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### Military Impact---1AC

#### Specifically, work stoppages disrupt military supply chains.

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Corey R. Payne, “Labor Unrest, Global Military Supply Chains, and the Chokepoints of Just-In-Time War,” Submission to American Sociological Association Conference, February 2023, https://ssha2023.ssha.org/uploads/230054

The COVID-19 pandemic revealed significant vulnerabilities in global supply chains. Public health shutdowns, a tight labor market, and volatile economic conditions led to significant disruptions to the flow of global trade. While disruptions to consumer industries have received considerable attention, the US military’s networks have also faced similar challenges: supply chain woes have “dealt a significant blow” to military industries, having “upended the plans of defense firms of all sizes” (Losey 2021). Pentagon officials noted that the pandemic heightened awareness of “vulnerability within the supply chain” that had existed before 2020 (Mayfield 2020). Indeed, long before the pandemic, some were sounding the alarm about supply chain vulnerabilities stemming from the “just-in-time” organization of the US military’s global supply chains (e.g. Adams 2013). The US response to Russia’s invasion of Ukraine has only compounded these challenges (Bender and Seligman 2022; Rathbone, Pfeifer, and Chavez 2022).

An analysis of labor relations can help us better understand these supply chain vulnerabilities. In the world economy writ large, labor unrest was a key component of supply chain disruption during the initial years of the COVID-19 pandemic, as workers struggled against dangerous working conditions and mounting deprivation in the face of an economic downturn (e.g. Covert 2020). The same held true in military supply chains: In 2020, for example, workers at Lockheed Martin and Boeing protested their being forced to work in dangerous conditions, while workers at GE’s Lynn, Massachusetts, plant organized a one-day strike—not just over their own safety concerns, but to pressure GE to swap production of armaments for the production of “life- saving ventilators the whole country so desperately needs” (Lacy 2020). Combined with a series of strikes over pandemic health and safety conditions in Mexican maquiladoras, many military officials and observers saw a coming crisis due to workplace disruptions (Sieff 2020).

While the pandemic brought the disruptive power of workers and the vulnerabilities of military supply chains into stark relief, their origins lie far earlier. Using new data on labor unrest in the US military’s global supply chains, this paper examines twenty-first century work stoppages in historical perspective. It argues that twenty-first century labor disruptions in the US military’s global supply chains directly stem from the decades-long embrace of neoliberal restructuring. In the mid-twentieth century, wartime challenges stemming from disruptive labor unrest and inefficiencies in mass mobilization led many officials and managers to seek a change in the way war was supplied (Payne 2023). While initial attempts at transformation emerged in the wake of World War II and the Korean War, restructuring took off after Vietnam—intertwined with the neoliberal changes in the world economy more broadly (Cowen 2014).1 The US military and its industrial base reorganized armaments production, privatized logistics services, embraced flexibilization and just-in-time networks, and racialized the workforce. By the 1980s and 1990s, labor costs were lowered, work stoppages declined, and a new form of “just-in-time warfare” (Hazlett 1995) warfare—exemplified in the technological and logistical prowess on display in the 1990-1 Gulf War—was on the horizon.

In the twenty-first century, the wars in Iraq and Afghanistan, combined with a global “war on terror,” placed significant strain on the military’s just-in-time supply chains. Careful observers have explored the industrial challenges of these wars (e.g. Hasik 2016), and some work has been done on strikes by industrial armaments workers in the twenty-first century (Payne 2020). Less attention has been paid to the significantly more disruptive labor unrest in global logistics networks. Using a new dataset to explore this unrest, this paper shows how the privatization, racialization, and flexibilization of logistics networks has yielded a new class of workers at the chokepoints of military supply chains. These workers often face poor working conditions, and they are able and willing to stop work in struggles to improve their conditions.

The response to this unrest from firms and military officials has thus far been to double- down on neoliberal restructuring. This only serves to heighten the conditions that place disenchanted and structurally empowered workers at the chokepoints of military supply chains. Instead, this paper argues that military officials should return to some of the lessons of World War II—when labor unrest was pacified through mutually beneficial social compacts with workers— but on a necessarily wider scale today than in the mid-twentieth century.

#### Robust military supply chains are the nexus of power projection.

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Nicholas Jordan and Jennifer Mapp, over 22 years of Air Force contracting and acquisition experience and is a national defense fellow at Georgetown University, “In the Dark: How the Pentagon’s Limited Supplier Visibility Risks U.S. National Security,” War on the Rocks, 06-14-2023, https://warontherocks.com/2023/06/in-the-dark-how-the-pentagons-limited-supplier-visibility-risks-u-s-national-security/

If logistics wins or loses wars, what wins or loses logistics? U.S. military doctrine has the answer: “The U.S. military supply chain (to include the defense industrial base) represents a major competitive advantage that underpins deterrence and allows the United States to project power.” Despite being established in doctrine, it took a global pandemic for the Department of Defense to take notice of the fragility of its supply chains and the full impact of China’s global economic expansion. However, acknowledging vulnerability, understanding it, and doing something about it are not mutually inclusive. While awareness in the Department of Defense is rising, the lack of visibility into defense supply chains makes easy targets for adversaries seeking to insert undetected risks into supply chains — silently biding time until they choose to exploit them. It is difficult to fix what you can’t see. It is time for the Department of Defense to take bold steps to gain full visibility into defense supply chains to help mitigate the risk of acquiring U.S. equipment from foreign adversaries and/or shoddy suppliers.

Supply chains underpin the global market. Every product has a network of interconnected companies that must come together at the right time and place to deliver a timely product. The more complex the product, the more nodes the network has. Each node has its own material, logistics, personnel, processes and stakeholder challenges. A disruption in one node will sweep quickly throughout the entire system and upend the supply chain.

The military supply chain is a complex system comprised of a network of suppliers, expanding beyond the known large defense contractors out to thousands of low-tier suppliers. Each tier of the network is critical to the success of the tiers above and below it. Within these networks, there are nexus suppliers critical to the success of the entire system. We argue that it is not too hard and not too expensive to gain full visibility over all of these supply chain nodes. To do so, the Department of Defense should capitalize on proven commercial supply chain software suites, work with Congress to set visibility mandates and reimagine its approach to supply chain management in the 21st century.

#### Lapses in power projection cause extinction.

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We are now, once again, living in the preliminary phase of an international confrontation that will rapidly evolve into a world war if the democracies do not shore up nuclear and conventional deterrence against territorial conquest. Full spectrum nuclear and conventional deterrence and Soviet appreciation of the costs of war kept the Cold War stand-off from escalating into a Third World War. However, nuclear deterrence will not on its own prevent World War III (over either Ukraine, Taiwan, the Straits of Hormuz, or the Korean peninsula), just as the prospect of incendiary and nerve gas assault against European capitals by bomber fleets did not deter the outbreak of the Second World War.

Instead, German leader Adolf Hitler chose to fight by armored conquest, and all of his adversaries complied. World Wars are never an intention of foreign policy. Instead, they escalate from failed attempts at a quick land grab by authoritarian states in the face of an unprepared and slowly coalescing democratic coalition. Washington must be on the lookout for deterrence crises in these minor theatres, as war will not start with an immediate Russian attack on Poland or even a direct Chinese amphibious landing on Taiwan’s coast.

Despite the enormous death toll among soldiers and non-combatants, neither the First nor Second World Wars had actually satisfied the complete definition of total war or reached Karl von Clausewitz’s definition of an absolute war. The First World War began, for both the Central Powers and democratic Allies, as quick campaigns, primarily focused on Berlin blocking the interference of France in German Imperial designs in Ukraine. Neutral world opinion likely deterred the use of gas against population centers in 1915 and thereafter, despite the war resembling a total effort in almost every other respect.

The reason the widely predicted incendiary and gas bomber attacks against the respective capitals of Paris, Berlin, and London never took place at the outbreak of the Second World War was that Hitler intended to achieve victory through a series of limited and rapid fait accompli conquests, including, in sequence, Czechoslovakia in March of 1939, and Poland in September, France in May of 1940, and culminating in a victory over Moscow by the end of 1941. In his 1938 Germany and a Lightning War, Fritz Sternberg argued that the experience of the First World War showed that Germany, even with its military-technical expertise, could not win a protracted total war. It was conceivable that an under-industrialized Russia could be defeated in the First World War. Still, there were absolutely no Nazi plans for defeating a USSR backed by U.S. industrial might.

While totalitarian propaganda could temporarily neutralize the German people’s reluctance to fight (11 million former Communist party voters still lived in Germany), Germany lacked the oil, food, and other resources necessary for an attritional contest. Hitler knew that given the political shock in Washington after the fall of France in June of 1940, it was only a matter of time before the United States would exploit an excuse to enter the war as it had previously in the First World War. Hitler was almost certainly aware that after the Japanese attack on Pearl Harbor in early December of 1941, and with the Wehrmacht’s failure to take Moscow a month later, Germany had one more campaign season to neutralize the Soviet Union before it would face the fate of inevitable defeat.

Contrary to popular histories, the September 1939 French and British declarations of war against Germany in response to its invasion of Poland were not intended to herald the beginning of the Second World War. As with the dispute between Sparta and Athens over Corcyra, which was to escalate into the Peloponnesian War, or the assassination of Archduke Ferdinand in Sarajevo in June 1914, the local conflicts evolved into World Wars as major powers saw opportunities to resolve long-standing strategic dilemmas.

According to the venerable Australian historian Geoffrey Blainey, wars that draw in originally neutral states into one of the two opposing alliances, thereby removing the uncertainty of the foreign policy of uncommitted states, cancel the deterrence against the attack calculations of the aggressor states (those states most intent on replacing the status quo with a new revisionist territorial, commercial and international institutional order). The mutual understanding between Germany and Hungary, Italy, Japan, and the Soviet Union (in the Molotov-Ribbentrop Pact), as well as the persistent isolationism of U.S. public opinion, made Berlin feel that an attack on Poland was safe from the further widening of the conflict. Beijing may today hope that the Russian and Iranian distraction of Europe and the United States, respectively, would allow it to move against Taiwan.

There does not need to be an existential threat to a country for its leaders to think it is worth the risk to trigger a war. While the sustainability of Nazi Germany’s autarkic and price-controlled economy and the reputation of the Nazi Party tied to it were doomed, Adolf Hitler gambled against a world order that blocked his aspiration to drastically enlarge German territory and population. Neither Russian President Vladimir Putin nor Chinese Communist Party General Secretary Xi Jinping faces an existential threat to their countries. Still, both believe it is worth staking the survival of their respective authoritarian regimes on a high-risk strategy to grasp at becoming a world power through regional conquest.

University of Chicago professor John J. Mearsheimer has demonstrated in his 2001 Tragedy of the Great Powers that continental states will risk their territorial futures for the opportunity of becoming regional hegemons because of the obvious benefit of near total security that dominating a region allows. Regional hegemons, of which the United States is the only example (completely dominating North and Central America, including Canada and Mexico), are able to exclude foreign powers from their own region through the low-cost expedient of interfering with them in their respective region.

China is too busy preparing for war against Taiwan to establish a major base and alliance against the United States with Venezuela, Mexico, and Brazil (although the USSR did try and set up a strategic base in Cuba and Nicaragua during the Cold War). In this fashion, the United States has preoccupied India with Pakistan, China with Japan, Russia with Germany, Egypt with Israel, Iran with Saudi Arabia, Indonesia with Australia, and Thailand with Vietnam. It would, if required, back Argentina against Brazil, Angola against South Africa, Cote D’Ivoire against Nigeria, and Kenya against Tanzania and Ethiopia.

There are three necessary requirements for deterrence to succeed against escalating local threats to global war. First, the democracies must have at least a single member incentivized to provide both strategic nuclear deterrence and the conventional trans-oceanic forces necessary for regional intervention in situations where a stability-instability paradox cancels out opposing nuclear arsenals. For example, the United States needs “escalation dominant” nuclear weapons to deter China’s use of nukes while also being able to land U.S. Marines on Taiwan to defend or liberate it. This is currently being undermined by an isolationist-populist trend within U.S. politics, largely the consequence of the perceived abandonment of the blue-collar class by both the Democratic and mainstream Republic political parties. This is, in turn, the result of deindustrialization, contested immigration policy, and the genderization of the law and voting patterns.

Second, the democracies must form a credible alliance framework for mobilization. NATO and its partnership architecture are well-suited for this purpose, especially given the challenges of setting up a similar alliance in East Asia and the Persian Gulf. Ironically, the lack of policy controversy so common during the Cold War, over command of the integrated Mediterranean fleet strategy, over nuclear weapons sharing, about whether a tactical nuclear war should be initiated at the East German border or the Rhine, indicate the lack of serious consideration of the implications of deterring China, Russia, and Iran. During the Cold War, Tehran was as hostile to Moscow as it was to the United States, a situation that now no longer holds. It is conceivable today that a Russian airborne division landing on the southern littoral of the Straits of Hormuz would now be conducted with the coordinated support, air cover, and supplies of Iranian forces at Bandar Abbas.

What democratic coordinated efforts do exist, such as the Interparliamentary Alliance on China, are rudimentary synchronization efforts by a minority of elites that hardly influence their domestic politics. In Canada, for example, the federal government has refused to identify those members of parliament who have been recognized by Canada’s intelligence service (CSIS) as colluding with hostile foreign powers. NATO membership is being used as a substitute rather than a focus of national defense efforts, as demonstrated by the repeated failure of Brussels to solve the collective action problem of producing artillery shells for the war in Ukraine.

Third, there have been few explicit warnings about what would happen, except in the broadly vague sense of triggering NATO’s Article Five, if any of the vital interests of the democracies is threatened or attacked. Rational deterrence theory has argued that there are three necessary conditions for deterrence to succeed: sufficient military capabilities, credible willingness to use force, and communication of that threat. Far too much discussion has focused on the sufficiency of force and credibility issues, and far too little has been focused on the most easily forgotten ingredient of communicating a warning. It was the simple error of excluding South Korea from the U.S. sphere of protection that made Beijing and Moscow feel safe to back the 1950 North Korean invasion of South Korea. Pakistan was emboldened to initiate the 1965 War because of reluctance in New Delhi to warn against any adventurism in Kashmir. The reasons for the failure to communicate are always the same. There is, first, a reluctance to alarm and appear irresponsibly belligerent to the domestic electorate. Second, there is the misguided notion that not mentioning a dispute will reduce the likelihood that it will become inflamed and lead to war.

Washington persists in its vague assurances about the defense of Taiwan, refusing to deploy ground troops as it had done as recently as 1979. This made sense at the time since Washington was exploiting the Sino-Soviet split that had developed since 1959. Siding with Beijing compelled the Soviets to shift one-third of their entire military and tactical nuclear arsenal to the East of the Ural Mountain range.

Today, the long frontiers of Norway and Finland and the former’s Arctic possessions, if violated by Russia, would likely produce an immobile stand-off. This dysfunctional response during the Second World War, the Sitzkrieg (or “sitting war”), was a seven-month period of inactivity after the September 1939 attack on Poland, during which Germany was afforded the time to build up and then conquer Denmark, Norway, the Netherlands, Luxemburg, Belgium, and France, by June of 1940.

Fortunately, today, declaratory policy and operational plans are far more explicit for the defense of Baltic NATO allies and Poland, the Straits of Hormuz, Filipino South China Sea islands, South Korea, and Japan, largely because U.S. forces are deployed there on the ground. In some instances, such as the war in Ukraine, deterrent ambiguity is useful because it robs Putin of the ability to activate outrage among Russia’s mobilization-age cohort. Thus, Moscow is trapped in a war whose expense is multiplied by the need to employ relatively ineffective technical expedients, such as using rocket bombardments to shift Ukrainian public opinion, and the predicament of having to hire overpaid foreign mercenaries and contractors.

U.S. Presidents Franklin D. Roosevelt and Harry S. Truman were constrained by American public opinion and their own strategic myopia about abandoning the people of Eastern and Central Europe to Bolshevism at the end of the Second World War, without which a confrontation with the Soviet Union would have been far more short-lived. Obviously, the American and British populations were hardly in the mood to support a new war aimed at pushing the large Soviet army back to its borders. However, as with the implied nuclear threat by President Truman against Soviet forces backing the Azeri separatists in the Iranian civil war in 1946, the United States could have intimidated a Soviet retreat out of much of Eastern Europe and thereby avoided the Cold War confrontation with the Warsaw Pact.

Consequently, contesting local threats to allies today, by Russia, China, and Iran, is vital because authoritarian states have repeatedly proven that they are capable of accumulating occupied people and redirecting their productive efforts against the spread of democracy. We see this coercive harnessing of free people into supporting authoritarian economies in how Beijing has suppressed the people of Hong Kong and how Russia has demonstrated its brutal occupations of Chechnya and parts of Ukraine, such as Mariupol.

The theory of the stability-instability paradox explains that the reciprocal deterrence by the 12,000-ton Nazi arsenal of Tabun nerve gas and Allied VX gas and biological weapons defaulted the Second World War to be fought by tanks and incendiary bombs. A very similar dynamic could neutralize the nuclear arsenals of China and the United States, leading to a conventional war over Taiwan, or at least delay the first desperate use of a nuclear weapon to signal a desperate resolve from the loser.

Deterring China, Russia, and Iran under these circumstances will require NATO and its democratic allies to focus on defending the smaller states on the peripheries. China will not attack Taiwan directly, nor will Russia drive directly into Poland, nor will Iran seize both shores of the Straits of Hormuz. Rather, by applying erosion tactics, they will all attack easier tangential targets that can be accumulated and later contribute to a major attack. China will boldly seize the offshore Taiwanese Islands, including Pratas and Taiping Island, Russia will target Norwegian Arctic island possessions, and Iran will push cohorts more deeply into Iraq. To preserve the peace, the democratic frontline should be pushed out to the periphery.

### CBR Key to Industrial Peace---1AC

#### Unionization promotes industrial peace by improving labor-management relations. Otherwise, work stoppages collapse society both at home and abroad.

Cohen 1917 – Lawyer, former Chair of the NYC Lawyers Association Committee on the Unauthorized Practice of Law

Julius H. Cohen, "A League to Enforce Industrial Peace,” *Proceedings of the Academy of Political Science in the City of New York*, Vol. 7, No. 1, from Labor Disputes and Public Service Corporations (Jan. 1917), pp. 108-144, pub. Academy of Political Science, https://www.jstor.org/stable/1171719

