# Cards---Round 7---DRR

## Case

### Lochnerism---1AC

#### Lochnerism greenlights existential judicial activism.

Robert Knowles 25. Associate professor at the University of Baltimore School of Law, J.D. from the Northwestern University School of Law. "How Lochnerism Ends." *Seton Hall Law Review*, 56(65), 66-72.

INTRODUCTION

The early 2020s felt like peak New Lochner. 1 The U.S. Supreme Court has been waging war on the administrative state and economic regulation, readopting the Lochner-era jurisprudence of the 1890s to 1930s in new doctrinal forms.2 Lochnerism prizes judicial supremacy, values common sense and traditional practices over agency expertise, and elevates economic liberty—the citizen’s right to participate in the marketplace and control property on one’s own terms—over other values in the domestic sphere.3

In foreign affairs, too, the Court’s jurisprudence has taken a Lochnerist turn, which manifests quite differently: The Court’s solicitude for economic liberty attaches, not to the citizen or corporation, but to the nation as a whole operating in the international realm. Tariffs and other trade restrictions—a core policy feature of both the Lochner Era and U.S. foreign policy in the 2020s—impose strict and potentially ruinous economic regulation that the Roberts Court would not tolerate if imposed on domestic transactions.4

This Article explains why the dualist nature of Lochnerism is also its fatal flaw. I introduce a model of Lochnerism as a recurring phenomenon in American jurisprudence with a predictable life cycle.5 Its rise and fall are driven by power shifts that change America’s role in the international system.6 Lochnerism surfaces during periods of low international conflict because U.S. courts are better equipped to police a boundary between domestic and foreign affairs matters.7 Yet periods of high international conflict involving the U.S. drive Lochnerism back into exile because solicitude for economic liberty tends to frustrate foreign policy during such periods.8 The U.S. government’s need to act effectively and nimbly on the international stage collides with the Lochnerian value of constraining regulatory authority within distinct limits.9 Security concerns suffuse domestic economic regulation, and an overmatched Court retreats.

Under this model, New Lochnerism is actually nearing the end of that life cycle, and the Roberts Court’s frenetic efforts to further transform the constitutional order in the 2020s are classic signs of a movement in its late stage.10 New Lochnerism is intertwined with the free-market worldview it embodies—neoliberalism.11 Neoliberalism regards “decentralized and spontaneous” forms of private ordering as inherently superior to public ordering by government.12 Put into practice, neoliberalism removes barriers to these private forms of ordering through deregulation, devolution, outsourcing, and market-oriented public policy.13

Even before the Trump appointees joined the Court, however, neoliberalism had already begun to lose its grip where it matters most—as the logic that keeps the international system stable and the United States as its predominant power.14 The neoliberal, free trade system has been giving way to conflict—the first full-scale war in Europe since 1945, trade barriers, arms races, cyberwarfare, industrial policy, and critical alliances fracturing in favor of Cold War-type rivalries.15 A new high-conflict era is well underway, and courts are lagging indicators of such shifts.16 As both the neoliberal worldview and the American-led order that sustained New Lochnerism continue to fade, the jurisprudence will fade, too. That is how Lochnerism ends.

This Article proceeds in four parts. Part I uses the Court’s pandemic cases to illustrate the problem. The Court’s poorly modulated and opportunistic response presages future confrontation, rather than negotiation, with the political branches over the implementation of vital public health and safety policies.17 The Justices’ opinions reinforced a pattern of second-guessing experts,18 “practical wisdom” that produced inapt analogies,19 some rather bombastic rhetoric,20 and, most fatally, line-drawing that appears arbitrary and results-driven.21 In other words, some of the same excesses that Lochner-era opinions were infamous for.

Next, Part I explains the methodology behind my account of Lochnerism’s life cycle. Drawing on international relations theory, history, and economics, it surveys how international conflict levels drive U.S. rights jurisprudence, which empowers or constrains economic liberty. I focus especially on three insights—that the international system’s structure shifts tectonically over many decades;22 that free markets will not meet national security needs without substantial regulation;23 and that the Court typically adjusts its judicial activism to fit the U.S. foreign policy needs during geopolitical conflict.24

Part II examines the vast literature on the Lochner-era Court to assemble a values-neutral and transhistorical definition of Lochnerism as a coherent and recurring jurisprudence.25 The features I highlight explain why Original Lochnerism was especially vulnerable to geopolitical shifts at the twentieth century’s midpoint. I define Lochnerism as a mission and a method. Its mission is to mediate the tension between economic growth, which accelerates globalization, and the administrative state, which regulates the consequences. At its best, Lochnerist jurisprudence tempers the pace of change through constitutional interpretation.26

As a method, Lochnerism is activist and nostalgic, positioning judges as embattled defenders of economic liberty against both globalization and regulatory expansion. Courts protect the distinct sovereignty of its citizens domestically and America globally, enforcing separation of powers and rights doctrines to maintain a clear boundary between the two sovereigns.27 As international conflict intensifies, however, that foreign-domestic boundary erodes. National security concerns move economic regulation beyond judicial expertise, forcing the Court to yield. During World War II, the U.S. government significantly expanded its administrative and regulatory powers, prioritizing centralized planning and control over traditional freemarket mechanisms.28 Successful wartime governance required flexibility and coordination across regulatory domains—including strict controls on production, prices, and labor, and establishing administrative mechanisms that persisted postwar. These experiences demonstrated that coordinated regulation could stabilize the economy even in crisis, shifting legal and political norms toward broader acceptance of federal economic oversight and embedding administrative rulemaking and adjudication in the structure of modern governance.

