip through the cracks. Homogeneity in the pool of investigators creates vulnerability in what risks are identified because individual positionality and lived experience informs how threats are perceived.

Proliferation of DVE Ideology

January 6th offered insight into how the DVE landscape in the U.S. operates. DVE is quite fractured; the perpetrators of January 6 were not a homogenous group.46 Yet certain categories emerged, which the George Washington Program on Extremism defined as organized clusters, inspired believers, to military networks—terms that help better connect participation in the siege to the nature of radicalization and mobilization to violent extremism within the U.S.47 The events of January 6 revealed what happens when supporters of relatively disparate extremist movements coalesce around one event, but there are still differences and distinctions that must be understood in order to properly allocate resources against this threat.

Extremist ideology proliferates in the online environment. DVE attackers often radicalize independently by consuming violent extremist material online and mobilize without direction from a violent extremist organization, making detection and disruption difficult.48 These individuals will seek weapons and then attack “soft targets.”49 In response to the growing prevalence of online extremism, social media companies and online platforms took actions against extremist content and activities, leading to a “great scattering” of extremists and extremist groups across alternative platforms.50 However, organized extremist groups have retooled their approaches to building online movements. Unlawful private militias, for example, have posted messages declaring that they are incorporating traditional methods of recruitment, like soliciting at in-person events.51 Movements that sought to return to or remain on mainstream platforms have deployed coded language and parallel rhetoric to evade detection from moderators.52

Online terrorism and violent extremism are cross-platform and transnational by nature. The current threat landscape grows increasingly more dynamic each day as a diverse array of violent extremist ideologies circulate in the online environment.53 Terrorists and violent extremists have always been able to adapt themselves to tactics that intelligence and law enforcement professionals use to disrupt them. Similarly, when it comes to modern technology and communication tools, this creates an immense challenge for those enforcing policies and terms of service.54

#### Banning collective bargaining rights would violate the First Amendment.

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The interpretation of the Constitution that undercuts workers’ ability to organize and act collectively is wrong because it impairs their ability to participate equally in social, economic, and political life. But additionally, it’s wrong as a matter of law. It gets the Constitution totally backwards.

As era-defining expositors of constitutional meaning like Abraham Lincoln, a Republican, and Franklin Roosevelt, a Democrat, understood, our foundational document supports the rights of workers. Lincoln once described his free labor constitutional vision—which he proposed as the alternative to the Southern Slave Power vision—as “a system of labor where the laborer can strike if he wants to!” He added, “I would to God that such a system prevailed all over the world.”

Roosevelt was even more explicit. On Constitution Day in 1937, he argued that if “constitutional democracy” were to survive and continue protecting the liberty of the American people, it “must meet the insistence of the great mass of our people that economic and social security and the standard of American living be raised.” In other words, as he stated in a later speech, “true individual freedom cannot exist without economic security and independence.”

While elected officials like Lincoln and Roosevelt announced these grand principles, it fell to scholars and judges—taking a cue from social movements—to help inform the proper legal interpretation of specific constitutional provisions and amendments. In The Lost Promise of Civil Rights, Risa Goluboff states that, in the 1930s and 40s, legal practitioners increasingly recognized that the constitution’s guarantee of liberty had an economic as well as political meaning. Edward Corwin, for example, a leading constitutional scholar of the era, wrote that the Supreme Court’s interpretation of “liberty” included “special concern for the rights of labor”—namely the rights to organize, bargain, and strike.

This recognition involved various provisions of the Constitution. In Hague v. CIO, for instance, the Supreme Court recognized that the Privileges and Immunities Clause of the 14th Amendment protects the right of labor unions to organize. Similarly, in Thornhill v. Alabama, the Court held that the First Amendment protects the right to picket. In another line of cases, including Baily v. Alabama and Pollock v. Williams, the Court applied the 13th Amendment to outlaw slave-like working conditions. And, in NLRB v. Jones & Laughlin, the Court held that the Constitution protects the ability of workers to engage in “self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.” This, held the Court, “is a fundamental right.”

In all these cases, the Court recognized that there was more at stake than the terms and conditions of any particular employment contract. Rather, the justices understood the rights of labor to be intimately tied up in the exercise of constitutional democracy itself, for all people. For example, in Thornhill, the Court held that picketing is not just an important means to resolve a labor dispute but is “indispensable to the effective and intelligent use of popular government.”