In discussing" War and Human Progress," Viscount Bryce brings out the distinction between two schools of philo-sophical thinkers or historians. One of these schools lays stress on " the power of reason and of those higher and gentler altruistic emotions which the development of reason as the guide of life tends to evoke and foster " and finds in these tendencies " the chief sources of human progress in the past, and expects from them its further progress in the future." This school regards man " as capable of a continual advance through the increasing influence of reason and sympathy," and dwells upon " the ideas of justice and right as the chief factors in the amelioration of society." It, therefore, regards "good-will and peace as the goal of human endeavor in the sphere both of national and of international life." The other school, less sanguine, insists " on the power of selfishness and of pas-sion, holding these to be elements in human action which can never be greatly refined or restrained, either by reason or by sympathy; " that social order " can be secured only by force, . . . right itself is created only by force," and that " it is past force that has made what men call right and law and govern-ment." The tendency of this second school is " associated with the less rational elements in man-with passion and the self-regarding impulses which naturally attain their ends by physical violence." 1 The conflict between these two philo-sophies which Viscount Bryce finds is the fundamental provo-cative of the great international war, thoughtful persons find also is the fundamental provocative of industrial conflict. Inevitably the rational mind finds resemblances in industrial situations illustrating this same conflict of philosophies. In 1 Atlantic Monthly, September 1916, pp. 301-2. I08 TO ENFORCE INDUSTRIAL PEACE I09 December 1914, Dr. Felix Adler, discussing" Militarism and Its Eulogists," said that while Self-defense has generally meant standing up for one's own rights . . . anyone who stands up for his rights, who separates in mind his right from the correlative rights of the other party, will inevitably glide over from right into might. He will begin by exercising right and presently change to the exercise of mere might. The only possible way to defend ourselves from that is to bear in mind that our right is an organ in the organism of rights. The great ethical error of the world till now has been that in righteous self-defense men have become most unrighteous, because in self-defense they have thought of their right as sundered from the right of others. Yet my right is but one blade of the shears, and the right of my fellow, even though he be the aggressor, is the other blade. Applying this principle applicable to the international conflict, he finds it involved in the conflicts of laborers and employers. Laborers protest [he says] that their employer has been unjust, oppressive. They combine to defend their rights, and in this they are justified. But often the movement of protest, which began with a strike on behalf of right, degenerates into sheer assertion of might. The labor organization, if sufficiently strong, becomes dictatorial, per-emptory, formulates demands inconsistent with sound business and with the self-respect of the employer. Now so long as the present in-dustrial system continues, so long as there are employers, the employ-ers have certain rights, because they have certain functions. Unduly to restrict their functions is to destroy their rights. Conversely, the employer may begin by resisting the tyranny of labor, and in so far as he does this we approve of his action. But presently, in defend-ing his rights, he is apt wholly to forget the rights existing on the opposite side, in particular the indispensable right of association He announces his intention to crush the union of laborers, and thus in his blind assertion of the fractional right which is his, he destroys the integral right which is compounded of his and theirs.1 Similarly, Professor John Dewey writes that the neutral coun� tries find themselves in the position of the public when there is a strike on the part of street-railway employees. The corporation and the employees fight it out between themselves, and the public suffers and has nothing to say. [He says that it is] the nations not at war [who] have the superior right in every case [because] in the existing situation they are the representatives of the normal interests of mankind, and so are in the right against even the contending party that with respect to other contenders is most nearly in the right. [Professor Dewey says that] our existing human intercourse requires some kind of a mechanism which it has not got [ and that] instead of setting our-selves in deliberate consultation to institute the needed laws of the intercourse of nations [ we wait] for new law to be struck out by the accident of clash and victory.1 It would seem, therefore, to be no vain prophecy to fore-cast that if the sentiment now behind the League to Enforce Peace should prevail and the outcome of the great inter-national war should be the invention of new mechanism for making reason triumphant in international relations, we shall witness a rapid creation of institutions for subordinating in-dustrial conflict to a reign of law. Viscount Bryce before the recent election emphasized the immense importance of the declarations made by Mr. Wilson and Mr. Hughes as the leaders of the two great American parties. . . . Both have described in clear and strong terms the interest the American people have in the prevention of war and the duty which lies upon it as a peace-loving people to do its utmost for securing the safety of the world in future by a permanent combination for the restraint of aggression and the preservation of a general peace.2 Both candidates during the campaign pledged themselves to the principle of arbitration in industrial disputes. Chancellor von Bethmann-Hollweg recently said: If at and after the end of the war the world will only become fully conscious of the horrifying destruction of life and property, then through the whole of humanity there will ring out a cry for peaceful 1 International Journal of Ethics, April 1916, p. 320. 2 New York Times, October 28, 1916. TO ENFORCE INDUSTRIAL PEACE III arrangements and understandings which, as far as they are within human power, will prevent the return of such a monstrous catastrophe. This cry will be so powerful and so justified that it must lead to some result. Germany will honestly co-operate in the examination of every endeavor to find a practical solution, and will collaborate for its possible realization.1 In its recent report upon the car strike forwarded to the governor of the state,2 the public service comm1ss10n of the first district of New York declared : The right of men freely to organize is a legal right no longer subject to question. The right of men freely to select spokesmen or advisers is a corollary of this right. The right to deal or to decline to deal collectively with an organization is likewise a legal right. So, too, the right to employ or to refuse to employ members of a certain organization is a legal right, justified morally in its exercise, accord-ing to the circumstances of each case. But the right of the state to have its public utilities operated safely, efficiently and continuously is also a legal right. Which of these rights is paramount? The rights of the people, or the rights of workers or employers? Whatever the application of these rights may be in private ventures, the right and the duty of the state in respect to its public utilities are clearly paramount. It is true that none of these rights, of the state, the worker or the employer, are arbitrable. But the adjustment of these rights so that each may be respected and properly balanced involves important considerations. While all of these parties have clear rights, the manner of exercising them is of the highest impor-tance. The methods commonly accepted as moral are the methods of argument and persuasion, and the methods commonly condemned are those of coercion or oppression. Neither should the men coerce acceptance of their views, nor the company coerce acceptance of its views. Even if the company has the legal right to discharge union men, it is questionable whether it can justify itself on moral grounds. With public utilities, where the necessities of the people depend upon their operation, it should not be permitted to any group of men, be they employees or employers, to inconvenience and bring distress upon the whole people for the purpose of securing acquiescence with its views. This is to substitute coercion arising out of the necessi-ties of the public for persuasion as a method for securing recognition of concededly non-arbitrable rights. It is a very significant indication of the movement for judi-cature in industrial conflict that in recent industrial contro-versy strong and fervent appeals for arbitration come first from one party and then from the other. In the cloak strike of 19 l 6 it was the union which, in its appeal to the public, declared that it had been consistently opposed to a warfare in the industry [and believed] that the problems of the industry cannot be satisfactorily solved either by lockouts or strikes, but only through patient resort to the method of fairminded discussion, adjustment and democracy, [and that its only demand was] that both sides should submit their dis-putes to the arbitrament of an impartial body, whether that body be called a board of arbitration or a council of conciliation. In the 1916 railroad situation it was the national conference committee of the railways which called upon the public to de-cide whether or not "this wage problem [should] be settled by reference to an impartial federal tribunal ... or by in-dustrial warfare." 1 On the other hand, in the case of the cloak strike, the manufacturers took the position that "We do not believe in outside bodies interfering in our affairs." 2 And in the case of the railway employees, the leaders of the brother-hood contended that they were in the grip of a power greater than we [themselves]. [ Indeed, so they said, they were in the condition where] the veneer of civiliza-tion falls off, and you have the primeval man to deal with on both sides of the question . . . and, like the primeval man, both are pre-pared to appeal to the club. . . . In other words, they (the rail-roads) won't arbitrate where they fear, and there is nothing to ar-bitrate where there is no fear.3 1 Advertisement, New York Times, June 26, 1916. z Editorial, New York Times, May 27, 1916. 3 Minutes of Hearing before the Committee on Interstate Commerce, U. S. Senate, pp. 25 and 28. TO ENFORCE INDUSTRIAL PEACE II3 Accordingly, the men refused to arbitrate. These illustrations suffice to indicate that in our country the demand for arbitra-tion of industrial disputes is not confined to labor or to capital, nor is the refusal to arbitrate confined to either. The slightly deaf gentleman, being asked concerning the points of the com-pass, replied "You can't tell. It shifts around up here," be-lieving that he had been asked concerning the direction of the wind. If you happen to be in control of the situation, or think you are in control, you are not for arbitration. If you happen to be weaker than the other party, or think you are, you are a sturdy advocate of the principle of arbitration. There is no monopoly in this country of this shiftiness of position. A recent study of the experience of arbitration in Australasia discloses a similar experience there. When there was a large surplus of labor in Australasia and standards of wages were beaten down by the competition of the unemployed, the trade unions sought the establishment of wage boards and compul-sory arbitration. When there was a shortage of workers and labor secured the upper hand, it was the employers who fought for the maintenance of arbitration.1 It is significant that in this country now, when there is a labor shortage, the demand for industrial arbitration comes most strongly from the em-ployers' group.2 The manager of a large enterprise in St. Louis, we are told by a trade journal, "struck the nail on the head in advocating the appointment of a government com-mission, to adjust differences arising between labor and capital, just as the interstate commerce commission now adjusts troubles between the railroads and the shippers." 3 Indeed, the Syndicalists seem to be the only industrial advo- cates who consistently decline arbitration. Workmen quickly perceive that the labor of conciliation or of arbitration rests on no economico-judicial basis, and their tactics 1 See Arbitration and Conciliation in Australasia, by M. T. Rankin. Lon- don, 1916. Ch. vi, Arbitration Court System. 2 See Merchants' Association of New York plan to prevent the interruption of public utilities, Greater New York, September 25, 1916. 8 Daily Trade Record, October 28, 1916. 114 LABOR AND PUBLIC SERVICE CORPORATIONS have been conducted-instinctively perhaps--in accordance with this datum. Since the feeling and, above all, the vanity of the peace-makers are in question, a strong appeal must be made to their im-aginations, and they must be given the idea that they have to accom-plish a titanic task ; demands are piled up, therefore, figures fixed in a rather haphazard way, and there are no scruples about exagger-ating them; often the success of the strike depends on the cleverness with which a syndicalist ( who thoroughly understands the spirit of social diplomacy) has been able to introduce claims, in themselves very minor, but capable of giving the impression that the employers are not fulfilling their social duty. It often happens that writers who concern themselves with these questions are astonished that several days pass before the strikers have settled what exactly they have to demand, and that in the end demands are put forward which had not been mentioned in the course of the preceding negotiations. This is easily understood when we consider the bizarre conditions under which the discussion between the interested parties is carried on. I am surprised that there are no strike professionals who would undertake to draw up lists of the workers' claims; they would obtain all the more success in conciliation councils as they would not let themselves be dazzled by fine words so easily as the workers' dele-gates. When the strike is finished the workmen do not forget that the employers at first declared that no concession was possible; they are led thus to the belief that the employers are either ignorant or liars. This result is not conducive to the development of social peace! 1 One of the things which appear to me to have most astonished the workers during the last few years has been the timidity of the forces of law and order in the presence of a riot; magistrates who have the right to demand the services of soldiers dare not use their power to the utmost, and officers allow themselves to be abused and struck with a patience hitherto unknown in them. It is becoming more and more evident every day that working-class violence pos-sesses an extraordinary efficacy in strikes: prefects, fearing that they may be obliged to use force against insurrectionary violence, bring pressure to bear on employers in order to compel them to give way; the safety of factories is now looked upon as a favor which the prefect may dispense as he pleases; consequently he arranges the use 1 Reflections on Violence, by Georges Sorel. Translated by T. E. Hulme; pp. 64, 65. TO ENFORCE INDUSTRIAL PEACE of his police so as to intimidate the two parties, and skilfully brings them to an agreement. Trade-union leaders have not been long in grasping the full bear-ing of this situation, and it must be admitted that they have used the weapon that has been put into their hands with great skill. They endeavor to intimidate the prefects by popular demonstrations which might lead to serious conflicts with the police, and they com-mend violence as the most efficacious means of obtaining concessions. At the end of a certain time the obsessed and frightened administra-tion nearly always intervenes with the masters and forces an agree-ment upon them, which becomes an encouragement to the propa-gandists of violence.1 Sorel says: We cannot censure too severely those who teach the people that they ought to carry out the highly idealistic decrees of a progressive justice.2 There is not much difference between this philosophy of Sorel's and the point of view of many-Praise be the Lord! not all-successful employers and successful leaders of labor. The writer in the financial columns of a daily paper in New York appeals to business men to realize what it means to find the attitude of labor " like that of capital. Both take what they can get in the present, intent only upon the highest profit; both refuse to be responsible for the sequel, and neither one can spare the time to attend to the future." 8 Goethe saw this struggle for power, the unwillingness to surrender power and the unwillingness to be bound by power. The thirst for power would not let the ghost be laid: How often has it risen! Yes, and it will rise Ever and evermore! No man yields sovereignty Unto his fellow: none will yield to him Who won the power by force, and by force keeps his hold. For man, who cannot rule his own unruly heart, Is hot to rule his neighbor, bind him to his will. 1 Sorel, op. cit., pp. 69-70. 2 Ibid., p. 122. s Garet Garrett, Finance-Economics, New York Tribune, October 23, 1916. 116 LABOR AND PUBLIC SERVICE CORPORATIONS II But the " neutral " in industrial warfare, like the " neutral " in international warfare, is securing a standing in court. He is becoming an amicus curiae. In the recent milk strike in New York-a strike, be it observed, called not by the proletariat, but by capitalists, i. e., farmers, owners of real estate-an attempt by capitalists to fix the price of milk by collective bargaining, upon the ground, indeed, that the farmer (a capitalist) was not earning a " living wage "-at thevery moment that these capitalists were practising sabotage, overturning and emptying milk cans in the up-state highways, the babe in its mother's arms, dependent for its life upon this wasted milk, cried out it'> neutral protest. Wherefore the editors pass comment: The interests of no group in the community are more important than the public interest. The well-being of all should never be permitted to suffer because some special portion of the whole is seeking its own well-being in its own way. The public should never be put in the position of the " innocent bystander " at a street fight, who often receives the severest injuries.1 And they prophesy : The next great public problem is to work out the means by which organized groups of individuals, whether they represent labor and capital, or production and distribution, or merely rival interests in a single field, shall be compelled to settle their differences peaceably, to accord justice to each other, and to observe the rights of the people. The " neutral " is more and more securing a hearing for his claims, not merely because of the disturbance of his immediate comfort, not merely because his breakfast bottle of milk is absent from his door-step, or his coal supply is shortened, or the street cars are delayed in running. There is cordial accept-ance of the thought that there can be no interruption in the arterial service of the social organism without disturbing the whole system. Sometimes it is the lungs who try to make us 1 Independent, October 23, 1916. TO ENFORCE INDUSTRIAL PEACE 117 believe that they are the most important member, but more often quiet little members of the family, less vocal than the lungs, remind us with twinges of pain that it is not the noisiest member who can make the most trouble. In certain fields of industrial activity for a long time there has been clear accept-ance of the principle that the rights of the parties involved are ever subordinate to the public interest. Notwithstanding the vast grant of power to the interstate commerce commission, enlightened railway executives appeal for grant of more power. No student of the decisions of the commission can fail to be impressed with the maze of discrimination, rebating and un-fair practices left utterly without control on the part of the state or nation until this latent power was institutionalized. In the express rates case, Commissioner ( now Secretary) Lane said: It is to be borne in mind that these carriers (meaning the express companies) remained for twenty years entirely without regulation as to interstate traffic after the railroads had become subject to this act, and that various efforts to remedy existing conditions made by individual carriers had failed because of lack of harmonious action and the inability of the government to compel them to adopt prac-tices that were just and non-discriminatory.1 It is a similar " lack of harmonious action " between employers and employees and a similar " inability of the government to compel them to adopt practices that were just and non-discrim-inatory " that leaves us still in a condition of mitigated syndicalism. The railroad enterprises of the country were obliged under the pressure of government to work out the intricate problems of popular control in relation to technical adminis-tration. Walter Lippmann points out that "on the capacity of labor to develop an efficient government for itself hangs the decision as to how much responsibility the unions can af-ford to assume. It is the development of a citizenship in in-dustry that the labor movement has before it. It will have 1 In re Express Rates, Practices, Accounts, and Revenues. 24 J. C. C. 381, at 389. I 18 LABOR AND PUBLIC SERVICE CORPORATIONS to work out the intricate problem of popular control in relation to technical administration." 1 Business is under the control of government. Do the business men of the country realize that the federal trade commission will ultimately determine what constitutes the ethics of competition, and thus limit and determine the daily life of all trade? True, the act contains in itself but a very simple mandate, namely, " That unfair methods of competition in commerce are hereby declared un-lawful." 2 Yet the commission is given the broadest powers to determine what constitute " unfair methods of competition in commerce " and to restrain by order those acts which it de-termines to be unfair. The commission is not controlled by legal precedents in its determination of what constitute un-fair practices. It can establish entirely new precedents or itself follow more modern precedents. It can follow the recent Massachusetts case, in which the court adopted the principle that, since all property rights proceed from the state, they must be used for the common good of all the subjects of the state. In that case the definite question arose whether an association of granite workers could, by a system of fines, preclude any of its members from trading with one who was not a member and so destroy his business of quarrying granite. The court held that it could not, saying: To what extent combination may be allowed in competition is a mat-ter about which there is as yet much conflict, but it is possible that, in a more advanced stage of the discussion, the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case that the proposition that what one man lawfully can do, that any number of men acting together by combined agreement may do, is to be received with newly disclosed qualifications arising out of the changed con-ditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals, acting each according to his preference, and that of an organized extensive combination may be so great in its effect upon 1 Drift and Ma.steYy, p. 97. 2 Federal Trade Commiuicn Act, sec. 5. TO ENFORCE INDUSTRIAL PEACE 119 private and public interests as to cease to be simply one of degree and to reach the dignity of a difference in kind.1 A writer upon " The Morals of Monopoly and Competition " says that in this decision we have a clear grasp of the modern situation and a clear recognition that changes in the conditions of civilized life call for equal changes in business methods and principles applicable to these changed condi-tions, that although it may be logically inferred that what one man may do singly he may also do jointly with others, results may prove this an invalid conclusion, and the difference in conditions may be so important as to make the inference impossible.2 Railroad men have already realized what public regulation means. Electric-light companies now know what it means to be regulated by public service commissions. Express com-panies now know that they must make rates subject always to revision by the interstate commerce commission. Business men generally will realize soon that, under the broad powers con-ferred upon the federal trade commission, they are subject to the same kind of governmental control. Business conduct which a decade ago would have been regarded as " good busi-ness " is now condemned not only as morally unsound, but as illegal and subject to criminal penalties, and this not merely as to cut-throat and predatory competition and the methods of the old-fashioned " octopus," but as to more modern practices, such as the misuse of trade names and the misrepresentation of the quality of an article. We have traveled a long distance from the philosophy of the decision in the great Mogul steam-ship case, wherein Lord Chief Justice Coleridge permitted him-self to say: It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay the trade of a particular place or district being possibly very limited, what one man gains another loses. In the hand-to-hand war of commerce ... men fight on 1 Martell v. White, 185 Mass. 255, 259, 26o. 2 Homer Blosser Reed, International Journal of Ethics, January 1916, p. 273- 120 LABOR AND PUBLIC SERVICE CORPORATIONS without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business.1 In tl:e same case Lord Justice Fry said: I know no limits to the right of competition in the defendants- ! mean, no limits in law. I am not speaking of morals and good manners. To draw the line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts. Competition exists when two or more persons seek to possess or enjoy the same thing; it follows that the success of one must be the failure of another-and no principle of law enables us to inter-fere with or to moderate that success or that failure so long as it is due to mere competition.2 Lord Justice Bowen said : To say that a man is to trade freely but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection . . . . To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute.3 The abuses of railroad management, then, the evils of un-regulated monopoly and competition, are not beyond the arm of the state. The capitalistic employer is in the grip of the law. In the interest of the " neutral," the weak needing the protection of the state is given help. Instead of the philo-sophy of " To him that hath shall be given," the more modern philosophy of " giving to each according to his needs " con-trols. Behind the workmen's compensation acts and the na-tional child�labor law is the same great purpose. The arm of 1 21 L R. Q. B. D. 544, at 553-4. 2 23 L. R. Q. B. D. 598, at 625-6. 8 23 L. R. Q. B. D. 598, at 615-16. TO ENFORCE INDUSTRIAL PEACE 12! the state is stretched out to guard the worker and the little child. Conditions of public service and of private service are regulated in the interest of the worker and of the consumer. The new justice involves simply a subtler and more far-reaching analysis of the human situation. It involves a recognition of the wholly inescapable social interrelations. . . . The new theory of rights assumes that men together create their destinies, that rights grow as needs increase, and that these rights are not simply to be protected but to be nurtured and developed.1 When labor is the dominant power, is the weak to be left without protection of the law? In short, [as another writer puts it] during the last few years in America we have been developing with all our energy the highest art of all arts-the art of living together. I believe this to be " the one idea more powerful than any other " that is shaping the events of our time.2 III Why are business men resorting to commercial arbitration? The "art of living together" in business necessarily involves the elimination of human friction and the elimination of waste. Our judicial machinery is too cumbersome, too expensive and too provocative of hatred. According to modern understand-ing, it is not efficient. The national movement for efficiency in commerce and industry must soon bring us to a point where we shall look with shame and mortification upon our antiquated machinery for disposing of commercial controversy and upon our medieval methods for disposing of industrial controversy. Does it not concern the " neutral " that in three months upon a street-railway line there is a net deficit of $372,471 compared with earnings of $326,015 in the same period of the year previous-due to a street-car strike? 3 I have received from 1 Harry Allen Overstreet, Philosophy and the New Justice, International Journal of Ethics, April 1915, p. 289. 2 Ray Stannard Baker, TJ,,e New Republic, December 5, 1914, p. 21. 8 Tke Sun, October 27, 1916, reporting deficit on the Third Avenue system. In one month the revenue of another line dropped $6o8,065. Nm York Times, November 13, 1916. 122 LABOR AND PUBLIC SERVICE CORPORATIONS L. W. Hatch, chief statistician of the New York state indus-trial commission, the following table of working time lost in strikes and lockouts in New York state for the ten years 1906-1915 inclusive: WORKING TIME LOST IN STRIKES AND LOCKOUTS IN NEW YORK STATE Year Ended September 30 Number of strikes and lockouts Aggregate days of working time lost 1906 245 1,668,281 1907 282 1,724,26o 1908 16o 396,7:is 1909 176 1,061,094 1910 250 5,783,394 I9II 215 2,360,092 1912 184 1,512,234 1913 268 7,741,247 1914 123 1,426,II8 1915 104 868,838 This shows a total aggregate number of days of working time lost amounting to 24,542,283. If we assume an average of but $2 a day, this means a loss in this period in the state of New York in wages alone of $49,084,566. The recent cloak strike in New York is estimated to have cost the union $750,000 for strike benefits and other expenses and the manufacturers' association a like amount, if not more, while the loss in wages to the cloakmakers amounted to $3,000,000, and business and profits to the manufacturers far exceeded this sum.1 Professor Wigmore says : Few laymen, and fewer lawyers, stop to reflect that the system of legal justice keeps changing slowly, from epoch to epoch, in its con-tents,-the subjects of its rules and dispensations. Professor Wigmore sees in the wings a new body of American law developing in the field of industrial controversy: Spontaneously, in our own country, work in the same field has be-gun.... Lawyers should awaken to this coming enlargement of the field of systematic justice. . . . The significant thing is that gen-eral principles are beginning to be formulated. And the moment you 1 Report of Morris Hillquit to Mayor Mitchel, Daily Trade Record, August 5, 1916. TO ENFORCE INDUSTRIAL PEACE 123 have general principles, used for deciding particular cases, you have justice in the form of law, as distinguished from the arbitrary justice of a Turkish caliph, or from private struggle decided by private force.1 When the balance sheet of the great war is made up, and we shall all have to foot the bill, the inefficiency and wastefulness of our medieval methods for settling industrial controversy will become intolerable. We shall soberly come to the reflection that in each instance the root of the evil is a fundamentally wrong philosophy. When we are stirred up, when public opinion is screwed up to the sticking point, we shall demand new law and new institutions. When we arrive at this point, we shall find much to learn from a study of the evolution of our present legal institutions. Sir Frederick Pollock has graphically described the general impotence of the English state in the administration of justice during the Anglo-Saxon period: Rigid and cumbrous as Anglo-Saxon justice was in the things it did provide for, it was, to modern eyes, strangely defective in its lack of executive power. Among the most important functions of courts as we know them is compelling the attendance of parties and enforc-ing the fulfilment both of final judgments and of interlocutory orders dealing with the conduct of proceedings and the like. Such things are done as of course under the ordinary authority of the court, and with the means constantly at its disposal; open resistance to judicial orders is so plainly useless it is seldom attempted, and ob-stinate preference of penalties to submission, a thing which now and then happens, is counted a mark of eccentricity bordering on unsoundness of mind. Exceptional difficulties, when they occur, indicate an abnormal state of the commonwealth or some of its mem-bers. But this reign of law did not come by nature; it has been slowly and laboriously won. Jurisdiction began, it seems, with being merely voluntary, derived not from the authority of the state but 1 A New Field for Systematic Justice, IO Illinois Law Review, No. 8, March 1916. Editorial Notes, pp. 59:2, 593, 594, 595. See also The Development of Government in Industry, by Earl Dean Howard, 10 Illinois Law Review, No. 8; The Need for Industrial Juri"sprudence, by Walston Chubb, The Standard, March 1916; A New Province for Law and Order, by Henry Bournes Hig-gins, Harvard Law Review, vol. xxix, no. I. 124 LABOR AND PUBLIC SERVICE CORPORATIONS from the consent of the parties. People might come to the court for a decision if they agreed to do so. They were bound in honor to accept the result; they might forfeit pledges deposited with the court ; but the court could not compel their obedience any more than a tribunal of arbitration appointed at this day under a treaty between sovereign states can compel the rulers of those states to fulfil its award. Anglo-Saxon courts had got beyond this most early stage, but not very far beyond it. The only way to bring an unwilling adversary before the court was to take something of his as security till he would attend to the demand; and practically the only things that could be taken without personal violence were cattle. Distress in this form was practised and also regulated from a very early time. It was forbidden to distrain until right had been formally demanded-in Cnut's time to the extent of three summonings - and refused. Thus leave of the court was required, but the party had to act for himself as best he could. If distress failed to make the defendant appear, the only resource left was to deny the law's protection to the stiff-necked man who would not come to be judged by law. He might be outlawed, and this must have been enough to coerce most men who had anything to lose and were not strong enough to live in rebellion ; but still no right could be done to the complainant without his submission. The device of a judgment by default, which is familiar enough to us, was unknown, and probably would not have been understood. Final judgment, when obtained, could in like manner not be di-rectly enforced. The successful party had to see to gathering the " fruits of judgment," as we say, for himself. In case of continued refusal to do right according to the sentence of the court, he might take the law into his own hands, in fact wage war on his obstinate opponent.1 Is this not an accurate photograph of the existing condition of the law of our present dealing with industrial controversy? No power by which parties can be compelled to arbitrate their differences. No power, even after they have submitted, to compel them to observe the awards. The parties left to volun-tary agreement or to fighting it out among themselves. Like the Anglo-Saxon litigant, no one can bring any other one into court. Violence in both cases the outcome. In the absence 1 Expansion of tlu Common La'W, pp. 145-6. TO ENFORCE INDUSTRIAL PEACE 125 of law, resort to force. The public service commission of the first district, reporting upon the recent car strike in the city of New York, brings sharply to the attention of the public this weakness in the existing law. In the case of each side, it finds voluntary agreements to arbitrate violated without remedy: There is no doubt that men have the right to refrain from working and any rule that requires a man to work against his will is in the nature of slavery. On the other hand, there are positions of public service that require the performance of instant duty; for example, the policeman or the fireman may not throw up his job while on duty, though he may resign his position. It may very well be considered at this time whether or not the principle should be extended to the extent of saying that it is against the public interest that men employed on railroad or other public utilities may, without notice, exercise their right to quit their jobs in a group, thus crippling if not totally arresting the operations of public utilities, to the great damage of the public. We are not un-dertaking now to suggest what remedy, if any, may be just and prac-ticable, but it is already the law that the matter of the operation of public utilities is a matter of state regulation. Is the quitting of the service a matter for state regulation? IV So far as public utilities are concerned, we cannot escape the logic that the regulation of rates and of service carries with it the duty to regulate conditions and rewards of employment. It is no longer open to dispute that Congress, in so far as re-lates to matters of interstate commerce, and the states, in so far as relates to matters of intrastate commerce, have the power. Mr. Justice Hughes, writing the opinion of the United States Supreme Court, in 1910 said: By virtue of its power to regulate interstate and foreign commerce, Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce, and of those who are employed in transporting them. Johnson v. Southern P. Co., 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158; Adair v. United States, 208 U. S. pp. 177, 178, 52 L. ed. 443, 444, 28 Sup. Ct. Rep. 126 LABOR AND PUBLIC SERVICE CORPORATIONS 217, 13 A. & E. Ann. Cas. 764; St. Louis I. M. & S. R. Co. v. Taylor, 210 U.S. 281, 52 L. ed. 1061, 28 Sup. Ct. Rep. 616; Chicago, B. & Q. R. Co. v. United States, decided May 15, 1911 (220 U. S. 559, ante, 582, 31 Sup. Ct. Rep. 612). The fundamental question here is whether a restriction upon the hours of labor of employees who are connected with the movement of trains in interstate transporta-tion is comprehended within this sphere of authorized legislation. This question admits of but one answer. The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. This has been repeatedly emphasized in official reports of the inter-state commerce commission, and is a matter so plain as to require no elaboration. In its power suitably to provide for the safety of em-ployees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train despatchers, telegraphers, and other persons embraced within the class defined by the act. And in imposing restrictions having reasonable relation to this end there is no interference with liberty of contract as guaranteed by the constitution. Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, ante, 328, 31 Sup. Ct. Rep. 259.1 Indeed, the Adamson eight-hour bill is based upon the theory that Congress, having the power to regulate the service, has power to fix the hours of labor or the compensation. In accept-ing the Adamson bill, the railway brotherhoods bowed before the power of the state. This phase of the incident has not been emphasized. The brotherhoods have not always been ready to go to Congress for legislative regulation of hours of labor. In one sense what they accomplished may be regarded as a victory, but. in another may be regarded as a setback. There was clear recognition that, in the development of public opinion, the time had arrived when the public's rights were paramount. Under the title, "The Public Welfare Supreme," The Independent says that labor organizations had been repeating the blunder that far more powerful organizations have 1 Baltimore & Ohio R. Co. v. Interstate Commerce Commission, 221 U. S. 612, at 618-619, 55 L. ed. 878, at 882-3. TO ENFORCE INDUSTRIAL PEACE 127 made from time to time since the Christian era began, and for which they have severely suffered. (This blunder, it says, is that) of asserting the alleged right of any organization whatever to exist on its own terms, irrespective of the welfare of the general public as interpreted by the sovereign people. [This blunder, it says, was made by the Roman Catholic Church, by the Mormon Church, and by the great corporate business interests, the last) to be brought under more and more strict control by state legislatures and courts, the national Congress and the United States Supreme Court. [But] the right of the public to enjoy civilized order, as Chairman Straus of the public service commission admirably put it the other day, is the supreme right. At all costs it must be maintained; by over-whelming force if necessary.1 The fundamental principle that the rights of employees, like the rights of stockholders, are subordinate to the rights of the public, in the operation of public utilities, is already imbedded in the law of the state of New York. By section 26 of the public service commission law every railroad corporation, person or common carrier is required to furnish "such ser-vice and facilities as shall be safe and adequate and in all re-spects just and reasonable," and is required to furnish such services at charges that " shall be just and reasonable and not more than allowed by law or by order of the commission having jurisdiction and made as authorized by this chapter." Section 491 authorizing the commission to fix rates and service, says that if the commission finds that the maximum rates, fares or charges are insufficient to yield reasonable compensation for the service ren-dered, and are unjust and unreasonable, the commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be per/ ormed, notwithstanding that a higher rate, fare or charge has been heretofore authorized by statute, and shall fix the same by order. 1 Vol. 88, no. 3539, October z, 1916, p. 6. 128 LABOR AND PUBLIC SERVICE CORPORATIONS Under section 55, for the purpose of approving issues of stock, bonds and other forms of indebtedness, the commission must be satisfied that the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes, and other evidence of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. (Throughout the act will be found provisions covering other public utilities.) It is true that heretofore it has been as-sumed that, in determining the reasonableness of rates or the reasonableness of stock or bond issues, the public service com-mission was not required to take into account standards of wages or hours of labor, or the manner in which employees in the service were required to perform the service. There is, however, no escape from the logic that if a commission is to regulate the safety of the service, the reasonableness of the rates, and the justifiability of stock or bond issues, it must of necessity consider the wages and hours of those who perform the service quite as much as it must consider the interest, the dividends and the adequacy of the purely mechanical parts of the utility. In the United States Senate on August 30 last, in the discussion of the various existing statutory methods for compulsory or voluntary arbitration of industrial disputes, tak-ing the position that it is not within the power of Congress to compel a man to work against his will, Senator Cummins said: I have little doubt that it is within our power to make unlawful a combination of employees looking to a strike in concert. We could not simply make it unlawful to strike. All that we could possibly make unlawful would be the combination or the conspiracy to strike.1 [And] it is apparent that these disputes which so vitally affect the whole body of the people should be settled, if possible, by an impar-tial tribunal, and I do not think of it as an arbitration; I think of it as a court, composed of men of the highest character and greatest 1 Congressional Record, August 30, 1916, P· 15677. TO ENFORCE INDUSTRIAL PEACE 129 attainments; a court composed wholly of members who have no pos-sible interest in the controversy, and who have the same sense of high responsibility which we expect of men chosen to exercise the judicial office. It must be composed of men in whom the entire country has confidence, of humanitarians who are looking constantly for the true pathway to a better civilization. If we can secure such a court, the strike, in concert or combination, may, for a time and in a degree, be subordinated to its judgments. [ Coming directly to the matter of disputes upon the railroads of the country, Senator Cummins said:] Undoubtedly Congress could prescribe maximum hours of work upon railways engaged in interstate commerce.1 Asked specifically by Senator Norris if he thought that Con-gress would have the constitutional right to fix the compensa-tion as well as the hours, he said : Unquestionably Congress has authority to prescribe both mmunum and maximum wages to be paid by such railway companies. It is true that regulation of this character might sometimes be overthrown in the courts if challenged as unreasonable or arbitrary, because there is no well-established standard for compensation in the various occu-pations of life.' In coming to the opm10n that the power of the government, national and state, to regulate public utilities in the matter of service and rates includes the power to determine the wages which shall be paid and the hours within which the work may be performed, the conservative senators do not hesitate to ac-cept the conclusion that this would necessarily involve the regulation of the salary of officers. Senator Cummins, recog-nizing fully the power of Congress to regulate wages and hours upon the railroads, questions only the power of Congress to delegate this power to a commission. 3 But certainly when Congress can delegate to a trade commission the determina-tion of what in each case constitute " unfair methods of com- 1 Congressional Record, Aug. 30, 1916, p. 15679. 2 I bid., p. I 5679. 3 The following discussion between Senators Norris and Cummins.is instruc-tive: MR. NORRIS. Does the Senator think there is any greater constitutional authority conferred upon such a tribunal as he has been describing to fix, not necessarily the maximum and minimum, but the absolute compensation of var- 130 LABOR AND PUBLIC SERVICE CORPORATIONS petition," it can delegate to a commission the power to deter-mine what is " a fair and reasonable wage" or what is "a fair and reasonable working day." Every lawyer knows that a contract of hiring which contains no definite sum for com-pensation is a contract for quantum meruit, and the jury deter-mines according to the circumstances of the case, and possibly upon the evidence of experts, what is " fair and reasonable compensation." I do not believe the point made by Senator ions kinds of employees than there is conferred upon the same tribunal the right to fix a rate that shall be charged, of which the salaries of all the employees and officials must be one of the component parts? MR. CUMMINS. There is a little difference in the constitutional authority. From time immemorial the standard which is applied to test the validity of a rate imposed by a common carrier has been known theoretically at least. When we created the interstate commerce commission we gave to this commission the standard which had been for centuries the law with regard to the transporta-tion of persons and property by common carriers, and the courts have held that that is a sufficiently definite standard to warrant the delegation of power which the interstate commerce law involves. Now, mark you, I am not speaking of Congress; but when Congress would attempt to delegate the power to fix wages, what is the standard, what is the rule? What is to determine whether a man ought to be paid $2 a day or $S a day or $10 a day? I do not know of any standard at all. MR. BORAH. Would the phrase "a fair and reasonable wage" be any more definite or less definite than "unfair competition" or "a reasonable rate"? MR. CUMlUNs. I think it would be very much less definite. Both unfair competition and reasonable rates for the carriage of persons or property have become fairly well established. But it is not necessary for me to argue the matter. If the power exists, it is to be exercised through regulation and is not involved in the subject I am discussing. You cannot compel a man to work for any wage that the commission may fix. \* \* \* \* • \* • \* MR. NORRIS. I concede the point the Senator has made. It was not the object of my question to contest that, but I was wondering if the board or tribunal, or whatever it is the Senator has been describing, has the authority to fix a rate and a part of that rate is made up of the salaries that the president of a road draws and the brakemen draw, that being a part of the rate that it is considered they have the constitutional right to fix, and we have the consti-tutional right to provide, if we define it as we did in the power to fix the rate, that the salaries of all the employees and officials should be reasonable, that being a part of the rate, why could they not fix those rates; and when they were fixed would they n\_otpartake much of the same as a governmental posi-tion, and a strike would probably be unknown in regard to it if they controlled the entire situation ?-Co11gressional Record, Aug. 30, 1916, p. 1568o. TO ENFORCE INDUSTRIAL PEACE 131 Cummins is sound. If Congress has the power, there is no difficulty in delegating that power to a commission. There is, as I see it, no constitutional difficulty in the way of regu-lating conditions of employment upon public utilities. We should not forget that there was a time when there was a pub-lic policy supporting yet broader and more restrictive regula-tion of wages and conditions of employment. Beale and Wyman, going back to a review of governmental regulation of business during the late Middle Ages, say : Not only did the law regulate business indirectly through the courts, Parliament itself frequently regulated prices of the necessaries of life by direct legislation. The great staples like wool and food were habitually regulated in this way, and the employment and price of labor was a subject of statutory provision. Thus, in 1366, Henry III, after reciting former statutes to the same effect, regulated the price of bread and ale according to the price of wheat and barley, and for-bade forestalling, that is, cornering the market. In 1344 the ordi-nances fixing the export price of wool were repealed after some years of trial. In 1349 all laborers were obliged to serve for the customary wages; and " butchers, fishmongers, regrators, hostelors (i. e., inn-keepers) , brewers, bakers, poulterers, and all other sellers of all man-ner of victuals " were bound to sell for a reasonable price. These statutes continued in force throughout the Middle Ages, and until the settlement of America.1 It is true that Section 6 of the Clayton Act reads as follows: That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be con-strued to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organiza-tions, or the members thereof, be held or construed to be illegal com-binations or conspiracies in restraint of trade under anti-trust laws. In discussing this amendment in the light of the decisions al-ready rendered, Ex-President Taft, addressing the American 1 Railroad Rate Regulatwn, p. 7. 132 LABOR AND PUBLIC SERVICE CORPORATIONS Bar Association in 1914, said that this provision "was not in-tended to make members of such associations (i. e., labor, agricultural, etc.) a privileged class and free from the oper-ation of general laws " and that in all probability " when the statute is construed by the courts it will keep the promise of the labor leaders to the ear and break it to the hope of the ranks of labor." Since Professor Taft delivered this legal opinion, the courts have been called upon to pass upon this section, and the recent decision of Dowd v. United Mine Workers of America, 235 Fed. Rep. r, indicates that Mr. Taft was not far wrong in his conclusions. In that case the court held that the United Mine Workers of America, though unincorporated, were not only subject to the provisions of the Anti-Trust Act, but that they could be sued as parties for treble damages; and that, if by conspiracy and combination they injured the business and property of the coal companies, the fact that their unlawful acts did not relate directly to interstate commerce is not a defense. This decision, taken in connection with the decision of the supreme court of Massachusetts holding unconstitutional a similar provision of the state law of Massachusetts 1 to the 1 Bogni v. Perotti, 224 Mass. 152, II2 N. E. 853. The provisions in St. 1914, C. 778, Sec. 2, declaring that "in construing this act" the right to labor and to make and modify contracts to work " shall be he1d and construed to be a personal and not a property right" and prohibiting the granting of an in- junction to enforce such a right "where no irreparable damage is about to be committed upon the property or property rigbt of either" employee or em-ployer, are unconstitutional and void, for the reason that they deprive those employed in labor of "the equal protection of the laws" guaranteed by the federal constitution and by the equivalent provision in the Massachusetts bill of rights. " ... the power of courts to afford injunctive relief cannot be im-paired by the legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners." In that case, Bogni and others, as members of the General Laborers' Industrial Union No. 324 of the Industrial Workers of the World, brought suit against the Hod Carriers Building and Common Laborers' Union, Local 209, affiliated with the American Federation of Labor. The contest was between two labor unions seeking similar employment for their members as laborers in the building trades. The court said ( p. 156) : "The right to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, TO ENFORCE INDUSTRIAL PEACE 133 effect that labor is not a commodity, must bring the enlight-ened and intelligent labor leaders of the country to the reali-zation that by no legislative process can they escape the conse-quences of any restraint of trade which, if committed by a busi-ness association, would be in violation of the law. Under the law, as the Attorney General of the United States said in the Northern Securities case, " whether it is a mob, a monopoly, or a sand bank," whatever interferes unlawfully with trade or commerce is subject to the law. Interpreting the Trade Com-mission Act in the light of the Dowd case and Loewe v. Lawler,1 there would seem to be no reason why employers should not apply to the trade commission in cases of boycotts or strikes for relief of the same character that competitors now secure against unfair competition. V Our law is not impotent. On the contrary, it is all�power-ful. Students of judicial precedents have repeatedly pointed out the recent change in judicial opinion. "Only twenty-five years ago the general feeling as to every sort of indus-trial relation was that it was better to leave all alone, that it was better to leave people to work out their own salvation." 2 Today we apply the rule of salus populi suprema est lex to all property clothed " with a public interest," and " Property be-comes clothed with a public interest when it is used in a man- as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law is a funda-mental principle of our own constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the land owner or capitalist, to that extent discrimination is exercised against him." These two principles-that the right to make a contract is a property right and that equal resort to the courts must be accorded to all men-have been com-pletely ignored in the formulation of its legislative program by the American Federation of Labor. Like the employers spending energy in an effort to de-stroy trade unionism, this effort to destroy fundamental principles of Amer-ican law is futile. The energy should be otherwise utilized-in both instances. 1 208 u. s. 274. 2 Wyman on State Control of Public Utilities, Harvard Law Review, June 1911. Also in Orth's Readings on tke Relation of Government to Property and Industry. p. 286. 134 LABOR AND PUBLIC SERVICE CORPORATIONS ner to make it of public consequence and to affect the com-munity at large." 1 The famous Peel Splint opinion 1 is like a blinding headlight in the darkness of a new highway. It may dazzle, but it lights the way : We base the decision in this case: First, upon the ground that the defendant is a corporation in the enjoyment of unusual and extra-ordinary privileges which enable it and other similar associations to surround themselves with a vast retinue of laborers, who need to be protected against the fraudulent or suspicious devices in the weighing of coal or payment of wages for labor. Secondly, the defendant is a licensee, pursuing a vocation which the state has taken under its gen-eral supervision for the purpose of securing the safety of employees, by ventilation, inspection and government report, and the defendant, therefore, must submit to such regulations as the sovereign thinks conducive to public health, public morals and public security. We do not base this decision so much upon the ground that the business is affected by the public use, but upon still higher ground, that the public tranquillity, the good and safety of society, demand, where the number of employes is such that specific contracts with such laborers would be improbable, if not impossible, that in general contracts jus-tice shall prevail as between operator and miner; and, in a company's dealings with a multitude of miners with which the state has by special legislation enabled the owners and operators to surround themselves, that all opportunities for fraud shall be removed. The state is frequently called upon to suppress strikes; to discountenance labor conspiracies; to denounce boycotting as injurious to trade and commerce; and it cannot be possible that the same police power may not be invoked to protect the laborer from being made the victim of the compulsory power of that artificial combination of capital which special state legislation has originated and rendered possible. It is a fact worthy of consideration and one of such historical notoriety that the court may recognize it judicially, that every disturbance of the peace of any magnitude in this state since the civil war has been evolved from the disturbed relations between powerful corporations and their servants and employees. It cannot be possible that the 1 Munn v. Illinois, 94 U. S. 113. 2 Peel Splint Co. v. State, 36 W. Va. 8o2. Reasoning of the case affirmed and language quoted with approval by the U. S. Supreme Court in Knoxville Iron Co. v. Harbison, 183 U. S. 13, 22 Sup. Ct. 1. TO ENFORCE INDUSTRIAL PEACE 135 state has no police power adequate to the protection of society against the re-occurrence of these disturbances, which threaten to shake civil order to its very foundations. Collisions between the capitalist and the working man endanger the safety of the state, stay the wheels of commerce, discourage manufacturing enterprises, destroy public con-fidence and at times throw an idle population upon the bosom of the community. The law is ready. It is public opm10n that dallies. The state has power to take action " when the contestants are not able to settle their controversies between themselves, and the public peace and welfare are being jeopardized, in stepping in and prescribing the rules and regulations under which the industries shall be conducted." 1 The field of governmental interference is being constantly extended. Business and oc- cupations formerly unknown or of little importance are now being regulated and their charges and actions controlled. When any industry secures sufficient control to disturb the public peace or its owners are constantly requiring the aid of the state for protection, the business to that extent becomes affected with a public interest.2 The right of regulation now legally covers electric light companies operating upon the public streets, railroad bridge companies, telephone and tele-graph companies, water companies, sewerage companies, irri-gation and canal companies, grain elevators, warehouses, mines, insurance and banking. Is milk or coal a property " clothed with a public interest" ?3 1 Judge Alexander A. Bruce of the Supreme Court of North Dakota, Michigan Law Review, June 1909. Also in Orth, op. cit., p. 307. 2 Ibid., pp. 300, 301 (Orth). 3 See the Donnelly Act, sec. 340, General Business Law, New York. "Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby com-petition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void." 136 LABOR AND PUBLIC SERVICE CORPORATIONS VI Labor recognizes its subjection to the law. Before the Senate committee on interstate commerce, Mr. Gompers testi tied : 1 SENATOR CUMMINS. I take it you do not object to responsibility under the law for an unlawful act in some form or other? MR. GOMPERS. Certainly not. SENATOR CUMMINS. That is, every man, whether alone or whether in association with others, if he commits a wrong, ought to respond for that act either to the public in a criminal prosecution or to the person who was injured by his unlawful act? MR. GOMPERS. Unquestionably. SENATOR CUMMINS. That is fundamental, and that leads me to a little further inquiry of you upon a subject a little more funda-mental even than the anti-trust law. You are familiar with what is known as the Debs case? MR. GOMPERS. Fairly well, sir. SENATOR CUMMINS. There the complaint was, as I remember, that certain persons had forcibly, physically restrained the instru-mentalities of commerce; that is, prevented commerce from being carried on. Now, entirely apart from the law through which it would be worked out, do you think that there ought to be prohibi-tions against acts of that sort? MR. GOMPERS. There are, without the Sherman anti-trust law. SENATOR CUMMINS. Of course you think there ought to be pro-hibitions against such acts? MR. GOMPERS. Unquestionably; any acts which in themselves are unlawful. The New York Times reports that on November 5 the Attorney-General authorized the following statement of his department's activities: "The De-partment of Justice is investigating the recent abnormal and suspicious in-creases in the prices of various necessaries of life, especially coal. Wherever any such increase is found to have been due to conspiracy or other unlawful action the department will invoke against the offenders the severest penalties which the law prescribes." See also article headed, Suspect Conspiracy in High Coal Prices, p. 20 of same issue of Times, November 6, 1916. 1 Report of Hearings before the Committee on Interstate Commerce, U. S. Senate, Sixty-second Congress, 19n-12. Pursuant to Senate Resolution 98. Pp. 1727-1765. Also in Orth, op. cit., pp. 610-6n. TO ENFORCE INDUSTRIAL PEACE 137 Capital recognizes the clear right of labor to organize. Mr. Emery, speaking for the National Association of Manufac-turers and approximately three hundred organizations of em-ployers, said at the same hearing: 1 I, and all I represent, are firm believers in the right of men to organ-ize for the protection of their hours, labor, and working conditions. Many thousands of men employed by my clients are members of labor organizations of all kinds, and we do not and never have questioned their right to form unions and by legitimate action enforce their de-mands. We ask for no other restrictions for them than the same law places on all other citizens. In theory, both sides agree. Shall they be permitted to escape from this harmony of thought in their practice? In those industries where the costliness to the worker of the strike and lockout has been graven upon the memories of the workers by hard and bitter suffering, there is clear appre-ciation of the value of stable and uniform administration of the law of the industry. The most recent report of the government (U. S. Department of Labor, Bureau of Labor Statistics, Bulletin 198) reviewing Collective Agreements in the Men's Clothing Industry, con-tains the following : Under these agreements a due process of law has been substituted for the arbitrary and irresponsible rule of the foreman in the adjust-ment of all differences, and with the institution of this due process of law there has developed among the workers a feeling of security under the law, in place of the feeling, formerly prevalent among them, of uncertainty, of fear, and of absolute helplessness.' 1 Report of Hearings before tke Committee on Interstate Commerce, U. S. Senate, Sixty-second Congress, r9II-r2. Pursuant to Senate Resolution 98. Pp. 2072-2104. Also in Orth, op. cit., p. 618. ' One of the union representatives writes: "To fully appreciate, and to be able to explain in what ways the people have benefited by the agreement, I must refer back to the time when no agreement was in existence. "I used to work in shop No. 3, and I must say that the foreman of said shop is a kind person. My work during the seven years was very seldom criticized, if at all, but I was considered a 'smart man,' consequently kept re- 138 LABOR AND PUBLIC SERVICE CORPORATIONS We may well follow today the example of Cavour, who, m the time of Italy's greatest crisis, sponsible for some little trouble that happened in the sections near me, Once a section of men picked enough courage to stand up and ask the foreman for an increase; for such action their leader, who was revealed by one of the men, was immediately discharged and even denied the privilege to come for his hat and coat in the shop, which were brought to him outside. He was such a very nice, quiet, sociable fellow that it broke my heart to see him go in such a fashion, but the only thing I could do was to feel sorry for him. A few hours later I was called by the foreman and nccused of being the instigator of those people; when I protested that I did not know anything about it, and that I could not have been the instigator as I couldn't speak their language (Lithuanian), I was told that I was a 'smart man,' that I knew everything, and that at least I should have notified him. Finally, I was asked to resign my position; I was a plain workingman and I expected the same treatment that the other fellow had received a few hours before. While I was getting ready very reluctantly to go home, reluctantly, not for the job, though I needed it, but because I thought my staying in the shop was necessary, the foreman had a conversation with the informer and had been told that I was not mixed up in the matter at all, so the foreman changed his mind and asked me to remain, told me that I was a good man and that he believed every word I had said. "Today when a section is dissatisfied a complaint is filed with the shop chairman, who tries first to adjust it with the foreman or manager. If he can not succeed, he reports to the deputies of the workers and a joint investigation is made with the deputy of the company. In the event the deputies fail to reach a settlement, the case is reported to the trade board, and finally, if necessary, to the board of arbitration. The chairmen of the shops may now speak for any of the workers without being told to mind their own business. The fear of being wrongfully discharged has disappeared, because of the right to demand redress. Wages or prices can not be reduced; if attempted to, the price committee, a creation of the trade board, will be there and inves-tigate the case." Compare this with the conditions in the New York cloak industry, after the "protocol" system of arbitration was recently abrogated. The workers now complain : "This agreement may be a model as far as the manufacturers are concerned, because there are practically no provisions for enforcement of same, but the workers having promises on paper but knowing full well that the right to hire and discharge is practically absolute under the new agreement, that equal division of work is not even mentioned therein, and that the manufacturer if he wants to discriminate against an active union man could do so with im-munity, cannot do anything else but express their dissatisfaction with it. "We expect to take up this subject from time to time, but let us hope that this model agreement will be of short duration unless properly amended so as to make it a real contract instead of a one-sided affair."-Editorial Note, The Ladies' Garment Cutter, October 28, 1916. TO ENFORCE INDUSTRIAL PEACE 139 rises and compresses the needs of Piedmont and Italy into a single sentence. Casting aside all petty demands for changes in detail, he insists that the king be asked " to transfer the discussion from the perilous arena of irregular commotions to the arena of legal, pacific, solemn deliberation." 1 VII The desideratum is the least possible regulation by the gov-ernment and the utmost freedom to the parties to come together. We should encourage the interested parties to negotiate and agree, subject only to the right of the third party, the public, to intervene at points where the public interest may be en-dangered. Collective bargaining under the sanction of the law furnishes this free opportunity for negotiation. Joined with clear right of review in case of injury to the public, and opportunity for appeal in case of deadlock, it opens up a hope-ful avenue of escape from our present chaos.2 Employers generally are recognizing that the human relations between them and the workers in their plants are a vital factor in the efficiency of the plant. A recent advertisement says: "The quality of every manufactured product depends upon the workmanship. Satisfied labor ensures high quality in the output of any plant." And this concern is pleased to advertise the fact that four hundred satisfied workers say: As employes, we feel that the . . . . . . . . Company has en-deavored to make our working conditions and wages as satisfactory as their business has warranted. We acknowledge and appreciate the eight-hour day that has been voluntarily granted, and we will do our best to increase the quantity and quality of the factory output,3 Another concern advertises: Satisfied labor is the one big key to industrial success. The . . . . Terminal conduces to success because the conditions under which the operatives in its many prominent factories perform their tasks make for perfect sanitation, inc?mparable light, air, health and safety, and because the location is accessible, at a five-cent fare, from all parts of the city. Modern housing facHities are keeping pace with the in-dustrial development. 1 Obviously, there is no condition of satisfied labor if the de-sire to organize is thwarted by the employer. Obviously, there is no condition of satisfied labor if the employer's aim for efficiency and discipline is thwarted by syndicalized work-ers. There are two blades to the shears, as Dr. Adler observed. The way out is for each to recognize that his right is right only in relation to the other's right. Each side must yield a bit in its antagonism to the other's position. We cannot permit society to remain in a condition of armed industrial truce. Business efficiency and industrial justice are coadjutors in the task of developing a new in-dustrial law. VIII There are, of course, certain fundamental principles applicable to all industrial controversy. Without attempting to state even the main points, it may help the argument if I roughly formulate a few: I. The principle of the recognition of the human rights of workers, including: (a) The right to organize. (b) The right to living conditions. (c) The right to be respected in one's personality. II. The principle that, in the present order of society, the employer must maintain discipline and efficiency in the plant. I and II were excellently stated by the mayor's council of conciliation in the cloak industry: That the principle of industrial efficiency and that of respect for the essential human rights of the workers should always be applied jointly, priority being assigned to neither. Industrial efficiency may not be sacrificed to the interests of the workers, for how can it be to their interest to destroy the business on which they depend for a living? Nor may efficiency be declared paramount to the human rights of the workers, for how in the long run can the industrial efficiency of a country be maintained if the human values of its work-ers are diminished or destroyed? The delicate adjustment required to reconcile the two principles named must be made. Peace and progress depend upon complete loyalty in the effort to reconcile them.1 III. The principle that coercion of neutrals or third parties ( destruction of the milk supply, interrupting the public service -the mails, the telegraph, the trains) must not be permitted. In the application of these principles, we have seen that. in the case of railroads, telegraphs, electric light, steamboats, etc., the power of the states to regulate public utilities and the power of Congress to regulate commerce furnish a legal basis for the establishment of institutions or tribunals or the grant of power to existing bodies. The transmission of the public mails justifies federal intervention. 2 On the other hand, we must, for the present at all events, formulate our legislative program in the matter of so-called " private industries " upon the legal principle of conserving the public health. How far this domain will extend remains still to be developed from the interpretations we shall receive from the United States Supreme Court in such cases as the national child-labor law. With this in mind, the proposal which I submitted to the federal industrial relations commission in 1914 and which is discussed in another place 3 is here added as an appendix, to furnish a basis for further criticism and discussion. IX In general, the proposal is a League to Enforce Industrial Peace made up of all the elements of society-the consumer, the neutral, the worker and the employer (i. e. the state itself), founded upon the following propositions: 1 Law and Order in Industry, by the author, p. 281. 2 See In re Debs, 158 U. S. 564. 3 See chapter XXI, A Federal Industrial Council, Law and Order in In· dustry, by the author. LABOR AND PUBLIC SERVICE CORPORATIONS I. The clear recognition of the moral and legal right of men to organize. II. The establishment of tribunals sanctioned by law, whose membership shall be representative of all three parties (em-ployees, employers and the public). III. The creation of fact-gathering machinery to enable such tribunals to determine what is in any given case a " fair and reasonable wage" and what are "fair and reasonable working conditions." IV. The clear recognition of the necessity for efficiency and discipline in all industrial organizations. V. Opportunity to every worker to secure just redress from arbitrary or oppressive exercise of the employer's functions. VI. Opportunity to every employer to secure just redress from arbitrary or oppressive exercise of power by the men. VII. The right to appear by a chosen organization or spokesman before all sanctioned tribunals and in all dealings between employers and employees. VIII. The registration of all collective agreements. IX. A national council, without whose sanction there shall be no concerted cessation of work or closing-down of plants, to which any interested party may apply for relief, as it may in public service matters to the interstate commerce commission or the public service commissions, or, in trade matters, to the federal trade commission. X. Such national council to be constituted of members elected from groups of employers and groups of workers and repre-sentatives of the public. XI. In public utilities, clear recognition of the function of the state, as part of the regulation of the service and the rates, to determine what is a reasonable wage and what are reason-able working conditions. XII. Clear acceptance of the proposition that, adequate mo-chinery being established for the redress of all just grievances, the right to coerce by concerted stoppage of work in all ser-vice affecting the public health, safety or convenience shall be made as obsolete as the duel or as illegal as lynching. TO ENFORCE INDUSTRIAL PEACE 143 (This principle to be applied if and when such machinery is established.) X The basis of the great industrial compromise is here. The trade unionist must yield in his opposition to governmental regulation of his organization; the employer must yield in his opposition to the organization of trade unions; the public must yield in its indifference to the conditions under which human work is done; the business man must yield in his opposition to "social uplift" in industry; and the social reformer must yield in his indifference to efficiency and discipline in modern pro-duction. Upon such a compromise can be founded a program of preparedness for peace. Without it, we shall have neither industrial efficiency nor industrial justice. Without legal sanctions, there can be no real progress. But the legal sanc-tions must be of a kind to which a modern democratic society founded upon a philosophy of reason-not of force-is ready and willing to give whole-hearted and devoted support. The lawyer's duty is big. The educator's duty is bigger, more im-mediate and more pressing.

### Unions Advantage---1AC

#### Advantage 1 is Unions.

#### Union density has been low for decades because of sustained employer opposition.

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Heidi Shierholz, Celine McNicholas, Margaret Poydock, and Jennifer Sherer, “Workers want unions, but the latest data point to obstacles in their path,” Economic Policy Institute, January 23, 2024, https://www.epi.org/publication/union-membership-data/

More than 60 million workers wanted a union but couldn’t get one

The share of nonunion workers who would like to have a union at their workplace is far higher than the share who actually have union representation. In 2023, 11.2% of workers were covered by a union contract. Survey data from 2017 show that nearly half of nonunion workers (48%) would vote to unionize their workplace if they could. The 2017 figure is up substantially from previous decades; in 1977 and 1995, only about one-third (32–33%) of nonunion, nonmanagerial workers said they would vote to unionize if they could (Kochan et al. 2018; EPI 2021).

While 2017 is the most recent year the survey of nonunion workers was conducted, we presume that the share of nonunion workers who would like to unionize was at least 48% in 2023, if not higher, given the rise in the popularity of unions since 2017.3 There were 128.3 million wage and salary workers in 2023 who were not represented by a union; 48% of that is 61.6 million. That means that more than 60 million workers in 2023 wanted to join a union but couldn’t.

Attacks on unions have created a long-term decline

Despite the continued popularity of unions among workers and the public, we have yet to see this momentum translate into substantial increases in the number of workers represented by a union. It’s worth noting that the current trend is still unfolding. It takes time to organize and win union elections, and not all of the union activity of the last couple of years will have yet translated into increased unionization. However, it does not explain the long-term trend of declining unionization. In fact, today’s overall union density is lower than before the National Labor Relations Act was passed in 1935.4 What is causing this disconnect? Simply put, decades of policy decisions have made it harder for workers to form unions and bargain collectively.

Private-sector workers face barriers to union membership under weak federal law

In the private sector, decades of federal policy and court decisions have weakened labor law. Most notably, the passage of the Taft-Hartley Act in 1947 allowed new legalized forms of employer anti-union activity. Under Taft-Hartley, an “employer free speech” clause was added, mandatory captive audience meetings were allowed, and employers were given the right to file representation petitions to determine whether their workers want to form a union.

Starting in the 1970s, when the overall unionization rate was over 25%, employers began to exploit the weaknesses in the National Labor Relations Act (EPI 2023a). For example, employers use the lack of civil monetary penalties for breaking labor law to their advantage and interfere with workers’ right to organize with little to no repercussions. Today, employers continue to engage in aggressive, coercive, and intimidating opposition toward workers’ efforts to unionize. EPI research estimates that employers are charged with violating federal law in 41.5% of all union election campaigns (McNicholas et al. 2019).

The organizing effort at Starbucks stores is a prime example of how employers are willing to break labor law. Since December 2021, more than 370 Starbucks stores in 42 states have voted in favor of unionizing (More Perfect Union 2023). Over the last two years, the National Labor Relations Board has fielded hundreds of unfair labor practice charges from Starbucks workers and from Starbucks Workers United (Jamieson 2023). Further, employers spend more than $400 million a year on consultants to dissuade and weaken workers’ unionization efforts (McNicholas 2023). In the case of Starbucks, the company has retained Littler Mendelson, a law firm notorious for its union avoidance services (Wise and Iafolla 2023).

As a result of the growing employer opposition to unions and the failure of policy to stem it, workers are unable to organize new union members fast enough under current labor law to keep pace with the natural “churning out” of unionized jobs. Every year in the U.S. economy—even during times when the aggregate economy is healthy—hundreds of thousands of establishments close, leading to millions of workers losing their jobs (BLS 2023d). Some of these business closings and employment losses fall on unionized workers. When the economy is healthy, hundreds of thousands of establishments also open each year, leading to millions of workers finding new jobs. However, employer hostility and our dysfunctional system of labor law keeps new jobs from becoming unionized at anywhere near the rate at which unionized jobs are disappearing.

#### That’s precipitating mass work stoppages as working conditions deteriorate and workers lack recourse.

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Upamanyu Lahiri, “Labor Unions Are Getting Stronger. What Does That Mean for the U.S. Economy?” Council on Foreign Relations, 06-14-2024, https://www.cfr.org/in-brief/labor-unions-are-getting-stronger-what-does-mean-us-economy

In 2023, the United States saw the strongest wave of labor unrest in decades. Punctuated by high-profile auto worker and actors’ union strikes, some analysts see this uptick in organized labor activity signaling a revival in worker power after a long period of declining union membership and stagnating wage growth. However, others warn that increased work stoppages could threaten U.S. supply chain resilience and economic competitiveness.

What happened last year?

There were thirty-three major work stoppages in 2023, the highest number in twenty-three years. (Major work stoppages are defined by the Bureau of Labor Statistics as involving one thousand or more workers and lasting at least one shift.) Almost five hundred thousand workers were involved in stoppages last year—the second-most since 1986—and a 280 percent increase from the previous year. The stoppages added up to almost seventeen million “days idled,” the most since 2000.

What’s behind the surge?

Experts sympathetic to labor argue it is the result of longstanding worker unhappiness. They point out that well-paying and stable unionized manufacturing jobs have increasingly been replaced by low-skill, low-wage “gig economy” work that comes with fewer, if any, worker protections, as well as by higher-tech jobs that these workers are not trained to do. Since the 1970s, real wage growth for lower- and middle-income workers has stagnated, and income and wealth inequality has risen.

#### Unionization promotes industrial peace by improving labor-management relations. Otherwise, work stoppages collapse society both at home and abroad.

Cohen 1917 – Lawyer, former Chair of the NYC Lawyers Association Committee on the Unauthorized Practice of Law

Julius H. Cohen, "A League to Enforce Industrial Peace,” *Proceedings of the Academy of Political Science in the City of New York*, Vol. 7, No. 1, from Labor Disputes and Public Service Corporations (Jan. 1917), pp. 108-144, pub. Academy of Political Science, https://www.jstor.org/stable/1171719