Part III examines the Roberts Court’s New Lochnerism, highlighting its similarities to, and differences from, its predecessor. Like the original, New Lochnerism seeks to shield traditional private ordering—markets, religious groups, and corporations—from globalization and the administrative state. It achieves this through four interconnected doctrinal prongs, the four types of Lochnerism: economic liberty, anti-administrative, private ordering, and, in foreign affairs, what I call Go-it-alone Lochnerism. 29

But New Lochnerism is more activist than its predecessor, despite the Justices’ efforts to disguise their activism in passive virtues. This activism is a product of the libertarian philosophy animating it— neoliberalism—and the global conditions that fostered it—U.S. dominance in a low-conflict, free-market-based international order. The Court’s attack on the administrative state has had limited national security consequences until recently because its deregulatory effects aligned with U.S. foreign policy—promoting economic globalization without fully committing to maintaining the international legal structures it helped establish. That fortunate alignment is over.

Part IV plots New Lochnerism’s likely fate as the Court and federal government adjust to high-conflict geopolitics that demand increased and coordinated economic regulation.30 The particular qualities of the 2020s high-conflict period include not just cross-domain military and economic threats to U.S. national security from rivals, but borderless environmental threats from climate change that pose catastrophic risks to Americans’ health, safety, and security.31 No amount of Lochnerist line-drawing can preserve a safe space of purely domestic regulation for the Court to roll back without also rolling back regulations necessary for U.S. security. The prognosis for the jurisprudence is not good. The Court’s most recent decisions are signs of a jurisprudence already in crisis. The world is knocking at the door, and New Lochnerism’s days are numbered.

#### It wrecks national security, ensuring great power war.

Robert Knowles 25. Associate professor at the University of Baltimore School of Law, J.D. from the Northwestern University School of Law. "How Lochnerism Ends." *Seton Hall Law Review*, 56(65), 123-127.

IV. THE FALL OF NEW LOCHNERISM

This Part details how the international system has shifted from a peaceful one led by the United States to a multipolar one riven by great power conflict. It discusses the significance of this shift for economic regulation. And finally, it examines how New Lochner’s current trajectory will lead it to collide with national security imperatives as the U.S. struggles to successfully navigate that shift.302

A. Our High-Conflict Era

Just as World War II upended the Original Lochner era, today’s national security concerns present an existential threat to New Lochnerism. All three aspects of Lochnerism—its preference for economic autonomy in the domestic sphere, its go-it-alone preference in foreign affairs, and judicial activism to enforce these preferences— were made possible by U.S. unipolar dominance in a globalized system. For a brief time, Americans benefited from their position in that order.

But U.S. unipolar dominance was the glue that held this arrangement together. For decades, the U.S. and its allies promoted neoliberal economic policies and loosened trade restrictions and foreign investment barriers to maximize efficiency.303 Antitrust enforcement weakened, prioritizing low consumer prices over market competition.304 The drive to lower production costs and wages weakened labor unions and stagnated incomes.305

Unipolarity enabled the U.S. to push free market solutions because the system of global trade and integration was backed by U.S. power projection. The U.S. Navy’s freedom of navigation maneuvers protected shipping lanes for the most part; U.S. troops were stationed around the world, providing a deterrent to regional aggression.306 Most nations relied on the dollar as their reserve currency, and the U.S. exerted “soft power” through its provision of humanitarian aid and cultural influence in film, television, and popular music.307

But over time, the free-market focus weakened that system’s capacity for structured cooperation, and this weakness has in turn undermined confidence in neoliberalism as governance.308 The most existential global challenges of the century present collective action problems, such as climate change, that a global system of free markets and private ordering are just not equipped to address.309 Indeed, the free-trade absolutism and loathing of market intervention that characterized the neoliberal era made these problems worse.310

Neoliberalism’s boundary-busting qualities also created the conditions for a revival of great power competition, the hallmark of a high-conflict global era. China’s rise to rough parity with the U.S. on economic terms was built, and still largely depends, on the economic power it gained from free trade with the U.S. and its allies, along with the rest of the world.311 Because economic power is a font of other forms of power, however, China has leveraged its newfound economic strengths to build power in other domains, including military power.312 And China’s foreign policy has centered on the goal of displacing the U.S. as the predominant power in the international system.313

As a result, by the mid-2020s, the global system has shifted from a U.S.-dominated unipolar one to a messier, multipolar or bipolar one that resembles 1930s or 1950s geopolitics far more than those of the 1990s.314 The ability of U.S. and European allies to project power globally—and in some situations, even locally—has faded across the domains of military, economic, and soft power.315 Russian aggression in Ukraine, from its 2014 “annexation” of the Donbas and Crimea to its full-scale invasion in 2021, was the first international armed conflict in Europe since World War II.316

A new high-conflict era is underway. Now that times have changed, the U.S. must shift away from both Lochnerian policies and jurisprudence.

Defense policy has long reflected neoliberal priorities, emphasizing economic liberty at home while ensuring U.S. operational freedom abroad.317 Outsourcing critical military production, however, has created vulnerabilities.318 Essential weapons components are manufactured in China, a strategic rival.319 To address these risks, the U.S. has shifted toward more economic regulation in trade, restricting key markets for computer chips and reviving industrial policy through the CHIPS and Science Act and the Inflation Reduction Act, in an effort to reshore critical manufacturing.320

But more will be required. The economic liberty central to Lochnerism is incompatible with the demands of prolonged geopolitical conflict.321 It instead requires more top-down coordination of resources across an entire society—education, labor, manufacturing, and research.322 A great deal of global conflict plays out in the “gray zone” between armed conflict and more outward forms of competition.323 Gray zone activities encompass a broad range of tactics, including disinformation, cyberwarfare, intellectual property theft, corporate espionage, and sabotage of space infrastructure.324 Because these tactics cut across so many regulatory domains, the combination of light-touch regulation and free speech protections have created openings for U.S. adversaries to gain crucial strategic advantages.

### --Aff Solves---1AC

#### The AFF stops Lochnerism in its tracks. First Amendment jurisprudence is “boundless” and spills over.

Brad Baranowski 19. J.D. from Boston University School of Law, Ph.D. in history from the University of Wisconsin Madison. "The Representative First Amendment: Public-Sector Exclusive Representation After Janus v. AFSCME." *Boston University Law Review*, 99(2249), 2282-2283.