In discussing" War and Human Progress," Viscount Bryce brings out the distinction between two schools of philo-sophical thinkers or historians. One of these schools lays stress on " the power of reason and of those higher and gentler altruistic emotions which the development of reason as the guide of life tends to evoke and foster " and finds in these tendencies " the chief sources of human progress in the past, and expects from them its further progress in the future." This school regards man " as capable of a continual advance through the increasing influence of reason and sympathy," and dwells upon " the ideas of justice and right as the chief factors in the amelioration of society." It, therefore, regards "good-will and peace as the goal of human endeavor in the sphere both of national and of international life." The other school, less sanguine, insists " on the power of selfishness and of pas-sion, holding these to be elements in human action which can never be greatly refined or restrained, either by reason or by sympathy; " that social order " can be secured only by force, . . . right itself is created only by force," and that " it is past force that has made what men call right and law and govern-ment." The tendency of this second school is " associated with the less rational elements in man-with passion and the self-regarding impulses which naturally attain their ends by physical violence." 1 The conflict between these two philo-sophies which Viscount Bryce finds is the fundamental provo-cative of the great international war, thoughtful persons find also is the fundamental provocative of industrial conflict. Inevitably the rational mind finds resemblances in industrial situations illustrating this same conflict of philosophies. In 1 Atlantic Monthly, September 1916, pp. 301-2. I08 TO ENFORCE INDUSTRIAL PEACE I09 December 1914, Dr. Felix Adler, discussing" Militarism and Its Eulogists," said that while Self-defense has generally meant standing up for one's own rights . . . anyone who stands up for his rights, who separates in mind his right from the correlative rights of the other party, will inevitably glide over from right into might. He will begin by exercising right and presently change to the exercise of mere might. The only possible way to defend ourselves from that is to bear in mind that our right is an organ in the organism of rights. The great ethical error of the world till now has been that in righteous self-defense men have become most unrighteous, because in self-defense they have thought of their right as sundered from the right of others. Yet my right is but one blade of the shears, and the right of my fellow, even though he be the aggressor, is the other blade. Applying this principle applicable to the international conflict, he finds it involved in the conflicts of laborers and employers. Laborers protest [he says] that their employer has been unjust, oppressive. They combine to defend their rights, and in this they are justified. But often the movement of protest, which began with a strike on behalf of right, degenerates into sheer assertion of might. The labor organization, if sufficiently strong, becomes dictatorial, per-emptory, formulates demands inconsistent with sound business and with the self-respect of the employer. Now so long as the present in-dustrial system continues, so long as there are employers, the employ-ers have certain rights, because they have certain functions. Unduly to restrict their functions is to destroy their rights. Conversely, the employer may begin by resisting the tyranny of labor, and in so far as he does this we approve of his action. But presently, in defend-ing his rights, he is apt wholly to forget the rights existing on the opposite side, in particular the indispensable right of association He announces his intention to crush the union of laborers, and thus in his blind assertion of the fractional right which is his, he destroys the integral right which is compounded of his and theirs.1 Similarly, Professor John Dewey writes that the neutral coun� tries find themselves in the position of the public when there is a strike on the part of street-railway employees. The corporation and the employees fight it out between themselves, and the public suffers and has nothing to say. [He says that it is] the nations not at war [who] have the superior right in every case [because] in the existing situation they are the representatives of the normal interests of mankind, and so are in the right against even the contending party that with respect to other contenders is most nearly in the right. [Professor Dewey says that] our existing human intercourse requires some kind of a mechanism which it has not got [ and that] instead of setting our-selves in deliberate consultation to institute the needed laws of the intercourse of nations [ we wait] for new law to be struck out by the accident of clash and victory.1 It would seem, therefore, to be no vain prophecy to fore-cast that if the sentiment now behind the League to Enforce Peace should prevail and the outcome of the great inter-national war should be the invention of new mechanism for making reason triumphant in international relations, we shall witness a rapid creation of institutions for subordinating in-dustrial conflict to a reign of law. Viscount Bryce before the recent election emphasized the immense importance of the declarations made by Mr. Wilson and Mr. Hughes as the leaders of the two great American parties. . . . Both have described in clear and strong terms the interest the American people have in the prevention of war and the duty which lies upon it as a peace-loving people to do its utmost for securing the safety of the world in future by a permanent combination for the restraint of aggression and the preservation of a general peace.2 Both candidates during the campaign pledged themselves to the principle of arbitration in industrial disputes. Chancellor von Bethmann-Hollweg recently said: If at and after the end of the war the world will only become fully conscious of the horrifying destruction of life and property, then through the whole of humanity there will ring out a cry for peaceful 1 International Journal of Ethics, April 1916, p. 320. 2 New York Times, October 28, 1916. TO ENFORCE INDUSTRIAL PEACE III arrangements and understandings which, as far as they are within human power, will prevent the return of such a monstrous catastrophe. This cry will be so powerful and so justified that it must lead to some result. Germany will honestly co-operate in the examination of every endeavor to find a practical solution, and will collaborate for its possible realization.1 In its recent report upon the car strike forwarded to the governor of the state,2 the public service comm1ss10n of the first district of New York declared : The right of men freely to organize is a legal right no longer subject to question. The right of men freely to select spokesmen or advisers is a corollary of this right. The right to deal or to decline to deal collectively with an organization is likewise a legal right. So, too, the right to employ or to refuse to employ members of a certain organization is a legal right, justified morally in its exercise, accord-ing to the circumstances of each case. But the right of the state to have its public utilities operated safely, efficiently and continuously is also a legal right. Which of these rights is paramount? The rights of the people, or the rights of workers or employers? Whatever the application of these rights may be in private ventures, the right and the duty of the state in respect to its public utilities are clearly paramount. It is true that none of these rights, of the state, the worker or the employer, are arbitrable. But the adjustment of these rights so that each may be respected and properly balanced involves important considerations. While all of these parties have clear rights, the manner of exercising them is of the highest impor-tance. The methods commonly accepted as moral are the methods of argument and persuasion, and the methods commonly condemned are those of coercion or oppression. Neither should the men coerce acceptance of their views, nor the company coerce acceptance of its views. Even if the company has the legal right to discharge union men, it is questionable whether it can justify itself on moral grounds. With public utilities, where the necessities of the people depend upon their operation, it should not be permitted to any group of men, be they employees or employers, to inconvenience and bring distress upon the whole people for the purpose of securing acquiescence with its views. This is to substitute coercion arising out of the necessi-ties of the public for persuasion as a method for securing recognition of concededly non-arbitrable rights. It is a very significant indication of the movement for judi-cature in industrial conflict that in recent industrial contro-versy strong and fervent appeals for arbitration come first from one party and then from the other. In the cloak strike of 19 l 6 it was the union which, in its appeal to the public, declared that it had been consistently opposed to a warfare in the industry [and believed] that the problems of the industry cannot be satisfactorily solved either by lockouts or strikes, but only through patient resort to the method of fairminded discussion, adjustment and democracy, [and that its only demand was] that both sides should submit their dis-putes to the arbitrament of an impartial body, whether that body be called a board of arbitration or a council of conciliation. In the 1916 railroad situation it was the national conference committee of the railways which called upon the public to de-cide whether or not "this wage problem [should] be settled by reference to an impartial federal tribunal ... or by in-dustrial warfare." 1 On the other hand, in the case of the cloak strike, the manufacturers took the position that "We do not believe in outside bodies interfering in our affairs." 2 And in the case of the railway employees, the leaders of the brother-hood contended that they were in the grip of a power greater than we [themselves]. [ Indeed, so they said, they were in the condition where] the veneer of civiliza-tion falls off, and you have the primeval man to deal with on both sides of the question . . . and, like the primeval man, both are pre-pared to appeal to the club. . . . In other words, they (the rail-roads) won't arbitrate where they fear, and there is nothing to ar-bitrate where there is no fear.3 1 Advertisement, New York Times, June 26, 1916. z Editorial, New York Times, May 27, 1916. 3 Minutes of Hearing before the Committee on Interstate Commerce, U. S. Senate, pp. 25 and 28. TO ENFORCE INDUSTRIAL PEACE II3 Accordingly, the men refused to arbitrate. These illustrations suffice to indicate that in our country the demand for arbitra-tion of industrial disputes is not confined to labor or to capital, nor is the refusal to arbitrate confined to either. The slightly deaf gentleman, being asked concerning the points of the com-pass, replied "You can't tell. It shifts around up here," be-lieving that he had been asked concerning the direction of the wind. If you happen to be in control of the situation, or think you are in control, you are not for arbitration. If you happen to be weaker than the other party, or think you are, you are a sturdy advocate of the principle of arbitration. There is no monopoly in this country of this shiftiness of position. A recent study of the experience of arbitration in Australasia discloses a similar experience there. When there was a large surplus of labor in Australasia and standards of wages were beaten down by the competition of the unemployed, the trade unions sought the establishment of wage boards and compul-sory arbitration. When there was a shortage of workers and labor secured the upper hand, it was the employers who fought for the maintenance of arbitration.1 It is significant that in this country now, when there is a labor shortage, the demand for industrial arbitration comes most strongly from the em-ployers' group.2 The manager of a large enterprise in St. Louis, we are told by a trade journal, "struck the nail on the head in advocating the appointment of a government com-mission, to adjust differences arising between labor and capital, just as the interstate commerce commission now adjusts troubles between the railroads and the shippers." 3 Indeed, the Syndicalists seem to be the only industrial advo- cates who consistently decline arbitration. Workmen quickly perceive that the labor of conciliation or of arbitration rests on no economico-judicial basis, and their tactics 1 See Arbitration and Conciliation in Australasia, by M. T. Rankin. Lon- don, 1916. Ch. vi, Arbitration Court System. 2 See Merchants' Association of New York plan to prevent the interruption of public utilities, Greater New York, September 25, 1916. 8 Daily Trade Record, October 28, 1916. 114 LABOR AND PUBLIC SERVICE CORPORATIONS have been conducted-instinctively perhaps--in accordance with this datum. Since the feeling and, above all, the vanity of the peace-makers are in question, a strong appeal must be made to their im-aginations, and they must be given the idea that they have to accom-plish a titanic task ; demands are piled up, therefore, figures fixed in a rather haphazard way, and there are no scruples about exagger-ating them; often the success of the strike depends on the cleverness with which a syndicalist ( who thoroughly understands the spirit of social diplomacy) has been able to introduce claims, in themselves very minor, but capable of giving the impression that the employers are not fulfilling their social duty. It often happens that writers who concern themselves with these questions are astonished that several days pass before the strikers have settled what exactly they have to demand, and that in the end demands are put forward which had not been mentioned in the course of the preceding negotiations. This is easily understood when we consider the bizarre conditions under which the discussion between the interested parties is carried on. I am surprised that there are no strike professionals who would undertake to draw up lists of the workers' claims; they would obtain all the more success in conciliation councils as they would not let themselves be dazzled by fine words so easily as the workers' dele-gates. When the strike is finished the workmen do not forget that the employers at first declared that no concession was possible; they are led thus to the belief that the employers are either ignorant or liars. This result is not conducive to the development of social peace! 1 One of the things which appear to me to have most astonished the workers during the last few years has been the timidity of the forces of law and order in the presence of a riot; magistrates who have the right to demand the services of soldiers dare not use their power to the utmost, and officers allow themselves to be abused and struck with a patience hitherto unknown in them. It is becoming more and more evident every day that working-class violence pos-sesses an extraordinary efficacy in strikes: prefects, fearing that they may be obliged to use force against insurrectionary violence, bring pressure to bear on employers in order to compel them to give way; the safety of factories is now looked upon as a favor which the prefect may dispense as he pleases; consequently he arranges the use 1 Reflections on Violence, by Georges Sorel. Translated by T. E. Hulme; pp. 64, 65. TO ENFORCE INDUSTRIAL PEACE of his police so as to intimidate the two parties, and skilfully brings them to an agreement. Trade-union leaders have not been long in grasping the full bear-ing of this situation, and it must be admitted that they have used the weapon that has been put into their hands with great skill. They endeavor to intimidate the prefects by popular demonstrations which might lead to serious conflicts with the police, and they com-mend violence as the most efficacious means of obtaining concessions. At the end of a certain time the obsessed and frightened administra-tion nearly always intervenes with the masters and forces an agree-ment upon them, which becomes an encouragement to the propa-gandists of violence.1 Sorel says: We cannot censure too severely those who teach the people that they ought to carry out the highly idealistic decrees of a progressive justice.2 There is not much difference between this philosophy of Sorel's and the point of view of many-Praise be the Lord! not all-successful employers and successful leaders of labor. The writer in the financial columns of a daily paper in New York appeals to business men to realize what it means to find the attitude of labor " like that of capital. Both take what they can get in the present, intent only upon the highest profit; both refuse to be responsible for the sequel, and neither one can spare the time to attend to the future." 8 Goethe saw this struggle for power, the unwillingness to surrender power and the unwillingness to be bound by power. The thirst for power would not let the ghost be laid: How often has it risen! Yes, and it will rise Ever and evermore! No man yields sovereignty Unto his fellow: none will yield to him Who won the power by force, and by force keeps his hold. For man, who cannot rule his own unruly heart, Is hot to rule his neighbor, bind him to his will. 1 Sorel, op. cit., pp. 69-70. 2 Ibid., p. 122. s Garet Garrett, Finance-Economics, New York Tribune, October 23, 1916. 116 LABOR AND PUBLIC SERVICE CORPORATIONS II But the " neutral " in industrial warfare, like the " neutral " in international warfare, is securing a standing in court. He is becoming an amicus curiae. In the recent milk strike in New York-a strike, be it observed, called not by the proletariat, but by capitalists, i. e., farmers, owners of real estate-an attempt by capitalists to fix the price of milk by collective bargaining, upon the ground, indeed, that the farmer (a capitalist) was not earning a " living wage "-at thevery moment that these capitalists were practising sabotage, overturning and emptying milk cans in the up-state highways, the babe in its mother's arms, dependent for its life upon this wasted milk, cried out it'> neutral protest. Wherefore the editors pass comment: The interests of no group in the community are more important than the public interest. The well-being of all should never be permitted to suffer because some special portion of the whole is seeking its own well-being in its own way. The public should never be put in the position of the " innocent bystander " at a street fight, who often receives the severest injuries.1 And they prophesy : The next great public problem is to work out the means by which organized groups of individuals, whether they represent labor and capital, or production and distribution, or merely rival interests in a single field, shall be compelled to settle their differences peaceably, to accord justice to each other, and to observe the rights of the people. The " neutral " is more and more securing a hearing for his claims, not merely because of the disturbance of his immediate comfort, not merely because his breakfast bottle of milk is absent from his door-step, or his coal supply is shortened, or the street cars are delayed in running. There is cordial accept-ance of the thought that there can be no interruption in the arterial service of the social organism without disturbing the whole system. Sometimes it is the lungs who try to make us 1 Independent, October 23, 1916. TO ENFORCE INDUSTRIAL PEACE 117 believe that they are the most important member, but more often quiet little members of the family, less vocal than the lungs, remind us with twinges of pain that it is not the noisiest member who can make the most trouble. In certain fields of industrial activity for a long time there has been clear accept-ance of the principle that the rights of the parties involved are ever subordinate to the public interest. Notwithstanding the vast grant of power to the interstate commerce commission, enlightened railway executives appeal for grant of more power. No student of the decisions of the commission can fail to be impressed with the maze of discrimination, rebating and un-fair practices left utterly without control on the part of the state or nation until this latent power was institutionalized. In the express rates case, Commissioner ( now Secretary) Lane said: It is to be borne in mind that these carriers (meaning the express companies) remained for twenty years entirely without regulation as to interstate traffic after the railroads had become subject to this act, and that various efforts to remedy existing conditions made by individual carriers had failed because of lack of harmonious action and the inability of the government to compel them to adopt prac-tices that were just and non-discriminatory.1 It is a similar " lack of harmonious action " between employers and employees and a similar " inability of the government to compel them to adopt practices that were just and non-discrim-inatory " that leaves us still in a condition of mitigated syndicalism. The railroad enterprises of the country were obliged under the pressure of government to work out the intricate problems of popular control in relation to technical adminis-tration. Walter Lippmann points out that "on the capacity of labor to develop an efficient government for itself hangs the decision as to how much responsibility the unions can af-ford to assume. It is the development of a citizenship in in-dustry that the labor movement has before it. It will have 1 In re Express Rates, Practices, Accounts, and Revenues. 24 J. C. C. 381, at 389. I 18 LABOR AND PUBLIC SERVICE CORPORATIONS to work out the intricate problem of popular control in relation to technical administration." 1 Business is under the control of government. Do the business men of the country realize that the federal trade commission will ultimately determine what constitutes the ethics of competition, and thus limit and determine the daily life of all trade? True, the act contains in itself but a very simple mandate, namely, " That unfair methods of competition in commerce are hereby declared un-lawful." 2 Yet the commission is given the broadest powers to determine what constitute " unfair methods of competition in commerce " and to restrain by order those acts which it de-termines to be unfair. The commission is not controlled by legal precedents in its determination of what constitute un-fair practices. It can establish entirely new precedents or itself follow more modern precedents. It can follow the recent Massachusetts case, in which the court adopted the principle that, since all property rights proceed from the state, they must be used for the common good of all the subjects of the state. In that case the definite question arose whether an association of granite workers could, by a system of fines, preclude any of its members from trading with one who was not a member and so destroy his business of quarrying granite. The court held that it could not, saying: To what extent combination may be allowed in competition is a mat-ter about which there is as yet much conflict, but it is possible that, in a more advanced stage of the discussion, the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case that the proposition that what one man lawfully can do, that any number of men acting together by combined agreement may do, is to be received with newly disclosed qualifications arising out of the changed con-ditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals, acting each according to his preference, and that of an organized extensive combination may be so great in its effect upon 1 Drift and Ma.steYy, p. 97. 2 Federal Trade Commiuicn Act, sec. 5. TO ENFORCE INDUSTRIAL PEACE 119 private and public interests as to cease to be simply one of degree and to reach the dignity of a difference in kind.1 A writer upon " The Morals of Monopoly and Competition " says that in this decision we have a clear grasp of the modern situation and a clear recognition that changes in the conditions of civilized life call for equal changes in business methods and principles applicable to these changed condi-tions, that although it may be logically inferred that what one man may do singly he may also do jointly with others, results may prove this an invalid conclusion, and the difference in conditions may be so important as to make the inference impossible.2 Railroad men have already realized what public regulation means. Electric-light companies now know what it means to be regulated by public service commissions. Express com-panies now know that they must make rates subject always to revision by the interstate commerce commission. Business men generally will realize soon that, under the broad powers con-ferred upon the federal trade commission, they are subject to the same kind of governmental control. Business conduct which a decade ago would have been regarded as " good busi-ness " is now condemned not only as morally unsound, but as illegal and subject to criminal penalties, and this not merely as to cut-throat and predatory competition and the methods of the old-fashioned " octopus," but as to more modern practices, such as the misuse of trade names and the misrepresentation of the quality of an article. We have traveled a long distance from the philosophy of the decision in the great Mogul steam-ship case, wherein Lord Chief Justice Coleridge permitted him-self to say: It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay the trade of a particular place or district being possibly very limited, what one man gains another loses. In the hand-to-hand war of commerce ... men fight on 1 Martell v. White, 185 Mass. 255, 259, 26o. 2 Homer Blosser Reed, International Journal of Ethics, January 1916, p. 273- 120 LABOR AND PUBLIC SERVICE CORPORATIONS without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business.1 In tl:e same case Lord Justice Fry said: I know no limits to the right of competition in the defendants- ! mean, no limits in law. I am not speaking of morals and good manners. To draw the line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts. Competition exists when two or more persons seek to possess or enjoy the same thing; it follows that the success of one must be the failure of another-and no principle of law enables us to inter-fere with or to moderate that success or that failure so long as it is due to mere competition.2 Lord Justice Bowen said : To say that a man is to trade freely but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection . . . . To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute.3 The abuses of railroad management, then, the evils of un-regulated monopoly and competition, are not beyond the arm of the state. The capitalistic employer is in the grip of the law. In the interest of the " neutral," the weak needing the protection of the state is given help. Instead of the philo-sophy of " To him that hath shall be given," the more modern philosophy of " giving to each according to his needs " con-trols. Behind the workmen's compensation acts and the na-tional child�labor law is the same great purpose. The arm of 1 21 L R. Q. B. D. 544, at 553-4. 2 23 L. R. Q. B. D. 598, at 625-6. 8 23 L. R. Q. B. D. 598, at 615-16. TO ENFORCE INDUSTRIAL PEACE 12! the state is stretched out to guard the worker and the little child. Conditions of public service and of private service are regulated in the interest of the worker and of the consumer. The new justice involves simply a subtler and more far-reaching analysis of the human situation. It involves a recognition of the wholly inescapable social interrelations. . . . The new theory of rights assumes that men together create their destinies, that rights grow as needs increase, and that these rights are not simply to be protected but to be nurtured and developed.1 When labor is the dominant power, is the weak to be left without protection of the law? In short, [as another writer puts it] during the last few years in America we have been developing with all our energy the highest art of all arts-the art of living together. I believe this to be " the one idea more powerful than any other " that is shaping the events of our time.2 III Why are business men resorting to commercial arbitration? The "art of living together" in business necessarily involves the elimination of human friction and the elimination of waste. Our judicial machinery is too cumbersome, too expensive and too provocative of hatred. According to modern understand-ing, it is not efficient. The national movement for efficiency in commerce and industry must soon bring us to a point where we shall look with shame and mortification upon our antiquated machinery for disposing of commercial controversy and upon our medieval methods for disposing of industrial controversy. Does it not concern the " neutral " that in three months upon a street-railway line there is a net deficit of $372,471 compared with earnings of $326,015 in the same period of the year previous-due to a street-car strike? 3 I have received from 1 Harry Allen Overstreet, Philosophy and the New Justice, International Journal of Ethics, April 1915, p. 289. 2 Ray Stannard Baker, TJ,,e New Republic, December 5, 1914, p. 21. 8 Tke Sun, October 27, 1916, reporting deficit on the Third Avenue system. In one month the revenue of another line dropped $6o8,065. Nm York Times, November 13, 1916. 122 LABOR AND PUBLIC SERVICE CORPORATIONS L. W. Hatch, chief statistician of the New York state indus-trial commission, the following table of working time lost in strikes and lockouts in New York state for the ten years 1906-1915 inclusive: WORKING TIME LOST IN STRIKES AND LOCKOUTS IN NEW YORK STATE Year Ended September 30 Number of strikes and lockouts Aggregate days of working time lost 1906 245 1,668,281 1907 282 1,724,26o 1908 16o 396,7:is 1909 176 1,061,094 1910 250 5,783,394 I9II 215 2,360,092 1912 184 1,512,234 1913 268 7,741,247 1914 123 1,426,II8 1915 104 868,838 This shows a total aggregate number of days of working time lost amounting to 24,542,283. If we assume an average of but $2 a day, this means a loss in this period in the state of New York in wages alone of $49,084,566. The recent cloak strike in New York is estimated to have cost the union $750,000 for strike benefits and other expenses and the manufacturers' association a like amount, if not more, while the loss in wages to the cloakmakers amounted to $3,000,000, and business and profits to the manufacturers far exceeded this sum.1 Professor Wigmore says : Few laymen, and fewer lawyers, stop to reflect that the system of legal justice keeps changing slowly, from epoch to epoch, in its con-tents,-the subjects of its rules and dispensations. Professor Wigmore sees in the wings a new body of American law developing in the field of industrial controversy: Spontaneously, in our own country, work in the same field has be-gun.... Lawyers should awaken to this coming enlargement of the field of systematic justice. . . . The significant thing is that gen-eral principles are beginning to be formulated. And the moment you 1 Report of Morris Hillquit to Mayor Mitchel, Daily Trade Record, August 5, 1916. TO ENFORCE INDUSTRIAL PEACE 123 have general principles, used for deciding particular cases, you have justice in the form of law, as distinguished from the arbitrary justice of a Turkish caliph, or from private struggle decided by private force.1 When the balance sheet of the great war is made up, and we shall all have to foot the bill, the inefficiency and wastefulness of our medieval methods for settling industrial controversy will become intolerable. We shall soberly come to the reflection that in each instance the root of the evil is a fundamentally wrong philosophy. When we are stirred up, when public opinion is screwed up to the sticking point, we shall demand new law and new institutions. When we arrive at this point, we shall find much to learn from a study of the evolution of our present legal institutions. Sir Frederick Pollock has graphically described the general impotence of the English state in the administration of justice during the Anglo-Saxon period: Rigid and cumbrous as Anglo-Saxon justice was in the things it did provide for, it was, to modern eyes, strangely defective in its lack of executive power. Among the most important functions of courts as we know them is compelling the attendance of parties and enforc-ing the fulfilment both of final judgments and of interlocutory orders dealing with the conduct of proceedings and the like. Such things are done as of course under the ordinary authority of the court, and with the means constantly at its disposal; open resistance to judicial orders is so plainly useless it is seldom attempted, and ob-stinate preference of penalties to submission, a thing which now and then happens, is counted a mark of eccentricity bordering on unsoundness of mind. Exceptional difficulties, when they occur, indicate an abnormal state of the commonwealth or some of its mem-bers. But this reign of law did not come by nature; it has been slowly and laboriously won. Jurisdiction began, it seems, with being merely voluntary, derived not from the authority of the state but 1 A New Field for Systematic Justice, IO Illinois Law Review, No. 8, March 1916. Editorial Notes, pp. 59:2, 593, 594, 595. See also The Development of Government in Industry, by Earl Dean Howard, 10 Illinois Law Review, No. 8; The Need for Industrial Juri"sprudence, by Walston Chubb, The Standard, March 1916; A New Province for Law and Order, by Henry Bournes Hig-gins, Harvard Law Review, vol. xxix, no. I. 124 LABOR AND PUBLIC SERVICE CORPORATIONS from the consent of the parties. People might come to the court for a decision if they agreed to do so. They were bound in honor to accept the result; they might forfeit pledges deposited with the court ; but the court could not compel their obedience any more than a tribunal of arbitration appointed at this day under a treaty between sovereign states can compel the rulers of those states to fulfil its award. Anglo-Saxon courts had got beyond this most early stage, but not very far beyond it. The only way to bring an unwilling adversary before the court was to take something of his as security till he would attend to the demand; and practically the only things that could be taken without personal violence were cattle. Distress in this form was practised and also regulated from a very early time. It was forbidden to distrain until right had been formally demanded-in Cnut's time to the extent of three summonings - and refused. Thus leave of the court was required, but the party had to act for himself as best he could. If distress failed to make the defendant appear, the only resource left was to deny the law's protection to the stiff-necked man who would not come to be judged by law. He might be outlawed, and this must have been enough to coerce most men who had anything to lose and were not strong enough to live in rebellion ; but still no right could be done to the complainant without his submission. The device of a judgment by default, which is familiar enough to us, was unknown, and probably would not have been understood. Final judgment, when obtained, could in like manner not be di-rectly enforced. The successful party had to see to gathering the " fruits of judgment," as we say, for himself. In case of continued refusal to do right according to the sentence of the court, he might take the law into his own hands, in fact wage war on his obstinate opponent.1 Is this not an accurate photograph of the existing condition of the law of our present dealing with industrial controversy? No power by which parties can be compelled to arbitrate their differences. No power, even after they have submitted, to compel them to observe the awards. The parties left to volun-tary agreement or to fighting it out among themselves. Like the Anglo-Saxon litigant, no one can bring any other one into court. Violence in both cases the outcome. In the absence 1 Expansion of tlu Common La'W, pp. 145-6. TO ENFORCE INDUSTRIAL PEACE 125 of law, resort to force. The public service commission of the first district, reporting upon the recent car strike in the city of New York, brings sharply to the attention of the public this weakness in the existing law. In the case of each side, it finds voluntary agreements to arbitrate violated without remedy: There is no doubt that men have the right to refrain from working and any rule that requires a man to work against his will is in the nature of slavery. On the other hand, there are positions of public service that require the performance of instant duty; for example, the policeman or the fireman may not throw up his job while on duty, though he may resign his position. It may very well be considered at this time whether or not the principle should be extended to the extent of saying that it is against the public interest that men employed on railroad or other public utilities may, without notice, exercise their right to quit their jobs in a group, thus crippling if not totally arresting the operations of public utilities, to the great damage of the public. We are not un-dertaking now to suggest what remedy, if any, may be just and prac-ticable, but it is already the law that the matter of the operation of public utilities is a matter of state regulation. Is the quitting of the service a matter for state regulation? IV So far as public utilities are concerned, we cannot escape the logic that the regulation of rates and of service carries with it the duty to regulate conditions and rewards of employment. It is no longer open to dispute that Congress, in so far as re-lates to matters of interstate commerce, and the states, in so far as relates to matters of intrastate commerce, have the power. Mr. Justice Hughes, writing the opinion of the United States Supreme Court, in 1910 said: By virtue of its power to regulate interstate and foreign commerce, Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce, and of those who are employed in transporting them. Johnson v. Southern P. Co., 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158; Adair v. United States, 208 U. S. pp. 177, 178, 52 L. ed. 443, 444, 28 Sup. Ct. Rep. 126 LABOR AND PUBLIC SERVICE CORPORATIONS 217, 13 A. & E. Ann. Cas. 764; St. Louis I. M. & S. R. Co. v. Taylor, 210 U.S. 281, 52 L. ed. 1061, 28 Sup. Ct. Rep. 616; Chicago, B. & Q. R. Co. v. United States, decided May 15, 1911 (220 U. S. 559, ante, 582, 31 Sup. Ct. Rep. 612). The fundamental question here is whether a restriction upon the hours of labor of employees who are connected with the movement of trains in interstate transporta-tion is comprehended within this sphere of authorized legislation. This question admits of but one answer. The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. This has been repeatedly emphasized in official reports of the inter-state commerce commission, and is a matter so plain as to require no elaboration. In its power suitably to provide for the safety of em-ployees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train despatchers, telegraphers, and other persons embraced within the class defined by the act. And in imposing restrictions having reasonable relation to this end there is no interference with liberty of contract as guaranteed by the constitution. Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, ante, 328, 31 Sup. Ct. Rep. 259.1 Indeed, the Adamson eight-hour bill is based upon the theory that Congress, having the power to regulate the service, has power to fix the hours of labor or the compensation. In accept-ing the Adamson bill, the railway brotherhoods bowed before the power of the state. This phase of the incident has not been emphasized. The brotherhoods have not always been ready to go to Congress for legislative regulation of hours of labor. In one sense what they accomplished may be regarded as a victory, but. in another may be regarded as a setback. There was clear recognition that, in the development of public opinion, the time had arrived when the public's rights were paramount. Under the title, "The Public Welfare Supreme," The Independent says that labor organizations had been repeating the blunder that far more powerful organizations have 1 Baltimore & Ohio R. Co. v. Interstate Commerce Commission, 221 U. S. 612, at 618-619, 55 L. ed. 878, at 882-3. TO ENFORCE INDUSTRIAL PEACE 127 made from time to time since the Christian era began, and for which they have severely suffered. (This blunder, it says, is that) of asserting the alleged right of any organization whatever to exist on its own terms, irrespective of the welfare of the general public as interpreted by the sovereign people. [This blunder, it says, was made by the Roman Catholic Church, by the Mormon Church, and by the great corporate business interests, the last) to be brought under more and more strict control by state legislatures and courts, the national Congress and the United States Supreme Court. [But] the right of the public to enjoy civilized order, as Chairman Straus of the public service commission admirably put it the other day, is the supreme right. At all costs it must be maintained; by over-whelming force if necessary.1 The fundamental principle that the rights of employees, like the rights of stockholders, are subordinate to the rights of the public, in the operation of public utilities, is already imbedded in the law of the state of New York. By section 26 of the public service commission law every railroad corporation, person or common carrier is required to furnish "such ser-vice and facilities as shall be safe and adequate and in all re-spects just and reasonable," and is required to furnish such services at charges that " shall be just and reasonable and not more than allowed by law or by order of the commission having jurisdiction and made as authorized by this chapter." Section 491 authorizing the commission to fix rates and service, says that if the commission finds that the maximum rates, fares or charges are insufficient to yield reasonable compensation for the service ren-dered, and are unjust and unreasonable, the commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be per/ ormed, notwithstanding that a higher rate, fare or charge has been heretofore authorized by statute, and shall fix the same by order. 1 Vol. 88, no. 3539, October z, 1916, p. 6. 128 LABOR AND PUBLIC SERVICE CORPORATIONS Under section 55, for the purpose of approving issues of stock, bonds and other forms of indebtedness, the commission must be satisfied that the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes, and other evidence of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. (Throughout the act will be found provisions covering other public utilities.) It is true that heretofore it has been as-sumed that, in determining the reasonableness of rates or the reasonableness of stock or bond issues, the public service com-mission was not required to take into account standards of wages or hours of labor, or the manner in which employees in the service were required to perform the service. There is, however, no escape from the logic that if a commission is to regulate the safety of the service, the reasonableness of the rates, and the justifiability of stock or bond issues, it must of necessity consider the wages and hours of those who perform the service quite as much as it must consider the interest, the dividends and the adequacy of the purely mechanical parts of the utility. In the United States Senate on August 30 last, in the discussion of the various existing statutory methods for compulsory or voluntary arbitration of industrial disputes, tak-ing the position that it is not within the power of Congress to compel a man to work against his will, Senator Cummins said: I have little doubt that it is within our power to make unlawful a combination of employees looking to a strike in concert. We could not simply make it unlawful to strike. All that we could possibly make unlawful would be the combination or the conspiracy to strike.1 [And] it is apparent that these disputes which so vitally affect the whole body of the people should be settled, if possible, by an impar-tial tribunal, and I do not think of it as an arbitration; I think of it as a court, composed of men of the highest character and greatest 1 Congressional Record, August 30, 1916, P· 15677. TO ENFORCE INDUSTRIAL PEACE 129 attainments; a court composed wholly of members who have no pos-sible interest in the controversy, and who have the same sense of high responsibility which we expect of men chosen to exercise the judicial office. It must be composed of men in whom the entire country has confidence, of humanitarians who are looking constantly for the true pathway to a better civilization. If we can secure such a court, the strike, in concert or combination, may, for a time and in a degree, be subordinated to its judgments. [ Coming directly to the matter of disputes upon the railroads of the country, Senator Cummins said:] Undoubtedly Congress could prescribe maximum hours of work upon railways engaged in interstate commerce.1 Asked specifically by Senator Norris if he thought that Con-gress would have the constitutional right to fix the compensa-tion as well as the hours, he said : Unquestionably Congress has authority to prescribe both mmunum and maximum wages to be paid by such railway companies. It is true that regulation of this character might sometimes be overthrown in the courts if challenged as unreasonable or arbitrary, because there is no well-established standard for compensation in the various occu-pations of life.' In coming to the opm10n that the power of the government, national and state, to regulate public utilities in the matter of service and rates includes the power to determine the wages which shall be paid and the hours within which the work may be performed, the conservative senators do not hesitate to ac-cept the conclusion that this would necessarily involve the regulation of the salary of officers. Senator Cummins, recog-nizing fully the power of Congress to regulate wages and hours upon the railroads, questions only the power of Congress to delegate this power to a commission. 3 But certainly when Congress can delegate to a trade commission the determina-tion of what in each case constitute " unfair methods of com- 1 Congressional Record, Aug. 30, 1916, p. 15679. 2 I bid., p. I 5679. 3 The following discussion between Senators Norris and Cummins.is instruc-tive: MR. NORRIS. Does the Senator think there is any greater constitutional authority conferred upon such a tribunal as he has been describing to fix, not necessarily the maximum and minimum, but the absolute compensation of var- 130 LABOR AND PUBLIC SERVICE CORPORATIONS petition," it can delegate to a commission the power to deter-mine what is " a fair and reasonable wage" or what is "a fair and reasonable working day." Every lawyer knows that a contract of hiring which contains no definite sum for com-pensation is a contract for quantum meruit, and the jury deter-mines according to the circumstances of the case, and possibly upon the evidence of experts, what is " fair and reasonable compensation." I do not believe the point made by Senator ions kinds of employees than there is conferred upon the same tribunal the right to fix a rate that shall be charged, of which the salaries of all the employees and officials must be one of the component parts? MR. CUMMINS. There is a little difference in the constitutional authority. From time immemorial the standard which is applied to test the validity of a rate imposed by a common carrier has been known theoretically at least. When we created the interstate commerce commission we gave to this commission the standard which had been for centuries the law with regard to the transporta-tion of persons and property by common carriers, and the courts have held that that is a sufficiently definite standard to warrant the delegation of power which the interstate commerce law involves. Now, mark you, I am not speaking of Congress; but when Congress would attempt to delegate the power to fix wages, what is the standard, what is the rule? What is to determine whether a man ought to be paid $2 a day or $S a day or $10 a day? I do not know of any standard at all. MR. BORAH. Would the phrase "a fair and reasonable wage" be any more definite or less definite than "unfair competition" or "a reasonable rate"? MR. CUMlUNs. I think it would be very much less definite. Both unfair competition and reasonable rates for the carriage of persons or property have become fairly well established. But it is not necessary for me to argue the matter. If the power exists, it is to be exercised through regulation and is not involved in the subject I am discussing. You cannot compel a man to work for any wage that the commission may fix. \* \* \* \* • \* • \* MR. NORRIS. I concede the point the Senator has made. It was not the object of my question to contest that, but I was wondering if the board or tribunal, or whatever it is the Senator has been describing, has the authority to fix a rate and a part of that rate is made up of the salaries that the president of a road draws and the brakemen draw, that being a part of the rate that it is considered they have the constitutional right to fix, and we have the consti-tutional right to provide, if we define it as we did in the power to fix the rate, that the salaries of all the employees and officials should be reasonable, that being a part of the rate, why could they not fix those rates; and when they were fixed would they n\_otpartake much of the same as a governmental posi-tion, and a strike would probably be unknown in regard to it if they controlled the entire situation ?-Co11gressional Record, Aug. 30, 1916, p. 1568o. TO ENFORCE INDUSTRIAL PEACE 131 Cummins is sound. If Congress has the power, there is no difficulty in delegating that power to a commission. There is, as I see it, no constitutional difficulty in the way of regu-lating conditions of employment upon public utilities. We should not forget that there was a time when there was a pub-lic policy supporting yet broader and more restrictive regula-tion of wages and conditions of employment. Beale and Wyman, going back to a review of governmental regulation of business during the late Middle Ages, say : Not only did the law regulate business indirectly through the courts, Parliament itself frequently regulated prices of the necessaries of life by direct legislation. The great staples like wool and food were habitually regulated in this way, and the employment and price of labor was a subject of statutory provision. Thus, in 1366, Henry III, after reciting former statutes to the same effect, regulated the price of bread and ale according to the price of wheat and barley, and for-bade forestalling, that is, cornering the market. In 1344 the ordi-nances fixing the export price of wool were repealed after some years of trial. In 1349 all laborers were obliged to serve for the customary wages; and " butchers, fishmongers, regrators, hostelors (i. e., inn-keepers) , brewers, bakers, poulterers, and all other sellers of all man-ner of victuals " were bound to sell for a reasonable price. These statutes continued in force throughout the Middle Ages, and until the settlement of America.1 It is true that Section 6 of the Clayton Act reads as follows: That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be con-strued to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organiza-tions, or the members thereof, be held or construed to be illegal com-binations or conspiracies in restraint of trade under anti-trust laws. In discussing this amendment in the light of the decisions al-ready rendered, Ex-President Taft, addressing the American 1 Railroad Rate Regulatwn, p. 7. 132 LABOR AND PUBLIC SERVICE CORPORATIONS Bar Association in 1914, said that this provision "was not in-tended to make members of such associations (i. e., labor, agricultural, etc.) a privileged class and free from the oper-ation of general laws " and that in all probability " when the statute is construed by the courts it will keep the promise of the labor leaders to the ear and break it to the hope of the ranks of labor." Since Professor Taft delivered this legal opinion, the courts have been called upon to pass upon this section, and the recent decision of Dowd v. United Mine Workers of America, 235 Fed. Rep. r, indicates that Mr. Taft was not far wrong in his conclusions. In that case the court held that the United Mine Workers of America, though unincorporated, were not only subject to the provisions of the Anti-Trust Act, but that they could be sued as parties for treble damages; and that, if by conspiracy and combination they injured the business and property of the coal companies, the fact that their unlawful acts did not relate directly to interstate commerce is not a defense. This decision, taken in connection with the decision of the supreme court of Massachusetts holding unconstitutional a similar provision of the state law of Massachusetts 1 to the 1 Bogni v. Perotti, 224 Mass. 152, II2 N. E. 853. The provisions in St. 1914, C. 778, Sec. 2, declaring that "in construing this act" the right to labor and to make and modify contracts to work " shall be he1d and construed to be a personal and not a property right" and prohibiting the granting of an in- junction to enforce such a right "where no irreparable damage is about to be committed upon the property or property rigbt of either" employee or em-ployer, are unconstitutional and void, for the reason that they deprive those employed in labor of "the equal protection of the laws" guaranteed by the federal constitution and by the equivalent provision in the Massachusetts bill of rights. " ... the power of courts to afford injunctive relief cannot be im-paired by the legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners." In that case, Bogni and others, as members of the General Laborers' Industrial Union No. 324 of the Industrial Workers of the World, brought suit against the Hod Carriers Building and Common Laborers' Union, Local 209, affiliated with the American Federation of Labor. The contest was between two labor unions seeking similar employment for their members as laborers in the building trades. The court said ( p. 156) : "The right to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, TO ENFORCE INDUSTRIAL PEACE 133 effect that labor is not a commodity, must bring the enlight-ened and intelligent labor leaders of the country to the reali-zation that by no legislative process can they escape the conse-quences of any restraint of trade which, if committed by a busi-ness association, would be in violation of the law. Under the law, as the Attorney General of the United States said in the Northern Securities case, " whether it is a mob, a monopoly, or a sand bank," whatever interferes unlawfully with trade or commerce is subject to the law. Interpreting the Trade Com-mission Act in the light of the Dowd case and Loewe v. Lawler,1 there would seem to be no reason why employers should not apply to the trade commission in cases of boycotts or strikes for relief of the same character that competitors now secure against unfair competition. V Our law is not impotent. On the contrary, it is all�power-ful. Students of judicial precedents have repeatedly pointed out the recent change in judicial opinion. "Only twenty-five years ago the general feeling as to every sort of indus-trial relation was that it was better to leave all alone, that it was better to leave people to work out their own salvation." 2 Today we apply the rule of salus populi suprema est lex to all property clothed " with a public interest," and " Property be-comes clothed with a public interest when it is used in a man- as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law is a funda-mental principle of our own constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the land owner or capitalist, to that extent discrimination is exercised against him." These two principles-that the right to make a contract is a property right and that equal resort to the courts must be accorded to all men-have been com-pletely ignored in the formulation of its legislative program by the American Federation of Labor. Like the employers spending energy in an effort to de-stroy trade unionism, this effort to destroy fundamental principles of Amer-ican law is futile. The energy should be otherwise utilized-in both instances. 1 208 u. s. 274. 2 Wyman on State Control of Public Utilities, Harvard Law Review, June 1911. Also in Orth's Readings on tke Relation of Government to Property and Industry. p. 286. 134 LABOR AND PUBLIC SERVICE CORPORATIONS ner to make it of public consequence and to affect the com-munity at large." 1 The famous Peel Splint opinion 1 is like a blinding headlight in the darkness of a new highway. It may dazzle, but it lights the way : We base the decision in this case: First, upon the ground that the defendant is a corporation in the enjoyment of unusual and extra-ordinary privileges which enable it and other similar associations to surround themselves with a vast retinue of laborers, who need to be protected against the fraudulent or suspicious devices in the weighing of coal or payment of wages for labor. Secondly, the defendant is a licensee, pursuing a vocation which the state has taken under its gen-eral supervision for the purpose of securing the safety of employees, by ventilation, inspection and government report, and the defendant, therefore, must submit to such regulations as the sovereign thinks conducive to public health, public morals and public security. We do not base this decision so much upon the ground that the business is affected by the public use, but upon still higher ground, that the public tranquillity, the good and safety of society, demand, where the number of employes is such that specific contracts with such laborers would be improbable, if not impossible, that in general contracts jus-tice shall prevail as between operator and miner; and, in a company's dealings with a multitude of miners with which the state has by special legislation enabled the owners and operators to surround themselves, that all opportunities for fraud shall be removed. The state is frequently called upon to suppress strikes; to discountenance labor conspiracies; to denounce boycotting as injurious to trade and commerce; and it cannot be possible that the same police power may not be invoked to protect the laborer from being made the victim of the compulsory power of that artificial combination of capital which special state legislation has originated and rendered possible. It is a fact worthy of consideration and one of such historical notoriety that the court may recognize it judicially, that every disturbance of the peace of any magnitude in this state since the civil war has been evolved from the disturbed relations between powerful corporations and their servants and employees. It cannot be possible that the 1 Munn v. Illinois, 94 U. S. 113. 2 Peel Splint Co. v. State, 36 W. Va. 8o2. Reasoning of the case affirmed and language quoted with approval by the U. S. Supreme Court in Knoxville Iron Co. v. Harbison, 183 U. S. 13, 22 Sup. Ct. 1. TO ENFORCE INDUSTRIAL PEACE 135 state has no police power adequate to the protection of society against the re-occurrence of these disturbances, which threaten to shake civil order to its very foundations. Collisions between the capitalist and the working man endanger the safety of the state, stay the wheels of commerce, discourage manufacturing enterprises, destroy public con-fidence and at times throw an idle population upon the bosom of the community. The law is ready. It is public opm10n that dallies. The state has power to take action " when the contestants are not able to settle their controversies between themselves, and the public peace and welfare are being jeopardized, in stepping in and prescribing the rules and regulations under which the industries shall be conducted." 1 The field of governmental interference is being constantly extended. Business and oc- cupations formerly unknown or of little importance are now being regulated and their charges and actions controlled. When any industry secures sufficient control to disturb the public peace or its owners are constantly requiring the aid of the state for protection, the business to that extent becomes affected with a public interest.2 The right of regulation now legally covers electric light companies operating upon the public streets, railroad bridge companies, telephone and tele-graph companies, water companies, sewerage companies, irri-gation and canal companies, grain elevators, warehouses, mines, insurance and banking. Is milk or coal a property " clothed with a public interest" ?3 1 Judge Alexander A. Bruce of the Supreme Court of North Dakota, Michigan Law Review, June 1909. Also in Orth, op. cit., p. 307. 2 Ibid., pp. 300, 301 (Orth). 3 See the Donnelly Act, sec. 340, General Business Law, New York. "Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby com-petition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void." 136 LABOR AND PUBLIC SERVICE CORPORATIONS VI Labor recognizes its subjection to the law. Before the Senate committee on interstate commerce, Mr. Gompers testi tied : 1 SENATOR CUMMINS. I take it you do not object to responsibility under the law for an unlawful act in some form or other? MR. GOMPERS. Certainly not. SENATOR CUMMINS. That is, every man, whether alone or whether in association with others, if he commits a wrong, ought to respond for that act either to the public in a criminal prosecution or to the person who was injured by his unlawful act? MR. GOMPERS. Unquestionably. SENATOR CUMMINS. That is fundamental, and that leads me to a little further inquiry of you upon a subject a little more funda-mental even than the anti-trust law. You are familiar with what is known as the Debs case? MR. GOMPERS. Fairly well, sir. SENATOR CUMMINS. There the complaint was, as I remember, that certain persons had forcibly, physically restrained the instru-mentalities of commerce; that is, prevented commerce from being carried on. Now, entirely apart from the law through which it would be worked out, do you think that there ought to be prohibi-tions against acts of that sort? MR. GOMPERS. There are, without the Sherman anti-trust law. SENATOR CUMMINS. Of course you think there ought to be pro-hibitions against such acts? MR. GOMPERS. Unquestionably; any acts which in themselves are unlawful. The New York Times reports that on November 5 the Attorney-General authorized the following statement of his department's activities: "The De-partment of Justice is investigating the recent abnormal and suspicious in-creases in the prices of various necessaries of life, especially coal. Wherever any such increase is found to have been due to conspiracy or other unlawful action the department will invoke against the offenders the severest penalties which the law prescribes." See also article headed, Suspect Conspiracy in High Coal Prices, p. 20 of same issue of Times, November 6, 1916. 1 Report of Hearings before the Committee on Interstate Commerce, U. S. Senate, Sixty-second Congress, 19n-12. Pursuant to Senate Resolution 98. Pp. 1727-1765. Also in Orth, op. cit., pp. 610-6n. TO ENFORCE INDUSTRIAL PEACE 137 Capital recognizes the clear right of labor to organize. Mr. Emery, speaking for the National Association of Manufac-turers and approximately three hundred organizations of em-ployers, said at the same hearing: 1 I, and all I represent, are firm believers in the right of men to organ-ize for the protection of their hours, labor, and working conditions. Many thousands of men employed by my clients are members of labor organizations of all kinds, and we do not and never have questioned their right to form unions and by legitimate action enforce their de-mands. We ask for no other restrictions for them than the same law places on all other citizens. In theory, both sides agree. Shall they be permitted to escape from this harmony of thought in their practice? In those industries where the costliness to the worker of the strike and lockout has been graven upon the memories of the workers by hard and bitter suffering, there is clear appre-ciation of the value of stable and uniform administration of the law of the industry. The most recent report of the government (U. S. Department of Labor, Bureau of Labor Statistics, Bulletin 198) reviewing Collective Agreements in the Men's Clothing Industry, con-tains the following : Under these agreements a due process of law has been substituted for the arbitrary and irresponsible rule of the foreman in the adjust-ment of all differences, and with the institution of this due process of law there has developed among the workers a feeling of security under the law, in place of the feeling, formerly prevalent among them, of uncertainty, of fear, and of absolute helplessness.' 1 Report of Hearings before tke Committee on Interstate Commerce, U. S. Senate, Sixty-second Congress, r9II-r2. Pursuant to Senate Resolution 98. Pp. 2072-2104. Also in Orth, op. cit., p. 618. ' One of the union representatives writes: "To fully appreciate, and to be able to explain in what ways the people have benefited by the agreement, I must refer back to the time when no agreement was in existence. "I used to work in shop No. 3, and I must say that the foreman of said shop is a kind person. My work during the seven years was very seldom criticized, if at all, but I was considered a 'smart man,' consequently kept re- 138 LABOR AND PUBLIC SERVICE CORPORATIONS We may well follow today the example of Cavour, who, m the time of Italy's greatest crisis, sponsible for some little trouble that happened in the sections near me, Once a section of men picked enough courage to stand up and ask the foreman for an increase; for such action their leader, who was revealed by one of the men, was immediately discharged and even denied the privilege to come for his hat and coat in the shop, which were brought to him outside. He was such a very nice, quiet, sociable fellow that it broke my heart to see him go in such a fashion, but the only thing I could do was to feel sorry for him. A few hours later I was called by the foreman and nccused of being the instigator of those people; when I protested that I did not know anything about it, and that I could not have been the instigator as I couldn't speak their language (Lithuanian), I was told that I was a 'smart man,' that I knew everything, and that at least I should have notified him. Finally, I was asked to resign my position; I was a plain workingman and I expected the same treatment that the other fellow had received a few hours before. While I was getting ready very reluctantly to go home, reluctantly, not for the job, though I needed it, but because I thought my staying in the shop was necessary, the foreman had a conversation with the informer and had been told that I was not mixed up in the matter at all, so the foreman changed his mind and asked me to remain, told me that I was a good man and that he believed every word I had said. "Today when a section is dissatisfied a complaint is filed with the shop chairman, who tries first to adjust it with the foreman or manager. If he can not succeed, he reports to the deputies of the workers and a joint investigation is made with the deputy of the company. In the event the deputies fail to reach a settlement, the case is reported to the trade board, and finally, if necessary, to the board of arbitration. The chairmen of the shops may now speak for any of the workers without being told to mind their own business. The fear of being wrongfully discharged has disappeared, because of the right to demand redress. Wages or prices can not be reduced; if attempted to, the price committee, a creation of the trade board, will be there and inves-tigate the case." Compare this with the conditions in the New York cloak industry, after the "protocol" system of arbitration was recently abrogated. The workers now complain : "This agreement may be a model as far as the manufacturers are concerned, because there are practically no provisions for enforcement of same, but the workers having promises on paper but knowing full well that the right to hire and discharge is practically absolute under the new agreement, that equal division of work is not even mentioned therein, and that the manufacturer if he wants to discriminate against an active union man could do so with im-munity, cannot do anything else but express their dissatisfaction with it. "We expect to take up this subject from time to time, but let us hope that this model agreement will be of short duration unless properly amended so as to make it a real contract instead of a one-sided affair."-Editorial Note, The Ladies' Garment Cutter, October 28, 1916. TO ENFORCE INDUSTRIAL PEACE 139 rises and compresses the needs of Piedmont and Italy into a single sentence. Casting aside all petty demands for changes in detail, he insists that the king be asked " to transfer the discussion from the perilous arena of irregular commotions to the arena of legal, pacific, solemn deliberation." 1 VII The desideratum is the least possible regulation by the gov-ernment and the utmost freedom to the parties to come together. We should encourage the interested parties to negotiate and agree, subject only to the right of the third party, the public, to intervene at points where the public interest may be en-dangered. Collective bargaining under the sanction of the law furnishes this free opportunity for negotiation. Joined with clear right of review in case of injury to the public, and opportunity for appeal in case of deadlock, it opens up a hope-ful avenue of escape from our present chaos.2 Employers generally are recognizing that the human relations between them and the workers in their plants are a vital factor in the efficiency of the plant. A recent advertisement says: "The quality of every manufactured product depends upon the workmanship. Satisfied labor ensures high quality in the output of any plant." And this concern is pleased to advertise the fact that four hundred satisfied workers say: As employes, we feel that the . . . . . . . . Company has en-deavored to make our working conditions and wages as satisfactory as their business has warranted. We acknowledge and appreciate the eight-hour day that has been voluntarily granted, and we will do our best to increase the quantity and quality of the factory output,3 Another concern advertises: Satisfied labor is the one big key to industrial success. The . . . . Terminal conduces to success because the conditions under which the operatives in its many prominent factories perform their tasks make for perfect sanitation, inc?mparable light, air, health and safety, and because the location is accessible, at a five-cent fare, from all parts of the city. Modern housing facHities are keeping pace with the in-dustrial development. 1 Obviously, there is no condition of satisfied labor if the de-sire to organize is thwarted by the employer. Obviously, there is no condition of satisfied labor if the employer's aim for efficiency and discipline is thwarted by syndicalized work-ers. There are two blades to the shears, as Dr. Adler observed. The way out is for each to recognize that his right is right only in relation to the other's right. Each side must yield a bit in its antagonism to the other's position. We cannot permit society to remain in a condition of armed industrial truce. Business efficiency and industrial justice are coadjutors in the task of developing a new in-dustrial law. VIII There are, of course, certain fundamental principles applicable to all industrial controversy. Without attempting to state even the main points, it may help the argument if I roughly formulate a few: I. The principle of the recognition of the human rights of workers, including: (a) The right to organize. (b) The right to living conditions. (c) The right to be respected in one's personality. II. The principle that, in the present order of society, the employer must maintain discipline and efficiency in the plant. I and II were excellently stated by the mayor's council of conciliation in the cloak industry: That the principle of industrial efficiency and that of respect for the essential human rights of the workers should always be applied jointly, priority being assigned to neither. Industrial efficiency may not be sacrificed to the interests of the workers, for how can it be to their interest to destroy the business on which they depend for a living? Nor may efficiency be declared paramount to the human rights of the workers, for how in the long run can the industrial efficiency of a country be maintained if the human values of its work-ers are diminished or destroyed? The delicate adjustment required to reconcile the two principles named must be made. Peace and progress depend upon complete loyalty in the effort to reconcile them.1 III. The principle that coercion of neutrals or third parties ( destruction of the milk supply, interrupting the public service -the mails, the telegraph, the trains) must not be permitted. In the application of these principles, we have seen that. in the case of railroads, telegraphs, electric light, steamboats, etc., the power of the states to regulate public utilities and the power of Congress to regulate commerce furnish a legal basis for the establishment of institutions or tribunals or the grant of power to existing bodies. The transmission of the public mails justifies federal intervention. 2 On the other hand, we must, for the present at all events, formulate our legislative program in the matter of so-called " private industries " upon the legal principle of conserving the public health. How far this domain will extend remains still to be developed from the interpretations we shall receive from the United States Supreme Court in such cases as the national child-labor law. With this in mind, the proposal which I submitted to the federal industrial relations commission in 1914 and which is discussed in another place 3 is here added as an appendix, to furnish a basis for further criticism and discussion. IX In general, the proposal is a League to Enforce Industrial Peace made up of all the elements of society-the consumer, the neutral, the worker and the employer (i. e. the state itself), founded upon the following propositions: 1 Law and Order in Industry, by the author, p. 281. 2 See In re Debs, 158 U. S. 564. 3 See chapter XXI, A Federal Industrial Council, Law and Order in In· dustry, by the author. LABOR AND PUBLIC SERVICE CORPORATIONS I. The clear recognition of the moral and legal right of men to organize. II. The establishment of tribunals sanctioned by law, whose membership shall be representative of all three parties (em-ployees, employers and the public). III. The creation of fact-gathering machinery to enable such tribunals to determine what is in any given case a " fair and reasonable wage" and what are "fair and reasonable working conditions." IV. The clear recognition of the necessity for efficiency and discipline in all industrial organizations. V. Opportunity to every worker to secure just redress from arbitrary or oppressive exercise of the employer's functions. VI. Opportunity to every employer to secure just redress from arbitrary or oppressive exercise of power by the men. VII. The right to appear by a chosen organization or spokesman before all sanctioned tribunals and in all dealings between employers and employees. VIII. The registration of all collective agreements. IX. A national council, without whose sanction there shall be no concerted cessation of work or closing-down of plants, to which any interested party may apply for relief, as it may in public service matters to the interstate commerce commission or the public service commissions, or, in trade matters, to the federal trade commission. X. Such national council to be constituted of members elected from groups of employers and groups of workers and repre-sentatives of the public. XI. In public utilities, clear recognition of the function of the state, as part of the regulation of the service and the rates, to determine what is a reasonable wage and what are reason-able working conditions. XII. Clear acceptance of the proposition that, adequate mo-chinery being established for the redress of all just grievances, the right to coerce by concerted stoppage of work in all ser-vice affecting the public health, safety or convenience shall be made as obsolete as the duel or as illegal as lynching. TO ENFORCE INDUSTRIAL PEACE 143 (This principle to be applied if and when such machinery is established.) X The basis of the great industrial compromise is here. The trade unionist must yield in his opposition to governmental regulation of his organization; the employer must yield in his opposition to the organization of trade unions; the public must yield in its indifference to the conditions under which human work is done; the business man must yield in his opposition to "social uplift" in industry; and the social reformer must yield in his indifference to efficiency and discipline in modern pro-duction. Upon such a compromise can be founded a program of preparedness for peace. Without it, we shall have neither industrial efficiency nor industrial justice. Without legal sanctions, there can be no real progress. But the legal sanc-tions must be of a kind to which a modern democratic society founded upon a philosophy of reason-not of force-is ready and willing to give whole-hearted and devoted support. The lawyer's duty is big. The educator's duty is bigger, more im-mediate and more pressing.

#### Specifically, work stoppages roil supply chains and cause social unrest.

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Kampus Tazkia Bogor, “Understanding the Impact of Strikes: A Comprehensive Guide,” Tazkia, 12/04/2025, https://ib.tazkia.ac.id/blog/understanding-the-impact-of-strikes-a-comprehensive-guide-1764798119#:~:text=Strikes%20can%20also%20raise%20public,strategies%20for%20managing%20labor%20disputes.

The Economic and Social Consequences of Strikes

Strikes can have far-reaching economic and social consequences. From a business perspective, strikes lead to reduced production, lost revenue, and damage to the company’s reputation. The extent of these impacts depends on the duration of the strike, the size of the workforce involved, and the nature of the industry. In some cases, strikes can lead to business closures or bankruptcies. From a broader economic perspective, strikes can disrupt supply chains, impact consumer spending, and reduce overall economic output. These effects can ripple through the economy, affecting other businesses and industries. The extent of the economic impact depends on the importance of the industry affected, the size of the strike, and the overall economic conditions. Strikes can also have significant social consequences. They can lead to increased social unrest, as workers and employers clash over their rights and interests. Strikes can also raise public awareness of labor issues, leading to greater support for workers’ rights and social justice. The media often plays a crucial role in shaping public opinion about strikes, influencing the outcome of the dispute. The social consequences of strikes can also extend to the political arena, as politicians may be forced to intervene in labor disputes or propose new labor laws. These changes can have a lasting impact on labor relations and social policy. Strikes can have profound effects on the relationship between employers and employees. In some cases, strikes can improve the relationship, as both sides are forced to negotiate and compromise. In other cases, strikes can worsen the relationship, leading to resentment and mistrust. The long-term consequences of strikes depend on how the dispute is resolved and the actions taken by both parties after the strike has ended. The economic and social consequences of strikes are complex and multifaceted, with both positive and negative implications. Understanding these consequences is essential for evaluating the impact of strikes and developing effective strategies for managing labor disputes.

#### Supply chain collapse causes extinction.

Youvan 25 – former Associate Professor at MIT and former CEO of Kairos Scientific, Inc.

Douglas C. Youvan, also President & CEO of the Youvan Foundation, “The Day the Signal Died: Systemic Collapse and Civilizational Consequences of a Global Internet Shutdown,” June 30, 2025, https://www.researchgate.net/profile/Douglas-Youvan/publication/393228577\_The\_Day\_the\_Signal\_Died\_Systemic\_Collapse\_and\_Civilizational\_Consequences\_of\_a\_Global\_Internet\_Shutdown/links/6863bb4b07b3253fd1cae955/The-Day-the-Signal-Died-Systemic-Collapse-and-Civilizational-Consequences-of-a-Global-Internet-Shutdown.pdf

Maritime and trucking logistics collapse next: port cranes stop due to software lockouts, shipping containers cannot be tracked or unloaded, and warehouse inventory systems fail. Global supply chains instantly fragment. Fuel distribution halts as gas stations cannot process payments or manage inventory. Urban infrastructure such as smart grids, water filtration systems, and waste management, increasingly managed by cloud services, begin to degrade or enter failure states. 2.4 Health Care Breakdown and Early Deaths Hospitals, clinics, and pharmacies are among the most immediately impacted. Electronic Health Records (EHRs) become inaccessible. Prescriptions cannot be filled. Diagnostic imaging equipment reliant on cloud data sharing goes offline. Coordination between emergency rooms, surgeons, labs, and specialists fails. Telemedicine ceases entirely. Ambulance dispatch, reliant on geolocation and digital routing, becomes erratic. Critically ill patients suffer first. Those on ventilators, infusion pumps, or dialysis machines dependent on internet-monitored telemetry may experience 7 unmonitored failure. Medication supplies for chronic illnesses—such as insulin for diabetics or antipsychotics for the mentally ill—are disrupted within hours to days. Pharmacists are unable to verify dosages or interactions. The invisible web of safety that undergirds modern healthcare collapses in silence, and deaths begin to mount in hospitals, homes, and care facilities. Conclusion to Section 2 Within the first 72 hours, the world does not just "go offline"—it descends into a chaotic interregnum. Digital systems freeze. Human systems panic. The pace of failure outstrips any institution’s ability to respond. The false security of digital continuity is replaced by the visceral reality of informational absence, and in that vacuum, society begins to unravel. The next phase—famine, violence, and institutional collapse—is already incubating. 3. The First 30 Days: Scarcity, Violence, and Fragmentation As the world stumbles into the first month without internet, the initial paralysis gives way to an accelerating breakdown of material systems, civil order, and shared understanding. The psychological shock of disconnection deepens into resource desperation, violent competition, and governance failure. Without digital coordination, institutions fragment, supply chains shatter, and the social contract erodes. The crisis moves from inconvenience and panic to survival and collapse. What begins as a communications failure metastasizes into a civilizational fracture. 3.1 Medical Supply Chain Disruption and Starvation Risk Modern healthcare and food systems are among the most complex and interconnected logistical achievements in human history—and both are fundamentally internet-dependent. In the absence of functioning supply networks, medication production and distribution grind to a halt. Essential drugs, including antibiotics, antivirals, insulin, anti-rejection medications for transplant patients, and psychiatric medications, become scarce. Local pharmacies run out within days, and hospitals exhaust their reserves within weeks. Simultaneously, food systems begin to fail catastrophically. Supermarkets are not designed for long-term storage, but for just-in-time inventory management—a model reliant on minute-by-minute tracking via internet-based software. Without the internet, regional warehouses cannot restock grocery stores. Refrigeration fails in many areas. Farmers, unable to communicate with buyers or transportation networks, either dump perishable goods or withhold them. Starvation begins in urban centers first, where populations are densest and self-sufficiency lowest. Vulnerable populations—children, the elderly, the chronically ill—are the first to die. 3.2 Civil Unrest and the Breakdown of Law and Order By the second week, social cohesion begins to fray. As scarcity turns to panic, local governments are overwhelmed. Looting becomes widespread. Armed citizens guard homes and stores. Riots erupt in densely populated areas, often over rumors of hoarded supplies or preferential treatment. Police forces, whose dispatch and coordination mechanisms rely heavily on internet infrastructure, struggle to respond effectively or at all. Many officers desert to protect their own families. In some regions, vigilante groups or organized crime syndicates fill the vacuum, offering food and protection in exchange for loyalty or labor. Prisons become flashpoints: some systems fail to feed or guard inmates, resulting in mass escapes or uprisings. The line between lawful society and gang-dominated enclaves blurs rapidly. Martial law is declared in several countries but is inconsistently enforced. The social contract dissolves where it is no longer backed by communication, resources, or trust. 9 3.3 Isolation of Governments and Paralysis of Response National governments—cut off from the digital infrastructure that supports everything from taxation to inter-agency coordination—become internally fragmented and externally blind. Presidents and prime ministers, lacking internetbased communication, revert to archaic forms of governance: military radio, couriers, landline phones, or in some cases, total silence. Cabinet-level coordination collapses. International diplomacy halts. Multinational organizations like the United Nations, NATO, and the World Health Organization become inert. Relief supplies cannot be requisitioned or tracked. Global development and humanitarian efforts stall completely. With no international coordination and increasingly unreliable national leadership, most effective action occurs at local or regional levels, often carried out by pre-existing informal networks, military garrisons, or civilian volunteers. For most people, government disappears—not violently, but quietly, as an unseen presence that no longer speaks or acts. 3.4 Disinformation, Rumor, and Collapse of Epistemic Coherence The internet has functioned not only as an infrastructure of logistics and communication, but also as the primary epistemic interface—a real-time filter for truth, authority, and public discourse. Its sudden absence creates a vacuum into which rumor, superstition, and tribal mythologies rapidly flow. No one knows what has happened or why. In the silence of institutional authority, the imagination fills the void. Conspiracy theories flourish: that the shutdown was orchestrated by a rogue AI, or a government plot, or divine judgment. In some regions, charismatic leaders or preachers exploit the epistemic void to consolidate power, offering narrative certainty in a time of collapse. Without shared media, trust collapses along lines of kin, tribe, and language. Even radio transmissions—difficult to verify and easily spoofed—begin to spread false alarms, panic-inducing claims, or ideological propaganda. 10 The result is an epistemic fragmentation of the species. The shared global conversation—the most defining feature of the internet age—is dead. In its place, humanity reverts to information feudalism, where truth is whatever a trusted voice can convince a local audience to believe. Conclusion to Section 3 The first 30 days of an internetless world reveal that our civilization was not built for disconnection. Starvation, violence, and the collapse of truth itself become the dominant forces shaping daily life. While isolated pockets of resilience may form, the overwhelming trend is toward decentralized, destabilized survivalism. The modern world is not returning to the 1980s—it is plunging into something much older, more primal, and far more dangerous. 4. Year One and Beyond: Death Toll and Global Transformation While the first month without the internet would be marked by cascading institutional collapse and individual survival crises, the longer-term consequences are even more profound. What begins as a technical failure mutates into a demographic catastrophe, a global economic collapse, and the political reconfiguration of power. In the absence of digital connectivity, much of the post-Cold War world order unravels. Globalization halts. Institutions rooted in coordination—financial, legal, technological—become nonfunctional. At this scale, the death toll becomes measured not in headlines, but in historical epochs. 4.1 Estimating the Human Cost: Mortality by Cause and Time Horizon Initial projections suggest that in the first year alone, the global death toll could reach tens of millions, depending on region, resilience, and climate. The primary drivers of mortality would include: 11 • Starvation and malnutrition, especially in urban areas and food-importdependent nations. • Medical attrition, where the chronically ill, immunocompromised, and injured are denied care. • Violence and civil conflict, including riots, local wars, and organized looting. • Exposure, particularly among displaced populations as energy grids fail and housing security declines. • Disease outbreaks, as public health infrastructure collapses and water sanitation degrades. A conservative estimate projects 5 to 30 million deaths globally in the first year, while a worst-case scenario—especially in regions with fragile states or extreme climates—could lead to over 100 million deaths over 3 to 5 years, approaching the scale of the Black Death or the 20th century world wars. The nature of the collapse is slow-burning but widespread, a creeping mass casualty event driven by systemic dysfunction rather than discrete violence. 4.2 Regional Variation and Demographic Vulnerabilities The impact of the shutdown would not be evenly distributed. Some regions and demographics are disproportionately vulnerable: • Sub-Saharan Africa and South Asia, heavily dependent on global food imports and humanitarian aid, would suffer catastrophic famine. • Northern megacities (e.g., New York, Tokyo, London) would face mass dieoffs from supply disruption and overpopulation stress. • Remote and rural communities might survive longer due to pre-existing low-tech self-sufficiency. • Elderly populations, already susceptible to medical complications, would be among the first to die without internet-enabled care systems. 12 • Refugees and displaced persons in camps or war zones would become untraceable and unprotected. • Children in low-resource environments would face increased mortality from malnutrition and lack of vaccination. Conversely, indigenous populations and subsistence agricultural communities may experience less disruption initially, owing to their non-dependence on digital infrastructure. Some might even become nodes of cultural preservation, offering models of survival to others. 4.3 Economic Regression and Collapse of International Trade The collapse of the internet is the collapse of globalization. Without access to digital systems, there is no way to: • Conduct international banking or enforce contracts. • Track shipping containers, customs documents, or bills of lading. • Synchronize supply chains or allocate global production. The global economy reverts to localized barter, commodity currencies, or regional paper money systems—if they can be physically distributed. The World Bank, IMF, WTO, and other global economic institutions become inoperable. Industrial economies—dependent on global supply chains for semiconductors, rare earths, pharmaceuticals, and fuel—experience a sharp regression. High-tech manufacturing collapses. Air travel becomes rare or extinct. Urban centers deindustrialize. Many nations return to pre-digital industrial baselines; others descend into subsistence-level economies. The 21st century recedes, not by choice, but by sudden reversal. 13 4.4 Potential for State Failure and Geopolitical Realignment With communications severed and legitimacy undermined, many governments fail outright. Some implode from internal unrest. Others fracture into regional or ethnic enclaves. In weak states, military commanders or regional governors may assert autonomous control, turning nations into archipelagos of warlords, militias, and provisional governments. A few states with strong internal cohesion, geographic self-sufficiency, and hardened communications (e.g., radio, satellite) may retain partial functionality. Nuclear-armed states would become uniquely dangerous: disconnected from one another, yet still holding weapons capable of global devastation. Geopolitically, the disappearance of global oversight mechanisms may trigger: • Regional hegemons expanding influence in a vacuum. • Local wars over water, fuel, or food. • The dissolution of multinational states into smaller, more manageable regions. A new world order—if one emerges—would likely be non-digital, regionalized, and fragmented, with power shifting from information economies to land-based and resource-based systems of control. Conclusion to Section 4 The internet's loss would not be a digital inconvenience but a species-wide discontinuity. In its wake, humanity would undergo not just a technological regression, but a psychosocial transformation: from global citizens to local survivors. Mortality would be only the most visible metric of collapse. Beneath it lies the deeper rupture of meaning, order, and continuity. Civilization, as we have known it since the dawn of the internet age, would not recover—it would be replaced by something else. Whether that successor is more just, more local, or more brutal remains unknown. Military + Nukes 5.The U.S. Military Response: Island of Resilience? In the chaos of a global internet shutdown, the U.S. military would stand as one of the few institutions with robust internal continuity. Its operations, hardened through decades of contingency planning, EMP preparedness, and Cold War legacy protocols, are among the most digitally insulated and strategically decentralized in the world. However, the question is not whether the military can survive, but whether it can function meaningfully in a disintegrating civilian context. The military may endure—but endurance is not the same as order, and functionality is not the same as legitimacy. 5.1 Continuity of Nuclear and Command Systems The most secure aspect of U.S. military infrastructure is the nuclear command and control architecture, which is explicitly designed to function in total digital blackout scenarios. Systems like Minimum Essential Emergency Communications Network (MEECN), E-4B Nightwatch airborne command centers, and submarine-launched communications relays remain operational without reliance on civilian internet infrastructure. The nuclear triad—intercontinental ballistic missiles (ICBMs), strategic bombers, and ballistic missile submarines—would remain under hardened, air-gapped command systems. Presidential authority, military chain-of-command, and nuclear deterrence capabilities are protected through layers of redundancy and analog fallback systems, including high-frequency (HF) radio and direct satellite uplinks. Thus, strategic deterrence would remain intact, but with the caveat that mutual verification and diplomacy would vanish, increasing the danger of misinterpretation or panic-based escalations. 5.2 Secure Military Networks vs. Civilian Logistics Dependency Military communications systems such as SIPRNet (Secret Internet Protocol Router Network) and JWICS (Joint Worldwide Intelligence Communications System) 15 operate independently of the public internet. Satellite constellations such as MUOS (Mobile User Objective System) and AEHF (Advanced Extremely High Frequency) ensure secure, global command connectivity between deployed forces, ships, and bases. However, the military’s logistical tail is inextricably tied to civilian infrastructure. From fuel delivery and ammunition production to spare parts, food, and pharmaceuticals, the Department of Defense depends on civilian contractors and just-in-time supply chains. The vast majority of its global projection capability— including airlift, sealift, and base resupply—relies on coordination with civilian ports, trucking companies, rail networks, and fuel depots. These systems would collapse without digital infrastructure. In the early stages, the military could sustain itself using internal stores, depot inventories, and priority allocations, but by month two or three, resupply failure would degrade readiness, especially for operations abroad or at forward bases. The illusion of self-sufficiency would fade under the strain of maintaining a continental military machine in a digitally shattered society. 5.3 Martial Law, Posse Comitatus, and Internal Instability Domestically, the U.S. military faces a legal and political dilemma. Under the Posse Comitatus Act of 1878, the use of federal military forces for domestic law enforcement is restricted without specific Congressional authorization or a Presidential declaration of emergency. In a collapsed internet scenario, it is unclear whether such authorization could even be communicated or validated. As civil unrest escalates, National Guard units—under dual federal-state control— would be deployed first. If governors are unable to communicate with Washington, decentralized orders and regional self-assertion may occur. In some states, the Guard could become de facto civilian governance, especially if state governments are paralyzed. If federal military units are activated domestically, the imposition of martial law would face logistical and ethical limits. Military police are not equipped to rebuild 16 collapsed cities, manage famine, or restore economic function. Attempts to enforce order by force could lead to backlash, desertion, or rebellion—especially if soldiers are asked to suppress hungry civilians, protect elite infrastructure, or prioritize government continuity over public welfare. The specter of militarized governance without civil legitimacy raises deep constitutional and moral questions. In a society where democratic institutions no longer function, does the military rule by emergency, or by consent—or does it withdraw entirely? 5.4 The Limits of Militarized Order in a Collapsing Society Despite its internal resilience, the U.S. military cannot govern a failing nation indefinitely. It is designed for combat, not sustainability. It can hold territory, but not feed it. It can secure facilities, but not repair supply chains. As urban riots turn into refugee flows, and civilian institutions cease to function, the military will be confronted with impossible choices: which cities to abandon, which populations to prioritize, which leaders to obey. Morale may fracture. Units composed of reservists and National Guard personnel may refuse orders that conflict with their familial or regional loyalties. Chain-ofcommand continuity will not prevent ethical collapse or internal dissent. In extreme scenarios, some military factions could align with local governments, secessionist movements, or civilian coalitions. Others might retreat into hardened facilities, adopting a "bunker mentality" focused on survival rather than restoration.

#### Social unrest causes extinction.

Marche 22 – Reporter & essayist; former Professor, CUNY; Ph.D., U of Toronto

Stephen Marche, The Next Civil War: Dispatches from the American Future, Avid Reader Press, Simon & Schuster ebook, pp. 6-128

The next civil war in America won’t look like a civil war in a smaller country. The United States is fragile but enormous. Its military might remains unparalleled. Its economy determines the health of the global economy. If the American Republic falls, democracy as the leading political system in the world falls. If democracy falls, the peace and security of the global order falls. No one will escape the consequences.

The Likelihood of a Civil War

Retired US Army colonel Peter Mansoor, professor of military history at The Ohio State University, is a veteran of the Iraq war who now studies the insurgencies of the past. He doesn’t have any difficulty picturing a contemporary American equivalent to civil wars elsewhere. “It would not be like the first civil war, with armies maneuvering on the battlefield,” he says. “I think it would very much be a free-for-all, neighbor on neighbor, based on beliefs and skin colors and religion. And it would be horrific.”

In a poll taken in the aftermath of Trump’s election, 31 percent of American voters predicted a second civil war would occur within five years. In Foreign Policy, a panel of national security experts assessed the chances of a civil war over the next ten to fifteen years. The answers ranged from 5 percent to 95 percent. The consensus stood at 35 percent. In the eyes of the expert class and ordinary Americans alike, the odds of a civil war in the near future are about the same as drawing ten or higher from a pack of cards.

That estimation was only “over the next ten to fifteen years” though. The pressure is mounting, and the forces fraying American unity—the hyper-partisan politics, the environmental degradation, the widening inequality—are growing. A 2019 poll from Georgetown University asked Americans how close to “the edge of a civil war” their country was, on a scale from 0 to 100. The aggregate of their answers was 67.23, so almost exactly two-thirds of the way.

The technical definition of a civil war, according to the Centre for the Study of Civil War at the Peace Research Institute Oslo, is a thousand combatant deaths within a year. The definition of civil strife starts at twenty-five deaths within a year. In the United States in 2019, domestic anti-government extremists killed forty-two people; in 2018 they killed fifty-three people; in 2017, thirty-seven; in 2016, seventy-two; and in 2015, seventy. By this definition, America is already in a state of civil strife, on the threshold of civil war.

The United States as a Complex, Cascading System

There is never a single cause to any civil war. A huge number of factors contribute to the slide of a peaceful prosperous society into violence. The interaction is turbulent, which is why stable scenarios seem to descend into chaos out of nowhere. The complex cascading nature of the system explains why the unimaginable keeps happening.

The unimaginable does not mean the unpredictable. The collapse will arrive sooner and more suddenly than anybody expects, but it won’t come as a surprise. America is cracking apart at a moment when the ability to see the cracks spreading has attained unprecedented clarity. NASA recently reported that its climate change modeling has been accurate to within one-twentieth of a degree. The detailed precision of the models as much as the quality of the prediction is extraordinary. When—not if—a Category 1, 2, or 3 hurricane hits New York, the model makers know, to the street, which parts of the city will be rendered uninhabitable. The electoral models of political partisanship have become more effective than their creators can acknowledge: one group of political scientists refused to believe their own program when it told them that Trump would be elected. Such a forecast seemed too outlandish. The contours of economic inequality have never been so thoroughly drawn, their consequences on democracy never so fully understood. Scholars of civil war, used to analyzing conflicts abroad, now see their established patterns replicating themselves identically in the world’s richest country, home to the most powerful military in human history.

History books on the subjects of civil wars usually open with chapters about the lead-up to conflict. In the case of the United States, that chapter could be written today. Economic and environmental instability worsens every year. The fruits of the country accrue only to those at the very top. The government, whose legitimacy is never established to the satisfaction of all parties, cannot be relied on. Faith in institutions of all kinds is declining. National purpose is withering. National solidarity is eroding. The government increasingly cannot, even when given clear mandates, respond to its people’s will. Political gamesmanship overrides any and all other governmental concerns. Of the last four presidents, two have faced extensive impeachment proceedings. Two elections of the past four have seen the popular winner defeated by an arcane system inherited from the eighteenth century. The judiciary is dogmatic and hardening to the point where the law barely holds meaning outside of the political context of the courts’ application. Mass murders are nightly news. Ordinary Americans refuse to listen to authorities, even on questions as important to their survival as public health.

America has lived for 160 years with a half-settled myth of unity. All such myths are fragile. Even the most long-established national identities, the most ancient fusions of peoples and creeds, can dissolve with shocking speed. Before sectarian hatred consumed Iraq, before 2006, the country had a relatively high Shi‘a-Sunni intermarriage rate. The supposedly permanent and intractable religious rift was a relic from antiquity. Then it wasn’t.

Wherever government fails, whenever the peaceful transition of power breaks down, restoring an orderly democracy takes nothing short of a miracle. America won’t be any different. When Democrats feel that they cannot find representation, when Republicans feel that they cannot find representation, the government becomes just another resource to control. Outrage feeds all-consuming cycles of revenge. People retreat into tribes. Once the stability of power goes, it’s easy to come up with excuses to murder your neighbors.