The full scope of the challenges that employers may face should the Supreme Court hold exclusive representation to be a violation of the First Amendment is difficult to assess, providing an additional reason to proceed cautiously. Some commentators, for example, have speculated that cases like Janus may prompt the Court to adopt a more expansive approach to state action, expanding the deregulatory First Amendment into the realm of private labor relations - a possibility that will become only more plausible if exclusive representation falls in the public sector. 197While this Note does not attempt to provide an exhaustive list and analysis of such consequences, considerations of these effects is proper given both the possible magnitude of the disruptions awaiting employer-employee relationships and the source of such disruptions. As discussed below, the current boundless quality of First Amendment jurisprudence is due in large part to the normative judgments that underpin it - normative judgments for which there are feasible alternatives. 198

III. The Representative First Amendment

The collision course detailed in Part II is avoidable. The First Amendment does more than deregulate; it also protects duly constituted representative associations. In other words, the First Amendment safeguards the ends of democracy (i.e., representation) as well as its means (i.e., speech and association). All this is encapsulated in and protected by what this Note has deemed the "representative First Amendment."

### Bureaucracy---1AC

#### An unprotected civil service unleashes “the biggest portfolio of catastrophic risks ever.”

Loren DeJonge Shulman 22. Lecturer of international affairs at George Washington University, M.P.P. from the University of Minnesota, "Schedule F: An Unwelcome Resurgence." Lawfare. 8/12/2022. lawfaremedia.org/article/schedule-f-unwelcome-resurgence

Best-Case Scenario: Weakening the Civil Service Risk Management Role

Over 2 million career civil servants working across dozens of large and small agencies are hired under the competitive service process. More than 70 percent work in national security-oriented agencies, such as the Defense Department, the State Department, the Treasury Department, and the Energy Department. Many more work in technical, administrative, policy, and legal roles. They do work that often results in news that makes headlines—negotiating sanctions policies, advising on the legality of drone strikes overseas, maintaining relationships with allies and partners, preparing procedures and resources for future pandemic response—and a great deal more behind the scenes that may end up on a cabinet secretary’s or president’s desk for consideration.

Author Michael Lewis describes civil servants’ responsibilities in the “The Fifth Risk,” calling the U.S government the manager of “the biggest portfolio of [catastrophic] risks ever managed by a single institution in the history of the world.” Some are obvious—the threat of nuclear attacks, for example—but most are glacial and opaque, demanding a portfolio of reliable and steady risk managers who can prioritize the nation’s security without fearing for their job security.

Thousands of such “risk managers” who work in policy-adjacent roles would be implicated by a Schedule F policy that removes the civil service protections set out for them in the Civil Service Reform Act of 1978. Civil servants today are protected against possible political retaliation, coercion, or removal by presidents and political appointees. They must be hired on the basis of relative ability, knowledge, and skills, using fair evaluation metrics. And they are protected against reprisal for whistleblowing.

These rules are frequently shorthanded derisively in (false) assumptions that civil servants cannot be fired. To the contrary, there are set guidelines for when federal employees can be lawfully terminated and disciplined based on performance or misconduct. The antiquated federal hiring process faces similar—albeit fairer—criticism, but its slowness is intended to screen for those who have “a high standard of integrity and trust to promote the interests of the public” and for good reason. Overall, these critiques misunderstand that the competitive hiring process and subsequent protections are what make it possible for civil servants to perform exceptionally, particularly in high pressure, complex policy areas where the government is managing extreme risk on behalf of the country, such as national security.

By protecting them from political reprisal, these rules give civil servants in policy roles the foundation to offer advice that may be tough for presidents to hear, to execute policies with high stakes, to report illegal activity and misconduct as a part of their duties, and to trust that they and their peers owe their first fealty to protecting and defending the Constitution. They do all of this with the confidence that their integrity will be rewarded and protected.

At best, shifting policy-aligned roles to Schedule F roles would have a chilling effect on such policy experts whom we rely on for their unique expertise, candor, and integrity, potentially making them more cautious about the advice they give, the portfolios they support, the risks they take in defending the Constitution, and their willingness to call out malfeasance or bad news.

Worst-Case Scenario: Harming National Security

At its worst, Schedule F will make it possible for presidents to remove thousands of experts who make U.S. global leadership possible. By shifting protected civil servants to at-will employees, Schedule F makes it possible to fire them without the due process currently owed to civil servants. In other words, civil servants could be fired for any reason at all—for giving unwelcome advice, for prior jobs, for being the subject of unsubstantiated accusations of any type, for perceptions of partisan affiliation, or simply for being in a role the president wishes to open up for a loyalist.

Some Schedule F advocates make clear that large-scale removals are under consideration and that removal, not oversight, is their ultimate goal for Schedule F. “Fire everyone you’re allowed to fire,” one commented, according to the Axios reporting. “And [then] fire a few people you’re not supposed to, so that they have to sue you and you send the message.”

Because the policy would also allow replacement of current civil servants without a competitive process, replacements for nonpartisan civil servants could be made without regard to qualification and suitability, or based on partisan affiliation, creating a new kind of political appointee.

The potential loss of talent could be wide and extremely damaging. Axios also reported that, according to sources close to Trump, the former president intends to “go after” the national security establishment as a matter of “top priority,” including those in the intelligence community and State Department. Policy roles that could be reclassified as Schedule F could cut across many high-import areas: Russian defense strategy, Iranian nuclear programs, or Chinese regional security capabilities, among hundreds of other categories. The harm to national security of removing and replacing civil servants—whose work, as we have established, requires expertise, relationships, and clear understanding of risk—with individuals with no required qualification except loyalty to a single individual is self-evident.

But, should a future president pursue this action, beyond missing an endless list of risk portfolio managers, the United States will miss something more fundamental to its success and security: its reliability. American alliances are valuable because of the steady undercurrent of the nation’s civil servants who maintain networks, expertise, and consistency regardless of who inhabits the Oval Office. Despite its turmoil, the American political system is a strong model and international interlocutor because its civil servants serve expertly and well across presidential administrations of any political affiliation. Schedule F, by stifling or removing long-serving civil servants, would make the United States a weaker, less reliable, and less trusted partner.