The Inciting Incidents

The dispatches that follow are based on the best available models with established predictive capacities. They are more than educated guesses. But the inciting incidents are another matter. They are works of consciously thorough imagination. Complex, cascading systems are abstract. They don’t show human costs. In each of the dispatches that follow, I have imagined an inciting incident to show the human cost. My inspiration was The Effects of Nuclear War, a 1979 product of the Office of Technology Assessment, acting on a request from the Senate Committee on Foreign Relations, and arguably the most influential piece of fiction in history. The Effects of Nuclear War grew into the miniseries The Day After. The Day After converted “abstract measures of strategic power” into comprehensible terms, imagining the fallout from nuclear war based on the best available science. Ronald Reagan, in his diaries, cited The Day After as a main inspiration behind the Intermediate-Range Nuclear Forces Treaty. Today’s crisis requires prediction because so many people do not want to see what is unfolding in front of their eyes. At the same time, the future is inherently unpredictable. Nobody could have known that an employee at Cup Foods in Minneapolis would report a counterfeit $20 bill and that when the police arrived to investigate the incident an officer named Derek Chauvin would drag a Black man named George Floyd out of a car and, in the process of restraining him, kneel on his neck for seven minutes and forty-six seconds, ignoring more than twenty pleas to allow him to breathe. Nobody could have predicted that plainclothes officers would mistakenly enter the home of Breonna Taylor and kill her. Still less could anyone know that these particular incidents of police brutality, rather than the literally thousands of others, would spark massive protests across the United States. But anyone paying attention could easily have known that the militarization of America’s police forces has been underway for decades, that the police in the United States shoot their own citizens at rates that vary between three and thirty times more than the police in other countries, that large swaths of the Black population do not regard the police as legitimate stewards of justice, and that protest movements against police brutality had been gaining momentum since the Obama administration. Breonna Taylor was one of forty-eight Black women shot by police in the United States since 2015. Her name, the particular circumstances of her death—these facts were unpredictable. But not the event itself and not its aftermath. It is entirely predictable now that another incident of police brutality will occur and just as predictable that there will be riots in its wake. The Point of View of the Dispatches My nationality gives me a specific advantage in describing an imminent American collapse. Civil conflict forces people to choose sides and their perspective is shaped by the side they’ve chosen. Confusion precedes any civil conflict. Being Canadian, I am outside that particular confusion. Canada is the Horatio to America’s Hamlet, a close and sympathetic and mostly irrelevant witness to the grand dramatics on the other side of the border. I am a foreigner who has lived in the United States, who works in the United States, who loves the United States. While I’m pretty much in the dead center on the political spectrum of my own country, I don’t want to hide the fact that on policy questions my underlying assumptions would be considered liberal by most Americans. I live in a country where socialized medicine and gun control are taken for granted, even by conservatives. Increasingly, though, being Democrat or Republican is a tribal identification rather than a commitment to particular policies. And I am not of either tribe. As I have crisscrossed the United States to see the conditions on the ground, meeting with white nationalists and Black Lives Matter protestors, with gun sellers and the mothers of mass shooting victims, it has all been equally foreign, the flyover states and the coastal elites, the North and the South. They’re all other countries to me. The experts who have informed these dispatches—military leaders, law enforcement officials, agricultural specialists, environmentalists, historians, political scientists—inhabit a wide range on the political spectrum. Many are lifelong Republicans. Nearly half would describe themselves as conservative. I did not strive for a diversity of viewpoints. The people who know what they’re talking about come from both sides. They serve larger interests than partisan politics. This book reflects that knowledge and those interests. The Trump Distraction You already have feelings about Donald Trump, one way or the other. He is either the last defender of American greatness or a fundamental threat to US democracy. He is either a fighter for traditional American values or a criminal with nothing more than personal impunity for motivation. It doesn’t particularly matter which you believe. Trump is far less meaningful than either side understands. The smartest thing he himself ever said about his political career was in a 2017 press conference: “I didn’t come along and divide this country. This country was seriously divided before I got here.” Trump is, at most, a symptom. It is essential to recognize this hard fact: if Hillary Clinton had been elected in 2016, all the forces pointing toward the fall of the Republic would be no less powerful than they are right now. Those forces—the hyper-partisanship, the bifurcation of the country into blue and red, the violent loathing for the federal government, the economic unsustainability, the incipient crises in the food supply and urban environmental security, the rise of the hard-right anti-government patriot militias—are the subject of this book. The American experiment was never designed to face what the United States is about to face. No matter who is president, that reality will not change. Joe Biden’s victory speech in the 2020 election announced “a time to heal.” It was wishful thinking. Even as the president-elect tried to gesture toward reconciliation, the sitting president wouldn’t concede. American liberals in the major cities retain a kind of desperate faith in their country’s institutions that amounts nearly to delusion. Americans have taught themselves for 250 years that their country, in its ideals and systems, is the solution to history. It is tough, under those conditions, to accept being just another of history’s half perpetrators, half victims. The hope of a Biden restoration is a faint hope indeed. Barack Obama’s presidency was based on what we will, out of politeness, call an illusion of national purpose. He articulated the idea most passionately, most purely, during his keynote address at the 2004 Democratic Convention: “There is not a liberal America and a conservative America—there is the United States of America. There is not a Black America and a White America and Latino America and Asian America—there’s the United States of America.” It was a beautiful vision. It was also a fantasy. There is very much a red America and a blue America. They occupy different societies with different values, and their political parties are emissaries of that difference. Unfortunately, America appears to have entered a self-defeating loop, in which the collapsing system prevents reforms to the system itself. Congress can’t even agree to investigate violent extremists who attacked its own place of business and threatened the members’ own lives. After the Trump years, the Democrats have attempted to salve the wounds inflicted on American institutions, but they remain overwhelmingly committed to the old ways, to the United States they grew up in. One way of reading the current political situation is that Republicans have only come to realize the collapse of the institutions before Democrats. Meanwhile, the window to keep America democratic is closing. Party politics is mostly a distraction at this point. That’s not to excuse the anti-democratic actions of elected officials. In 2021, Oregon representative Mike Nearman was expelled from the state house of representatives because he opened a locked door for the rioters who stormed the Oregon State Capitol. The Republican Party now has an elected wing and an armed militant wing. The point is that the parties and the people in the parties no longer matter much one way or the other. Blaming one side offers a perverse species of hope: “If only more moderate Republicans were in office”… “If only bipartisanship could be restored to what it was.” Such hopes are not only reckless but irresponsible. The problem is not who is in power but the structures of power. The US system is an archaic mode of government totally unsuited to the realities of the twenty-first century. It needs reforms to its foundational systems, not just new faces. The United States has burned before. The Vietnam War, the civil rights protests, the assassination of JFK and MLK, Watergate—all were national catastrophes that remain in living memory. But the United States has never faced an institutional crisis quite like the one it is facing now. Trust in the institutions was much higher during the sixties and seventies. The Civil Rights Act had the broad support of both parties. JFK’s murder was mourned collectively as a national tragedy. The Watergate scandal, in hindsight, was evidence of the system working. The press reported presidential crimes. Americans took the press seriously. The political parties felt they needed to respond to the reported corruption. You could not make one of those statements today with any confidence. The American political system has become so overwhelmed by anger that even the most basic tasks of government are increasingly impossible. The legal system grows less legitimate by the day. Trust in government at all levels is in free fall or, like Congress with approval ratings hovering around 10 percent, cannot fall any lower. None of this is a prediction, a thought experiment. All of it has already happened. Inside the ruins of the old order, bright flames of pure rage are blossoming. The Stakes of the Conflict This book is a warning. Civil wars are total wars laced with atrocities, fought not between professional soldiers but between populations. Insurgent conflicts are wars of meaning, conflicts in which the ideals and communal vision of a country have rotted away. The nature of war against insurgents is so vicious exactly because meaning is at stake: When you are fighting for freedom and your soul, what won’t you do? America was founded with the motto “Out of Many One.” If the One fails, a multitude of different factions will emerge out of it: the Black and the white, the North and the South, the coasts and the heartland, Jews, Christians, Muslims, Hindus, Mormons, Scientologists, the Nation of Islam, fifty states, the Seminoles and the Sioux and the Blackfoot and the Comanche, immigrants from every other country on earth. You could, if you wanted, fracture America 327 million different ways. The forces tearing America apart are both radically modern and as old as the country itself. All that is swelling to the surface now has been lurking underneath for decades, if not from the beginning. Bloody revolution and the threat of secession are essential to the American experiment. America has always been subject to quick, radical change. The question is not whether the United States’ factions will descend into conflict, or even what that conflict will look like, but which America will emerge victorious from that conflict. The Desire Not to See What’s Coming In a sense, the crisis has already arrived. Only the inciting incidents are pending. In America’s first civil war, Buchanan’s State of the Union address preceded the war itself by five months. But his declaration—that secession was unlawful but that he couldn’t constitutionally do anything about it—marked the moment when America split and the war became inevitable. From then on, the country operated by two separate political systems, two legal systems. The country cracked before it divided. On the eve of America’s first civil war, the most intelligent, the most informed, the most dedicated people in the country could not foresee its arrival. Even when Confederate soldiers began their bombardment of Fort Sumter on April 12, 1861, nobody believed that the first civil war was inevitable. The Confederate president, Jefferson Davis, declared the event, in which nobody died, “either the beginning of a fearful war, or the end of a political contest.” It was both, and neither. The war had begun earlier. The political contest continued long after. In Washington, in the winter of 1861, Henry Adams, the grandson of John Quincy Adams, declared that “not one man in America wanted the civil war, or expected or intended it.” South Carolina senator James Chesnut Jr., who did more than most to bring on the advent of the catastrophe, promised to drink all the blood spilled in the entire conflict. The common wisdom at the time was that he would have to drink “not a thimble.” The North was so unprepared for the war they had no weapons. At what exact point did the first civil war become inevitable? That question is so tantalizing because it’s so unanswerable. The presence of delegates from Georgia in South Carolina was necessary for the South to find its collective courage for secession, and the presence of the Georgian delegates was to celebrate the completion of a railroad between the two states. “If the Charleston and Savannah Railroad had happened to be completed a month earlier or later, might disunion have come at a different time, and/or in another form, or even not at all?” asks William W. Freehling in The Road to Disunion. Even a month’s delay in a single railroad might have kept hundreds of thousands Americans from dying. The closer to an event, the more avoidable everything seems. If Lincoln had not been elected, would there have been a war? George Custer, then a cadet at West Point, remembered seeing Southerners heading to the steamboat landing to join their states: “Too far off to exchange verbal adieux, even if military discipline had permitted it, they caught sight of me as step by step I reluctantly paid the penalty of offended regulations, and raised their hats in token of farewell,” he remembered, “to which, first casting my eyes about to see that no watchful superior was in view, I responded by bringing my musket to a ‘present.’ ” The sides, even then so joined by brotherhood, separated with salutes, leaving in sorrow. The men of West Point had been fighting and even dueling over the question of slavery for years. The idea that they were going to start killing each other seemed absurd. But the farther back you look, the more inevitable events appear. How could there not be a civil war after bloody Kansas, after John Brown landed at Harpers Ferry? How could there not be a civil war after slaveholding congressman Preston Brooks beat the abolitionist Senator Charles Sumner past unconsciousness with a gold-tipped cane on the floor of the Senate? How could there not be a civil war after South Carolina ignored federal tariffs during the nullification crisis of 1832? After the battles over the gag order? In hindsight, America’s policy of Manifest Destiny made the civil war impossible to avoid. As each territory opened—Missouri, Kansas, Texas—the question of whether America was a slave or free country had to be answered, and there was no answer. The opening of each new territory posed the impossible question: What is America? Before the first civil war, nobody saw the catastrophe coming, but the moment it started, it was inevitable. Events today appear chaotic and confusing from close up, but if you look behind the fury, it’s not hard to perceive their direction. Inertia and optimism are powerful forces. It’s so easy to pretend it’s all going to work out. It’s easy to obsess over the immediate chaos, too, over what spark might engulf the whole country in sudden flames. Nobody wants what’s coming, so nobody wants to see what’s coming. At critical moments in history, the future stares us right in the face. We can never manage to look it in the eye. The Preparations Already Underway There will be those who say that the possibility of a new civil war is alarmist. All I can say is that reality has outpaced even the most alarmist predictions. Imagine going back just ten years and explaining that a Republican president would openly support the dictatorship of North Korea. No conspiracy theorist would have dared to dream it. Anyone who foresaw it foresaw it dimly. The trends were apparent; their ends were not. Right now, elected sheriffs openly promote resistance to federal authority. Right now, militias train and arm themselves in preparation for the fall of the Republic. Right now, doctrines of a radical, unachievable, messianic freedom spread across the internet, on talk radio, on cable television, in the malls. Right now, radical Americanism craves violent resolution to its political fantasies. Right now, the faith in democracy has shattered. In the aftermath of Biden’s election, a YouGov poll found that 88 percent of Republicans do not believe that Biden won legitimately. The intelligence services of other countries are preparing dossiers on the possibilities of America’s collapse. Foreign governments need to prepare for a post-democratic America, an authoritarian and hence much less stable superpower. They need to prepare for a broken America, one with many different centers of power. They need to prepare for a lost America, one so consumed by its crises that it cannot manage to conceive, much less to enact, domestic or foreign policies. The purpose of this book is to give readers access to the same advance information. These dispatches are projections but not fantasies. The next civil war isn’t science fiction anymore. The plans to the first battle have already been drawn up. And not by novelists. By colonels. Until the killing starts, the uprising looks like a party. By the river, near the bridge, the anti-government patriots gather around bonfires. In their torchlit evening rallies, thick with the smoke of burning effigies and chants of “Not my president” and “America for Americans” and “This bridge stays open,” the militias work themselves into livestreamed nightly frenzies, always ending with automatic weapons firing into the air. Their costumes are a mishmash, like their ideologies: Boogaloo bois in Hawaiian shirts, neo-Confederates in full array, militiamen dressed like they’re about to go hunt deer. The Sheriff, as always, wears his uniform: pressed black slacks, a tan shirt, a black Stetson. He is on the scene, with his deputies, to guarantee order, but mainly he’s the celebrity of the occasion, the man who has defied the government in the name of the American way of life, the freedom fighter, the rebel. Laughter curls up with the smoke of the bonfires. There’s a glee in the brotherhood, glee in the spectacle. On the perimeter across the county line, the US forces wait in silence. Their mood is somber. The general in charge of the first full-spectrum operation in the homelandI has his orders. The moment is still nauseating. The General doesn’t fear the enemy. The rallies look more like Halloween than a movement, drawing a chaotic collection of angry and slightly ludicrous fanatics. Even the Sheriff has a faint tinge of failure around him—as if anyone knocking that black Stetson off his head would make him burst into tears. The anti-government patriots are armed with automatic weapons and IEDs and various ghost guns of their own manufacture, including hopped-up handmade rocket-propelled grenades and improvised drones. The General knows that their firepower, impressive to civilians, won’t amount to much against a professional army. He has Apache helicopters and Marines. The Army of the Interstate, as CNN has christened the anti-government patriot forces massed near the bridge, are threatening the sovereign power of the United States. Still, the General has doubts. Are they a genuine threat to the Union or just a bunch of hooligans letting off steam? Are they traitors or festivalgoers? The decision to use American soldiers to spill American blood is different from a police action. The General is about to wage war on American citizens, entitled to the freedom of expression and association and guaranteed the right to possess weapons. And how would a bloodbath look? Sixty years of American experience has taught the same lesson about counterinsurgency: If you lose, you lose. If you win, you still lose. But the General has his orders. He has no choice but to begin the next civil war. Nobody feels he has a choice. Right Wing Preparations for a Civil War In the immediate aftermath of Biden’s election, calls for active armed resistance against the federal government spiked. Several of the president’s lawyers called for acts of violence against election officials. Michael Flynn, a retired US Army general and Trump ally, tweeted the press release from an Ohio-based conservative group calling for a “limited form of martial law.” Later he would approve the idea of a Myanmar-style coup. A speaker at a rally led by Donald Trump Jr. said, “We’re getting ready to start shooting.” The intensity of the violent rhetoric may have been new; the message wasn’t. Since 2008, American conservatives have been actively preparing for civil war. They have been preparing intellectually by predicting civil war and rehearsing its possibilities. They have been preparing materially by training themselves and gathering weapons. It is no longer accurate to describe civil war proponents as “far right.” Before 2008, only the most extreme groups on the margins of the conservative movement held secessionist beliefs. Now openness to violent rebellion against federal authority is a mainstream position. On September 12, 2016, when expert opinion stood in more or less complete consensus on the imminence of a Hillary Clinton victory, Matt Bevin, then governor of Kentucky, openly suggested violent resistance. “Somebody asked me yesterday, I did an interview, ‘Do you think it’s possible, if Hillary Clinton were to win the election, do you think it’s possible that we’ll be able to survive, that we’d ever be able to recover as a nation?’ ” he told a crowd at a Values Voters Summit. “And while there are people who have stood on this stage and said we would not, I would beg to differ. I do think it would be possible, but at what price? At what price? The roots of the tree of liberty are watered by what? The blood of who? The tyrants, to be sure, but who else? The patriots. “Whose blood will be shed? It may be that of those in this room. It might be that of our children and grandchildren.” That’s not some guy blasting off in a Facebook post, or a conspiracy theorist spouting dark nonsense from a random street corner. That’s the governor of Kentucky, calling for bloody insurrection. Vague predictions of the collapse of the Republic have been a mainstay of right-wing talk radio since the 1990s. Right-wing television has made calls for disunion much more specific. “This country is headed towards a civil war in terms of two sides that are just hating each other and if Robert Mueller wants, there’s a big red button in the middle of the table,” Sean Hannity said on Fox News on April 2, 2018. “And if Robert Mueller is so pompous and so arrogant and so power hungry and so corrupt that he’s going to hit the red button, he’s going to ignite a battle we’ve not seen in this country before.” The genre of future civil war fantasy, which is more extensive than you might imagine, is almost exclusively right-wing. The secession of Texas from the Union is a particularly rich vein. Armed conflict with the federal government is one of the most popular fantasies in the United States today. Sometimes the would-be warriors know they’re pretending. In American MilSim—an extreme sport that blends historical reenactment with live-action military simulation to come as close as possible to real combat—scenarios of American insurrection make for plausible backgrounds. Many more Americans are not aware they are fantasizing. In 2015, Jade Helm 15, a routine military exercise across the southern United States, spawned a vast labyrinth of conspiracy theories. Millions believed their own government was preparing the American people for a Chinese invasion. Others believed the operation would coincide with an asteroid collision. Alex Jones claimed that “helm” was an acronym for “Homeland Eradication of Local Militants.” Texas governor Greg Abbott, apparently swayed by the notion that the federal government was about to seize control of Texas by force, sent the Texas State Guard to monitor the operation. The disinformation pipeline flows into real power: internet-generated fantasies move through conservative media into the arena of policy. Fantastic visions bleed into real politics. The Texas governor responds with troops to theories with no basis in reality. The fantasy of a civil war has established a place for itself on all levels of the American conservative system—radical groups, media personalities, elected officials. All it will take is a symbol, a hook, to catch their anger, their sense of being under threat, to focus their belief in the fantasy of cleansing violence. The Bridge By the time the fighting begins, no one will remember that it started over a bridge. Not an important bridge, not one of the feats of human excellence that define American achievement. Not the Brooklyn Bridge, not the Golden Gate, but a small two-lane bridge nobody bothered to name over a river ordinary people need to cross in a small rural county that loathes the federal government and has decided not to obey its mandates anymore. The bridge would make a perfect symbol for the hard right. Nothing embodies decaying American government more completely than its bridges. Of the 616,087 bridges in America, nearly 40 percent are fifty years old or older. The United States constructed infrastructure miracles, then didn’t bother to maintain them. Maintenance requires money, and nobody notices a bridge not being dangerous. The current backlog of bridge rehabilitation stands at $171 billion. In 2016, nearly 10 percent of the nation’s bridges were structurally deficient. The bridge that will be the inciting incident of the first battle of the next civil war could be any one of them. At this particular bridge, agents from the Federal Highway Administration show up for a routine inspection. They find crumbling concrete, water damage from improper sealants, and thinning gusset plates that could tear the line of rivets. They have no choice but to direct the county’s supervisors to close the bridge as a danger to public safety. Repairing the bridge won’t be simple, either. The Environmental Protection Agency requires an environmental assessment before any repairs can be made. Due to funding cuts and the backlog of infrastructure projects with mandated assessments, the EPA won’t be able to give a hard deadline. Meanwhile the bridge will be barricaded with concrete stanchions and barbed wire. Drivers will have to take the long way around. The Sheriff will wake up one morning to find his constituents furious. The politics won’t matter, or even register, with the residents of the county. They’ll just be pissed that they don’t have their bridge. When the Sheriff stops in at the local diner in town, beside the county offices, his people will give him an earful. What is a government for—what do you pay taxes for—if not to keep the bridges open? Steeped in the right-wing internet and an active member of the Constitutional Sheriffs and Peace Officers Association, this Sheriff decides to turn himself into a hero. In a fit of outrage and a genuine sense of service to the community, he straddles an excavator and pulls aside the concrete stanchions and barbed wire to reopen a closed bridge. A local Fox affiliate covers the scene, and it makes great television: the Sheriff with his laughing face as he operates the wall clamp barrier lift that moves the concrete to one side. That’s his first crime, since he isn’t licensed to operate heavy machinery. In the interview that follows the bridge clearance, he stands stiffly, his uniform pressed and starched. He keeps his Stetson hat on. “Why have you opened the bridge, Sheriff?” the reporter asks. “The distinguished representatives of the Federal Highway Administration and the so-called Environmental Protection Agency do not, I am afraid, understand the needs of the people of this county, and I do.” “Do you expect any trouble from the government?” The Sheriff smiles. “I remember that Ronald Reagan said that the nine most terrifying words in the English language are ‘I’m from the government and I’m here to help.’ ” “Sheriff, have you spoken with the Federal Highway Administration or the EPA?” “I don’t think I need to speak with them. I think the doctrine of interposition is well established.” “What do you say to those who say the bridge is unsafe?” The Sheriff shrugs. “This is a free country. Anyone can choose to use the bridge or not to use the bridge. You know, my grampy always told me life is unsafe.” The “grampy” comment lifts the segment into the mainstream. The networks pick up the drama of the bridge: The Late Show jokes about how conservatives believe in “the God-given right to die in bridge accidents.” Tucker Carlson rants for ten minutes about why the left-wing media has grown so comfortable mocking law enforcement. They bully the Sheriff, he concludes, because he’s a government figure who’s done something that people wanted for a change. The Wall Street Journal publishes an editorial entitled “A New Horatio on an Old Bridge.” From the beginning, the Sheriff divides America, along the lines that already divide it. The View from an Interpositional Sheriff Today You do not have to imagine this defiant sheriff. You can meet a version of him right now. To this day, Richard Mack is proud that he reopened a closed bridge when he served as the sheriff of Graham County in Arizona from 1988 to 1996. “We had a bridge out on the east side of the county and two different agencies told us we couldn’t fix it,” he remembers, his voice charged with cheerful contempt. “The EPA and the Army Corps of Engineers told us we couldn’t fix it until they finished their environmental impact study. Well, it went on for ten, eleven months. And the county commissioners finally got the courage and they voted unanimously to fix the bridge. Then the federal government threatened to arrest the county commissioners and all the maintenance workers at the site. I got involved. I told them, ‘I get along with everybody but you guys aren’t arresting anybody in my county. You guys make any effort to arrest anybody in my county, I’ll arrest you. You do not come in here and try to prevent us from fixing a bridge.’ ” Mack believes in the doctrine of interposition—“standing in the way”—the sheriff’s duty to resist government abuses. “The founding fathers fought a war to oppose government abuses,” he adds. In Cooper v. Aaron (1958), a desegregation case, the Supreme Court rejected the constitutionality of interposition, whether on a county or a state level. That clear ruling has done nothing to stop the popularity of the idea among local law enforcement. Mack is not alone in his beliefs about the power imbued in the role of sheriff. The Constitutional Sheriffs and Peace Officers Association has about 5,000 members. They are what anti-government patriots with power look like. “The FBI has very little authority in the county,” Mack argues, their role being properly limited to investigations of counterfeiting, treason, border protection, piracy, and the violation of treaties. The sheriff, for Mack, is a sacred figure imbued with a constitutional role of resistance to federal authority. “The federal government is not supposed to be big,” he says. “The federal government was designed to be small and impotent.” The sheriffs elected across the United States are there to ensure that impotence, he believes. The United States has always had resistance to government in its blood. The resistance is growing louder and angrier. The Political Consequences of Information Pollution The next civil war will be a war over meaning. The division begins in the information systems: the media, the machinery of electoral politics, the internet, and social networks. Every study of virality since the origin of social media has shown that, after the experience of awe, moral outrage is the strongest driver of traffic. When you combine the power of outrage with the low risk of judgment from behind a screen, along with what psychologists call “the reduction of empathic distress”—the basic inhumanity that the facelessness of the internet permits—you have a very powerful machine for dehumanization, no matter what content goes into it. This phenomenon isn’t limited to the United States. The same effect has been seen in Bangladesh, the Middle East, and elsewhere, with mass death as a result. Since anger drives the information networks and the networks create meaning, it should come as no surprise that twenty-first-century sheriffs love to put on angry shows. They want to be celebrities. In 2017, Arizona lawman Joseph Arpaio ignored the federal government’s injunctions barring him from “immigrant roundups,” but even after he was convicted of criminal contempt of court, President Trump pardoned him. He earned his pardon by being famous. In his tent city chain gangs, large prison camps in the 1990s in which the humiliation of criminals was used as a major deterrent, he insisted that inmates wear pink underwear. He sold pink handcuffs during his promotional effort for his book tour. It’s not just Arpaio, either. Trump-loving sheriff David Clarke has worn twenty-two medals during his media appearances despite never having served in the armed forces. The information networks of the United States have become polarization machines. They work by anger, through anger, toward anger. The force of virality is indistinguishable from divisiveness. The power of spectacle is driving American politics, on the right and the left. That spectacle demands larger and larger stakes. It distorts all perspective. It turns small, minor issues—like the closure of a rural bridge—into the grandest possible questions—like the authority of the federal government. The Spectacle of the Sheriff Once the Sheriff becomes a celebrity, the bridge becomes a constant point of media attention. The Sheriff speaks to Fox News earnestly on the need to rein in the federal government and the impulse to restore freedom. “This is not a country built on shutting down bridges,” he says. “It’s not a country built by bureaucrats. It’s not a country built by men who listen to bureaucrats either.” He will automatically be a hero to talk radio and cable news, appearing nightly on their shows. The Sheriff will be equally happy to speak to white nationalists and European heritage sites. Inevitably, he becomes a meme, chopped up, parodied, pornified, set to music, idolized, demonized, worshipped, set inside pastiches of horror films or old television shows or earlier memes, yet another image to be demolished and reconstituted. To liberals he is a terrifying autocrat, an icon of the country tearing itself apart. To mainstream conservatives, he represents the dedication to small government. To the talk radio entertainment complex, he offers a mockery of the political order and a rambling carnival of ratings-grabbing turmoil. To the fringes of the hard right, he’s an outright hero. When he speaks to mainstream outlets, like the New York Times and the Washington Post, he tends to be polite and moderate, playing up his folksiness. “I just wanted to keep the people moving,” he tells the Boston Globe. “It just seems to me like it’s my job to get out of people’s way.” “You’re in the government’s way, though.” “I suppose that’s so. I can’t imagine I have a great number of friends in Washington these days. But I guess I feel it’s my job to get the government out of people’s way, too.” With Fox News and other right-wing outlets, he’s more serious, less jokey. He speaks earnestly of the need to rein in the federal government and of the impulse to restore freedom. After one of his interviewers goes on a long rant about how the government is using the EPA and other federal agencies to promote the interests of Blacks and Jews over the interests of whites, he says nothing except “I hear what you’re saying.” He never agrees or disagrees, which allows mainstream media to continue to treat him as more than a fringe figure. “What will you do when the FBI comes for you?” Geraldo asks during a live segment. “Well, sir, if the FBI came to arrest anyone in this county, they would need to consult with the sheriff.” “And you have a connection there.” “I feel like I know the sheriff pretty well, sir.” Always at ease, always in his pressed and starched uniform, always in his Stetson hat, the Sheriff is caricature and legend at once. His humility seems as bottomless as his arrogance, his strength and formality of manners balanced by the vulnerability in his eyes. The man of quiet defiance radiates the impression that the world is about to be taken away, that the last decent glint of humanity is about to be extinguished, that he alone stands in front of a tide about to swallow the world. Half the American people love it. He becomes two memes straightaway. In the “grampy said” meme, on one side a journalist asks him a vastly complicated or insoluble question—“How do we overcome the environmental crisis while maintaining economic growth and diminishing income inequality?” or “Why does a loving and all-powerful God allow children to get cancer?”—and in the next frame the Sheriff answers: “Grampy said…” In the “at ease” meme, the image of the Sheriff standing at ease is posted into ever more ridiculous situations—on a mountaintop, in a 1990s porn star orgy, in a scene from the Saw franchise. Slowly, militias start filtering into the Sheriff’s county. They bring flags. They aren’t American flags. How to Think Through the American Hard Right In these dispatches, I use the term “anti-government patriot” to describe the hard right in the United States. I believe the phrase captures the basic connection between a wildly diverse collection of groups. They hate the government but they love the country. The intensity of their hatred for government is how they express their love for their country. They believe that the federal authority is destroying the true America. That core belief expresses itself in hundreds, if not thousands, of different ways. Tracking the changing beliefs of the hard right would require daily, sometimes hourly reports. Conspiracy theories are metastasizing across American conservatism continuously. Who the Boogaloo bois are now will be different by the time you are reading this. They began as a hard-right white power group; they have split into a race war wing and a libertarian wing. Some have showed up recently at Black Lives Matter protests in support of the protestors. Similarly, QAnon, a wide-ranging conspiracy theory grounded in the belief that high-level Democratic operatives have been involved in elaborate pedophile rings, has morphed into a whole range of conspiracies around the “deep state.” These ideologies are fragile but oddly durable; they smash and reform all the time. The hard right in America today ranges from men and women a few steps over from small-government conservatives to outright criminals and the insane. Their reasons for hating the government vary. There are tax protestors who believe that income tax is illegitimate and there are sovereign citizens who don’t believe that the Fourteenth Amendment is valid. Differences of style matter, too. The alt-right is polished in its racism. The Ku Klux Klan isn’t. There are Second Amendment absolutists and there are minutemen and there are sagebrush rebels and there are border vigilantes. Even among the white power wing of the anti-government patriot movement, there are white supremacists and there are white nationalists and there are white identitarians and there are neo-Nazis—none of them exactly the same in motivation or in action. Many of these intellectual currents run into each other. They often overlap. But none requires the others. It is possible to hate the federal government’s involvement in public lands and not be, at the same time, a white nationalist or even a racist. There are sovereign citizens who are Black. Rather than following one coherent ideology, or series of ideologies, the hard right offers a buffet of sensibilities. Each individual picks and chooses: white power, Christian identity, the inviolability of the Second Amendment, tax loathing, the belief in the illegitimacy of the federal government. Conspiracy theories blossom, and intertwine, and separate. New factions appear every couple of months. The militias emerge from a general anti-government feeling that is the widespread base of support—at least a third of the country. That base is the ground from which domestic extremists sprout. Don’t mistake intellectual incoherence with weakness. The power of the anti-government patriots is real and rising. The hard right is much larger and much more violent than almost anybody believes. A study from the Institute for Family Studies in 2018 suggested that nearly 11 million Americans “share the attitudes” of the alt-right alone. The vast majority of terrorism in the United States comes from the hard right, and the University of Maryland’s Global Terrorism Database shows the number of terrorist incidents in the United States has tripled since 2013. During the decades in which America obsessed over the rise of Islamic terrorism in the Middle East, it failed to notice the rise of a homegrown equivalent, radical Americanism, a pocket heartland ISIS. The bipartisan Center for Strategic and International Studies concluded in 2020 that “far-right terrorism has significantly outpaced terrorism from other types of perpetrators, including from far-left networks and individuals inspired by the Islamic State and al-Qaeda.… Right-wing extremists perpetrated two thirds of the attacks and plots in 2019 and over 90 percent between January 1 and May 8, 2020.” The success of hard-right terrorism has led to a rise in accelerationism: the desire to hasten a civil war by inciting violent chaos. Two neo-Nazi organizations, the Atomwaffen Division (using the German word for atomic weapons) and The Base, a white power version of Al Qaeda, promote terrorism as part of a plan to institute a white ethnostate after a systematic collapse of the United States. Even the fringe movements of anti-government patriots are sizable. A low estimate of the number of sovereign citizens in the United States starts at 300,000, the number of people who refused to file their taxes out of principle, a felony. To put that in perspective, the Weather Underground was estimated, at its peak, to contain a thousand members. The estimate of the number of Black Panthers rises as high as 10,000, a highly debatable figure; the Panthers talked a great deal about the need for violence but managed to commit very little. The most power they ever gained were seats on a few local government commissions in Oakland. The Panthers and the Weather Underground caused immense panic in the late sixties—and massive responses from the FBI. The sovereign citizens, and the anti-government patriot movement as a whole, are much more numerous; they are armed, they are anxious for the government to fall, and they regularly murder dozens of people a year. In 2012 the FBI began listing sovereign citizenry as its top domestic terrorist threat. Sovereign citizens believe they are sovereigns unto themselves and therefore do not have to pay attention to any laws that legislatures pass or to law enforcement. They believe that the federal government is a fictitious entity that is operating outside the purview of the Constitution for the purposes of holding US citizens in slavery. Their ideas hovered on the extreme fringes of American politics until the housing crisis of 2008 and the election of Barack Obama. Then they exploded. Declining financial power and the rise of multicultural iconography—the sovereign citizens are its fruit. The anti-government patriots, and the sovereign citizens who are their most extreme members, are the most overt reflection of lost white privilege in the United States. Fueled by the loss of faith in government and the rising sense of aggrieved white diminishment, theirs is a totalizing vision of absolute individual freedom and resistance toward the state as such. “Understanding Sovereign Citizenry ideology is like trying to map a crack that develops on your windshield after a pebble hits it. It’s a wild and chaotic mess,” Ryan Lenz, a senior investigator for the Southern Poverty Law Center, tells me. Sometimes the spirit of disobedience expresses itself in fanatical violence, as in the case of Jerry Kane, who killed police officers at a routine traffic stop in Memphis. At other times it expresses itself as convoluted tax dodges, as in the case of the founder of the Republic for the united States of America (RuSA), James Timothy Turner, who was convicted of posting a $300 million fictitious bond in his own name. He traveled the country in 2008 and 2009 conducting seminars about elaborate systems underlying the tax code and how ordinary people could use his knowledge of the system to excuse themselves from financial obligations—or, to put it in the FBI’s more familiar terms, to defraud the IRS. Turner has been sentenced to eighteen years in prison. Bruce Doucette, a sovereign “judge” who traveled the country offering a similar financial salvation, planned alternative state legislatures. He received thirty-eight years in jail. One pet theory of the sovereign citizens is that the Fourteenth Amendment, first passed after the Civil War, is illegitimate, making the current government merely “de facto.” The real government, the government the sovereign citizens recognize or imagine, is “de jure.” The movement has become famous for their elaborate disruptions of court procedure. They are masters of “paper terrorism.” A favorite tactic is to take out false liens on judges trying their cases, thereby forcing a recusal. “Between 2012 and 2014, there was a massive effort in the United States to make sure that county clerks, in rural areas and in metropolitan areas, knew what to look for when a sovereign came in to file something fictitious,” Lenz says. They draw vast consequences from the tiniest details. My favorite example: the flags in most American courts have gold fringes, traditionally the style of the American navy. Therefore, according to some sovereign citizen theories, when you enter court and pass out of the gallery, you are entering a jurisdiction where maritime law applies. Their theory of the straw man, another convoluted idea of legal precedent, fuses conspiracy with economic salvation in a typically secretive vision of hidden powers shaping daily reality. They believe that “there is a federal account associated with you, which the federal government has invested in you, based on your future earnings,” Lenz tells me. It’s a secret account that citizens have access to if they know how. “There are sovereign citizens out there who believe that the US government is run by reptilian aliens,” Lenz says. “Turner said he had documents that proved that the US government had made intergalactic peace treaties with alien nations.” Literally, the conspiracies go beyond the surface of the earth. “The sovereign citizens are preparing for when the government falls, not if,” Lenz says. Sovereign citizens commit crimes more or less daily in the United States. In April 2014, Jerad and Amanda Miller, sovereign citizens who were present at the Bundy standoff, killed two police officers at a CiCi’s Pizza in Las Vegas. They pinned a note to one of the cops’ bodies: “This is the beginning of the revolution.” They told the horrified onlookers: “The revolution has started.” In 2014 a survey conducted with US officers in intelligence services across the country found sovereign citizens to be law enforcement’s top concern. The resistance movement to the United States is broad and deep and violent. It is intellectually incoherent but ferociously devoted. This is essential to understand: the incoherence is part of the appeal. The lack of a coherent or stable ideology means that the knowledge is esoteric, the world illuminated by a hidden meaning known only to the initiated. When you don’t have an explicit ideology, a practice, you can’t be blamed for the effects of that ideology: If you call yourself a Nazi, you have to embrace the history of Nazism. But with fast-moving conspiracy theories wrapped in satire, you get all the advantages of belonging to a tribe, with none of the responsibilities. The internet provides a way to flirt with reality; you can always claim you were just kidding, or you can go and kill a cop. Increasingly, accelerationism, the faction of the anti-government patriot movement that wishes to bring about civil war, is losing all ideological content. They praise the Unabomber and Timothy McVeigh alike. They just want the destruction of the state. To what purpose matters less and less. The American hard right operates on a spectrum from the criminally insane to law enforcement officials. In a way, that spectrum makes the true size of the movement harder to perceive: you can dismiss the criminals as criminals, and the law-abiding pose no immediate threat. But the spectrum shows a breadth of support in the country at large that is not the result of local conditions. There is a widespread, if confusing, popular support for opposition to the US government. And, even more confusingly, several of those anti-government forces have moved into government. Two congresswomen elected in 2020—Marjorie Taylor Greene of Georgia and Lauren Boebert of Colorado—publicly backed the QAnon conspiracy theory. Mainstream conservatism and the Republican political establishment are both involved in anti-government patriotism. Extremist views are no longer extreme. Confusion is a natural state at the beginning of any collapse. In other countries and in other times, it’s never been clear, at least at first, whether a civil war was properly underway. Who is a rebel and who is a bandit? Who is a freedom fighter and who is a terrorist? The line between criminality and revolution blurred in Mexico, in Cuba, in Northern Ireland, in Algeria—everywhere. What if America is already in the middle of an armed uprising and we just haven’t noticed? What if we’re just not used to armed uprisings happening in places we know? The Gathering at the Bridge Neo-Confederates, white nationalists, straight Nazis, Klansmen, the alt-right, Three Percenters, Spartan youths, the American Golden Dawn, Frontiersmen, Oath Keepers—all come to the bridge brandishing swastikas, Odal runes, Black Suns, Iron Crosses, the Valknut, Confederate battle flags, Deus Vult crosses, and many other symbols. The largest militias, the ones that set up separate compounds, are the Pennsylvania Light Foot Militia, the New York Light Foot Militia, the Virginia Minutemen Militia, and the Oregoners, but eventually militia members from all fifty states, including a lone representative from Hawaii, set up camp. They use generators for power. They purify their water with colloidal silver. They finally have a chance to use all the materials they have bought at the prepper conferences. The area downstream of the bridge fills up with booths selling rations and weapons and tactical wear and books about manufacturing your own bazooka, and planting a garden after a nuclear event, and Muslim infiltration into the CIA, and Jewish control of the media. During the day, the space around the bridge resembles an open-air gun show. The story dominates coverage on all formats. Time magazine is the first to describe them as the Army of the Interstate. CNN becomes a twenty-four-hour “Battle of the Bridge” station. Every hotel and Airbnb in the county is taken. The international press soon follows. No quantum of information is too insignificant when it comes to the Sheriff or the county in defiance. Every nuance of the arguments on all sides is rehashed on the Sunday talk shows. Meanwhile, every militant group has brought DSLR cameras alongside its arsenal and survival supplies. They livestream their resistance. The line between hard-right journalistic organizations and hard-right militias is blurry at the best of times. The crisis at the bridge erases any distinction. The struggle isn’t over a bridge but over a narrative. It begins in a county but it is fought, at first, over the networks—the internet, television, the means of information. At night, the militias gather for torchlit rallies. The most popular chant—alongside “You will not replace us” and “Blood and soil”—is “This is what democracy looks like.” Every night the crowd stands on the bridge to show how much weight it can bear. “This bridge stays open,” they howl. It makes can’t-miss television, wildly viral memes. When asked by a Times reporter whether he supports the festival of rage in his county, the Sheriff answers, “Isn’t freedom of speech wonderful?” When Rachel Maddow describes the scene as “the Woodstock of Hate,” the Sheriff approves. “I guess it’s time real Americans had a party of their own.” The Sheriff is an icon to the groups on the bridge, no matter their affiliation. When he speaks, he doesn’t need a microphone. Everyone goes silent. Among the swastikas and the banner of the Army of Northern Virginia, a new flag is lifted. The Black Gadsden has the traditional rattlesnake and the motto DON’T TREAD ON ME, but on a black background. Around this time, the Sheriff begins to deputize various senior members of the larger militias. NBC coins the phrase “American ISIS” to describe the development. Fox claims the Sheriff needs deputies to maintain order during “the extraordinary surge of freedom” at the bridge. “We are officially dealing with traitors,” Frank Bruni writes. Podcasters on the left predict an imminent national coup, spearheaded by the Sheriff. A ProPublica poll finds that 73 percent of Americans agree with the statement “The Sheriff represents a rebellion against the legitimate government of the United States.” But only 36 percent agree that “the US government should intervene with military force.” The View from a Prepper’s Conference Again, you don’t have to imagine. The anti-government patriots are preparing now for the collapse of the United States. They are readying themselves for a conflict with their own government. You can go see them. On the fringe of Bowling Green sits Woodland Mall, where the Ohio Prepper and Survivalist Summit takes place. The several dozen booths sell not only a lot of guns but also solar-powered flashlights that keep a charge for seven years and plastic buckets containing 120 emergency rations for $274.99. (Gluten-free is available if you plan on a gluten-free collapse.) The summit offers a range of courses on the art of retreating in the event of civilizational collapse, ranging from bug-out planning and building caches and black-powder DIY to bushcraft skills and homeopathy, archery and self-defense. Frontiersmen—an organized prepper group—wander the booths with pistols at their belts. The Oath Keepers wear black shirts identifying themselves as security. Preparations for the new collapse look exhausting. Jim Cobb is the author of several books, including Prepper’s Armed Defense, and Cobb’s plans for surviving the apocalypse are intensive. Pick three bug-out locations in different directions from your residences, all of them under 200 miles from your home so you can get there without a full tank of gas in your car. You should also plan three routes to each of your three locations. That makes nine routes in all. Don’t mark them down on a map, either. What if you’re stopped on the way? Then people can tell where your bug-out locations are and go steal your stuff. Cobb tells us to use our heads: “Use it for more than a hat rack.” At each bug-out location, Cobb suggests keeping the weapons cache on the outskirts of the property in case of “unplanned party attendees.” And above all, drill. Your wife might not like it. Your kids might not like it. “Drills suck,” as Cobb says. Still, you have to drill to build up “muscle memory.” Everybody needs a bug-out bag, of course. He stalks the front of the classroom with the jaunt of a middle manager explaining effective sales strategy to a regional office for the nth time. The fantasies of the preppers are absurd and melancholy, but they aren’t useless. Eve Gonzales teaches home medicine and post-collapse gardening. She has the sad eyes of a woman growing tired of explaining things to people who will not listen, like she’s run the school library in a small town for too long. Beside me, a female soy farmer with gray hair and a floral shirt from the seventies talks to a guy in a National Guard T-shirt with a copy of Gary Lincoff’s The Joy of Foraging about the merits of eating Queen Anne’s lace. It’s very good for you but you have to be careful. It’s so similar to hemlock. Gonzales wants her audience to develop “the skill of sprouting.” Bean sprouts are full of nutrients and grow quickly. She wants us all to buy heirloom seeds, which self-germinate. You can harvest seeds from them, but you should remember that germination declines by up to 50 percent over five years. And don’t forget about protecting your harvest. The preppers agree that, in a crisis, everybody wants to steal from everybody else. The biggest thief will be the government. Gonzales warns us equally about looters and the federal authorities. Her solution is brilliant: Fill your garden with nutritious weeds—dollar weed, lamb’s-quarter, amaranth, dandelions. “The government, by executive order, can take everything, but they don’t take dandelions,” she says. Nick Getzinger, the executive officer to the president of the Ohio Oath Keepers and the owner of the Oath Keepers Outpost, teaches the class on survival caches. The caches are built out of PVC tubes and then buried at secured sites. Mainly, Getzinger fills his PVC tube with incredibly elaborate ways of purifying water. (Everyone takes for granted that the LifeStraw, a straw-style water filter, is insufficient, although everyone recommends buying one anyway.) His methodology for water purification includes a combination of hypochlorite, colloidal silver, and charcoal. For starting a fire, he uses a Fresnel lens or wax-coated matches. He recommends a Mylar blanket for a solar oven and Vietnam-era ponchos because of the way they roll up. A complete cache also includes snares, a hacksaw blade, seeds, silica packs, and oxidizer to reduce the effects of moisture. He advocates a new kind of slingshot that flings projectiles from a circle (“more accurate than a wrist rocket”). As for ammunition, he suggests a consistent round in all the guns you own. You don’t want to have a .38 pistol and .45 bullets, do you? The preppers share a specific fantasy. It’s not nuclear winter. It’s not climate change. It is a world without authority in which roving bands attempt to raid your hard-won supplies, and self-sufficiency and self-defense determine survival. It’s all conspicuously similar to what the American frontier looked like—or, rather, what the American frontier looks like in the movies. The students are often enjoined to “think like the pioneers.” The preppers and survivalists aren’t just imagining the end of America. They’re imagining it beginning again. And in that dream of rebirth is the seed of a radical politics. Apart from guns, the most popular items for sale are “Black Guns Matter” T-shirts and flags with the coiled “Don’t Tread on Me” snake—the usual. There’s a Spartan helmet with the letters MOΛΩN ΛABE underneath. MOΛΩN ΛABE translates to “Come and take,” the defiant response of Leonidas, king of Sparta, when Xerxes, king of the Persians, demanded he surrender his weapons at the battle of Thermopylae. In this analogy, the US government is the Persians and the preppers are Spartans. The high point of the Ohio Prepper and Survivalist Summit is the appearance of Challice Finicum Finch, whose father died in a standoff with the FBI. Twenty-six years old, with four kids, blond, skinny, she knows who the bad guys are. The bad guys are the federal government. What precisely happened to Finicum Finch’s father is subject to debate. Nobody doubts that, in 2016, LaVoy Finicum was involved in a gunfight with federal agents as his group occupied the Malheur National Wildlife Refuge in Harney County, Oregon. Nobody seems to dispute that Finicum crashed his pickup into a snowbank and attempted to flee on foot. The FBI version of subsequent events is that Finicum was shot while reaching for a firearm and that while he was being arrested he shouted: “Go ahead and shoot me. You’re going to have to shoot me.” The police declared his shooting justified. But one of the FBI agents, W. Joseph Astarita, was indicted on charges of lying and obstruction about who fired first. (He was later acquitted of all charges.) Challice Finicum Finch believes that her father was shot in the back three times and left overnight to die in the snow. For her, the question of federal authority is not just a grand matter of democratic validity, nor is it a technical issue of jurisdiction. It is a matter of blood. “We are in slavery,” she announces to the audience. Why are Americans in slavery? “If you don’t own anything, you are a slave.” And why don’t Americans own anything? “If you don’t pay your property tax, you’ll find out pretty soon if you own anything. You have purchased the right to rent from the government.” She asks: “Who’s been fined by Obama, for not having healthcare?” A couple of hands shoot up. “You don’t own your body.” How did Americans become slaves? Finicum Finch’s answer is that they didn’t read the Constitution. She enjoins the audience to weekly, even daily reading of their foundational text. What did Finicum Finch find in it? She found that the states supersede the federal government because the states created the federal government. She discovered that the federal government holds “80 percent” of land in the west, land to which it is not entitled. She tells the story of a recent encounter with the police. “I got pulled over and, like a little slave, I did everything the officer told me to do and then I get home and I realize, hey, that was wrong. He just trampled my rights.” The audience is full of veterans and police officers. The armed anti-government forces are rising among those who serve or once served the government they condemn. Finicum Finch loves the police forces and those who serve. She repeats that she isn’t anti-government; she’s just anti–corrupt government. That line is the line on which the new radical Americanism rides. The men and women wandering the stalls at the Prepper Summit buy the books and the seeds and the guns to imagine themselves resisting federal authority. The books, the seeds, the classes, the guns—all of them are accessories to a story Americans tell themselves in increasing numbers. In that story, the US government is the bad guy and they are the good guys. At the Woodland Mall they know that whatever freedom is, they don’t have it. “How far are you willing to be pushed?” Challice Finicum Finch asks. “When is your faith going to be bigger than your fear?” And while it seems impossible to imagine the overthrow of the system of the American government at this moment in time, “do we not believe in a God of miracles?” The Counterprotestors “New freedom riders” form in the closest major city to plan opposition to the rise of the Sheriff and the gathering of the militias. “John Lewis Battalions” plan to “not cross the bridge.” They paint signs with “This Is Still America” on them and “The Punishment for Treason Is Death” and “No Amerikkka.” Proud Boys meet the first group of protestors as their bus pulls into a Red Roof just across the county line. They have automatic weapons and baseball bats. The Proud Boys grab and drag the counterprotestors, beat them at gunpoint, and throw them back on the bus. By the time the first new freedom riders arrive at a hospital, three are dead. The Sheriff shrugs off the deaths: “I think it’s common sense not to go where you’re not wanted.” He refuses to take any actions against the Proud Boys. “Freedom of expression and freedom of association are bedrock American values,” he says. Asked if he believes beating protestors at gunpoint is protected under the First Amendment, he smiles. “I think those boys expressed themselves rather well.” The organizers of the new freedom riders cancel their planned protests. All stations begin covering the story from the ground twenty-four hours a day. The rebellion in the county is the only story. Digression on the Threat from the Left The extreme left in the United States is weaker than the extreme right on every level. Nonetheless, left-wing interposition—refusal to recognize governmental authority—is real. The closest analogue to the Battle of the Bridge that I am imagining is CHAZ, the Capitol Hill Autonomous Zone, established by progressive forces in Seattle during the Black Lives Matter protests. The autonomous zone amounted to a collection of vague sensibilities—with candlelit shrines to George Floyd, community gardens, a designated smoking area, and a “no cop co-op” where protestors could supply themselves for free. CHAZ exposed the weakness of the far left, intellectually and materially. The group published a thirty-point list of demands that went well beyond simply abolishing the police: “We demand a retrial of all People in Color currently serving a prison sentence for violent crime, by a jury of their peers in their community” was on the list. No mainstream political Democrat took their side. Without the police, the community couldn’t provide security for itself. Proud Boys and Patriot Prayer activists threatened the collective, and an executive order by the mayor of Seattle confirmed “an increase of 525%, 22 additional incidents, in-person-related crime in the area, to include two additional homicides, 6 additional robberies, and 16 additional aggravated assaults (to include 2 additional nonfatal shootings) between June 2nd and June 30th, 2020, compared to the same period of time in 2019.” CHAZ became an accidental study of the impotence of the Left: political incoherence and no real means of defense. Left-wing radicalism matters mostly because it creates the conditions for right-wing radicalization. “It’s the interplay, the dance, between the extreme left and the extreme right that can become an escalating spiral,” Ramón Spaaij tells me. He’s a sociologist of violent extremism from Amsterdam who works with law enforcement agencies to determine the signs that point to the likelihood of terrorism. The action by one fringe leads to a reaction from the other, and so “they radicalize each other. It’s an interactive process.” A political interposition in the United States and the subsequent political crisis is much more likely to come from the right. It’s not that the left is less angry or less threatened by its opponents. Rather, the left lacks the same consciousness of resistance; they have a far less developed fantasy of interposition. Antifa does exist, but it lacks any power or the means to establish power. Left-wing defiance of federal authority, when it comes, tends to be legalistic and political, and led by state officials—the subject of the fifth dispatch of this book. In the CSIS study of 893 terrorist incidents on US soil between January 1994 and May 2020, only 22 of the 3,086 deaths due to terrorism were caused by left-wing groups. The Political Crisis It won’t matter who the president is, or which party she belongs to, when the Sheriff takes his stand. She will need to respond. It doesn’t matter how conservative she might be; to represent the federal government, she will have to defend its authority. She has no choice in the history that she makes. The FBI is incapable of responding: a police force, designed to combat criminality, cannot serve as a military force against insurgency. The Sheriff’s role has shifted from law enforcement to political resistance. But he remains an elected official and a law enforcement figure. Also, the federal authorities aren’t able to trust any law enforcement agency. They have been infiltrated by the hard right already. The Hard-Right Infiltration of Law Enforcement The hard right has strategically infiltrated law enforcement in the United States to such an extent that no police department or federal agency can be relied upon in a struggle against white supremacy. Connections between law enforcement and white supremacists or hard-right militias have been established in Alabama, California, Connecticut, Florida, Illinois, Louisiana, Michigan, Nebraska, Oklahoma, Oregon, Texas, Virginia, Washington, and West Virginia. These connections number in the hundreds. Michael German, a former FBI agent who worked undercover against domestic terrorists during the 1990s, knows that the white power sympathies within police departments hamper domestic terrorism cases. “The 2015 FBI counterterrorism guide instructs FBI agents, on white supremacist cases, to not put them on the terrorist watch list as agents normally would do,” he says. “Because the police could then look at the watch list and determine that they are their friends.” The watch lists are among the most effective technique of counterterrorism, but the FBI cannot use them. German has seen the infiltration of white supremacy firsthand. “When I was doing this work, I met tons of people who were hard-core Nazis. They knew the history, they had a vision for how to bring National Socialism to the United States, they published newsletters, they wrote books, they went on the speaking circuits. When they would meet me, they would say, ‘Who are you here with?’ And I would point to these scruffy guys in the corner, and they would say, ‘Son, you gotta get away from those idiots. They’re going to get you arrested. You’re going to be dead to this movement. What you need to do, because you don’t have any tattoos, is put on a suit and we can run you for the school board.’ ” The white supremacists in the United States are not a marginal force; they are inside its institutions. Recent calls to reform or to defund the police have focused on officers’ implicit bias or policing techniques. The protestors are, in a sense, too hopeful. Ordinary, everyday racism is much less a threat than activist white supremacists in positions of authority. At the protests in Oregon, law enforcement figures, from the Department of Homeland Security, from the Federal Bureau of Prisons, sometimes out of uniform, rounded up protestors. “If you look at how authoritarian regimes come into power, they tacitly authorize a group of political thugs to use violence against their political enemies,” German says. “That ends up with a lot of street violence, and the general public gets upset about the street violence and says, ‘Government, you have to do something about this street violence,’ and the government says, ‘Oh, my hands are tied, give me a broad enabling power and I will go after these thugs.’ And of course once that broad power is granted, it isn’t used to target the thugs. They either become a part of the official security apparatus or an auxiliary force.” Neither criminals nor government forces, the camouflaged agents from the Bureau of Prisons use lawless violence with authority. They exist in a state of impunity. Anti-government patriots have used anger against Black Lives Matter effectively to build a base of support with law enforcement. “One of the best tactics was adopting the Blue Lives Matter patch. I’m flabbergasted that police fell for that, that they actually support these groups,” German says. “It would be one thing if they had uniformly decided not to target police anymore. But they haven’t. They’re still killing police. The police don’t seem to get it, that the people you’re coddling, you’re taking photographs with, are the same people who elsewhere kill.” The current state of American law enforcement reveals an extreme contradiction: the order it imposes is rife with the forces that provoke domestic terrorism. The Hard-Right Infiltration of the US Military The Military Times reported in a 2019 poll of 1,630 active-duty soldiers that 36 percent of active troops have seen evidence of “white supremacist and racist ideologies in the military,” a significant increase since 2018, when the number was 22 percent. The Origin of a Quagmire At first the President hopes that the governor of whatever state the county happened to be in would ask for assistance. She could then justify intervention through the Insurrection Act: “Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.” The Governor wants nothing to do with the request; any support for federal authority against locals would jettison his chances for reelection. So the President has to enter the county on the basis of section 333 of Title 10 US Code, which allows a president to use armed forces in the homeland to suppress insurrection or domestic violence if it “(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and that constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protections or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.” She only briefly considers calling in the State Guard. It might look like the state was at war with itself. The fifteen days the President grants for the peaceful dispersion of the militias comes and goes. The rebels continue their spectacle. They run streams of their rallies. They gleefully promote their ideologies on every available format. The President invokes precedent, the Reconstruction after the Civil War, Dwight Eisenhower calling troops into Little Rock, the LA riots. And when she calls in the military she doesn’t skimp. The Attorney General and the Department of Justice serve as leads, but the US Northern Command, the Fifth Army, units at Fort Bragg and Fort Stewart, as well as the Marines at Camp Lejeune will be under the command of the General. The General The General comes from an old military family. He’s a West Point grad, a veteran of campaigns in Iraq and Afghanistan. He is active and cheerful. He runs with his troops. He can still do eighteen pull-ups. He has a law degree from Harvard, and this, above all, qualifies him to lead the first full-spectrum operation in the homeland. At night he reads Julius Caesar in the original Latin. All of this comes out in the GQ profile he allows to be written about him. The General’s first priority is preventing any further militia incursions into the area. The chaos inevitable in any military campaign is vastly expanded by the novelty of a full spectrum operation in the homeland. The Sheriff is nowhere near as organized or tactically sophisticated as the Taliban or ISIS. But this time the enemy is American. The General’s problems will be legal, not tactical. Killing your own people is much more involved than killing foreigners. The conquest of the county requires an army of lawyers as well as an army of soldiers. The US Army Operating Concept defines its role as protecting “US sovereignty, territories, domestic population and critical defense infrastructure against external threats and aggression or other threats as directed by the President.” So which is it? Is the army there to protect against “external threats”? Or is the category of “other threats” broad enough to include rebel militias? The General’s staff shares the consensus that the terms are so vague that no action, however small, should be taken against the insurrectionists without an explicit order by the President. The President appoints a SCRAG (senior civilian representative of the Attorney General), since the procedures in the Insurrection Act mandate that the Department of Justice be the lead agency in cases of homeland pacification. The SCRAG has been temporarily reassigned from the Department of Justice. She went to Harvard with the President. Nobody knows, from the President to the lowest grunt, whether the conflict is a police action or the overthrow of a hostile power. And the President’s public instruction to use the minimum force necessary further divides the military and the political fronts. If the conflict ends with a pile of corpses, the President will make clear to everybody that the General is the one to blame. Two-tier authority cripples initial intelligence-gathering efforts. Executive Order 12333 from the Reagan administration explicitly decrees that the military is only allowed, in the case of US citizens, to gather enough information for situational awareness. A federal court has to authorize every individual wiretap, and while the judges work night and day, wiretaps for the residents of an entire county take time. No general, no professional soldier, will initiate combat without full situational awareness. Intelligence gathering is hampered by the fact that the SCRAG and the Senior Federal Law Enforcement Officer fail to agree on the legal conditions for placing a name on the list of high-value targets. The staff cannot liaise with local law enforcement, since local law enforcement is the enemy. The General can’t cooperate with state officials because they’re security risks. No one is able to say where the loyalty of a state policeman stands when it comes to the Sheriff. Department of Defense Directive 5240.1, under “Operations Related to Civil Disturbance,” states: “Upon specific prior authorization of the Secretary of Defense or his designee, information may be acquired that is essential to meet operational requirements flowing from the mission as to the Department of Defense to assist civil authorities in dealing with civil disturbances. Such authorization will only be granted when there is a distinct threat of a civil disturbance exceeding the law enforcement capabilities of State and local authorities.” The SCRAG, who hasn’t served in the military, interprets the phrase “essential to meet operational requirements” literally. The disagreement is more than legalistic. The insurgents need to be treated scrupulously under the Constitution. Any failure to uphold their rights justifies their claim that the government is illegitimate. The General anticipates the legal and tactical difficulties with relative ease. He is unprepared for celebrity and its difficulties. The Sheriff turns him into a villain of illegitimacy, a Benedict Arnold, a monster of overreach. The conservative media accuses him of being under foreign influence. He sees his face distorted and his name made synonymous with the satanic. The General has to engage on the level of image manipulation, where neither he nor his staff have expertise. The struggle takes place under conditions of greater scrutiny than any US military operation in history. Information operations are the great weakness of the American military: control over the subtle but all-powerful narratives that give governments legitimacy have always eluded even the most brilliant American soldiers. Four-star general John Galvin, back in 1986, described the military mind as “uncomfortable with warfare’s societal dimension.” Every general who has written a new COIN (counterinsurgency) operating manual or reported on the reasons for the failures in Afghanistan and Iraq, including Petraeus and McChrystal, have mentioned the same weakness in understanding the interplay of culture and conflict. Military leaders are, by nature, technicians rather than humanists. They are deliberately not politicians. So is it any wonder that they don’t understand politics? “We’ve got a government in a box, ready to roll in,” General McChrystal said in 2010 after the offensive into Marjah. His government in a box rolled back out less than a year later. The Joint Chiefs of Staff’s failure to address the informational nature of conflict in the twenty-first century is another example of the oldest crisis in warfare. The generals are always preparing for the last war. The MISO (military information support operations) officer is more important, the General quickly realizes, than anyone in the IPB (intelligence preparation of the battlefield) process or any of the engineering officers. His MISO officer is responsible for all show-of-force operations and media interventions during the conflict. He is also in more or less complete opposition to the SCRAG, who refuses to suspend any civil liberties pertaining to the First Amendment. After a titanic legal struggle with the Supreme Court, in the teeth of the Civil War, Lincoln was only able to suspend habeas corpus by way of a specific bill passed by Congress, and even that extreme measure required the procedural sleight of hand for which Lincoln was so famous. The nub of the problem, then as now, is inherent in facing enemies who are fellow citizens, entitled to rights. The Sunday morning talk shows second-guess the General before he orders a single shot fired. Military experts argue that the months of delay cost the initiative, which cost lives. Legal experts argue that the proper agencies to deal with the insurrection are the FBI and the DHS, not the Northern Command. Fox News—firmly on the side of the Sheriff from the beginning—insinuates that the delay means that military command lacks confidence that American troops will fire on American citizens. The conspiracy channels churn through theories, from the General plotting with the rebels to overthrow the President to an alien presence in the county with superior technology the Fifth Army cannot defeat. The Sheriff’s defiance is electric. His daily pronouncements from the bridge sometimes attract 100 million views. Videos of the Sheriff doing push-ups, or taking off his distinctive Stetson hat to reveal his bald head, go viral instantly. Liberal Facebook is rife with elaborate comparisons of the Sheriff’s career to Mussolini’s and Benedict Arnold’s. Kanye West appears at a Paris fashion week event wearing a Stetson. “They’re afraid!” the Sheriff shouts in one of his daily appearances at the bridge. “They know they’re going to take it on the chin.” He alternates between supreme confidence and an apocalyptic vision of his own self-sacrifice. He is either strutting or weeping. “Not every man is born to die in his bed,” he declares, his face streaming with tears. “And not every generation is going to escape the end times. We stand for freedom! Men who die for freedom!” The Sheriff’s celebrity has military consequences. Each contingent of anti-government patriots has their own media stream. They spread a vast inflammatory web of misinformation across the United States. By June, 36 percent of Americans believe that the General is a Chinese operative. A Rasmussen Reports poll finds that only 48 percent of US citizens agree with the statement “The US military should operate in the homeland during incidents of insurrection.” A white nationalist in California, inspired by the resistance, firebombs the Wilshire Boulevard synagogue in Los Angeles and massacres the fleeing congregation with a legally purchased AR-15. “The federal government lit a fire,” the Sheriff declares. “They think they can keep that fire here but fire is fire. You can’t keep it from spreading. It’s spreading all over this country.” The Sheriff’s popularity rises to the level where mainstream conservatives, even if they won’t praise him, won’t attack him, either. The Weapons Available to the Insurgents The insurgents, when they come, will be armed. Seventeen million Americans bought guns in 2020 alone, the largest total of any year on record. Forty percent of purchasers were new buyers. The number of guns in the United States is somewhere north of 400 million. Americans purchase 12 billion rounds a year, and although a solid estimate of how much ammunition is in private hands is more or less impossible to ascertain, the number probably runs higher than a trillion rounds. When it comes to gun violence, the United States is a complete global outlier, beyond exceptional. There are fifty-seven times as many school shootings in the United States as the rest of the industrialized world combined. Before the outbreak of Covid-19, America experienced a mass shooting—defined as involving more than four people not including the shooter or shooters—nine out of ten days. Nearly 40,000 Americans lost their lives to guns in 2017—12 deaths per 100,000 people, compared to 0.3 in the UK and 0.9 in Germany. There are no reliable statistics for the rise of ghost guns—manufactured at home with kits and by 3D printing—because they are unregistered, but in May 2019 the Department of Alcohol, Tobacco, Firearms and Explosives reported that 30 percent of seizures were ghost guns. Between 2018 and 2019, the number of ghost guns showing up in Los Angeles County rose by 50 percent and in Washington, DC, by 342 percent. At this point, gun control in the United States is simply impossible. The View from the World’s Biggest Gun Show Wanenmacher’s Tulsa Arms Show in Tulsa, Oklahoma, features the ordinary American gun culture, a resistance culture, on its most expansive display. Wanenmacher’s claims to be the world’s largest gun show and it is certainly large enough. The event fills all eleven acres of Expo Square on the Tulsa Fairgrounds. It takes five and a half minutes, at a brisk pace, to cross from one end to the other, eight hours simply to wander through the 4,200 stalls. You could argue that the annual Shot Show in Vegas is bigger, but Shot Show invites only industry professionals, law enforcement, dealers. Ordinary Americans, not authorities, arm themselves here. Here the guns are as varied and as beautiful as human experience itself, in every shape, color, and price point, and for every purpose. There are rifles and pistols and semiautomatics, by brand, by type, by cost. Worn old .22s you might give a kid to shoot squirrels with and .50-cals closer to cannons that look like they could take out armored cars. Long-barreled old Colts out of Westerns and neat little Glocks that possess the slick smoothness of MacBook Airs. There is cheap ammunition that you could rattle off, expensive ammunition to test your precision, materials for making your own ammunition, antique ammunition for scholars or nostalgics. Depending on your budget, you can buy an ugly little Arms Co. 22 for $69 or dream about bidding on an early nineteenth-century Artemus Wheeler revolving flintlock valued at somewhere between $100,000 and $200,000. Vendors peddle as much innovation as history: new concepts in barreling, targets, silencers, laser sights, armor, customized hearing protection, triggers that are not in violation of the ban on automatic weapons complete “with a letter from the ATF.” The Barrett .50-cal with night vision and thermal scope is iconic, pure power in physical form. “He’s light there. Pick him up,” the dealer purrs. She’s right. The weight is phenomenal, if unusually balanced in the hand, like a briefcase filled with water. The thing is a miracle of engineering, its muzzle like an arrowhead, a primitive death dealer on the edge of the future. But it is the AR-15s that people are purchasing: you can buy one for as little as $349, you can get it custom-designed with the Stars and Stripes, you can buy it adjusted to every imaginable specification. The AR-15 is easily the most popular gun in the United States, and it’s useless for hunting and useless for home defense. It’s a civilian adaptation of an M16. It’s been adapted for all kinds of uses with all kinds of claims about its function, but really it’s for a civilian who wants to own a military-style weapon. What moves a weapon, what really makes a gun sell, is the promise that the government is going to ban it. If the government doesn’t want you to own it, you have to have it. At some gun shows, dealers post lists of weapons that are about to be banned. Any future legislation on guns—more consistent background checks, assault rifle bans—is at this point moot. The United States is saturated with weaponry. The weapons, as impressive as they are, matter less than their symbolism. The main reason Americans buy guns is to tell themselves the story of the failure of government. It’s not for sport; it’s not for hunting. Two-thirds of gun owners own a weapon for “protection.” Protection for when the government fails them, and protection from the government. Gun culture is a culture inherently in resistance to federal authority.

Thanks to American gun culture, large groups of people proudly own weapons that the government doesn’t want them to have. And that means that when the federal government faces a hard-right resistance movement, that movement will be heavily armed.

The Accessibility of Military-Grade Weapons

Many thousands of people in the United States own .50-cal rifles, and it’s not that difficult to convert an AR-15 into a rough approximation of an M16. Along with hand grenades and drones, the war chest of the hard right includes radiological weapons. In two separate incidents, the first in 2008, the second in 2017, police discovered materials for dirty bombs in the residences of white supremacists on American soil. So the hard right in the United States is in possession of any and all weaponry between the pistol and low-level nuclear bombs.

The Tactical Situation

The hard right in the United States is heavily armed. It has military-grade weaponry. It has training. But the US government is better armed and better trained. Infinitely better.

The arsenal available to the American public, and to the anti-government faction of that public, is no doubt impressive. But the US Marines are the US Marines. The Marines have M16s, and M240 machine guns, and M110 sniper rifles, and they have Hummer-mounted BGM-71 TOW (tube-launched, optically tracked, wire-guided) missiles. They have Apache attack helicopters with Hellfire air-to-surface missiles. When I asked the retired colonel about a hypothetical engagement between a hard-right militia and a professional military force, he was at a loss for an answer. Asking what would happen if a platoon of Marines faced an armed insurrection is sort of like asking what would happen if an NBA team faced the local YMCA Sunday night pickup players. It would be entirely one-sided. There is no conceivable situation in the immediate future by which a militia force, no matter how prepared, no matter how advanced, could compete with US forces tactically. War by Spectacle After the months required for situational awareness, the General, following established military protocol, starts softening the town by shutting off water and power. Instead of punishing the militias, cutting utilities only hurts the remaining ordinary citizens of the county. The insurgents will have generators, satellite sticks, their own water purification systems. The military, as usual, misjudges the informational and narrative dimensions of war. Just as they failed to understand the cultural framework of engagements in Iraq, in Afghanistan, in Vietnam, they fail again to recognize the narrative effect of the arrival of a massive US force in a small rural community. “Has the President Gone Too Far?” the Washington Post asks on its front page. The New York Times devotes an entire Saturday magazine to the legal questions opened up by an American occupation. The National Review argues that “even liberals are outraged by the President’s overreach.” The MISO officer will beg SCRAG to shut down internet access to the county, but there is no authority to do so, and the rebels remain entitled to the protections of the First Amendment. The MISO has to use more established psyops and begin show-of-force operations. He organizes a military parade on the road to the bridge, but the insurgents, not the military, know how the symbolism works; they turn their backs. On screens across the United States, audiences watch the Fifth Army greeted by no one. For many, it’s the most frightening scene since the beginning of the standoff. The President and the General begin to lose control of the story. Soldiers deployed to the county are inundated with messages from family and friends begging them not to attack “the forces of liberty.” The show-of-force operation to intimidate the Sheriff directly is more successful. Using a SEAL infiltration team, the General walks into the Sheriff’s offices after incapacitating the guards. He even knocks on the office door before entering. “Hey there, Sheriff,” he says, shaking the Sheriff’s hand. “I just wanted you to know that I can go wherever you are without you even knowing about it.” The Sheriff is shaken but manages to smile. “I wish you’d made an appointment. I would have been happy to see you.” “You don’t need an appointment when you’ve got the Fifth Army.” “You ever read the Constitution, General?” What follows is a long and rather boring debate about the nature of the Third Amendment, against the billeting of militias. The General’s staff begins to make it clear to him that he has been given an impossible task. The President wants the military problem solved, and quickly. The Attorney General demands that no laws be broken. The government and the public insist the General wage war without waging war. The rules of force issued to the Seventh Infantry during the Los Angeles riots of 1992 specified minimum levels of force in response to levels of civilian violence. The 1992 riots were inherently disorganized, with no coordinating force. But the Chairman of the Joint Chiefs of Staff issues almost identical standing rules for the Battle of the Bridge. The Chairman has to cover himself against the possibility of future prosecutions. After the battle, if the press thinks there has been too much blood, the standing rules for the use of force (SRUF) will make a perfect excuse. The General is asked to wage war on people while preserving their constitutional rights. He will, he knows, be served up as a scapegoat for the inevitable failure. On the eve of the first battle of the next civil war, the General is worried not about victory but about the paperwork. The Immediate Cause The conflict will obey the logic of reality television rather than revolution. The more defiant the Sheriff, the higher his engagement numbers. The most extreme opinions, the most vivid conspiracies, the most spectacular threats, gather the most attention. It will be in nobody’s interest to find common cause or to explore ways out. The mainstream media, uncovering the layers of support for the Sheriff, inevitably provides massive exposure to fringe figures with extreme positions. The camera phalanxes of pro-militia websites distribute their iconography and their message to unprecedented audiences. Virality concentrates attention. The Sheriff keeps talking about interposition and federal illegitimacy, taking ever more extreme positions. Eventually he talks himself into a declaration of independence. “When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and Nature’s God entitle them, a decent response to the opinions of mankind requires that they should declare the causes which impel them to the separation,” the Sheriff reads out at the foot of the bridge. “And our founders, I know, would celebrate this gathering of sovereigns.” To the public, it is just another wild speech by the most famous outlaw in America. The use of the word “sovereignty” will shock the President and the General with its implication of a separate power. The protest of federal authority has morphed into a threat to national unity. The President will have no choice but to respond if she wants to preside over what are still the United States. The Eve of the Battle The torchlit rallies, during which the rebels whip themselves into furies, often end with weapons fired into the air. The night of the assault, a few stray bullets puncture military vehicles at the perimeter. That will be enough to justify an assault. The SRUF from the Joint Chiefs of Staff will mandate that “every incident of gunfire is to be investigated.” The night before the battle, the Sheriff’s forces will let off their guns as usual. This time the General will take it as justification. The General retires to his room to pray. He knows that he will have a place in history now—the General who used American forces against American citizens. He thinks about Washington and the Whiskey Rebellion. He thinks about Lee and Grant. He thinks about Sherman marching to the sea. He cannot help remembering the sectarian conflicts of his youth, in Iraq and Afghanistan, how all their military control had spiraled out of control, how he had hated the people who had thrown him and his buddies into chaos for reasons they themselves didn’t seem to fathom. The leaders he had despised asked their men to kill and to die in order to change the world. They changed the world. They had not thought through what they were changing it into. He hated the decision makers then. Now he is one. Just another confused man doing what he feels he must as history rolls over him. The General must ask other American soldiers to kill and this time their own people. Who can say what the outcome will be? The Battle of the Bridge Apache helicopters destroy the major points of militia communication networks within an hour. The street battle has ended by the time the media arrive at dawn. The anti-government patriots barely have a chance to resist. Those who can, flee. The rest are taken prisoner. The group that puts up the most resistance by far is the “flipped” former members of the US military who join the anti-government patriots. A SEAL team takes the Sheriff in his office. As he is dragged away, the Sheriff shouts to a white nationalist journalist he has been streaming with: “Tell my story! If the British had captured George Washington, he would have found himself in the same position I find myself in now.” Leaning back over his shoulder, he howls, “Is not what binds America together our pursuit of freedom?” The Meaning of the Battle of the Bridge The morning will be a harvest of ashes. Bodies litter the banks of the river. Panoramas of the bridge and the town reveal shattered corpses and craters, a quiet rural town turned into the kind of battleground scene remembered from military adventures in the Middle East. A photo captures a severed hand in the street. An orphaned child wails in a whirl of dust. The army loads bulk groups of prisoners into buses for processing in a small POW camp in the neighboring county, under the watch of cameras at a distance. CNN mourns the death of a unified country. Fox News mourns the death of liberty. Factual descriptions of the battle are indistinguishable from the conspiracy theories that light up the internet with fantasies of imminent white genocide, Chinese infiltration of the Fifth Army, Jewish cabals, the nefarious influence of the CIA and other governmental agencies, alien invasions, stories of angels coming to the aid of the Sheriff, strange beams of light illuminating the battle. The horror overwhelms; the hunger for revenge grows with what it feeds on. The slaughter bolsters the righteousness. There is no collective mourning, only panicked preparations and fury. The battle itself matters much less than how it resonates. It sows trauma and loathing; each side regards the other as murderous traitors, the very opposite of America. The Immediate Aftermath The Department of Justice charges the Sheriff with treason and a few of his closest conspirators with sedition. The rest receive fines or smaller prison terms on the basis of the Insurrection Act. All are banned from running for public office. The Sheriff, converted instantly into a martyr by the hard right, is imprisoned in the same Colorado cell block where Ramzi Yousef, architect of the first World Trade Center bombing, is serving a life sentence. The only other prisoner in that wing is the Unabomber, Ted Kaczynski. They share their hour of yard time together every day. The Enduring Aftermath The army could not take up residence in specific structures in the county—a violation of the Third Amendment—but they are permitted onto any property to reconnoiter. The local residents feel the intrusions, and the subtle intricacies of the supposed constitutionality won’t make them feel any better. At present, the official US counterinsurgency strategy remains a version of General Petraeus’s 2006 Clear, Hold, and Build strategy. In the current edition of Joint Publication 3-24, it is outlined as “Shape, Clear, Hold, Build, Transition,” part of a suite of counterinsurgency strategies that include the generational approach (engaging with youth who are most likely to join insurgencies) and network engagement (through social media). All of these strategies smack of desperation in their operating modes. The military holds on to these strategies because at least they are strategies, not because they work. For fifty years the US military has been defined by its ineffectiveness against insurgencies in foreign countries. Why would they do any better at home? The problems US forces face in the occupation of foreign soil would be that much greater in an occupation of the homeland. The theory of Clear, Hold, and Build predicts that peace and security will spread like an ink stain from a central position to an entire zone of control. American troops in Afghanistan had another metaphor for the strategy: “mowing the grass”—the moment they thought they could start building, they had to begin again with the process of clearing. The county is only a locus of a general American chaos. The insurgents rally there, then disperse. Their support moves online, or underground, everywhere. It is tactically impossible to contain a terrorist force when it is supported by broad swaths of the population outside the zone of control. Then there is the question of America’s sheer size: How do you clear and hold the whole of the United States? (This question is addressed in Dispatch Four.) The larger problem is that it is impossible to build legitimacy as an occupier: the process of holding, even with the best of intentions, is humiliating and disruptive. Anyone who has passed an American checkpoint, or entered an American prison, or even crossed the American border, knows the inherent dehumanization of the protocol. The illegitimacy of any occupying force—the French in Algeria and Indochina, the Russians in Afghanistan, the English everywhere—would meet greater opposition than ever in an American-on-American context. The defiance begins in a claim to the illegitimacy of federal authority. If you are occupying an anti-government patriot stronghold, any state-building of any kind will be forced. The locals don’t want government. That’s the point. But how could any force address the “drivers of violence” without the machinery of legitimization? You don’t have to look very far to find an example of a failed occupation on American soil. The South under Reconstruction spawned the Ku Klux Klan, Red Shirts, and White League—terrorist organizations that beleaguered the Northern administration until they abandoned the project of reconciliation. The resentment of the occupation after the first civil war survives to this day. The South has not forgotten the abuses of Sherman’s March to the Sea. Nor have they forgiven the Northern authorities for the humiliation of subjugation. The occupied Americans hated the occupying Americans. That hatred endures. The Rebuilding The General resigns six months into the occupation after a scandal over the destruction of the information gathered for situational awareness. That destruction, ninety days after the battle, is mandated under Field Manual 3-28, Civil Supports Operations, but the SCRAG didn’t give prior authorization. It looks like a cover-up. The General has to go. Within six months, Americans are equally divided on the occupation. While 49 percent of respondents accept the description of the Sheriff as a traitor, 49 percent accept the description of the Sheriff as a patriot. The next civil war won’t be divided between organized sides, distinct ideologies, or ethnicities. It will be a struggle between the forces of order and chaos—a struggle to preserve a coherent definition of America itself. As part of the rebuilding effort, US forces raise a new bridge across the river. I. The colonel who talked me through the planning for full-spectrum operations in the homeland would only speak on the condition of anonymity due to threats. After learning of his involvement in constructing homeland scenarios, anti-government patriots took out billboards in his neighborhood with his face on them asking why he was planning an assault on his country’s liberty. The FBI and, more importantly, his wife had concerns for his safety. I am grateful for his courage in speaking to me. The Assassin will be a young man, probably but not necessarily white. He could look like anyone, but it’s not hard to imagine his face. Like Patrick Crusius, who shot and killed twenty-three Mexican Americans in an El Paso Walmart after posting a “white replacement” manifesto, or Jared Lee Loughner, who shot Arizona representative Gabby Giffords in Tucson in 2011, or Dylann Roof, who massacred nine congregants in the Emanuel African Methodist Episcopal Church, including state senator Clementa Pinckney, he will have that vague misery in his eyes, scraggly, unkempt, not quite grown. The three military veterans who met on a Boogaloo Facebook group in 2020 and planned to spark an uprising to overthrow the US government by means of spectacular explosions had that same look. The Assassin will be one of the many troubled young men in America. No one will expect him to assassinate the President. No one will be surprised when he does. Stochastic Terrorism We live in an age of what scholars call stochastic terrorism, otherwise known as “lone-wolf terrorism,” although that phrase is imprecise. “Lone wolf” sounds like something from the movies. It implies that acts of spectacular violence are the result of organization, that there are masterminds hiding, like Bond villains, in distant countries, elaborating schemes and then disseminating them over networks, to be undertaken by their secretive minions. The reality of the current threat is much more banal. The background hum of hyper-partisanship, the rage and loathing of everyday American politics, generates a widespread tolerance for violence. Eventually somebody acts on it. The likelihood of a foreign government or terrorist organization killing the President of the United States is negligible. The Secret Service is simply too competent. But stochastic terrorism is a matter of an indistinct loathing, of which America has plenty. The general climate of anger and recrimination condenses into murder. Ramón Spaaij is a sociologist of political extremism specializing in stochastic terrorism. The atmosphere of violent political hatred that permeates American society frightens him. “The background of partisan politics clearly has an influence” on shaping radical acts of political violence, Spaaij says. “If you expose many people to radical partisan politics, some of them will go on to translate that into violent action.” The violent rhetoric serves as a guidance mechanism, even when it offers no explicit plan or even specific targets. “It’s not a direct causal link but a number of cultural scripts that can then be drawn on,” Spaaij says. The cultural scripts of political violence are spreading across the United States and becoming more entrenched. At this moment, agents and assassins throughout America are chasing and evading one another. They are fields of force, the assassins pushing from the chaos of the rage and loathing overwhelming American politics, and the agents attempting, against that rage and loathing, to preserve the integrity of American institutions. On the agents’ side is technical proficiency, an elaborate system with a “zero fail mission” mentality, and a corps dedicated literally to death. The agents have their brilliance and their courage. The Assassin has the sheer number of others like him, and time and chance. The Tradition of Presidential Assassination The preferred form of political violence in the United States, by far, is presidential assassination. The country has seen one civil war and no coups d’état. But assassination? The odds of being assassinated while president is one in eleven. A further seventeen presidents survived attempts on their lives. That’s a lot. Compare it to other countries: The only British prime minister to be assassinated was Spencer Perceval, in 1812. There have been two assassination attempts in Australian history, one in Canadian history. The second most lethal job in the United States, after serving as president, is industrial fishing. One in a thousand die at that job. The mortality rate of troops in combat is 82 per 100,000. So it’s no surprise that the US Secret Service currently spends a million dollars a day to keep the president alive. In the United States, assassination amounts to a dimension of the political process. The reason for the high murder rate of US presidents is that they are living symbols of national unity that no other country possesses—icons as executives. In 1782, the Founding Fathers made their motto e pluribus unum, a phrase with many different meanings—“out of many states, one country,” “out of many peoples, one people”—but the specific role of the presidency, a leader who emerged from the general populace rather than the aristocracy, was also a key significance: “out of many citizens, one president.” If you shoot the queen of England, you’re not making a statement on the government of the country. If you shoot the prime minister of Great Britain, you’ve killed only the first advisor to the queen. The US president has an aura that no public servant or monarch possesses or can possess. When you murder a president, you murder an America that should have been. One of the retired Secret Service agents I spoke to, a man who has thought a great deal about the motivations of the people who want to kill the president, offered me a simple explanation for the popularity of presidential assassination in the United States: “It’s the fastest way to change history.” When the political system cannot bring historical change, a gun will. The Latest Trends in Assassination The Secret Service looks into every direct and indirect threat against the president, assessing for intent, means, and opportunity. An anonymous Secret Service agent—they must remain anonymous to discuss any aspect of their protocol—described to me the extreme transformation in the assessment process over the past decade due to the proliferation of political hatred. “Years ago, it was relatively straightforward, because threats were coming in to the president via telephone calls or letters, or they would show up at the White House,” he says. “Nowadays, the digital platform has allowed for threats to be made at a significantly greater volume with greater frequency by people who can remain anonymous.” It is simple enough for anyone—an assassin, a kid, just an idiot—to go into any random Starbucks in America, post a death threat anonymously on public Wi-Fi, and leave. At volume, such threats are basically untraceable. The Secret Service uses artificial intelligence to deal with the bulk of violent communication, but the effectiveness of that methodology remains unproven. The only way to know if it works is if it fails. And it hasn’t failed. Yet. Counterterrorism agencies are increasingly turning to researchers like Spaaij to distinguish signal from noise. He’s a sociologist of political extremism but his work is psychological. He establishes the patterns that tend to manifest themselves in individuals before they commit acts of spectacular violence. Many angry people live in America but not that many are actually preparing to assassinate political leaders. Spaaij and the Secret Service face the same problem. How do cultural scripts tip over into violent action? How does a person go from raging behind the screens to pulling a trigger? Spaaij sees what others do not in the world of deep confusion and indecipherable rage. “If there is a common thread, it is a search for belonging, a desire for transcendence,” Spaaij tells me. The state of mind that leads to assassination is both personal, “a crisis of attachment to others,” and political, a crisis of history. Grandiosity plus grievance is the toxic mixture. The Assassin feels strongly that he has not received what he deserves, “seeing himself as a historical character.” “A Crisis of Attachment to Others” The Assassin is alone but there are many like him. He belongs to a generation of lost young men, alienated misfits in a state of despair, who will do worse than their parents, who will live shorter lives than them, who will experience America as a country in decline. Like Crusius and Loughner and Roof, the Assassin is a product of divorce. His father moved away when he was a boy. His mother works long hours to support them. He managed to graduate from high school despite a record of incidents, fits of rage that came out of nowhere, sudden viciousness against a female teacher that got him suspended. The other students tended to avoid him. History was his favorite subject but he never believed what they taught him. He was always on the web for alternate histories, cool stuff like how aliens had built the pyramids and the Nazca Lines in South America, how powerful hidden forces had shaped the world. What he really likes is the dark web. There you can see what people don’t want you to see. That’s what’s worth reading. Plus, it’s hilarious. He didn’t attend his graduation ceremony. They didn’t want him, so he didn’t want them. The Assassin lives in his childhood bedroom on the top floor of his mother’s house. His walls are covered in posters—a platoon of old B-52 bombers, Reservoir Dogs, Moonrise Kingdom, the scene from A Clockwork Orange with Alex’s eyes held open. He has an old typewriter and a half-solved Rubik’s cube on a small desk, alongside a broken board from his Tae Kwon Do lessons when he was a kid and some old junior soccer participation medals. He keeps a pair of binoculars on his desk. From the window he can see, over the soundproofing barriers, the interstate highway. In the fall after graduation, his mother sits him down for a serious chat. She begins by telling him how much she loves him and how both she and his father want the best for him. She says that she knows he had a hard time in high school and that she doesn’t blame him for that. The Assassin just sits and listens. The less he says, he knows, the shorter the conversations are. “You can live here but only if you find a job or go to school,” his mother tells him. That seems fair enough. He tells his mother that he’s going to apply to the local community college to study carpentry, but he delays sending off the application and ends up missing the deadline. He doesn’t tell his mother. She doesn’t ask. One of his father’s old friends owns a hardware store. The Assassin starts to work there part-time. He likes the smell of wood. He loathes the smell of people. One day, in the lumberyard, he sees the owner laughing with a contractor, a Black contractor. He has never seen anything like it. The scene, for reasons he does not understand, fills him with a wild disgust and fear, and he just walks out and never comes back. He wanders across the highways, past the sprawling homeless encampments, down to the local library, where he can read things on their computers he wouldn’t read at home. He types in “Why do Blacks and Mexicans hate white people so much?” The message board fills up with links. —Because there at war with white folks. Look around. They want jobs just for being themselves! No white man gets that! —The “lower forms of life” hate us because we’re better. They hate that white people built the world and they just live in it. And it doesn’t matter how much we give, they always take more. —Everybody just wants to be with their own. Look around, snowflake. —It’s a war, man. It’s a war. “Seeing Himself as a Historical Character” In the detritus and confusion of his young life, the Assassin will know one thing for sure. He will know that he was meant for more than living with his mother, with no job and no girlfriend and no friends and no prospects; that he is worth something to the world. Political Murder as a Search for Redemption “The political ideology becomes an excuse, an overlay, a way of giving sense and meaning to petty personal experience,” Spaaij says. The violent solution becomes “a search for redemption.” This is what Secret Service agents call “nefarious intent.” The résumé of Jared Loughner, who shot Arizona congress-person Gabby Giffords, is typical: dropped out of college after a series of violent outbursts; was denied entry to the military; couldn’t find a job; compensated for his own degradation by way of online political forums; posted his own violent fantasies on social media and YouTube. The Assassin, wherever he might be, is stewing in his failure and idealism. He’s a loser, a dreamer, a man-boy denied a destiny who feels a destiny is owed to him. His sense of his own importance only rises with each personal failure. The search for redemption can take many forms: a petty criminal who goes into the penal system and comes out a radical Muslim; a father who defaults on his mortgage and turns to sovereign citizenship; a youth with mental health issues who can’t find employment and turns to white power. The internet will blur the Assassin’s soul further through “selective consumption of online materials”—carving the world into good and evil, confirming what he already knows, allowing him to produce hatred, to share hatred, to suffuse his own failures in ideology, driving him toward a single conclusion, a response to the disasters in his own life and in the country’s. “From the best of our knowledge, online radicalization starts with social alienation, which is why you see radicals from all socioeconomic classes,” Alex Newhouse, lead researcher at the Middlebury Institute’s Center on Extremism, Terrorism, and Counterterrorism, tells me. “Social alienation comes with anger at their lot in life. It always starts with some kind of grievance, and the contrarian viewpoint will often provide an explanation, a very clean, very convenient explanation for why they are feeling that way.” The first step in online radicalization is often nothing more harmful than basic contrarian media—the Dave Rubins or Joe Rogans of the world, shows with massive audiences, the vast majority of which never even consider violence. Contrarianism feeds on itself. “The hunger for justification for the anger that they’re feeling pushes them farther and farther to fringe figures,” Newhouse says. Those who become radicalized progress from ordinary, healthy alternative media to accelerationist promotion of mass murder. “The other pathway is algorithmic,” Newhouse says. “Facebook, YouTube, to a lesser extent Twitter, have recommendations that actively promote engagement with increasingly fringe content.” If you go into a libertarian gun rights Facebook page, on the recommendation page you find “outright civil war groups, explicitly calling for violence against the state.” One thing leads to another. The system is designed that way. What underlies the motivation to violence is a drive to understand the sense of grievance they’re feeling. The despair of the Assassin’s own life finds a mirror in the general despair: “There are no democratic means anymore and so violence is the only solution,” Spaaij says. The Assassin sees his life falling apart before it even begins, and he sees his country falling apart before he can belong to it. “Selective Consumption of Online Materials” After graduation, the Assassin spends more time online. Mostly he’s alone in the house. Sometimes he pretends he’s going to look for work but then he heads to the library to read his favorite message boards about politics and history. The drift of his life punctuates itself with electronic dreams of grandeur and pornography and violent fantasies. He reads mostly funny stuff, like what are the best tortures in history (the Blood Eagle) and what is the weirdest porn (the lemon party). He learns that moss grows on the north sides of trees. He learns that Napoleon liked his girlfriend not to wash when they had sex. He learns that Washington is run by pedophiles. It’s well established. The press has known about it for ten years. The president organizes parties where her friends rape and murder little kids in restaurants in DC. It disgusts him. —It’s the beginning you know? You can only become a “leader” in “government” if you have no morality. It’s like a test. It’s a test for them to see if they’re willing to rape children. Tom fucking Hanks is going to run for office. You mark my words. —The Great Awakening. Not the Great Awokening. And all these little bitches whining about random bullshit snowflake nonsense. They don’t care about CHILDREN BEING RAPED. —You hear of a pedophile stopping at pedophilia. What’s “next”? It’s the thrill of the new that gets them off. It’s hopeless little children today. What’s the next outrage? —We gotta fuck someone up. There is a war going on, or there is a war about to begin. The Assassin doesn’t need special inside information for that. The regular news tells him that. And it’s all this bitch the President’s fault. She is overseeing the annihilation of white people and men, and white people and men are finally fighting back. It makes sense. How did the world get so fucked-up? The people with money, the people with power fucked it up. He sees a banner ad for a gun show in town. “Sport and Hunting Equipment, Plus Historical Memorabilia!” So he goes, with $50 he’s taken from his mother’s purse, even though it’s at a mall he hasn’t heard of. The trip takes three buses; he arrives at an industrial park next to an Amazon delivery center. Inside, there is an Oath Keeper recruitment drive and a few dozen displays on folding tables. The historical memorabilia is just one booth, manned by a big-bellied old-timer who barely looks up from his work of restoring an old pistol. Under glass the Assassin sees tiny silver cups that belonged to Hermann Göring, Vietnam patches, slave shackles and bills of sale. The Assassin peruses some of the cheaper guns, and a guy in a T-shirt that says I SUPPORT SINGLE MOMS with the silhouette of a stripper on it tells him, “I can get you that gun cheaper. That gun right there.” It’s a small black Ruger in the case, 9mm. “I can get you that gun right there for eighty bucks.” The Assassin digs in his pocket and comes out with the $50 bill. The man in the T-shirt looks pissed off but grabs the bill and hands over a small black pistol. The Assassin comes home and unscrews a vent in the air ducts and puts the gun inside. The Assassin has taken possession of a great gift. Everything will be all right in the end. He holds a secret. He does one good thing that year, one thing he’s proud of. A woman who claimed her daughter was killed during one of the mass shootings in California turned out to be an actor planted by people who want to take guns away from ordinary citizens, probably to make them less trouble when the government decides to impose martial law. The /freedomcosts message board he follows doxxed her and he called her number from the pay phone at the library and told her answering machine she was a lying fake bitch and she was going to get what was coming to her. The call thrilled him. He put down the receiver, radiating with excitement. He had reached out. Later that night he posted: —I did it. I told that fucking bitch that she could go and die. The messages came back in a flurry: —Fucking A! —Every day more like us are joining in, and you should know yer not alone. And we’re coming for them. We’re coming for them. —Do more little boy. You think yer fucking yackety-yak matters one whit. Action! What we need is action! The Assassin reads later that the actress pretending to be the mother of a shooting victim killed herself. One less lying bitch with power. He may not have a job. He may not have a life. But he helped the fight. The Assassin makes some changes to his room. He puts up a bright red 1945 poster that reads Blitzkrieg! and a meme of Daffy Duck with the phrase “Of course you realize this means war!” underneath. The Assassin as Symptom In stochastic terrorism, political murder does not emerge out of the concrete plans of ideological opponents. It’s not some Day of the Jackal–style event. A climate of loathing finds expression in a single person with an opportunity. The hatred motivating the Assassin will not be extraordinary. Quite the opposite. Hatred drives politics in the United States more than any other consideration. The same helplessness that motivates the assassin drives the new contemptuous politics of the United States. If you’re an American conservative, you already know that open discussions of murdering political rivals are standard. If you’re an American liberal, ask yourself how upset you would have been if Donald Trump had been assassinated. As lousy and vicious and stupid as American politics might look on the surface, underneath the reality is even worse. Steven Webster is a scholar of the new breed of hyper-partisanship that is tearing the United States apart. For many years, he worked with Alan Abramowitz on the political modeling of partisan opposition in US politics, and together they published the 2015 essay “The Rise of Negative Partisanship and the Nationalization of U.S. Elections in the 21st Century,” which predicted the current political lunacy better than any other. Abramowitz is a rare case of a scholar being incorrectly humble: he refused to believe the results of his own model when it predicted a Trump victory, even though it had correctly predicted every presidential election since 1992. “The model is based on the assumption that the parties are going to nominate mainstream candidates who will be able to unite the party, and that the outcome will be similar to a generic vote, a generic presidential vote for a generic Democrat versus a generic Republican,” he told Vox in 2016. Webster sees a terrible spiraling effect in action in the United States, a force that, once started, cannot be stopped except by disaster: “Partisans in the electorate don’t like each other. That encourages political elites to bicker with one another. People in the electorate observe that. And that encourages them to bicker with one another.” The past thirty years have led to “ideological sorting,” which means that the overlap between conservative Democrats and moderate Republicans has more or less disappeared. But it’s the people in the parties, not just the ideas in the parties, that have changed. Identity politics is not some phrase but a real phenomenon. The political parties, and the various branches within the political parties, have become identities by which individuals define themselves. “There’s a really big racial divide between the two parties,” Webster says. “The non-white share of the American electorate has been increasing tremendously over the last few decades. And with this rise in the non-white share of the electorate, most of the non-white voters have chosen to affiliate with the Democratic Party.” Not only has the Republican Party become whiter and the Democratic Party become more multicultural, the white people on each side have also changed. During the Reagan-Bush years, there really wasn’t that much of a difference between the racial attitudes of white people in both parties. Over the past three decades, the Republican Party has become the party of racial resentment, “the moral feeling that Blacks violate such traditional American values as individualism and self-reliance,” Webster says. “During the Obama era, 66 percent of white Republicans scored high on the racial resentment scale. For white Democrats it was around 32 percent.” White Republicans have become more intolerant about the country’s growing diversity. White Democrats haven’t. That’s the big change. The Lack of Independents America is becoming two Americas, Americas that hate each other, that don’t speak to each other. No one occupies the middle ground anymore; everyone has separated into one side or the other, one party or the other, no matter what they may claim. “A lot of people say, ‘What would happen if there was a very independent-minded candidate, a third-party candidate with no partisan label, who would come and unite America?’ ” Webster asks rhetorically. “That is absolutely not going to happen.” In surveys, independents seem like a high percentage of Americans, but if you press those self-identified independents on their actual voting behavior, they behave just like strong partisans. Only 7 percent of Americans are truly independent in the sense that they might consider voting for a party they don’t typically vote for. The Depth of the Hatred How to grasp the scale of the political hatred overtaking America? Thanksgiving is one way. In the aftermath of the 2016 election, economists at Washington State University found that cell phone data and precinct-level election results revealed a chilling difference between celebrations attended by opposing-party families and celebrations attended by same-party families: “Thanksgiving dinners attended by residents from opposing-party precincts were 30 to 50 minutes shorter than same-party dinners.” The symbolism couldn’t be more apt. Because of politics, because of the brutality of the new breed of hyper-partisan loathing, ordinary Americans can no longer enjoy their feast of plenty. They can no longer celebrate the sheer good fortune of being Americans. The report calculates exactly how much goodwill has been lost: “Nationwide, 34 million hours of cross-partisan Thanksgiving dinner discourse was lost in 2016 to partisan effects.” Americans diminished the time they spent talking across party lines at the exact moment they most needed to spend more time talking across party lines. According to Pew Research, 58 percent of Republicans view Democrats “very unfavorably,” up from 21 percent in 1994, and 55 percent of Democrats view Republicans “very unfavorably,” up from 17 percent in 1994. There are 41 percent of Democrats and 45 percent of Republicans who now believe the opposing party is “a threat to the nation’s well-being.” But even those numbers fail to capture the emotional depth of the hatred between Republicans and Democrats. In 1960, 5 percent of Republicans and 4 percent of Democrats said they wouldn’t want their children to marry a member of the other party. By 2010, it was half of Republicans and a third of Democrats. Differences of opinion have hardened into a siege mentality on both sides, leaving behind questions of policy or effective leadership. The dominant question of American political life isn’t what you stand for but what you stand against. Hyper-partisanship is now the defining hatred of the United States, and it affects so much more than how people vote or how they think about their fellow citizens’ political choices. A 2015 study of polarization from the American Journal of Political Science found that “partisans discriminate against opposing partisans, doing so to a degree that exceeds discrimination based on race.” Tribalism is no longer a mere metaphor. Democrats and Republicans really do act as tribes, with codes of purity for themselves and loathing for outsiders. This tribalism affects society as a whole. It has infiltrated commerce and religion as much as the institutions of law and government. It’s worth noting that all of these trends predate Trump, sometimes by decades. Demographic Change and Civil War Scott Gates is an American who lives in Norway, where he studies conflict patterns at PRIO, the Peace Research Institute Oslo. His work, naturally, has been devoted to the study of political struggles in the developing world, where most civil wars take place. He is as shocked as anybody to find that his research suddenly has applications at home. The question for the United States, as it is for every other country nearing the precipice, is how strong civil society is and how much that civil society can hold back the ferocious violence of its politics. When it comes to the United States, Gates has little confidence in either point anymore. Americans’ spiral into loathing is far from unique. It’s typical. A recent study from Anirban Mitra and Debraj Ray, two English economists, examined the motivations underlying Hindu-Muslim violence in India and found that “an increase in per capita Muslim expenditures generates a large and significant increase in future religious conflict. An increase in Hindu expenditures has a negative or no effect.” Hindus are the dominant group in India and Muslims a comparatively poor minority. Riots start at the times and in the places in which the Muslims are gaining the most relative to the status of the dominant Hindus. Violence protects their status in a context of declining privilege. The more an underclass peacefully approaches economic and political equality, the more violent and resentful the overclass grows. “A very similar pattern can be seen in the US right now,” Gates tells me. “Over the past twenty years the white working class community, in absolute terms, gets less now than it did in the 1980s. Systematically they see their position in life getting worse. And they see their children not doing better. At the same time, the Latino community and the Black community have been improving their status relative to where they were.” To be clear, white Americans don’t resent growing poorer. They resent losing their comparative superiority to non-white Americans. The revolutionary prophets of the nineteenth century, like Karl Marx, believed that the oppressed would rise up against their oppressors. In the twenty-first century, the oppressors revolt. By no means is this violent reaction against lost privilege unique to white Americans. It underlies conflicts all over the world. As privilege declines, violence increases. The Republican Party has become a white party defined by racial resentment. Declining privilege in the context of racial resentment leads historically to violence. The US Census recently announced that the country will be minority-white by 2045. One reason why Democrats view Republicans as other and Republicans view Democrats as other is that they are other. The Democrats represent a multicultural country grounded in liberal democracy. The Republicans represent a white country grounded in the sanctity of property. America cannot operate as both at once. The political system quite simply cannot manage the instability of the demographic change. The Incipient Legitimacy Crisis According to a University of Virginia analysis of census projections, by 2040, 30 percent of the population will control 68 percent of the Senate. Eight states will contain half the population. The Senate malapportionment gives advantages overwhelmingly to white, non–college-educated voters. The 2016 electoral college results were the same as in 2020, with 232 electoral college votes for the loser and 306 for the winner. But Donald Trump lost the popular vote by 2.1 percent in 2016 and Biden won the popular vote by 3.4 percent in 2020. Even in 2020, the Democrat could have won the popular vote by as much as 6 points and still have lost the election. In the near future, a Democratic candidate could win the popular vote by many millions of votes and still lose. The federal system no longer represents the will of the American people. The Meaning of the President The hyper-partisan environment means that any American president will be a symbol loaded with a double meaning. She will be an icon of American leadership for half the country and an icon of oppression and illegitimacy for the other half. Symbolism matters. Countries live and die by symbols. No American president of either party, now and for the foreseeable future, can be an icon of unity, only of division. The First Stage in the Transition to Assassination The transition from ordinary rage-fueled American to assassin can progress gradually or overnight. “It varies from years to even days,” Ramón Spaaij says. “The police would say it almost seems to happen in the moment, so how can we ever prevent this, since the person wasn’t on our radar?” The Assassin will be one of millions wallowing in the sewers of loathing. He will live behind a screen, breathing in the fumes of hatred, occupying a dark corner in a country that has many dark corners. Guys like the Assassin are common enough. The vast majority do nothing. What separates people who act from people who don’t? The transition moves through three stages, or “dimensions of clusters,” according to Spaaij. The first is a sudden exposure to means and opportunity, “capable of recalibrating perceived chances of success.” Sudden Exposure to Means and Opportunity The Assassin will hear about it on the radio: the President is coming to town. She has announced a listening tour and one of the stops is going to be at that fucking high school where those bitch teachers and their student pets hated him. “The time has come to heal this great country,” the Assassin hears the President saying. “And the only way we can heal is when we listen to everybody and everybody feels heard.” To the Assassin her visit feels like more than a stroke of luck. The strange man sold him a gun for what he had. Now the President’s coming. It feels like destiny. But he must keep it a secret. The Preparations of the Secret Service The Secret Service knows that the Assassin is out there. They don’t know his name. They don’t know who he is. But they know he is out there. Any assassin who kills a sitting US president will have to be very lucky, and he won’t succeed merely through planning. “The process the Secret Service goes through is comprehensive and proactive,” my anonymous agent tells me. “What they do is they go out and proactively do an advance, they understand the threat environment, they identify, during that advance process, every threat they can think of, and they mitigate it.” Location doesn’t matter to the Secret Service. Preparation overcomes accident. If you’re prepared, the streets of Baghdad pose no more danger than the streets of New York. “Control can come in many forms. I build control. I force control.” The President’s tour will require a constant application of control. The Secret Service doesn’t particularly care about the quality of the weapon available to the Assassin. A .50-cal Barrett is only useful to somebody who can find the opportunity to use it—and the Secret Service excels at denying the opportunity. In almost every real situation of danger, a pistol would be just as adequate. The Second Stage of the Assassin’s Transition The second dimension that leads from general hate to political murder, according to Spaaij, is that “the costs associated with action are lowered and the costs associated with inaction are raised.” The political and the personal fuse: the Assassin recognizes that his life no longer holds any meaningful future, so he has very little to lose. “The Costs Associated with Action Are Lowered” His mother brings him out of his room for another talk. “This has got to end,” she says, her eyes wet with tears, the exhaustion plumb on her face. By now he’s mastered tuning his mother out but he gets the gist of what follows. His mother wants him to move to San Jose to live with his father for a while. His father owns a sports equipment store where he can work and will pay for an apartment for a few months. “Maybe it will be a fresh start for you. Maybe you’ll be able to build something of yourself out there.” The loathing comes over him like a hot cloud, a long burning tongue licking up his spine. Does she not understand? Does she not know that his father left them, that he stopped loving them, that he’s living with some Vietnamese bitch whose name they never even learned to pronounce, that his dad has new babies they haven’t even met? The rage comes out cold: “You fucking bitch. You fucking bitch.” He retreats to the top floor and the internet. He types in “How far can you go in life when your mother is a bitch?” A Buzzfeed quiz pops up. His ordinary message boards are lit up with loathing for the President’s listening tour. On the Boogaloo sites, he reads that the tour is a cover for preparations to impose martial law. The bitch President is on a reconnaissance mission. A listening tour is cover for why she’s going to places that don’t want her: to establish centers of control. It’s part of the pedophile ring. The President is coming to town to organize the rape of children so she can blackmail the rapists. Everyone in power is in on it. From the lower floor, the Assassin hears his mother whispering into the phone. “I don’t know,” she is saying. “I don’t know what he’s going to do.” She’s slowly weeping. “He’s your son, too. You’re responsible. You’ll be responsible.” Then: “No, no, no, you have to take him. You have to.” He goes to the vent in the attic and unscrews the panel. The black gun sits there like a small black bird waiting to fly. A secret. A gun is a time machine that changes the future. The Final Stage of the Transition The last step involves “intensification of pressure,” according to Spaaij, a rising sense of urgency. Assassins tend to wither away in the weeks leading up to political murder. They stop talking to their families, stop responding to their emails. They give away precious objects and close out bank accounts. They detach themselves from people and objects. The reduce their lives to the roles they’re about to perform. “The Intensification of Pressure” If the President doesn’t die soon, all of America will descend into hell. There will be no hope for decent people. There will be no life for anyone like the Assassin. There will be no future. There is no future anyway. The Assassin rolls up the posters from his walls. He takes the Rubik’s cube, the old typewriter. He wanders along his route to the library, drifts toward where the homeless have camped out. He remembers a little kid he’s seen there before. The boy lives with his father and he’s always fingering through a little box of treasures outside their tent. The Assassin has to search but he eventually finds him, staring into a phone, at the edge of the tent. He looks like he’s just been crying. The Assassin leaves him the posters and other materials. “For you,” he says to the surprised boy, and leaves. He burns the rest of his stuff in a parking lot beside a failed shopping mall. That kid will know his name soon. He will be known. He and that homeless boy share the secret of his being. Every morning, his mother wakes him up by knocking on his door and shouting, “We’re going to have to talk tonight,” but then she comes home and makes dinner. He comes down after she’s eaten and eats. One morning he wakes up to find a plane ticket under the door, a one-way trip to San Jose. A Post-it note on top reads: “You don’t have to go there but you can’t stay here.” There’s another Post-it note underneath that Post-it: “It’s for your own good.” What his mother doesn’t understand, what his father doesn’t understand, is that he’s a hero. They are the parents of a hero. The Assassination Foiled Every assassin has to be lucky. Gavrilo Princip, who shot the archduke Franz Ferdinand and ignited the First World War, only managed to reach his target because the archduke’s Czech driver heard the driving instructions wrong, so instead of turning onto the Appel Quay, he proceeded onto Franz Joseph Street, where Princip was waiting. The course of history is full of flukes, especially when it comes to the business of killing particular individuals. Just