Why Shouldn’t the President Get a Say?

A president’s desire to shape a policy team, and to be sure it is filled with strong performers who are closely aligned with their views, is understandable. After all, presidents are elected to implement their chosen policy agenda, and having a team around them who can work in support is critical. But presidents already can wield enormous influence over both their closest policy advisers and the most far-flung agency overseers: through the 4,000 political appointees who are named, or removed, at the pleasure of the president. The Schedule F proposal would be an enormous and unnecessary expansion of this already poorly utilized system.

Most administrations never come close to seeing all those politically appointed policy roles filled despite the tremendous access and leverage such appointments bring them. And some presidential teams still struggle to make best use of political appointee and career civil servant partnerships. Rather than adding more chaos and instability with a Schedule F policy, administrations could be maximizing the opportunity that comes with leveraging their career and political leaders together. As noted in a recent Partnership for Public Service and Boston Consulting Group report:

Career executives bring program and policy expertise from their long familiarity with their agencies which can help them manage programs better and work more effectively with external stakeholders and inside actors. Politically appointed leaders can bring energy, risk-taking and responsiveness into an agency’s decision-making process which can improve performance. When leaders are matched with missions, agendas and teams that align with their distinct approaches and perspectives, they can find success in creating a government that is more efficient, innovative and responsive to the needs of the public.

The civil service system is not perfect. The pay system has its origins in World War II. The hiring process, though well-intended, is glacial. The permeability of the system in an era that requires close understanding and collaboration across sectors is limited. But the fundamentals are powerful, and they serve as a critical ingredient to the success of the United States’ global leadership and the sustainability of its democracy.

The U.S. government is able to take on high-risk, high-cost ventures—nuclear security, pandemic response, environmental clean-up, food safety, and more—because civil servants are hired based on qualifications, not party affiliation; give advice based on data and integrity, not fear of reprisal; and owe allegiance to the Constitution, not the president. It needs to stay that way.

#### Small mistakes cascade. Our internal link is about expertise, not policymaking authority.

Peter Earle 26. Director of economics and senior economist at the American Institute for Economic Research, Ph.D. in economics from the University of Angers, M.A. in economics from American University. "Expertise Remains Indispensable." American Thinker. 1-1-2026. americanthinker.com/articles/2026/01/expertise\_remains\_indispensable.html

Indeed, even the loudest critics of what’s sloppily been called “credentialism” quietly rely on it every day. Few people are interested in performing their own surgery or putting it in the hands of the Domino's Pizza deliveryman (who may fancy himself a “polymath” — another word which has strayed from its original meaning). And even if I know, roughly, how to fix a glitching electrical panel, I’m likely to leave that to people who do it daily. Amid the churlish cry of generalism-for-all, we continue to trust surgeons to operate, airline pilots to fly, structural engineers to calculate loads, anesthesiologists to manage unconsciousness, and specialized mechanics to keep complex machines from failing at speed. We do so not because these professionals are infallible, but because long training, apprenticeship, and error correction still matter in a world of growing, unforgiving complexity.

Modern systems — technological, economic, social/cultural — are far from intuitive. They are tightly coupled, layered, and increasingly nonlinear. Small mistakes can cascade. (Ask any actuary.) Partial understanding is nearly always more dangerous than ignorance when it encourages confident intervention without awareness of second- and third-order effects. That’s precisely why expertise developed in the first place—not to exclude the public, but to reduce error in domains where error is costly.

Ironically, errors within expert communities tend to fail slowly and visibly: they’re constrained by peer review, professional norms, and reputational risk. Popular error, by contrast, fails quickly and at scale. When decisions are driven by self-important narrative, identity politics, or viral consensus rather than disciplined analysis or hard-won experience, corrections come late — often only after damage has already been done. History suggests that major disasters are more often born of mass enthusiasm and political shortcuts than of excessive technical caution.

None of this, of course, implies blind deference. Expertise should inform decisions, not dictate values. Specialists are good at explaining constraints, tradeoffs, probabilities, and risks: not at deciding collective goals. Much of the public backlash of recent years stems from role confusion, when technical advice was presented as moral certainty or political necessity. The remedy for that failure is not an infantile screed to abandon expertise, but to restore its proper boundaries.

Throwing away accumulated knowledge does not empower citizens; it forces complex choices to be made by guesses, intuition, tribal loyalty, or rhetorical force. Societies that do this do not become freer or wiser. They become more fragile.

The lesson of the past few years is not that expertise is obsolete or, in and of itself, dangerous. It is that expertise, severed from humility and institutional restraint, can be misused and even weaponized. The correct response is accountability, not a ridiculous fantasy that we can replace hard-won competence with a disingenuous generalism, confidence, and crowd wisdom. Civilization does not advance by pretending everyone is equally qualified to do everything. It advances by recognizing that specialization, while imperfect, remains indispensable — and that abandoning it is not liberation, and hardly progress, but self-inflicted blindness.

### --US Key/Impact---1AC

#### And guarantees that the cumulative effect of multiple risks is extinction.

Henry Farrell 25. Professor of international affairs at Johns Hopkins University, Ph.D. in government from Georgetown University. "When the polycrisis hits the omnishambles, what comes next?" Programmable Mutter. 2-21-2025. programmablemutter.com/p/when-the-polycrisis-hits-the-omnishambles

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

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

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

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

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

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

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

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

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

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

## Court Politics

### Impact Defense---2AC

#### Tariffs won’t cause war.

Peter Drysdale et al. 25. Professor of economics at the Australian National University Crawford School of Public Policy, Ph.D. in economics from the Australian National University. "The United States and China take a step back and send a signal of hope." East Asia Forum. 11-10-2025. eastasiaforum.org/2025/11/10/the-united-states-and-china-take-a-step-back-and-send-a-signal-of-hope

The big news of the past two weeks has been the agreements Trump forged while in Asia, in which he made some concessions, albeit limited, to the heavy tariffs he has imposed on allies and adversaries alike. China, in exchange for concessions like promises to crack down on the illicit trade in fentanyl, has obtained somewhat lower tariffs, though it should be emphasised that China-US cooperation on this issue is not exactly new and trying to stop the trade in fentanyl requires chasing a constantly moving target.

Trump’s diplomatic accomplishments can be easily overhyped. Mostly they consist of solving — often only partially — problems that he created in the first place. The agreement to slightly lower tariffs on Chinese exports and to relax some export controls is simply the United States deciding to soften some of its own self-inflicted economic damage. And the tariff rates still remain very high.

Chinese export controls on critical minerals have been relaxed, and China has pledged to start buying American soybeans again, solving a major potential political headache for Trump. Yet it is hard to see how this is a victory for Trump’s form of diplomacy: neither export controls on rare earth minerals nor restrictions on soybean imports were on the table prior to Trump’s own trade provocations.

The reaction to Trump’s trip among commentators has been relatively muted, reflecting the sense that while concessions on both sides are welcome, there is still a long way to go to restore the US-China relationship even to where it was under the previous US administration.

Yet, as former US diplomat Susan Thornton writes this week in our lead article, there is a sense in which this is grading Trump’s achievements in Asia against the wrong benchmark.

‘The biggest Trump–Xi meeting success was the signal of hope it sent for the future — that these two great powers can meet, talk and respectfully manage their interactions. This most important guardrail against a downward spiral or a hot conflict remains in place. The two leaders showed warmth, asserted that their two countries could be partners and made plans to meet again twice in the coming year’, argues Thornton.

Given the heated, almost messianic rhetoric in Washington about China that has become popular across the bench in Washington over the past decade or so, Thornton is right that a recognition that dialogue and negotiation is a more productive form of engagement than sabre-rattling has to be welcomed.

Perhaps the best way to describe the current state of the relationship is poor, but stabilised, with at least now a glimmer of hope for improvement. As Thornton argues, both sides of the relationship have learned a great deal about how the other side will react to provocation, and what the most effective levers for retaliation are. The hope is that this may lead to an equilibrium in which actual economic coercion is only, at most, a last resort rather than a habitual feature of the relationship under Trump.

### Impact Defense---1AR

#### Trade doesn’t solve war.

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There is a good reason for such confusion: on close inspection, the relationship between global economics and global stability turns out to be extremely multifaceted. Although there have been notable individual studies supporting the optimistic view that commerce promotes peace, they are just that — individual studies. A systematic examination of all the empirical research on commerce and conflict shows that the connection is far more complex.

Consider trade. In a forthcoming book, I have identified 57 empirical studies published since 2000 that examined the influence of trade on war and peace. Just 16 of the studies supported the optimistic perspective that trade universally promotes peace. One found that it promotes conflict, and nine found no effect. The remaining 31 concluded that trade has a mixed effect on the likelihood of war — sometimes preventing it, sometimes promoting it.

These mixed-effect findings would be useful if they yielded consistent, clear insights regarding the circumstances that lead to peace. But instead, the list that emerges from this scholarship is long, unwieldy, and sometimes contradictory. Recent studies, for example, have found that trade leads to peace only when it occurs among democracies, among rich states, among states that are members of the World Trade Organization, among states that mostly trade products from different industries, among states that mostly trade products from the same industries, among states that are members of common regional trade pacts, among states that trade with one another at very high levels, among states that trade with one another to a roughly equal extent, and among states that have low levels of protectionism. Small wonder, then, that policymakers have struggled to craft peace-enhancing trade agendas. The relationship between trade and conflict has so many asterisks that it simply cannot be boiled down into anything pithy for officials, students, or anyone else to follow.

The effect of international finance is even murkier. Many analysts have argued that international capital flows prevent war. The New York Times columnist Thomas Friedman, for example, once maintained that international investors will “not fund a country’s regional war” and will “actually punish a country for fighting a war with its neighbors by withdrawing the only significant source of growth capital in the world today.” But the literature does not show that investors consistently flee states that are at war. Moreover, of the four studies that looked directly at how flows of capital influence the likelihood of conflict, only one found a stabilizing effect. Two concluded there was no relationship, and one found that greater foreign ownership of government debt increased the likelihood of conflict.

#### Neg studies fall prey to simultaneity bias.

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In all, any signal that “trade brings peace” remains weak and inconsistent, regardless of the way proximity is modeled in the conflict equation. The signal that conflict reduces trade, in contrast, is strong and consistent. Thus, international politics are clearly affecting dyadic trade, while it is far less obvious whether trade systematically affects dyadic politics, and if it does, whether that effect is conflict dampening or conflict amplifying. This is what we have termed in KPR (2004) “The Primacy of Politics.”

7. Conclusion

This study revisited the simultaneous equations model we presented in KPR (2004) and subjected it to four important challenges. Two of these challenges concerned The specification of the conflict equation in our model regarding the role of intercapital distance and the sizes of both sides in a dyad; one questioned the bilateral trade data assumptions used in the treatment of zero and missing values, and one challenge suggested a focus on fatal MIDs as an alternative indicator to the widely used all-MID measure

The theoretical and empirical analyses used to explore proposed alternatives to our original work were instructive and the empirical results were informative, but there are certainly other legitimate issues that the trade and conflict research community may continue to ponder. For example, researchers may continue to work on questions of missing bilateral trade data, attempt to move beyond the near- exclusive use of the MIDs data as we contemplate the meaning of “military conflict,” and use, and extend the scope of, the Harvey Starr GIS-based border data as one way to treat contiguity with more sophistication than the typical binary variable.

The single greatest lesson of this study is that future work studying the effect of international trade on international military conflict needs to employ a simultaneous specification of the relationship between the two forces. The results we obtained under all the 36 SEM alternatives we estimated yielded an important, measurable effect of conflict on trade. Henceforth, we would say with high confidence that any study of the effect of trade on conflict that ignores this reverse fact is practically guaranteed to produce estimates that contain simultaneity bias. Such studies will claim that “trade brings peace,” when we now know that in a much broader range of circumstances, it is “peace that brings trade.”