before the President arrives for her listening tour stop at the local high school where the Assassin graduated, the Assassin posts a political statement. It parrots various ideologies already inundating the internet, saving all the unborn babies, preserving American liberties, keeping America great. It celebrates guns above all. The title: “A Gun Is a Time Machine for the Future.” Perhaps it will register on the Secret Service’s machine learning algorithms. Perhaps not. It doesn’t matter. The agents, guiding the President to the campaign stop, will be in complete control. Advance teams will have scouted every possible approach. Every angle of threat will have been established and neutralized. Every person in contact with the President will have been vetted. Security personnel will screen all points of access. Other security personnel will scan the crowd. The Assassin wandering toward the President, gun snug in pocket, won’t get close. There will be a crowd, both of locals and reporters, and the President stops so briefly before entering the school that she’s barely a glimpse before she’s gone. That’s it. That’s the end. That’s how much history the Assassin gets a look at. He will retreat and take comfort in a Jamba Juice across the street, a new despair settling over him. He wasn’t meant to be a hero after all. The Assassin will have to be lucky. But he doesn’t have to be that lucky. All it would take would be for the President to decide, as she was driving away from the rally, to stop in at a Jamba Juice for a quick photo op. It’s what the Secret Service calls an “off-the-record movement.” The Secret Service uses tradecraft to manipulate the environment in these situations as quickly as possible. They create barriers out of what’s available. “We are always going to be in a position of advantage. We are never going to put the President into a position where we are at a disadvantage,” my anonymous agent tells me. “What are the risks I’m willing to accept? Let’s take the example of the President jumping out of a car and going into a diner. Well, I have to accept the risk. There are probably people who have some kind of weapon. Maybe it’s a pocketknife. Maybe somebody has a handgun or two. For that initial move, I’m willing to accept it, and here’s why. I also have the element of surprise on my side. No one knew he was coming.” The people in the diner might have the means and the opportunity, but it’s unlikely that they have nefarious intent. “It’s such a low-probability event that I’m willing to accept that. Now, I’m only willing to accept that for a very short amount of time.” It takes only a burst. The Incident Here is the moment that will be replayed endlessly. Multiple recordings will exist of this murder, from various surprised customers. The President extending her hand, laughing with an older couple, then the Assassin rising up with a blast from the little black Ruger, then the Secret Service tackling him. The Possibility of Survival The Assassin will need to have a good shot, with a bullet to the head or multiple to the body. “The Secret Service medical protocols are the most comprehensive in the world. Period,” the agent tells me. “There’s no other person who travels with a doctor twenty-four hours a day, with a physician assistant, combat-trained paramedic, and a nurse.” Chemical, biological, and nuclear experts ride in every motorcade. “That’s your baseline. That’s the minimum.” Beyond that extensive traveling team, agents plan out the medical contingencies of every journey, with a trauma center as close as possible. The President almost never ventures outside “the golden hour”: advanced life support within the first hour of trauma. But not even the best team can save everyone every time. The Immediate Aftermath There, in the middle of some Jamba Juice, in the middle of the country, will be another assassinated President, another broken institution, another cracked symbol. What would the aftermath of a presidential assassination look like today? “It would be incredibly pregnant with the potential for violence, because the society is so polarized,” Ronald Eyerman, author of The Cultural Sociology of Political Assassination, and the world’s foremost expert on national trauma in the aftermath of assassination, tells me. Typically, when democracies confront violent disruptions to the transition of power, they rely most heavily on their national symbols and collective rituals. In other countries as well as in other eras of American history, moments of national unity and grief followed in the wake of assassinations. After Swedish prime minister Olof Palme was murdered on a main street of Stockholm in 1986, “there was a period when party politics was put aside and the nation mourned,” Eyerman explains. The same thing happened after the assassination of both Kennedys, John and Robert. The current state of hyper-partisanship makes such solidarity almost inconceivable. “I don’t think there would be a shock and a grieving. I think there would more likely be protest and collective violence,” Eyerman says. “Then, in terms of the other representative figures, their performance in public would be extremely important.” The representative figures of American politics, as we have seen, do not do bipartisanship. Rage primes popularity. Since hyper-partisanship has already afflicted every other political ritual, like the selection of Supreme Court justices, why wouldn’t it overtake a presidential funeral? “Especially with the history of violence in the US, and the prevalence of guns, and all the anger and frustration that’s there, a spark like that is more likely to evoke violence than grieving,” Eyerman notes. “One of the things that could happen is an institutional collapse, not only in terms of establishments but also in terms that would allow people to grieve.” The next time a president is assassinated, the streets will not feature scenes of somber reflection. The streets will fill with rage and loathing, right on the edge of control. What’s One President More or Less? As noted at the beginning of this dispatch, one in eleven American presidents has been assassinated. The country has survived all those assassinations. The next assassin doesn’t matter. The president doesn’t matter, either. This thought experiment serves to establish how different the meaning of a president is now. A president was once the unquestioned representative of the American people’s will. The murder of that representative meant an assault on the nation as a whole. Now there is no nation as a whole. The Assassin as Hero The Assassin would become a symbol, in direct inversion of the President. Just as the President would be a tyrant to half the country and an icon to the other half, the assassin would be a cold-blooded murderer to half the country and a heroic resister to the other half. The internet would throw up a fan club for him within hours. After Dylann Roof attacked the Emanuel African Methodist Episcopal Church, a “Bowl Gang” formed, in reference to his bowl haircut, on the hard-right social media sites Gab and Discord. And the established right-wing polarization network applies—from the internet, through mass media, to elected officials. After seventeen-year-old Kyle Rittenhouse killed Anthony Huber and Joseph Rosenbaum in Kenosha during a protest, the Republican Women of Waukesha County in Pewaukee gave his mother a standing ovation at a “safety and self-defense” event. Michelle Malkin, Republican pundit, talked to him on the phone, thanking him for his courage. Representative Thomas Massie of Kentucky praised Rittenhouse for his “incredible restraint and presence and situational awareness.” Presidential Mourning The standard rituals of mourning will be followed. There will be a state funeral. The flags will fly at half-mast. But two new icons will have entered American public consciousness: the martyred President and the heroic Assassin. Meanwhile, a vice president will take over in turmoil and the sense of legitimacy in American democracy will plummet further. Who voted for him? Hyper-Partisanship and the Decline of Institutional Legitimacy An assassinated president would solidify the dominance of the executive role in American government. The end result would be an ever-hardening version of soft autocracy riddled with violent grievance politics born out of a sense of institutional illegitimacy. The Assassin and the President are both products of a hyper-partisan environment. In the current context, they would only be an external expression, an allegory of the violence that is overtaking the United States as symptomatic of the electoral process in mid-failure. Democracies are built around institutions larger than partisan struggle; they survive on the strength of those institutions. “The delegitimization of national institutions inevitably leads to chaos,” Scott Gates at PRIO says. Unfortunately, partisanship has already compromised nearly every institution in the United States. Congress has popularity numbers below 10 percent. The presidency, as it becomes less and less representative of the popular vote, loses its capacity to act with unified executive function. Since Bush v. Gore in 2000, everyone recognizes that the Supreme Court no longer represents transcendent interests of national purpose. It’s merely a collection of partisan hacks, like any other branch of the US government. Mitch McConnell’s decision to make the appointment of a Supreme Court justice an election issue is a typical case of a political institution being converted into a token in a zero-sum game, exactly the kind of decision that destabilizes smaller, poorer countries struggling to maintain democracies. The norm of bipartisan agreement has been shattered forever and, once shattered, it cannot be put back together. Five of the nine current Supreme Court justices were appointed by presidents who lost the popular vote. The cycle of negativity that has overtaken the American political process continually undermines trust in government. “Politics inherently evokes anger in America. It’s a zero-sum game now,” Steve Webster says. Anger and distrust make it virtually impossible to go about the business of governing, which leads to ineffective government, which reinforces the anger and distrust. Because of the widening distinction—the quite correct sense that they are not us—American politics has taken on more and more radical agendas, and because government is ineffective, why not? American politics behaves like an inverse pendulum, swinging farther to the extremes. Each side, divided by negative advertising, social media, and a primary system that encourages enthusiasm over reason, pursues ideological purity at any cost, because ideological purity increasingly leads to power. The actual business of governing is an afterthought. No institutions stand above politics anymore—not the Supreme Court, not the FBI, not the Department of Justice, not the Centers for Disease Control (CDC), not the presidency. Faith in institutions of all types is on the decline: faith in religious leaders, police officers, business leaders, elected officials, journalists, university professors. When the crisis comes, the institutions won’t be there. The Next President After taking the oath of office, the new president will give lengthy speeches, grand rhetoric about a time to heal, to build a unified country, to recover the glories of their history. He can say whatever he wants. It won’t matter. He’ll just be the necessary monster for half the country and the necessary idol for the other half. Washington’s Warning Americans can’t say they weren’t warned. In his Farewell Address, George Washington was almost fantastically lucid about the exact situation the United States faces at this moment. “I have already intimated to you the danger of parties in the state, with particular reference to the founding of them on geographical discriminations…,” he warned. “This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy.” The greatest threat to the United States today is not the rise of the hard right. It is the general decline of legitimacy in government that underlies the rise of the hard right. How did Washington see it? Why did he put so much emphasis of the rejection of partisanship? You have to remember that Washington gave his warning at the moment of supreme national and personal triumph. He wrote it, with Alexander Hamilton, at the end of his second term of office as he was preparing to return to Mount Vernon. His archenemy, King George III, had admitted in private that if Washington returned to his farm, “he will be the greatest man in the world.” Washington had built an extraordinary country and was in the act of handing it over peacefully. Why, at this moment of personal moral supremacy, did he choose the dangers of partisanship as his subject? Washington must have recognized the vulnerability that he himself had helped to create, the vulnerability inherent to the glory of the American experiment. Difference is the core of the American experience. Difference is its genius. There has never been a country—in history, in the world—so comfortable with difference, so full of difference. The great insight of its founders was that they based government not on the drive toward consensus but on the permission for disagreement. They structured American government to ensure as little domination by one faction as possible. But the United States only works if there is a tension between the forces allowing difference and the forces insisting on unity. For 250 years, American legal and political institutions provided a system through which to negotiate its incomparable competition of interests and perspectives, and they created the greatest democracy and the greatest economy in the world. Once partisan drive takes precedence over the national interest, it shreds the tension underlying the system. Unless both sides believe that they’re on the same side, they aren’t. And once shared purpose disappears, it’s gone. A flaw lurked right at the core of the experiment, as flaws so often do in works of ambitious genius. The Farewell Address, every bit as powerful and important a document as any of the Founding Fathers’ writings, was once as popular and as studied as the Declaration of Independence. Schoolchildren across America used to memorize and recite passages. But its popularity waned after the Second World War, when shared national purpose was an easy sell. Perhaps the time has come to revive the Farewell Address. Senators and congressmen and presidents would do well to listen to what Washington had to say: “The common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.” At a Trump rally after the election, a reporter spotted a pair of Republicans wearing shirts that read, I’D RATHER BE A RUSSIAN THAN A DEMOCRAT. Centuries before, George Washington, riding out of thriving Philadelphia toward the lush hills of Mount Vernon, recognized what the failure of American democracy would look like. It looks like them. The Grinding Hate builds out of hate. Despair cascades. The rage out of which the Assassin will come is building, feeding on itself. The feeling of impotence and loss is by no means limited to one side or the other of the political spectrum. Nobody, or almost nobody, escapes the desperate trend. The parties have become consumed with defeating their opponents rather than building the country. Because of the domination of faction, government has separated from the business of policy. Meanwhile, the unifying myths and symbols that sustained the country for generations are crumbling. Explosions flare on the margins as the rot settles at the core. Hyper-partisanship shreds the party system, then it shuts down the legislative ability to enact policy, then it consumes the national symbols. The Cost of Illegitimacy and Paralysis Many Americans, as well as many outside America, once believed that America was different from any other country, that it was the culmination of history, the answer to history. They imagined that America represented something more than a country, an idea, a faith. We are finding out that America is only a part of history, that it rises and falls like everybody else. Its decaying political system will leave the United States more vulnerable than ever to shock and inaction just as it enters a period of unprecedented turbulence. Its government, at the best of times, was not designed to deal with the social, economic, and environmental crises it is about to face. The breakdowns in the political and information systems matter because they make it nearly impossible for the United States to deal with the coming emergencies. The fruit of hyper-partisanship and a toxic informational environment is paralysis—paralysis at a moment of peril. The United States will soon enter a period of radical instability as a country, no matter who is in power and no matter what policies they enact. The economic future will be more volatile. The environmental future will be more unpredictable. The cities will be more vulnerable. The government will be incapable of policy and disconnected from the people’s sense of their collective will. As the country is torn apart by deep, intractable forces their leaders can do less and less to avoid or to mitigate, ordinary Americans will be torn apart with it. There is politics. There is policy. Then there are people’s lives. Assassination and rebellion are the dramas of the breakdown—but the causes of the drama and its ultimate effects are more subtle, more difficult to see. It’s not just large American institutions that are vulnerable. American families are, too. There is no such thing as a typical American family. America is much too diverse and, frankly, much too weird to produce anything so fixed. For this dispatch, I have imagined two related families, one multicultural, coastal, and urban; the other white, central, and rural. These two sisters, one in New York and the other in Iowa, while by no means an adequate proxy for the country, represent the dangers across the main political and economic and geographic division in the country.I The catastrophes are coming for everyone. They will seem to come out of a blue sky. The Coming of the Storm In the late summer, the NOAA (National Oceanic and Atmospheric Administration) National Hurricane Center upgrades its hurricane watch to a hurricane warning. The storm forming in the mid-Atlantic, picking up power from hot, moist conditions, needs a name: Muriel. New York goes about its business as usual. The name that will come to mean the end of the city is just another name. Nobody cancels their trips to the Hamptons because of Muriel. The psychiatrists still take their month off. The Yankees have to cancel their series with the Blue Jays, but in the sweltering of New York in August, the idea of a solid rain seems, to some, like it might offer a break, refreshment. They have the wall by then. That’s the source of New York’s confidence. The Greater Manhattan Seawall, conceived after Superstorm Sandy and costing upwards of $119 billion,II will have already prevented several storm surges up to Category 3. As the storm comes on, they will close the gates at the East Rockaway Barrier, the Jones Inlet Barrier, and the East River Barrier. The Seawall embraces the city like the arms of a protective father. It makes the city feel safe. The following afternoon, under dark skies, the Governor gives a press conference: “For most families in the Tri-state area, the correct decision is to evacuate. If you have family away from the coasts, if you can find a place to stay in the interior, go there,” he says. “If you make the decision to stay, please prepare. Gas and electricity will be subject to massive interruptions. Most of the conveniences that you take for granted will not be available. If you know of any handicapped people, any elderly people, who have not found access to services, help them find those resources.” Most New Yorkers take the Governor’s statement as tacit encouragement not to evacuate. It’s the standard statement before a storm, and superstorms on the Eastern Seaboard are no longer a rarity. One of the New Yorkers listening to the Governor’s warning is a producer at WNYC, the local public radio station. She works mainly on the daily pop culture and politics podcast, but she makes occasional documentaries, too. Like every other New Yorker, she worries about Muriel but not enough to change her plans. The Producer lives in Gowanus in a two-bedroom with her husband and their teenage daughter. The place is smaller than they would like, but they never had an opportunity to find better. They were too busy living through Covid, and then the crash, and then the drought. When the storm first sets in, she has an idea for a story, an audio essay, a kind of This American Life–style piece, about riding out a storm in New York, a combination of personal confession with an up-close investigation of the effects of climate change. They send journalists to war zones. How bad could New York get? The Producer and her husband talk it over. At first they can’t see a reason for any of them to leave. But the city’s sticky with the heat and she wants to be alone to produce the piece, and the sound of her husband and child in the background would be complicating. Besides, her daughter hasn’t seen her grandmother since the Thanksgiving before. So the husband and daughter head out to Iowa for a couple of weeks while the Producer stays in New York. They have to take the train down to Philadelphia for the flight because the airports in New York are too full. The Producer’s sister, unemployed and living with their mother, doesn’t understand why they all don’t just move to Iowa. The Heartland is safe for them, at least from hurricanes. The Precariousness of the Twenty-First Century Right now, at this moment, wherever you happen to be, you live in a period of cheap food and safe cities in an orderly world. The cheapness and the safety and the order cannot last. The systems by which we go about our lives, and which we take for granted, are growing more threadbare. America’s paralyzed and half-legitimate government won’t be able to respond with adequate measures. The radical instability will have political consequences. Climate crises and mass inequality have been preludes to civil war and to revolution everywhere—Europe, Africa, South America, Asia—and they’ll be preludes to crisis in the United States as well. But the consequences of the new instability transcend politics. Over the next fifty years, American lives are destined to become much more precarious. Some lives will shatter. The Three Principal Threat Multipliers Economic and environmental instability are what the US military calls “threat multipliers,” destabilizing forces that brew underneath the surface. The instability feeds into the chaos and rage that explodes. There are three principal threat multipliers facing the United States today: economic inequality, drought, and property vulnerability. The Boredom Problem One of the reasons why the stability crises of the twenty-first century are stubbornly difficult to solve is because they’re boring. They don’t make good stories. The forces that threaten to destroy the world don’t have faces. They offer no satisfying conflict between protagonist and antagonist. Inequality and climate change are collective failures requiring collective solutions. Who survives and what survives and in what condition they survive will be determined by the dreariest of questions: taxation levels and environmental regulation on an international level. Their dreariness has consequences; ordinary people don’t care. The Democracy Problem Inequality and climate change will cause the disasters that ordinary Americans are going to feel most acutely. They already do. But to address these problems requires massive, concerted political action, both domestically and internationally. And the United States can’t even convince its citizens not to drink at bars during a plague. Democracy—as a system balancing the rights of individuals with the interests of the state—contains inherent limits on collective action: the American political system, with its structure of checks and balances, was never designed to deal with collective crises. In its current state of hyper-partisanship, the US government is effectively paralyzed. One of democracy’s deepest flaws is that no one gets elected for catastrophes they’re going to prevent. Even after foreseeable catastrophes strike, Americans tend to forgive their leaders. They, too, didn’t want to believe the worst was coming. Covid as a Pretest Covid represents exactly the problems facing the twenty-first century. It’s not an enemy with a face but a crisis of systems. Controlling Covid required scientific consensus, effective policy, and social solidarity. Countries that came to the wrong scientific consensus, like Sweden, suffered. Countries that enacted the wrong policies, like England, suffered. Countries with low levels of solidarity, like Russia, suffered. The American response to Covid was unique. Of all countries with populations higher than 5 million and at least $25,000 per capita gross domestic product, the United States had the highest death rate. Political dysfunction was the obvious cause. If you were to ask, “What was America’s Covid response?” you would get no answer. Part of the government said to wear masks, while part of it banned them. Even the most basic questions of public health became toxic: mask deniers and mask proponents physically attacked one another. At a moment when the safety of each individual required the most basic collective action—“Wear a mask”—Americans refused to stop infighting, even though their infighting led to higher risks for everybody and mass death. Failure to listen to scientists and failure to act on their insights have consequences. And, in the case of Covid, the science was clear, the cost of action was low, and the consequences were direct. Compared to the crises that are coming, Covid was nothing. Covid has been like an easy pop quiz before a punishing final exam. The Covid Thanksgiving As she waits for the storm to hit New York, the Producer remembers the Covid Thanksgiving—the Thanksgiving right after Biden was elected. Nationally, Covid had reached the beginning of its third wave, with a little more than 200,000 cases and 2,000 deaths a day. Pfizer had announced a vaccine, but it had yet to be approved. Unemployment had steadied at 14.7 percent. One in nine Americans were on food stamps. The CDC urged people to stay home, not to travel, but nobody seemed to be paying attention. Even though she trusted the CDC, even though she knew better, they went home for Thanksgiving that year. The Producer felt they had to. Her mother hadn’t seen the baby. She wasn’t a producer at WNYC then, just an audio freelancer. Her husband was making good money as a web designer. They had their little girl in February, a few weeks before Covid overran the hospitals. So many of her friends fled to the country, or to other countries, but they had to stay. They needed their in-network clinic. She remembered they ran out of places to bury the dead on Hart Island. Then the businesses started closing: Dizzy’s Diner went down, and her favorite, Cocoa Bar in Park Slope, too. Still, she felt safer in the city. A friend in Wyoming wore a mask in a grocery store, and a guy in the parking lot screamed at her, “Why do you believe all that Communist horseshit?”; she ended up driving to Colorado for groceries. The Producer’s sister back home didn’t believe Covid was real. Home, for the Producer, would always be the farmhouse her great-grandfather built at the turn of the twentieth century in the cornfields outside Davenport, Iowa. The family called it the Big House. If she closes her eyes, she can still see herself running down from her childhood bedroom on the third floor, past the window on the stairs where the rich wood of the dark paneling gave out to the limitless fields of swaying corn, through the front door, and to the bus for school. Her great-grandfather had overseen every detail of the Big House’s construction, designed it to the specifications of the large Eastern properties he had envied as a poor boy growing up in Vermont. A real estate agent might describe the place as a large five-bedroom in the Federal style with a classic wraparound porch—if the property weren’t so remote that no real estate agent would ever have a reason to describe it. When her father had decided to switch from farming to insurance, he sold most of the surrounding acreage to the neighbors, which they, in turn, sold onto corporate agribusinesses, but the Producer’s parents kept living in the Big House. When her father died suddenly in his sixties from a brain aneurysm brought on by lymphoma, her mom stayed on, though the Big House needs more upkeep than a single elderly woman could properly provide. The Big House is the family’s piece of America. When the Producer made the decision to return to Iowa during Covid, her sister set them up with a trailer behind the Big House. That year her sister’s boyfriend had left for the Dakotas, looking for work, and she started the job at the Ram dealership, and his trailer was available. The Producer agreed with her husband that it would be best to have limited contact with the Iowa side of the family, to keep six feet apart, not to enter the Big House. But within a few minutes, those rules, so carefully negotiated, were all broken. Her mom had to cuddle the new baby. Her niece and nephew, who were six and four then, wanted their hugs too. Mom prepared the classic American feast. They had a sixteen-pound turkey and pork chops and sausages. The family macaroni and cheese, made with nutmeg. Tater crumble, cheese on ground beef on tater tots. And the harvest of the backyard garden: mashed potatoes with gravy, and beans and peas and beets and corn and carrots and shredded cabbage cooked with pork. For dessert, they had Swedish pastries, cinnamon cookies, and a tusenbladstårta, a thousand-layered torte—traditions inherited from some forgotten Scandinavian ancestor. As they sat down to eat, they viewed the future with hope even in the middle of plague. Maybe life would return to normal? They weren’t doing too bad for Covid. Car sales had risen 6.2 percent over the year, so the dealership was flourishing. Her sister had to greet customers behind plexiglass, which she didn’t mind. With a mask on, she could say what she liked and nobody was sure what she’d said. The sisters didn’t know, because nobody ever knows, that these were the good times. The First Threat Multiplier: Inequality You know the problem of inequality is serious when rich people have started to worry that they’re too rich. In the United States, the wealthiest of the ultrawealthy, the kind who wouldn’t notice $10 million one way or another, are forming political action committees opposed to the concentration of wealth in their own hands. The Patriotic Millionaires formed in 2010 with two extraordinary goals: to lobby politicians to increase their taxes, and to explain to ordinary Americans how unjust the economic order is. Two of the richest men in the world, Bill Gates and Warren Buffett, have publicly called on the government to raise their tax rates. “I have a message for my fellow filthy rich, for all of us who live in our gated bubble worlds,” warned early Amazon investor Nick Hanauer in 2014. “Wake up, people. It won’t last.” He couldn’t be more right. The Koch brothers have recently shifted their charitable endeavors from libertarian politics to the problem that the new generation will be worse off than the old. The rich know what historians know: every society in human history with levels of inequality like those in the United States today has descended into war, revolution, or plague. No exceptions. There are precisely zero historical precedents that don’t end in destruction. Since 1980, inequality has been growing globally, but in the United States the growth is most dramatic. In 2015, the top 1 percent of American families made 26.3 times what the 99 percent did, garnering 22 percent of all income—the highest share since the peak of 23.9 percent before the Great Depression. In 1965, a CEO made roughly twenty times the typical worker’s pay. Now it’s 271 times. From 1980 on, the poorest 50 percent of the population has consistently seen a decline in their share of income. American inequality is now worse than it was in 1774. All of the political loathing in the first two dispatches of this book, the hyper-partisanship and disunion, the sheer rage—all of it dates, in large part, from the 2008 financial crisis. That’s when sovereign citizenry spiked; that’s when negative partisanship, the Tea Party and Occupy Wall Street, originated. The Effect of Income Inequality on Market Cycles Economic models are, at best, weakly predictive. Covid, again, provided a good test. Not one analyst of note predicted that the economy would crater, unemployment would spike, and then the stock market would rise. That prediction wouldn’t have made any sense. A crash is coming, though. It always is: Look at 2008, 2001, 1987, 1973, 1966, 1929, 1907, 1901, 1857, 1837, 1819, 1792, 1763, and 1640. Crashes are an inevitable feature of modern capitalist economies. Capitalism works in cycles or, to be precise, it has always so far worked in cycles. Extreme inequality makes a market crash much more likely and a recovery much more difficult. What will life look like just before the crash? It will look like right now. At the time of writing, the long-term yields on government bonds have fallen below the short-term yields on government bonds. This condition, which should be an economic impossibility, has predicted a major crash in every previous occurrence in history. Some sovereign bonds have a negative yield, which means the lender pays the borrower for the loan. If this sounds like it doesn’t make sense, that’s because it doesn’t. Most asset classes worldwide—equities, bonds, real estate, commodities—are approaching all-time-high prices. With interest rates at a hard low, no market correction in recent memory, and the expectation that the Fed will always inject more money no matter what the crisis, people and companies are borrowing too much. Once borrowers can no longer repay loans, loan values collapse. If the values of their assets drop, their own lenders start calling in loans or refuse to lend them new money. That’s how death spirals start. The standard policies for alleviating financial crises—lowering interest rates, cutting taxes, and quantitative easing—will all be unavailable because of current US policy. Interest rates cannot be lowered any further. In Europe, they have recently begun the practice of negative interest rates. In the United States, the cost of borrowing money is slightly above zero. Similarly, American taxes are at historic lows and deficits are at record highs. Quantitative easing, once an emergency measure, is now standard practice. The amount of cash in the financial system today is about four times as much as in mid-2008. Nobody knows why or how the crash will come, but when it does come, there will be highly limited room to move. The Federal Reserve will be “out of bullets.” Jonathan D. Ostry, deputy director of the research department at the International Monetary Fund, knows the dangers of inequality to any economy. Low inequality is emerging as a part of the Washington consensus, the conservative credo of macroeconomics. Even they have figured out that inequality strangles economies. The right-wing consensus has been that free trade, moderate marginal tax rates, and low interest rates lead to longer periods of growth. They do. But Ostry’s research, undertaken before the Arab Spring, before the Occupy movement, found that, as Ostry says, “low levels of inequality are robustly protective of growth duration. High levels of inequality seem to be associated, in all different times and all different countries, with the premature end of a growth spell. This is a striking finding.” From a policy point of view, neither increasing inequality nor decreasing inequality are good in themselves. Both can lead to deeper prosperity and stability: when China decreased its redistribution of wealth, the move sparked growth; when Brazil increased its level of redistribution that, too, sparked growth. For most of the world, about three-quarters of the countries Ostry studied, increasing redistribution would increase growth and preserve the length of growth. The United States belongs to that group. Inequality makes it vastly more difficult to deal with the fallout of a crash. “Think of a society that’s very unequal and bumping along, experiencing decent economic growth, and suddenly something bad happens to it, an oil shock or a virus or its biggest banks go under or it has a typhoon or whatever, and growth collapses,” Ostry says. “That could be a blip and it could get back on its feet very rapidly. The way you would avoid having this bad shock turn into something more sinister [is] you would have to adjust economic policies, and whenever you make such adjustments, there can be pain. The buy-in from the population for the kind of adjustments needed to get the economy back on its feet—there is much less buy-in in unequal societies.” If society’s wealth has accrued to the top 1 percent during periods of growth, then the other 99 percent don’t have any incentive to sign on for short-term pain if they’re still going to live in a society where the top 1 percent prosper exclusively. Inequality lessens social cohesion. “That sounds airy-fairy but it’s really supported in the data,” Ostry says. “When you’re very unequal, there’s not just inequality of outcomes but inequality of opportunities. People are not going to have access to health care, to education, to the political process, so you’re going to be leaving a lot of your population disenfranchised and not participating. It’s going to mean that your economy is being run by a very small group. Those societies are going to be more brittle and less resilient to shocks.” Inequality leads to crashes, which lead to further inequality. Bailouts are inevitably unfair. People who have saved suffer most. The irresponsible are the first to receive relief. As governments decrease spending, cutting into Social Security and Medicare, it is the poorest who lose the most. Typically, in unequal societies, financial markets are eager to extend credit to people who can’t afford to service their loans. The borrowers have a low capacity to consume and must borrow to sustain their consumption. The buildup of debt fuels vulnerabilities in financial markets. Inequality feeds into crisis, which feeds into inequality. Inequality as a Problem Without a Solution Inequality has no solution. Even extreme efforts at redistribution, for which there is little to no political appetite in the United States currently, tend only to slow inequality’s rise. Even communism only decreased inequality by destroying wealth. But you don’t need prediction to know that the American economic system is entering a deeply contradictory state. Economic growth has been artificially raised to a fever pitch, while life expectancy has been in decline for three years—a first for an advanced economy in history. Each subsequent American generation does worse than its predecessor. The current American generation will feel the decline over the course of their lives. The Depression Thanksgiving She had just started as a producer at WNYC the year of the crash. She couldn’t afford to go home, but she did anyway. That was the Thanksgiving after the Big One, after the run on the banks and the deflation of prices. The suicide rate was at 39.3 per 100,000 people. Nearly one-third of American families qualified as “food insecure.” She never forgot going to the bank, putting in her card, and seeing it spat out. She called the bank and a cheerful artificial voice told her that the next available agent would take her call in thirty-seven hours. She remembered the scenes of chaos: the police managing the lines outside one of the failed banks with their guns drawn, the hand grenades thrown into Goldman Sachs. In Jimmy’s Corner, a boxer bar near Times Square, she listened to a pack of coked-up finance bros discuss the most effective and popular ways to commit suicide. (She remembers thinking suicide was a good option for them.) Overnight, the tech companies decamped to Amsterdam and the financial services industry to Connecticut compounds. The Producer’s husband found a better rate out of the Buffalo airport, so they drove up from the city at 3:30 in the morning. They landed in Iowa in the afternoon, exhausted. The panic of the unfolding crisis had not so much cooled as normalized by Thanksgiving. Each crisis of confidence in the markets, staggering in just after the last, eroded a little further the security of the system as a whole. Her husband’s graphic design work had dried to a trickle, and looking for a job was harder than any job: the exhaustion of drifting into despair, then lugging himself out of it. The cousins ran in a pack around the property. To her daughter, who had only ever known the cramped spaces of tiny Brooklyn apartments, the Big House was still a magical place. The idea that there could be houses with so many rooms that some of them were empty seemed like something from a show. The fields outside, ragged and bare as they were in November, lightly dusted with snow, seemed as good as infinity. The Producer’s nephew was unusually quiet, mostly sitting on his own and staring at the television in a kind of daze. Earlier that year he had been sent home from school with pink eye, or what everybody thought was pink eye. His mom kept putting in the drops like the pharmacist told her to. There wasn’t a lot of yellow gunk around the eye, so she thought the drops were working. She couldn’t take him to the local doctor anyway. She couldn’t afford the deductible. A few days later, because she didn’t want to take a day off work, she brought the boy to the emergency room. They took one look, rushed him past the waiting room, and attached him to intravenous antibiotics. It wasn’t pink eye. It was periorbital cellulitis. The poor boy went blind in his left eye. The bill came to $43,000. He might have had neurological damage, too, but her sister didn’t have the money to run the test. The sisters didn’t talk about money. The subject was too tense. The Producer was hanging on in New York. The Ram dealership hadn’t fired her sister but they cut everybody’s wages. That year, for something different, their mother roasted a couple of chickens from the yard, but they still had the tater crumble and the nutmeg mac and cheese, the mashed potatoes, with gravy, the bread stuffing, and beans and peas and beets and corn and carrots and shredded cabbage cooked with pork. Then after that there was the tusenbladstårta and also Jell-O because it was the boy’s favorite. They had a lot to be grateful for. As they gathered around the table in the long dining room, the children were growing. Nobody was out on the streets. They had enough to eat. They were the lucky ones. The Precision of Climate Change Modeling This book draws on all the best available models of the future—economic forecasts, agronomic projections, established battle plans, algorithms from political scientists, historical patterns from scholars of civil war, and so on. But the climate change models that follow are vastly more concrete and precise than anything else in this book. They don’t predict the future; they portray it. The first climate model appeared in 1967, created by Syukuro Manabe and Richard T. Wetherald, and it remains more or less completely accurate. They predicted that a doubling of CO2 in the atmosphere would raise the temperature of the atmosphere by about 2°C. We have collectively increased CO2 in the atmosphere by 50 percent since the 1880s and the temperature has risen by nearly 1°C. The Limits of Climate Change Models Knowing the general trend is not the same as knowing the outcome. Manabe himself described the limited power of his model: “Models have been very effective in predicting climate change, but have not been as effective in predicting its impact on ecosystems and human society.” That climate change exists and will produce higher temperatures and rising sea levels is not debatable. The consequences of warming temperatures and rising sea levels on people remain largely unknown because our reactions are not yet set: How will nations and states mitigate climate change? How will communities adapt? What are the limitations of adaptation? Bernhard Schauberger, a researcher at the Potsdam Institute for Climate Impact Research, understands the oversimplification of most models of climate change. For one thing, “there is no such thing as a global temperature,” he points out. For convenience, everybody says that the global mean temperature rise will be between 4° and 6°C, but the rise is greater closer to the poles, and the rise in the temperate zones will be more rapid than in tropical zones. Higher temperatures lead to more heat waves, more droughts. But can you blame climate change when a fire consumes a small town in California? No one can say directly. It’s like smoking. No doctor can say that if you smoke you will certainly get cancer, that the cigarettes gave you cancer. But the doctors do know that if you smoke, the chances of cancer are much higher. Extremity is on its way. Or, rather, “what is now extreme will be normal in fifty years,” Schauberger says. The Indian monsoon was very predictable forty or fifty years ago. It is no longer. The same movement into chaos is happening in the United States. The atmosphere becomes less predictable, producing long periods without precipitation, followed by torrential rains. The July 2012 drought is the most recent example of what extreme weather can do to agricultural systems. The losses due to drought that year were estimated at $30 billion. The direct cost was a 6 percent increase in the price of international food commodities. The price of corn rose 50 percent and that of soybeans 35 percent. That was a once-in-a-generation drought, although “once-in-a-generation” does not mean what it once meant. Already, the dramatic warming trend over the past four decades has led to devastating flash droughts in the high plains and the prairies. The Second Threat Multiplier: Drought Jerry Hatfield is the laboratory director of the National Laboratory for Agriculture and the Environment in Ames, Iowa, and he has been with the USDA for thirty-five years. He has lived through the great realization about climate change: “When I graduated with my PhD in 1975 from the University of California, Davis, I was trying to figure out the impact of cooling temperatures on agriculture.” Back in the seventies, they were worried about the return of glaciers. “If you stay around long enough, you can work both sides of the issues,” he says. At first, even as the rise in temperature began to register, it was unclear whether increases in heat would damage agriculture. In the 2000s, temperature increases offset the effect of CO2. (CO2 is good for plants, “weeds in particular.”) Since then, each subsequent report from the Intergovernmental Panel on Climate Change, a United Nations body, has grown more and more grim. The most recent report from the IPCC is a plea for keeping the level of warming below 2°C and a warning that the worst impacts may be inevitable after 2030. The rising heat poses a problem particularly for commodity crops like corn, rice, and soybeans. Organic enzymes don’t function beyond 40°C. The primary effect of heat is to deprive plants of water, lowering biomass and yields. Heat results in senescence of leaves—aging before they have reached their potential. High temperature levels affect germination and pollination. In 2012, during the drought year, western Kansas and Nebraska were so hot that even irrigated fields could not maintain enough water to keep the plants out of water stress. “They just could not physically pump enough water through the plant,” Hatfield says. “What we think is that if we continued on these trends of increased temperature, variability, and precipitation, past 2050 we’re going to have much more adaptation.” Heat harms wheat, too. “On wheat, what we find is that there won’t be any grain on the ear,” Hatfield observes. High heat doesn’t hurt perennial crops like fruit. But the lack of lower temperatures does. Perennial crops in the Central Valley of California require a certain number of chilling hours. They have to be exposed to temperatures below 7°C before they will flower the next spring. These trees can no longer meet the number of hours required to get an effective “fruit set.” Hatfield notes that “if it takes thirty years to breed a perennial tree—say, a pear or a cherry—this could be quite catastrophic in terms of fruit production. The question is: Do you move perennial orchards? Or do you think about adaptation strategies? Can we chemically treat that tree to think it’s been chilled? What do we do with this process to understand the dynamics of what’s going on?” Vegetables will survive: “They can be moved around. There are strategies that are there,” Hatfield says, but overall, climate change will wreak havoc across the world’s farms. When waters rise and fields flood, roots have difficulty getting oxygen. Fungi and pathogens like heat. Diseases that tend to die off in cold winters will persist year-round. Livestock suffer in heat. The milk production of cows decreases. The Adaptive Capacity of the American Farmer Farmers will adapt to climate. That’s what farmers do. And do not underestimate the adaptive capacity of the American farmer. In the first third of the twentieth century, the average corn yield was 1.6 metric tons per hectare. Now it is approaching 9.5 metric tons per hectare. For many commodity crops, adaptation is already underway. The rice agronomists and producers started to notice that they were getting lower yields with higher temperatures, so they selected for rice varieties that pollinate during the early morning. They can do the same for wheat and barley. But corn doesn’t work that way. In corn, the pollen has to migrate from the tassel to the silks, a three foot distance. “The real impact is on the pollination phase,” Hatfield says. “You got these little pollen grains out there in the air as they travel from the male to the female part of the plant. If they’re exposed to high temperatures, that tends to destroy their viability.” In corn, temperatures above 30°C have a negative impact. So if they’re pollinating in the afternoon at 35°C, they will fail. Hatfield points out that, “sometimes, the high temperatures are coupled with extremely dry environments, so that pollen grain gets desiccated as well. That’s where you end up with bare spots on the corncob.” Corn is to food what plastic is to the material world: it’s used in sweeteners, food fillers, emulsifiers, preservatives, adhesives. Since the invention of high-fructose corn syrup in 1958, corn has dominated the American food system as a whole. Any substantial impact on corn production will affect the entire food supply chain. Rising temperatures also cause droughts, or, in the agronomist’s phrase, the heat “increases atmospheric demand.” Water leaves the plant with a higher transpiration rate. In 2012, farmers had to access the water in the Ogallala Aquifer, which is not a sustainable resource. “There is a concern about how long the water will last,” Hatfield says. “The Ogallala Aquifer, which underlies the great plains from South Dakota all the way to Texas, has been shrinking over the past decades. That has forced producers to go to drip irrigation rather than full-scale sprinkler irrigation, but that water’s not replenished. That’s primordial water. It’s not even well understood how it ended up there in the first place.” Huge amounts of water currently used in American agriculture are nonrenewable: “Once it’s gone, it’s gone,” Hatfield says. It’s not possible to adapt to no water. The Innovation Trap American farmers, in their brilliance, will probably be able to adapt to rising temperatures, and even to increases in variability of water. What scares Hatfield is the chart of May–June precipitation compared against July–August precipitation. “Those patterns are unlike anything we’ve seen in 125 years,” he says. “We’re kind of in uncharted territory.” The great innovative splurge in agriculture since the end of the Second World War, the Green Revolution, resulted from increased genetic material, increased inputs from nitrogen, and refined pesticides. A stable climate made all of those innovations possible. With a stable climate, innovative farmers could breed for higher nitrogen uptake. “There seems to be a tradeoff between high yield and high stability,” says Hatfield, who is pessimistic. High-yield crops have higher sensitivity to drought and heat. How can you adapt to inconsistency? How can you adapt to what you can’t imagine? Adaptation requires time and consistency. Designing new crop cycles takes thirty years or more. You can do them in ten or fifteen, Hatfield says, if you rush. “When Monsanto releases a new variety, it has been tested for quite a long time, and this is a fundamental problem with adaptation. The speed of climate change may be faster than breeding can cope with.” The crisis in American farming will be an innovation trap. “One of the key components of adaptation is that you need to know what to adapt to. So, is it to one degree of climate change? Is it two? Three? Four?” The best adaptation, and also the easiest, would be to stop climate change. The easiest adaptation is the least likely. Stable yields have already started to move north. Heat-tolerant cultivars, drought-tolerant cultivars, and expanded irrigation are all in the works. But the larger part of agricultural land in the United States is rain-fed. “What are the degrees of freedom that we’re going to have? Is the environment going to be such that we won’t be able to cope?” Hatfield asks. The real danger is unpredictability itself. “Mother nature is a very fickle lady,” he says. “Producers ask me all the time, ‘What’s normal anymore?’ I tell them basically we’re out on the fringes. Producers say ‘Yeah, I already know that. What do I do? What do I do about this beast that’s staring me in the face whenever I plant a crop?’ ” Their current anxiety is all under the assumption that the predictive models stay within historical limits. The farther into the future you look, the higher the inconsistency, the greater the variability, the more intense the vulnerability. The Effect of Decreased American Yields

The consequences of agricultural instability will reach far beyond America’s borders. American abundance spills out all over the rest of the world. The United States is, by far, the world’s largest exporter of food. The catastrophe of a drought on the world’s 800 million subsistence farmers would be extreme, a famine. The great gift of America’s agricultural ingenuity is reaching its apogee. “The rate at which we’re changing, that may be quicker than what we anticipated,” Hadfield suggests. “It’s tough to see where we go fifty or a hundred years from now.”