### Capital Fake---2AC

#### 1. Court capital is low, thumped, AND fake.

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IV. THE COURT AND PUBLIC OPINION TODAY

Throughout history, the Supreme Court has maintained a high public approval rating despite the occasional unpopular, even severely unpopular, decision. The Court has perennially had the highest reputational ratings of any branch of government.266 Its approval rating was typically above sixty percent until 2010, and its public trust was invariably above sixty percent between 1973 and 2014.267 The Court's public-trust rating even hit eighty percent in 1999, the year before Bush v. Gore.268 But since 2010, the Court's approval rating has been below sixty percent, and, since 2014, its trust rating has fallen below sixty percent four times.269 In 2021, the Court's approval rating sunk to a record low of forty percent.270 As of fall 2023, the Court's approval rating of forty-one percent and trust rating of forty-nine percent have languished near historic lows.271

These low approval ratings seem strange for a Court helmed by a Chief Justice who has publicly pressed a judicial philosophy of humility and minimalism calling balls and strikes, respecting precedent, avoiding controversy, offering political compromises, and striving for narrow opinions that can garner unanimity.272 Indeed, Joan Biskupic has surmised that "Roberts has at times set aside his ideological and political interests on behalf of his commitments to the Court's institutional reputation and his own public image."273 But his efforts haven't done the trick. This Part explores why.

The reason, I submit, lies not in a single, explosive exercise of antidemocratic power by the Court. As even the Cherokee Cases suggest, those shocks fade quickly, often hastened by calculated judicial retreat. Instead, this Court has experienced a confluence of circumstances that have accumulated over time, including: (1) two decades of perceived persistent conservative activism; (2) the Court's dismissive attitude toward a raft of ethics scandals; (3) partisanship surrounding the appointment of new Justices; (4) a handful of unpopular opinions; and (5) a rise in partisan polarization among the populace. Meanwhile, the Court has not issued a heroic opinion like Brown or Lawrence to pick up the flagging public support. The Court has avoided knockout punches, but it has exposed itself to, perhaps even invited, a steady barrage of jabs, and the public has noticed.

A. PERSISTENT CONSERVATIVE ACTIVISM

Some of the hits have been of the Court's own making. Stare decisis adherence to prior precedent is a foundational principle that increases stability and reduces ideological variance.274 Although measuring the Court's relative commitment to stare decisis over time is difficult,275 the public perception is that the Roberts Court regularly revisits important decisions, even delighting in overturning them.276 Key examples include Citizens United (overruling precedent allowing campaign-finance limits),277Dobbs (overruling Roe v. Wade's and Casey's constitutionalization of abortion),278Students for Fair Admissions (effectively overruling precedent allowing affirmative action in higher-education admissions),279 and Loper Bright (overruling Chevron's directive that courts defer to reasonable agency interpretations of implementing statutes).280 That these important decisions have all been outcomes that align with conservative politics, decided along the Court's own ideological split, undermines the role that stare decisis plays in "protect[ing] the Court's legitimacy by reinforcing the public's opinion of an apolitical judiciary."281

Worse, the Court appears to be using its discretionary agenda-setting powers not as Bickel proposed to avoid controversy until the right moment but to actively seek out controversial cases to decide. Scholars have noted "a trend, particular to the Roberts Court, of exercising its certiorari discretion to grant review in cases that present an opportunity to overrule precedent,"282 a trend that appears to be accelerating.283 Indeed, Dobbs presented three questions in the petition for certiorari: (1) whether to overrule Roe ; (2) whether a different constitutional standard should apply; or (3) whether standing existed.284 The Court could have taken the case on the second or third grounds and avoided the question of whether to overrule Roe. But it chose to take the case only on the first question.285 In other words, the Court overruled Roe "because it wanted to, not because it had to."286 This Court has turned the passive virtues discretionary docket control into the "active vices" by reaching out to take cases on certiorari and reframe issues for decision.287

In addition to active use of certiorari discretion, the Court has dramatically scaled up its use of other aspects of its "shadow docket"288 its non-merits docket often under the guise of the need to issue emergency relief, but resolving, in the process, particularly high-profile, partisan issues,289 including immigration, COVID-19 regulations, and other matters.290 The merits docket operates with formalism and transparency including regular procedures, public oral argument, and public written opinions all designed to enhance public respect for the Court. By contrast, the shadow docket exhibits none of these features.291 The Court can use the shadow docket to issue an unsigned, summary order staying the effect of a law or lower-court opinion. On May 22, 2025, for example, the Court, in an unsigned order, granted President Donald Trump's emergency application for a stay of a lower-court ruling blocking the President's ability to remove certain agency heads, despite some precedent to the contrary, and over the dissent of Justices Kagan, Sotomayor, and Jackson.292 The last ten years have seen "an explosion in the use of [the shadow docket] powers and the controversy they create,"293 and the public has noticed.294

And the Court's merits decisions reveal a conservative majority flexing its judicial muscles.295 Some ideologies threaten to destabilize the structure of government. The Roberts Court is strongly skeptical of the power and role of administrative agencies,296 "has consistently issued holdings that restrict the scope of administrative deference,"297 and doesn't think particularly much of Congress.298 Other ideologies reflect views of the Constitution that disable elected officials from addressing the needs of the day, like reasonable gun regulation.299 Some see this agenda as an exercise in judicial aggrandizement, achieved by disparaging other branches and imposing vague standards that help the Court maintain control.300 These observations have led commentators to charge the Supreme Court with imperialism.301 The Court, as one commentator put it, "today is not only the most activist of any Court in the past century, but increasingly the locus of all legal power."302 The Court is exercising that power not through sporadic and heroic decisions but through a series of decisions seen by large swaths of the nation as ideologically driven.

A prime example of all these factors is Citizens United, in which the Court overruled prior precedent and struck down, on free-speech grounds, a popular, bipartisan federal law limiting campaign contributions.303 The opinion generated a largely critical response.304 In fact, the five Justices in the majority had very little on their side, other than the Chamber of Commerce. Opposed were four Justices in dissent, the executive branch, Congress, and many states, all of which supported campaign limits.305 The Court could have avoided controversy by deciding the case as the parties presented it: without preserving the First Amendment question.306 Yet the Court itself put the constitutional challenge back on the table as well as reconsidering two past precedents upholding campaign limits.307 All on its own, the Court chose to engage the constitutional questions, strike down a democratically popular law, and overrule two prior decisions.

In the aftermath, President Obama took the rare step of criticizing the opinion publicly in his State of the Union Address, with several Justices in attendance; Alito was broadcast visibly shaking his head and mouthing "not true."308 To be sure, Obama's reproach paled in comparison to Jefferson's, Jackson's, and Roosevelt's, but the public noted the condemnation of the Court by a popular President. Citizens United, emblematic of this Court's propensity toward activism rather than restraint, is a part of a gradual accumulation of negative public reactions to the Court.

B. ETHICS SCANDALS

Aside from decisions, certain Justices have been caught in the limelight for conduct implicating judicial ethics. Justice Thomas has repeatedly been under fire for failing to disclose numerous gifts of destination vacations, private jet flights, sports events, tuition payments, and vehicle financing paid by prominent conservative businessmen.309 Justice Alito reportedly was gifted an expenses-paid luxury fishing trip by a conservative donor, whose hedge fund subsequently appeared as a litigant before the Court; Alito neither disclosed the trip nor recused himself from the case.310 In the weeks leading up to the January 6 insurrection of the Capitol by Trump supporters, Thomas's wife, Ginni, a longtime conservative activist, sent more than two dozen text messages to White House Chief of Staff Mark Meadows urging support for claims that the election was stolen from Trump.311 When flags flown during the January 6 insurrection were flown at Alito's house, he refused to recuse himself from pending cases pertaining to the insurrection.312 Both Alito and Thomas voted, in subsequent cases, to vacate the criminal conviction of a January 6 insurrectionist and to provide broad presidential immunity to Trump for his official acts in contesting the 2020 election.313 These matters received widespread media coverage.314

The Court's response to these events has not mollified the public. It has remained, as a whole, silent on media reports involving specific Justices.315 When Congress held hearings about ethics at the Supreme Court and invited Chief Justice Roberts to testify, he declined.316 And the Court has consistently resisted efforts to impose binding ethics standards on its members.317 The Court finally issued a formal Code of Conduct in November 2023,318 but that Code confirms that individual recusal matters are decided solely by the Justice implicated.319 The reaction of the Court to the scandals has generated its own negative media attention and contributed to its declining popularity.320

C. POLITICIZED APPOINTMENTS

New Justices are appointed by the President and confirmed by the Senate. That process, as John Adams's Midnight Judges shows, has always been political and has occasionally been controversial. Abe Fortas, Robert Bork, and Clarence Thomas are prominent examples. But until recently, such polarized partisanship has been the exception rather than the rule. Antonin Scalia and Anthony Kennedy, for example, were unanimously confirmed, and Bill Clinton's appointees Ruth Bader Ginsburg and Stephen Breyer were confirmed by margins of ninety-six percent and eighty-seven percent, respectively. Since 2006, however, only one of the eight Justices confirmed has been so by more than a two-thirds vote, and the votes are invariably divided along partisan lines.

The partisan voting pattern reflects the partisan popular view of the Court. From 1993 to 2016, the Court's political balance remained relatively constant. Conservative Justices held a 5-4 majority, with some conservative moderates namely, Justices Kennedy and O'Connor voting with liberal Justices to uphold key precedents, like Roe v. Wade.321 Republican Presidents would replace conservative retirements, and Democratic Presidents would replace liberal retirements, without dramatically altering the political valence of the Court.

But the political climate surrounding the Supreme Court began to change dramatically in 2015, in the waning years of an outgoing Democratic President and several aging liberal Justices who seemed unlikely to retire in time for Obama to appoint a younger successor. Then, Justice Scalia, a conservative standard-bearer, suddenly died, resulting in a vacancy that President Obama attempted to fill by appointing Merrick Garland, a highly respected judge on the D.C. Circuit at the time. The Republican-controlled Senate, however, refused to act on the appointment, arguing that a Supreme Court confirmation should not occur in an election year when an outgoing President was of a different party than the controlling Senate majority.322 It was not lost on the public that Garland's confirmation would have given liberal-leaning Justices a majority on the Court for the first time since 1970.323

The gambit paid off. Donald Trump prevailed in 2016 and appointed Neil Gorsuch to fill Scalia's seat, securing a conservative majority on the Court. Soon after, Justice Kennedy retired, and Trump appointed the reliably conservative Brett Kavanaugh to the Court, who was confirmed by a 50-48-1 vote only after a controversial and widely televised hearing involving allegations of sexual assault.324 And, soon after, liberal icon Justice Ruth Bader Ginsburg died, giving Trump the opportunity to flip a liberal seat to a reliably conservative vote, which he took by appointing Amy Coney Barrett in a move widely viewed as portending the end of Roe v. Wade's constitutional protection of abortion.325 That view proved true in the 2022 overruling of Roe in Dobbs v. Jackson Women's Health.326 The dissenters in that case wrote: "Neither law nor facts nor attitudes have provided any new reasons to reach a different result than Roe and Casey did. All that has changed is this Court."327 The culmination of a string of high-profile appointments whose ideologies have shifted the political valence of the Supreme Court has firmly tied the appointments process to popular politics.328

D. POLITICAL POLARIZATION

These events have, since 2010, coincided with "a rapid rise in party polarization," with Republican voters and candidates becoming more conservative and Democratic voters and candidates becoming more liberal.329 As a result, the public is more likely to view the Court in partisan terms, and elected officials are more likely to characterize the Court in partisan terms. With a shrunken political center, the Court, whatever it decides, is likely to dismay around half the populace.

That dismay is increasingly felt by the left. President Trump and his appointees "supercharged liberal discontent with the Supreme Court"330 by dismantling cherished precedent like Roe,331 undermining core progressive values,332 elevating the primacy of religious rights and gun rights,333 expressing a "deep distrust of bureaucracy,"334 and handing Trump a win on presidential immunity from criminal prosecution.335 With now more than fifty-five years of conservative dominance on the Supreme Court, the shine of the Court has worn off for progressives.336 Waning liberal support for the Court, in an age of Court politization and party polarization, is contributing to the view of the Court as just another form of dirty politics.337

CONCLUSION

Throughout history, the Court has ably managed its relationship with the coordinate branches and the people, despite punctuated events of extraordinary controversy. Today's Court sits in a somewhat different position, beset by lowgrade but persistent political and public skepticism, fueled by charged partisanship and the Court's own conduct.

It is unclear what the Court can do, or is willing to do, to restore its reputation. The Court has committed itself to assuming the apex position not only of the judiciary but also in law itself, such that the other branches and the people routinely look to the Court to decide the major political and social questions of the day, cast in legal terms.338 As Susan Carle has argued, when "[c]onfronted with matters they see as profoundly important, [the Justices'] sense of responsibility, if nothing else, impels them to use the power they have to set matters straight in the way they see appropriate."339 This Court, in particular, seems inclined to do so, without regard to the reactions of the political branches or the people.340 Blunt force has overcome master strategy.

But even so, it's not clear the Court feels much threat. Although liberal anger at the Court in the wake of President Joe Biden's election generated calls for term limits and court-packing,341 Biden neutralized the fervor by forming a Presidential Commission on the Supreme Court to study reform proposals;342 the Commission did not recommend major reform, and no congressional reform measures resulted from its efforts.343 So perhaps the Court has calculated that it can continue along its path without paying a price.

But some costs are hidden. This Court, though weathering this stretch of low public opinion, has saved little political capital to cash in when needed. The real fear is whether the Court has exhausted the security and support to stand up when it really matters, perhaps in the face of serious threats to the constitutional order. Today, the Court is vulnerable. And thus so are we.

### AT: Balancing/Nonpartisan---1AR

#### The Court doesn’t care about legitimacy.

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The justices of the US supreme court – even its conservatives – have traditionally valued their institution’s own standing. John Roberts, the current US chief justice, has always been praised – even by liberals – as a staunch advocate of the court’s image as a neutral arbiter. For decades, Americans believed the court soared above the fray of partisan contestation.

No more.

In Donald Trump’s second term, the supreme court’s conservative supermajority has seized the opportunity to empower the nation’s chief executive. In response, public approval of the court has collapsed. The question is what it means for liberals to catch up to this new reality of a court that willingly tanks its own legitimacy. Eager to realize cherished goals of assigning power to the president and arrogating as much for itself, the conservative justices seemingly no longer care what the public or the legal community think

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of the court’s actions. Too often, though, liberals are responding with nostalgia for a court that cares about its high standing. There is a much better option: to grasp the opportunity to set right the supreme court’s role in US democracy.

Attention to the body’s legitimacy surged in the decades after the extraordinary discussion on the topic in Planned Parenthood of Southeastern Pennsylvania v Casey – the 1992 case that memorably preserved the abortion rights minted in Roe v Wade despite recent conservative additions to the court. “The Court’s power lies in its legitimacy,” former justices Anthony Kennedy, Sandra Day O’Connor and David Souter explained in their joint opinion, “a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands”. The fact of popular acceptance of the institution’s role was itself a constitutional and legal concern.

Compared with the prior quarter-century, when they angled for just one justice (often Kennedy) to swing to their side, it was already clear as Trump’s first term ended how much was going to change with Amy Coney Barrett’s conservative substitution for Ruth Bader Ginsburg. Yet liberal justices generally proceeded as if their conservative peers would continue to take their own institution’s legitimacy seriously. They focused on warning conservatives against further eroding it. The dissent in Dobbs v Jackson Women’s Health Organization, which removed the federal right to abortion, is a classic example. The liberal justices lionized Kennedy and other conservatives for refusing to overturn Roe v Wade out of the need they cited in Casey to maintain the supreme court’s image.

That was then. In Trump’s second term, the court has ceded to him near total control over federal spending, even as the president is now openly threatening to withhold funds from “blue” states and projects not aligned with administrative “priorities”. Authorized by the court to engage in racial profiling, masked federal agents continue to descend upon “Democrat-run” cities, subjecting Latinos and now Somalis to ongoing abuse.

Most recently, the court hinted at its plan to declare most, if not all “independent” agencies unconstitutional, allowing Trump to fire members of the Federal Trade Commission and the National Labor Relations Board – though Chief Justice Roberts did suggest that the Federal Reserve might be different, drawing sighs from legal commentators (and sighs of relief from investors). The conservative justices appear wholly unbothered by the howls that the court is no more than a partisan institution, turning their destructive attention next to what remains of the Voting Rights Act.

Yet with the conservative justices shattering the supreme court’s non-partisan image during Trump’s second term, liberals are not adjusting much. The liberal justices – Ketanji Brown Jackson, Elena Kagan and Sonia Sotomayor – have become much more aggressive in their dissents. But they disagree with one another about how far to concede that their conservative colleagues have given up any concern for institutional legitimacy. Encouragingly, Jackson pivoted to “warning the public that the boat is sinking” – as journalist Jodi Kantor put it in a much-noticed reported piece. Jackson’s fellow liberals, though, did not follow her in this regard, worrying her strategy of pulling the “fire alarm” was “diluting” their collective “impact”.

Similarly, many liberal lawyers have focused their criticism on the manner in which the supreme court has advanced its noxious agenda – issuing major rulings via the “shadow” docket, without full-dress lawyering, and leaving out reasoning in support of its decisions.