The Politics of Hunger Multiple droughts in a row are not unknown to the Midwest. The 1930s had four. Those droughts were not the result of incompetent farming; rather, the opposite. The Dust Bowl was a direct result of the newly invented deep-plowing methods that allowed the Great Plains to produce the vast quantities of cheap food that enabled, among other triumphs, the American victory in the First World War. The innovative prosperity of deep-plowing methods had a catastrophic reckoning built into it. The topsoil blew away. There were food riots. Americans died of starvation. Food shortages produced elevated levels of murder, suicide, and robbery. Americans have not forgotten the hunger of that period. It informs some of America’s deepest food trends. Country gravy, for example—powdered milk, flour, oleo—dates from the Depression, a cheap way to provide calories from the most basic available ingredients. “Aunt Sammy,” the government-mandated promoter from the USDA’s Bureau of Home Economics, introduced the notion of whole wheat during the Dust Bowl, a healthier option but also a cheaper one. She taught ways of fancying up split-pea soup with a slice of lemon. Before the Depression, American families traditionally served a bevy of pies with Thanksgiving dinner: mincemeat, cranberry, huckleberry. There would be a chicken pie along with the turkey and vegetables of all kinds. Aunt Sammy, in her Thanksgiving menu, suggested tomato juice instead of oyster stew, and no turkey but a roast or an “old hen” or “mock duck”—flank steak spread with bread crumbs rolled up, seared, then baked. The United States already eats a post-Depression diet. The Depression brought vitamins and calories to the American consciousness. There was a rush on canning and pickling. “Go back to the 1930s; the Dust Bowl was four or five drought years in a row. Look at West Texas, western Kansas, right now: they’ve had four years of low precipitation in a row,” Hatfield points out. “These things that are way below normal are happening. They’re not widespread, but they are occurring.”

Even slight spikes in the price of other commodities, like crude oil, has led to unrest the world over. The Yellow Vest movement in France, the country’s most pronounced political violence since 1968, exploded from a relatively small rise in the price of gasoline. For highly unequal societies, any commodity price increase creates a threat to stability.

For ordinary Americans, instability will mean hunger.

The Drought Thanksgiving The Producer never knew hunger, not even after the third drought in five years. Nearly two-thirds of American families qualified as “food insecure” by then. The number of Americans using their savings to buy food was 28 million and growing. The first year, the drought had barely made the news, small items in the financial papers about the rise in food prices. Even her sister hadn’t worried much the first year. The second year of drought was when the anxieties drifted down, from the experts and the farmers, to ordinary people. The drought two years later was when the prices spiked. One day, the Producer picked up a Napa cabbage that cost $28. It’s a beautiful cabbage but not that beautiful, she thought. Around that time, she realized that they were keeping almond milk behind the counter. Soldiers in full military gear moonlighted for Walmart. New York suddenly flourished with gardens, the Drought Gardens. In Brooklyn, every rooftop, every veranda—every bit of backyard—had tomatoes and lettuce and herbs. How best to grow your vegetables became one of those permanent topics of conversation, like real estate and school districts, and when her colleagues at WNYC or the parents of her daughter’s school friends found out she was from Iowa, they assumed she was more or less a farmer, asking for advice as if she knew. She did find herself dreaming of the garden in Iowa in the days leading up to the Drought Thanksgiving. She had to take the bus back to Davenport. She justified it as a bonding opportunity with her teenage daughter, just the two of them riding cross-country. It was the only way they could afford to go. Her husband couldn’t stomach a thirty-two-hour bus ride. He stayed in New York that year. The road trip was supposed to be educational, but not as educational as it turned out to be. Every town on the thirty-two-hour trip to Davenport was dying. The bus stations in the smaller places seemed to be placed there out of habit. The diners, which doubled as cleaning stations and brothels, weren’t safe even in daylight. In the fields, the corn was stunted, brownish yellow in the rows, the spaces too wide. Where once there was planned lushness, now there was simply empty space. Herds of feral hogs ravaged the landscape. A mound of clothes had been dumped beside a boarded-up school. They passed through a town where recently thirty-two people had died from drinking vodka that had been cut with ethyl alcohol. The Producer didn’t let her daughter leave the bus, even when she whined about her cramped legs. Mostly they just sat in the back watching movies on a phone with a split audio cable. The prairies were so ragged there wasn’t much to see. The Big House was full up then. Her sister and the kids had moved in after the Ram dealership closed. The only work her sister could find was temporary room cleaning on a contract basis with the local Red Roof. It offered no benefits or security. Her niece had the grades to go to college but she would have had to borrow nearly half a million dollars to attend. In the meantime, she found herself working beside her mother on the carts. Any little bit of money helped. As for the boy, he was still in school, but after the austerity program had been put in place, classroom sizes swelled to sixty kids. There was no help for kids with learning difficulties. He was almost a young man then. He had developed an obsession with the military, making models of panzers and Hamilton bombers in his room. Bright red Nazi and Allied propaganda screamed from the walls. The army would never take him because of his eye. He brought the fact up in nearly every conversation. They had all started to fear her nephew, with his menacing silences and the angry hopelessness flaring up in bursts. Her mother’s garden had expanded. Even in drought, she could eke out beets and carrots and a row of lettuce. The Producer wondered if she could make a show out of her mother’s garden: the simple prosperity of abundant greens. It was what everyone was talking about in New York, anyway. The Garden. Might work. Thanksgiving dinner had changed with the drought. They used to eat turkey, but turkeys are corn-fed and so, much too expensive. The tater crumble, the nutmeg mac and cheese, the tusenbladstårta with its cream filling—they’re mostly corn and therefore quite expensive. They skipped the mac and cheese and tater crumble but they had to have the tusenbladstårta. The year of the drought, her mother experimented with soy turkey, which was tasty enough, though it had a slight chemical tinge. They had potato pancakes instead of mashed potatoes. The garden, even in drought, had given them enough greens and carrots and beans and beets to feel like a feast. That year the tusenbladstårta had no cover of strawberries. Strawberries were too expensive in November. The Third Threat Multiplier: Property Vulnerability Farmers have been dealing with climate change since the invention of farming. That’s what farming is: making as much food as possible with the weather you’ve been given. But cities, vastly more complex, do not adapt nearly as well to climate change. The world is full of history’s once-great cities, abandoned to desert, subsumed by jungle, visited only by tourists. Peter Sousounis is the director of climate change research at AIR Worldwide, where he works on catastrophe model development for large-scale clients, including insurance companies and reinsurers. He combines physics with actuarial data to provide the people who have the most at stake with the best answers on the climate future. The best estimate of the worldwide property damage due to sea level rise alone in the immediate future totals $1 trillion. But that only takes into account slow, steady rises in the sea level. The increase in unpredictability of extreme weather events means that much more than a mere $1 trillion is at risk. Over forty years, Category 5 hurricanes have increased by 300 percent globally. The direction is the same in all models, but the scale varies. “People have this ideal perception that climate change is happening slowly and steadily. In the grand scheme of things, it’s not. It has fits and starts. It might even change direction temporarily,” Sousounis says. “But I wholeheartedly believe that it will manifest itself nonlinearly rather than linearly. And that’s what we have to be careful of. We need to account for nonlinearity.” (“Nonlinearity” means that everything goes along as it always has until suddenly it doesn’t.) The models of the United Nations and the insurance companies are hedged bets. There are hundreds of climate models and they take the mean. But that conclusion is not the same as the result. In Vegas, if you’re playing baccarat, in theory you should always come out even. It’s a 50-50 bet. But you don’t play baccarat to get your money back. The destructive total of climate change, for Sousounis, “could be, not to scare you, but 200 percent on the high side”—that is to say, 200 percent worse than the current standard model. If massive pieces of glaciers collapse, sudden sea level rise will follow, and with sudden sea level rise, the complex cascading system will spiral out of control. For Sousounis’s clients, the increase in risk has one obvious consequence: “Definitely parts of the shoreline will be uninsurable.” We are inside a climate bubble. Bubbles pop. “The one thing there is reasonable consensus on, at least for hurricane activity, for the US, is overall an increase in the frequency and intensity of Category 4 or Category 5 hurricanes,” Sousounis says. That fact alone is going to change America. Nonlinear Climate Change “New York would be incredibly high on the list of vulnerable cities,” notes Vivek Shandas, director of the Institute for Sustainable Solutions at Portland State University in Portland, Oregon. The Institute for Sustainable Solutions deals with the way cities will adapt to climate change. Some of the infrastructure in cities on the Eastern Seaboard dates from the eighteenth century, a disaster waiting to happen even before the compounding effect of multiple vulnerabilities from climate change. “Much of New York is relatively flat. Even modest levels of sea level rise are billions of dollars of infrastructure impact, and the available space to move is more concentrated as well,” Shandas says. “Then you have heat waves that occur. We see deaths every year. Then there’s urban flooding, because you have storm and sewer systems that are relatively outdated.” Miami will see intense heat waves, sea level rise, and hurricanes happening at the same time. But Miami is just a great town. New York is New York; 88.3 percent of the world’s foreign exchange pours through it. Superstorm Sandy in 2012 was a warning shot. Across New York State, $32.8 billion was required for restoration. For a storm that was not technically even a hurricane when it hit New York, Sandy wrecked eight tunnels and stranded millions of commuters between Brooklyn and Lower Manhattan. New Jersey transit was shut down for nearly a month. The South Ferry subway station flooded with 15 million gallons of salt water and only resumed service in 2017. To repair and improve the subway, the Metropolitan Transportation Authority spent $4.5 billion. They are preparing for large storms by making it possible to seal terminals with retractable stairwell covers and other flood protection measures, including “flex gates,” waterproof Kevlar belts to be unrolled, and “resilient tunnel plugs”—air balloons. But they can only prepare for what they know and for what they might expect. What would a Category 5 storm with an extra half a foot of sea surge do? The Cascading Failure of Urban Systems City failure happens incrementally and then by cataclysms. “The incremental failures are often things like the sewer systems can no longer handle the water coming in and the investment in the sewer system is no longer what the city can handle,” Shandas says. “What failure means is a cascading failure of systems.” It’s a feedback loop. When population declines, the tax base declines. When the tax base declines, funding to deal with mitigation and adaptation declines, which leads to infrastructure breakdown, which leads to the inability to provide services, which leads to a population decline. “How much energy would a city need to continue sustaining itself?” Shandas asks. “How much do we want to keep subsidizing the activities within cities to keep them going? When do we say enough is enough? When can we no longer do it? What we haven’t had a serious conversation about is managed retreat.” Instead, the most likely scenario is that those with enough resources will flee, leaving behind the poor and vulnerable. The markets will respond after the crises without any mitigation of human costs. This is already happening in some places. Mexican Americans live on polluted areas that are totally unprotected near the Rio Grande. In 2020, California banned insurance companies from dropping homeowners’ policies, a step to protect ordinary homeowners. But it means that nothing will stop people from continuing to build houses in unfeasible locations. The state will not take action on climate change, and they are preventing the market from taking action. Eventually, climate change will force adaptation. Without the political will for investment—and remember that nobody ever got elected preventing a catastrophe—the forces driving managed retreat will be market forces. Insurance companies will tell homeowners they can no longer insure their properties. Those properties will lose their value because they can’t be insured. Developers will build in safe areas because that will be the only real estate that holds its value. Some researchers in the field describe the effect as “climate gentrification”—tighter labor markets, increased property values where property survives, and more inequality. The rich will be able to afford the security of safe places, and the poor will live on the margins, in the darkness on the edge of town.

A marketplace retreat will produce a Fortress America, an America of walls, an America to keep out the sea, an America to keep out foreigners, an America to keep out the poor. Stable real estate will require more investment to maintain. “Then you have these massive events like Hurricane Maria in Puerto Rico, short-term and incredibly intense events that wipe out populations,” Shandas says. This is a model well known to ecologists. It’s how species go extinct.

The Crossing Alone in her Gowanus apartment, the Producer is waiting for the event. Thirty-six hours before landfall, the NOAA upgrades Muriel to Category 2. Everybody receives the message on their devices simultaneously, a faint buzzing over the whole of New York. The Governor now implores the people of the city to evacuate. “If you can leave, leave. If you must stay, know what you’re getting into. Muriel is going to pick up a good chunk of the Atlantic Ocean and dump it on us. Winds are going to reach 110 miles per hour.” Most New Yorkers hear only that the storm was Category 2. Everybody knows that the wall can withstand up to Category 3. The Producer listens to the Governor’s warning but doesn’t consider leaving. She has a story to make. To her relief, the tenants in every other unit evacuate. They have to force their way across the bridges. All twenty-one bridges fill with last-minute evacuees. The tunnels have already flooded. Then the storm surge comes. In Brooklyn, the surge rises from the canal, the tide drifting from the northwest, bringing with it the detritus from the surrounding houses and businesses, a flood of books and papers, art and the displays from the Whole Foods on Gowanus. Several witnesses report seeing a baby floating in a stroller. Others remember a kind of foam of vegetables on the surface. Something, someone, had failed. Within a few hours, the tidal surge floods JFK and LaGuardia airports. The power goes off for Manhattan and Staten Island at 8:37 p.m. By 9:45, power cuts out for most of the outlying boroughs. Red Hook, the most vulnerable New York neighborhood, no longer exists. In downtown Manhattan, Greenwich Village, Tribeca, and the East Village flood. Wall Street floods. The winds that follow the surge reach 116 miles per hour. From Iowa, the Producer’s husband calls, imploring her to leave. The chance to leave has passed. She will need to wait until the first effects of Muriel subside. She spends several days inside, in fear. The Governor calls the National Guard. A hundred thousand soldiers are making their way into the city. After a few days, more out of curiosity than fear, the Producer half floats, half swims through the flotsam-blanketed seep over Fourth Avenue. The water has receded enough to walk there. She heads up the hill to Prospect Park. Prospect Park isn’t Prospect Park anymore. The trees have tumbled. Whole families are curled up inside the sweep of horizontal branches. People are sleeping under the bushes, in a daze of upended lives. The Producer heads back to her apartment. She didn’t take out enough extra cash, she realizes. She barely has a few thousand. She fills a duffel bag with food and water and batteries. She tucks her Glock into her belt. Other than her chargers and her phone, she needs nothing else. She goes to the safe to remove the passports. The family Bible is in there, too, brought over from the old country. The thing’s the size of her chest and weighs as much as a load of bricks. She can’t take it. She can’t bear to leave it. So she tells herself she’ll come back. Her daughter’s violin in the corner of the room, the furniture, the framed doll’s dresses, the candlesticks she and her husband received as a wedding gift—she tells herself she’ll be back for all of it. Wading back onto Fourth Avenue, she joins in with the stream of other refugees along the old route to JFK. She’s glad to have her Glock. A few hours down the road, the crowd of refugees slowly starts to thicken. She overhears rumors that the storm had been bigger than Category 3. Up ahead she can see groups standing, unsure what to do, where to go. The road has slopped into the water. It’s almost beautiful, the way the arch of the highway’s concrete dips into the black waves. It reminds her of a Mayan ruin she once visited in Belize, a grand center of trade fifteen hundred years earlier, fitted with glamorous temples, now overrun by jungle. Here, for the first time, she asks herself: Did New York survive? What happened to the city she loved? Boats of all types offer transport across the water: fishing vessels come down from New England, pleasure craft from the Jersey Shore, skiffs and motorboats that probably shouldn’t be on open water. The new shoreline is abuzz with negotiation. Most of the transporters start at five grand a seat. But some of the heavier, safer craft go for ten, and the motorboats for as low as two. Most of the refugees, like the Producer, have little or no cash. Some of the deals are barter, for trade. The Producer watches a young couple, sitting on a cooler, pooling their jewelry, wedding rings and all. Other transporters can process credit cards on their phones. A gentlemanly fifty-year-old strides onto one of the larger skiffs, tapping his phone, as if paying for a latte at Starbucks. The Producer realizes at that moment that she’s a refugee. She’s a refugee in her own country. They’re all refugees in their own country, all these strangers on the new New York shoreline. How did Americans become refugees in their own country? What brought them to this? On the other side of the waters, the army is loading the refugees into buses. On the bus to Iowa, the Producer finds she can tell who’s a New Yorker and who’s an Iowan. She always believed, when she lived in New York, that she could tell Midwesterners from locals. Now she knows she can. The New Yorkers look scared. The Iowans look bored. The Imminent Crisis of Climate Change Refugees The current best estimate for the future number of climate refugees from coastal areas is 13 million. Using historical patterns and machine learning to connect direct and indirect effects of climate change, a team of computer scientists and demographers working at multiple universities in 2020 came up with this model (see map on page 143), which is based entirely on sea level rise and no other environmental affect. The darker the square, the more refugees will be arriving. The View from Climate Change Refugees Climate change is already reshaping the United States. It is already upending people’s lives. For decades, John Toto’s family owned a traditional Italian family restaurant, Joe and John Toto’s, across from Midland Beach in the Ocean Breeze neighborhood on Staten Island. The family lived across the street. During Sandy, Toto left when the water reached his knees; the restaurant had unmoored from its foundations by then. Sections of sidewalk had crumbled. “My house got pushed two hundred feet off the foundation,” he remembers. “It was like The Wizard of Oz. My entire existence got turned upside down.” The Producer will be one of those dots moving from the coast to the center as the sea level rises. Ocean Breeze and Oakwood Beach were declared eligible for state buyouts at pre-storm values. New York bought six hundred homes. Federal flood insurance for houses damaged by Sandy has risen by as much as 25 percent. The area around the restaurant is gap-toothed. Toto points out the houses of some residents who were underwater on their mortgages before their houses went literally underwater. Since Sandy, Toto sold the restaurant to new owners who are turning the place into a barbecue joint. Some who can’t afford to leave, or who are too old to start over, have stayed. Their new houses stand on stilts. One structure, an attached unit, has one intact, inhabited side and one crumbling, abandoned side. “It’s a mixed bag,” Toto says. The Ocean Breeze neighborhood was originally a salt marsh and never should have been built on. The land is returning to nature. On the deck of the new place, Toto has left a painting on the wall, a mural of the waves at the height the waters reached during Hurricane Sandy. It hangs about level with your shoulders if you’re sitting down. You can have a lovely meal, Staten Island barbecue, and see right where the water will rise to. “I wanted them to put that there as a reminder,” Toto says. “People have no clue what this experience is. I do. And I do think it will happen again.” Everybody knows it will happen again. They’re still eating there. Toto came back to Staten Island to rebuild because of massive investment by the state. It’s unclear whether that would be possible after a massive outflow of its population. A different possible response to climate change catastrophe followed the Camp Fire conflagration in Paradise, California. Fifty-two thousand people evacuated. Only half of them ended up staying in California. The wealthier people moved to the nearby town of Chico. On the Facebook group Camp Fire survivors use to share their stories and to stay in touch, they have registered their presence in forty-eight states. They’ve also left records of the randomness of their lives: I find myself in Washington with no family around. And life is still hard. But I’m working on it. I finally found a job, I got a travel trailer. I made it work but yes we are still struggling and we might be for a while but will be okay. Me and my kids miss our lives but there’s nothing we can do about it. We miss our family, we miss our friends, we miss our home, and we miss our stuff. I still haven’t went to counseling like my mom said I should but I think I might need it. Because I find myself crying over the littlest things. We are strong, I just keep telling myself at least we’re alive. I’ve arrived at Murphy, North Carolina now, staying at an air B and B rental cabin here. It’s the first chapter in a new adventure to have moved across the US at 66, disabled and knowing NO one here where I’ve moved. Now to find a new long-term home—fingers crossed! I am now in a new state, in a beautiful town. Everyone here is so nice, and I have a new home as well. I know I should just feel lucky to be alive, but something inside me died that day and cannot be recovered. I miss my pets, my home, and my neighbors and it sickens me that some did not make it. I dream each night of my pets who died and the idea of their suffering terrifies me. I cannot eat or sleep normally now; nothing brings me pleasure anymore. I am bereft. I cannot abide the death of my community. I have decided to give myself one year, until November 8th, 2019, to see if anything will change. Sometimes I wish that I too had died that day. After Hurricane Katrina, around 100,000 citizens were trapped in New Orleans. That disastrous evacuation—a case study in emergency mismanagement—resulted in several hundred deaths by heat and dehydration within a few days. Eventually, 1,800 died there; 1.36 million applied for assistance. The scale of human destruction for a hurricane hitting New York would be exponentially greater. The Politics of Climate Change Refugees Robert McLeman studies migration patterns and climate change at Wilfrid Laurier University in Waterloo, Ontario. He has a disarmingly cheerful, upbeat way of describing the spread of total pandemonium. Climate change can bring about political chaos, in large part through migration. The rise of temperature or sea level won’t necessarily break people. It’s what you don’t expect that breaks you. I’m Canadian, so no cold snap, no snow dump, can break me. I’m used to it. I know what to do. But I wouldn’t know what to do in the case of even a mild drought. Bangladesh, to take an example, will typically not experience mass migration due to flooding, because people in that region have been dealing with floods for thousands of years. But a drought could cause a serious crisis, causing waves of migration into India that result in political chaos. What could Americans adapt to? And what could break them? Most worrying to McLeman is the fact that American populations are growing in the areas that are most vulnerable to unpredictable catastrophes. They include coastal New York, coastal New Jersey, Florida, coastal Louisiana, the Carolinas, the Valley of the Sun, the Bay Area, and Los Angeles. Many Central Americans who were separated from their children at the American border were fleeing gangs and political instability, but they were also fleeing drought. “Environmentally related migration already happens; we’re just seeing the thin edge of the wedge right now,” McLeman says. You cannot read a history of fascism that does not attribute its popularity, in part, to the deeper trends of the Great Depression. A 2012 study from the National Bureau of Economic Research confirmed “the existence of a link between political extremism and economic hard times as captured by growth or contraction of the economy.” The future of America will involve severe drought, economic downturn, and the erosion of major coastal cities. The political scenarios in the previous two reports reveal the dangers of these realities. The rise of the hard right and hyper-partisan Washington emerged, tangentially, from the collapse of the housing market in 2008. The rising chaos works both ways. American institutions respond weakly to emergencies. The emergencies weaken the American institutions, which, in turn, diminish their capacity to respond to emergencies. It’s a cycle. American families are chewed up. No policy solutions, not even the most extreme, would prevent what I have described here. The Thanksgiving After the Fall of New York The Producer didn’t travel home for Thanksgiving that year. She was already there. Months after the fall of New York, there’s no longer reliable data on suicide rates or food insecurity. There are large drifting groups of human wreckage exploding in random violence or moving away from fear and toward the hope of safety. For the Producer, the relief of escape and reunion have passed. Vanished New York is worse than a wound to her. It’s a cauterized future. It’s a closed escape hatch while the waters are rising. The Producer fought so hard to break out of Iowa, to climb her way to the center of the world. And then the center of the world disappeared. She had some amazing audio footage of her escape from New York in the end. There was no one to sell it to. At first, no one doubted that they would rebuild New York. Everybody talked about “New York tough,” and writers published pieces written about the surprising joys of having to take the Brooklyn Ferry again, and sidewalk vendors hawked FUCK YOU, MURIEL, YOU BITCH T-shirts outside the World Trade Center. After the Second World War, Germany and Japan rebuilt Berlin and Tokyo. After the earthquake of 1755, the Portuguese rebuilt Lisbon. But in all those cases, they assumed that their cities would not face such an uncertain future. If New York is forever more vulnerable to hurricanes, why rebuild it? How to rebuild it? The city and state and the federal government face an insuperable challenge, tasked with the almost incalculable cost of rebuilding the bulk of New York City’s infrastructure for an unpredictable future. And how could they raise the money when the people have fled? Who was going to pay the taxes? The Producer’s husband has moved back to New York by then, and crossing the country is too much, even for Thanksgiving. He’s part of a salvage crew in the Bronx, digging up the abandoned subways for precious metals. All that devastated infrastructure has become the richest scrap metal in the world. As for her nephew, he vanished one morning, leaving a note: He went to look for his father in North Dakota. When he bought a phone, he would call them. That’s what the note said. His mother took his note seriously. She had to. But the Producer knew better. Her nephew had become one of the untraceable, the phoneless. He could have joined anyone. The Dakota Gadsdens. The local branch of the Atomwaffen Division. One of the separatist communes forming across the country. Or just one of the roving gangs. Still, they left his room exactly as he had left it, plastered with the historical Nazi and Allied propaganda, vintage images of Sharknado and Dawn of the Dead, the ceiling with dangling models of bombers. At least they still have the garden. The Producer and her sister built an electric fence around the edges of the property after a few thieves snuck in, looking for marijuana and chickens. She was glad she’d brought the Glock with her from the city, but she bought a couple of Mossberg pump-action shotguns too. As she sets the table for the family in the long dining room, the Producer finds herself recalling the Thanksgiving her cousin Rose returned from the Iraq War back in the early 2000s, the cackle of her mother’s laughter in the kitchen, her uncle and her dad in the hubbub of some argument, who can remember about what. All those happy memories are burdened with the sense of defeat now. Is it just the passing of time? Nobody’s life goes the way it’s supposed to go. Everybody knows the numbing sting of what might have been. She thought she would have grown into maturity by now, into security, into property, into control over her own life, a legacy to offer the future, if only some wisdom. At the Big House, the sisters live in the shadow of their mother’s exhaustion. They know, with a shared sense of guilt they don’t have to acknowledge, that their own stalled lives have burdened their mother. They should be inviting her to Thanksgiving at one of their houses. But they’ll never own anything. The food this Thanksgiving is a little better. Not enough for leftovers but plenty for now. They have turkey again, and mashed potatoes with real butter. The garden did well with a little more rain. They made beans with slivered almonds and carrots and beets and sweet potatoes and shredded cabbage. The whole family gathers around as it always had. Everybody agrees that rice stuffing with sage tastes better than bread stuffing. What happened? The Producer won’t know as she looks back, trying to figure it out. The systems that keep us alive are ghostly, invisible. When they’re gone, we won’t even be able to say with any certainty what we’ve lost. She will sometimes blame herself and sometimes blame her times, and she’ll be right both ways. She, like her country, has stumbled from crisis to crisis. And the hardest fact is that the catastrophes they’ve lived through—the crash, the drought, the fall of New York—are only preludes. Worse is to come. They remain the lucky ones—for now. You’ll see it in on your feed, or maybe you’ll be out and catch it on a television in the corner of a coffee shop, or somebody you love will call or text. Everyone’s phones will go off at once. In your office, on the street, on the screen, horrified spectators, stopped still, with their hands to their mouths, gasping, running in vague panic. Smoke lifting over the Capitol—gray and black fumes billowing from the top of the great dome. A dirty bomb at the heart of power. The photographs will be unforgettable: the horrifying cloud visible from Arlington cemetery, the burning mirrored in the Reflecting Pool in front of the Lincoln Memorial, a casual shot from the East Potomac Golf Course of players teeing off while the government burns behind them. Even before anyone knows who committed the atrocity, the news will report that everything has changed, that America will never be the same. The news will be right. Everything will have changed. America is one spectacular act of political violence away from a national crisis. The Power of the Gesture Only a spark is needed, one major domestic terrorist event that shifts the perception of the country—an anti-government patriot who takes his rage against federal authority and finds expression in a drone loaded with explosives flown into the Capitol dome. The politics of the terrorist and even the violence itself won’t matter so much as the shock the violence produces, the perception it conjures. Even a small gesture can completely alter the public’s consciousness of its own security. In 1970, in my own country, Canada, a separatist splinter group kidnapped a Quebec cabinet minister and a British diplomat. That was enough for the prime minister, Pierre Trudeau, an icon of liberalism, to declare martial law and suspend civil liberties. The kidnappings were, in themselves, of very limited moment or importance. The threat to the stability of government was negligible. The separatist party in question, the Front de libération du Québec, was disorganized and minor. It didn’t matter. It was a question of perception: when the country felt out of control, the government had to respond. That sense of control has already frayed in America. On January 6, 2020, rioters beat a policeman to death on the steps of the Capitol, smeared feces on the walls, took selfies in the House chamber, and stole souvenirs. The event was widely described as an insurrection. It wasn’t. The rioters were only loosely organized and possessed little political support and no military support. But those facts may easily change. What will it be like when they come back shooting? The riot of January 6 should be taken as evidence of how political partisans will treat the onset of violence: 45 percent of Republican voters support the assault on Washington. “There’s a lot of people out there calling for the end of violence…,” Rush Limbaugh said on his show the day after. “I am glad Sam Adams, Thomas Paine, the actual Tea Party guys, the men at Lexington and Concord, didn’t feel that way.” As January 6 has faded from the news, Republican talking points have continued to diminish its importance. “Watching the TV footage of those who entered the Capitol and walked through Statuary Hall showed people in an orderly fashion staying between the stanchions and ropes taking videos and pictures,” Georgia Republican Andrew Clyde said in May. “You know, if you didn’t know the TV footage was a video from January the 6th, you would actually think it was a normal tourist visit.” The representative was signaling. The Republican Party has become a movement with a political and an armed wing; the connection is clarifying. The relationship between the two is rarely direct—as in the case of the Oregon state representative literally opening the door for rioters. It’s more often expressed laterally, sometimes through gestures, like Senator Josh Hawley’s raised fist in support of the rioters, and sometimes through legislation, like the new restrictions on voting that continue to cast doubt, peripherally, on the legitimacy of the 2020 election. Meanwhile, the impotence of the government only becomes more naked: the greatest deliberative body in the world cannot manage to investigate an assault on its own members. The question of civil war is only a matter of scale. All it would take is for the violence that’s already manifested—the LA riots in 1992; the defiance of the federal authority by Arkansas in 1957; the sagebrush rebels shooting federal authorities as they have in recent years; the January 6 storming of the Capitol; white power groups promoting lone-wolf terrorism as they do—to fuse, through the rage-fueled mechanisms of the internet, into widespread conflict after a cataclysmic event. In hindsight, the cataclysmic event will appear completely natural, a logical outcome to the trends of the country. The United States is particularly vulnerable to terrorist spectacle. September 11 was an act of significant destruction, but its iconic status, the meaning it took on in the American consciousness, was outsized. The resonance of September 11 in public life caused the United States to enter two failed wars and to continue those wars long after any national or global interests were being served. A domestic September 11 would create the same irresistible momentum. A serious assault on the political symbols, a sense that the nation, as a body, could be under threat, would inevitably provoke the impetus for revenge and the hunger for order. The United States would not respond rationally to an assault on the Capitol. It would not manage to find a considered policy broadly supportive of the goal of restoring peace to the country and reducing tensions within its sectarian fronts. The underlying tensions in the country are too strong, the sense of threat too developed. If history is any guide, the reaction would be oversized. It would be violent. It would be controlling. It would be vengeful. How Close America Has Come In two separate incidents in the past fifteen years, radical right-wing partisans with violent intentions had access to low-grade nuclear weapons. They were discovered by accident. The first was in Maine. “On 9 December 2008, radiological dispersal device components and literature, and radioactive materials, were discovered at the Maine residence of an identified deceased James Cummings,” the Bangor Daily News reported. The second was in Florida. In 2017, one of the roommates of a National Guardsman named Brandon Russell shot two of his other roommates. In their shared property, police found a cooler filled with HMTD, a high-power explosive, along with thorium and americium, both nuclear fuels. Russell had Atomwaffen ties. Cummings was a white supremacist. Both Cummings and Russell were caught by accident, not by anti-terrorism efforts. Cummings’s wife shot him. One of Russell’s roommates shot the others. Those peripheral crimes, not efforts by law enforcement, led to the uncovering of the nuclear materials. How many other Cummingses and Russells are out there right now? What a Dirty Bomb Does “The effects from radiation exposure would likely be minimal,” a Department of Homeland Security report on the effects of dirty bombs makes clear. The spectacle is the main problem. “Psychological effects from fear of being exposed may be one of the major consequences of a dirty bomb.” A dirty bomb at the Capitol building would serve as an act of annihilating symbolism more than an act of physical destruction. But that wouldn’t diminish its power. “Such impacts might involve disruption to lives and livelihoods as the contaminated area is being cleaned up,” the DHS report adds. This impact could continue even after the site has been cleaned up if people are reluctant to return to the affected area.” The disruption of the legislative body would devastate the country’s faith in its capacity to negotiate solutions peacefully. How the Country Changes At first you won’t necessarily notice much of a change. Violence has always defined America. There have always been two sides to every story. The New York Times and MSNBC will begin by blaming the catastrophe on the Secret Service and the FBI, who, in their view, have shirked the threat from domestic terrorism for too long. Fox News and the rest of the conservative media will bemoan the rising incivility in American politics. Online discourse will be rife with conspiracy theories. Anyone who can be blamed will be blamed—the Jews, the Muslims, immigrants. “White democracy eats itself,” the radicals on the left will claim. Others will be happy, or will claim they are happy, now that the facade of democracy has been stripped away. White power groups will claim that it’s all a false flag and that the long-awaited race war is finally underway. All of this already happens after acts of political violence in the United States today. To clamp down on domestic terrorism, the US government will have no choice but to control arms, control the movement of people, and control hate speech. Even the first of these requirements will be technically unfeasible and counterproductive. A significant portion of the US population considers any attempt to curtail, or even to register, the private possession of military-grade weapons inherently un-American. How much more un-American will they consider limits on movement and speech? The American government, in order to survive, will have to suspend the most sacred icon of the American government, the Bill of Rights. So, right from the beginning, as an inevitable element of this kind of war, a massive portion of the US populace, nearly half, would consider the actions of the US government un-American. And they wouldn’t be wrong. The United States has been involved in counterinsurgency conflicts for over fifty years. It has never learned enough to avoid the first trap: the violence that imposes order to control violence produces more violence and more disorder. The means of counterinsurgency are in direct conflict with their ends: You cannot reach pacification by murdering people. Over and over again, the methods of control generate chaos. American Counterinsurgency Strategy Fortunately, or unfortunately, we have a pretty good idea of how the United States government would respond to an outbreak of mass political violence. After decades of failure, the American military has a complete manual on the subject: Joint Publication 3-24, Counterinsurgency, or JP 3-24. There are two basic strategies at work in current military policy around counterinsurgency: they go by the acronyms SCHBT and ISIR. SCHBT stands for “Shape, Clear, Hold, Build, Transition,” mentioned earlier, and ISIR for “Identify, Separate, Influence, Renunciation.” Ultimately these are not that different from the “oil slick strategy” used during the Algerian War of Independence. The military holds areas of loyalty and moves outward from them. The first requirement is to determine areas of loyalty. During the desegregation crisis in Arkansas, Eisenhower’s first order was to hold the Arkansas National Guard to barracks. He didn’t want to test their loyalty. A military force would move from, say, Portland, where the belief in government legitimacy is comparatively strong, county by county, into rural Oregon, which is rife with anti-government patriotism. ISIR is a strategy for de-radicalizing youth in the areas under control. How do you de-radicalize youth while at the same time taking away their most basic rights? You can’t. It’s hard to find youth so stupid that you can kill and imprison their parents and tell them you love them afterward. It didn’t work in Iraq and Afghanistan. It won’t work in the United States. JP 3-24 is the culmination of decades of failure. It’s a manual born out of lost wars. Because it has been written by those who need to articulate some kind of operational purpose, it imagines the possibility of victory. But those who have fought in America’s counterinsurgencies have suffered enough to abandon false hopes just because they serve an institutional purpose. Not that there aren’t differences of opinion. While some veteran officers insist that counterinsurgency can never succeed, others believe that, under specific conditions and with clear limits, counterinsurgency can achieve a few, narrow goals. Daniel Bolger, a retired lieutenant general and history professor at North Carolina State University, is the author of Why We Lost, an on-the-ground report on the failures of two decades of American counterinsurgency. Bolger studied counterinsurgency in military school and even wrote a speculative novel about the Afghan war of the late 1980s from the Russian perspective. When he found himself as part of an occupying force in Jalalabad, he knew, perhaps as much as anyone could know, the folly of occupation. “It is a militarily futile and stupid thing to engage in. Most countries regret it,” he says. “You can go back to Roman times, to ancient China. Whenever you get into these situations, it tends to bleed the occupiers.” His view about the counterinsurgency manuals is definite. “Most of this stuff is just bunk. We’re kidding ourselves if we think this stuff is going to work. There’s a flawed assumption at the base of the counterinsurgency field manual. If we, as outsiders, are going to secure the population, we are already wrong. How can we do that as outsiders?” The false premise of counterinsurgency is that you can change the minds of people through force. Wars of counterinsurgency are wars of perception. You can’t murder your way to any perception other than that you’re a murderer. It’s in the nature of insurgent conflict that violence builds on itself. Symbolic horrors echo. Resonance compounds. The most recent counterinsurgency manual, JP 3-24, has digested, or at least acknowledged, the problem of perception. Insurgencies and counterinsurgencies are engaged in competitive storytelling. “Insurgent groups harness narratives to communicate grievances, goals, and justifications for actions to both internal and external audiences,” JP 3-24 reads. “Insurgency narratives have three elements or components: actors and the environments in which they operate, events along a temporal continuum, and causality—cause and effect relative to the first two elements.” The key word here is “audiences.” And how good can any military force be at playing to audiences? The Spectacular Nature of Twenty-First-Century Conflict You will be the audience. You yourself will be the battleground of the conflict. The war is over your feelings about the war. You will begin on one side or the other. Stories will accumulate. Soldiers will fill the street. Flags will hang out of windows. You will feel that the other side is all terrorists and they will feel that you are a terrorist. As they already do. At first, the horrors will seem distant. You will talk about them with your friends. The military brings in tanks to crush a pocket of apocalyptic cultists who are preparing for armed resistance. Was it overreach? Sovereign citizens, organized in posses, stalk Chicago and the cities of the Northwest murdering protestors. Should there be armed left-wing groups to respond? The statehouse impeaches a Southern governor for hate speech after he critiques the Democratic president. What about the First Amendment, or should that be suspended? An attempt to disarm Oregon Three Percenters after they hang a government informant turns into a bloodbath on both sides. Running gun battles erupt over the rights to herd cattle on federal lands in the West. Racialized terrorism becomes as normal as mass shootings in the United States currently are. The government declares martial law and suspends the writ of habeas corpus. The number of places you visit will shrink. Where is safe? Who is safe? Control and chaos feed into each other and feed into despair. When you see an officer of the law, you ask yourself: Which side is he on? Public spaces in general are dangerous. You can’t go to a movie without wondering who’s going to shoot it up. Fracture means threat. You will know how you feel about all of this. The more confusing America gets, the more clear everyone will believe it to be. As your side commits evil, you will become entrenched. There must have been an even greater evil to justify it. The Importance of the Military Oath Who controls the military is the most important question. The US military is a true transnational institution. In 2017, a Gallup poll found that Americans’ trust in the military is double that of the presidency and six times that of Congress. The worship of the armed forces has been ingrained into ordinary American life since the beginning of the Iraq War. No sporting event can happen in the US without a celebration of a member of the military. Many airlines give the military priority boarding on US flights. Some grocery stores offer preferred parking to military families. The US military occupies 2 percent of all federal land in the continental United States. Its economic activity constitutes 3.1 percent of the GDP. There are nearly 20 million veterans. Worried analysts in the military describe an emerging “monopoly of trust,” a position of reverence they don’t want. The military functions as a tool. That is how it sees itself. It is not supposed to be in charge. Soldiers would serve a constitutionally elected government whether they considered it legitimate or not. Right-wing infiltration into the military is less of a concern than partisan infiltration into law enforcement, because the oath and the chain of command are clear. A coup would hardly be unprecedented in global terms: in Chile, in 1973, a constitutional democracy in place for forty-five years devolved into winner-take-all, zero-sum partisan politics until the military imposed tranquilidad. Other countries, even established democracies like Canada, have imposed martial law in the middle of severe political upheaval. But a hard coup in the United States—tanks rolling up Pennsylvania Avenue to impose military control over the country—is unlikely. The deep-seated causes of almost every coup, anywhere, are “poverty, economic activities based mostly on land, and hybrid political regimes,” according to Taeko Hiroi, a professor at the University of Texas at El Paso who studies the causes and triggers of coups. Countries which are neither authoritarian nor democratic are most vulnerable. The immediate triggers of coups tend to be “social instability, anti-government protests, economic crisis and regime transitions.” It’s not that these conditions are inconceivable for the United States, but the real reason why a hard coup is unlikely is simply that it hasn’t happened before. “One of the most important factors in a country’s propensity to experience coups is its history,” Hiroi says. “Coups are more likely to happen to countries that have experienced coups.” The Situation at the Outbreak Both the right and the left have structural advantages. The right will benefit from the ferocity and militarization of its base, significant infiltration of the radical right into institutional life, and the legacy of the Senate and the Electoral College. The left, for its part, makes up the majority of the country, and they have the money. Biden-voting counties in 2020 accounted for 70 percent of the national GDP. With each side’s respective strengths, there will be no overwhelming force or clear winner from the outset. The Impossible Solution For Daniel Bolger, the problem of counterinsurgency is fundamentally not a military one: “A succession of winning firefights makes exactly no difference. The local people have to run their own government.” When you read Bolger’s book Why We Lost, you keep waiting for the losses. The Americans win nearly every engagement, and totally. They have excellent plans that are well-executed. Their collection of victories is irrelevant. “By definition, you’re the occupier, and everything you do just proves to the local population that their ‘local government’ is nothing but a proxy or a tool,” he says. It’s the classic case of if you lose, you lose, and if you win, you still lose. The tactical considerations of battles between the military and the militia forces on United States would be completely irrelevant. No one with any tactical expertise can imagine anything other than a one-sided engagement. Professional military forces are professional. No one with any political expertise in counterinsurgency could imagine that any of those victories would matter. Rather, every time the Marines demolished another outpost of resistance, it would only exacerbate the underlying crises. In Dispatch One, I outlined what an engagement between the US military and anti-government patriots might look like. In the opinion of every military expert I talked to, there was no question of who would win the battle. But the United States has lost a series of wars in which it has won the vast majority of engagements. “You will occasionally hear people say, ‘I’m not worried about an insurrection because the army’s got all the tanks and the air force has bombers,’ ” Bolger says. “Look, if that’s what you’re reduced to, just going in and killing people, you’re not solving the insurrection. In fact, you’re spreading it. You’re guaranteeing more of it.” You cannot punish people out of hating you. The military is an instrument of punishment. Its very function makes it useless. For Bolger, who has seen this futility from every angle, counterinsurgency strategy is a contradiction in terms. It is a game in which the only winning strategy is not to play. But not everyone has the luxury of not playing. Retired colonel Peter Mansoor has a different perspective. For Mansoor, a successful counterinsurgency is next to—but not quite—impossible, a vital distinction. For one thing, insurgencies fail when they are unpopular with the local population, as in the cases of the Shining Path in Peru and Che Guevara in Bolivia. “The most important thing is to get the politics right, and if you get the politics right, you’re going to be able to win a counterinsurgency,” Mansoor says, while acknowledging that “the reason these insurgencies occur in the first place is because of politics.” The role of the military, in Mansoor’s view, is to clamp down on violence so that political progress can be made. “If you have so much violence going on, the politics is frozen,” he says. That need for stability to promote dialogue was the assumption behind the Surge in Iraq in 2007. And there, an expanded counterinsurgency strategy did make politics possible. It’s just that the parties found themselves exactly where they started before the violence. Ingrowing Despair The solution to the next civil war will be the solution to the crises America already faces. The military at best could provide the space that the United States currently possesses to negotiate its problems. If America cannot solve these problems now, why would it be able to solve them after widespread violence? Once counterinsurgency starts, it’s nearly impossible to extricate your forces. How can anyone manage to maintain perspective in the middle of a fight for survival? “You get focused because it’s life-or-death on patrols, ambushes, night raids, because your life is on the line,” Bolger says. “You’re hopeful, as you’re doing that, that somebody way up the chain is thinking, ‘Hey, I’m making these guys do this because this is getting us towards whatever we want.’ My experience was that they were making us do it because that’s what we did. I don’t think they had an overall plan that I could detect. When you’re talking about your own country, the stakes would be much higher.” JP 3-24 has a nifty graphic explaining how to win a counterinsurgency. It involves three neat political goals. Do I need to point out how impossible this is in the case of the United States? There are whole libraries devoted to identifying the root causes of American grievances. Addressing the country’s immediate problems is increasingly beyond the capacity of the government no matter who forms it. And as for the “resolution of the underlying issues,” what would such a question even mean? The resolution of a country devoted to liberty but founded on slavery? The resolution of a political order built on revolutionary overthrowing? How do you resolve the glorious contradictions of the Republic, the contradictions that have made it great? What would that even look like? The Evanescence of Democracy The stakes would keep rising, as every attempt to contain the violence would lead to more resistance, and the rising violence of the resistance would lead to more ferocious attempts to contain it. Mass shootings at military bases, which have already occurred, will spark retribution and more intense security strictures. Atrocities will blossom into brighter and brighter flames. The wealthy, in gated communities, will up the quantity and quality of their private security. The poor, as they do now, will fear gangs and join them. The machinery of American democracy will continue to function. The country will hold elections. Parties will change power. But they will increasingly matter less and less. Once the state gets involved in political violence, the machinery of the peaceful transition of power is superfluous. The insurgents will want political power. If you deny it to them, which must happen to preserve the state, its machinery is useless. The Unlikelihood of a Hard Coup in the United States One of the reasons that hard coups—militaries taking over civilian governments—have become so rare generally is that partisans the world over have found them increasingly unnecessary. “There are many different ways to remove the president,” Taeko Hiroi points out. Impeachment is much quieter. The supporters of indicted presidents—in Brazil, in Israel—consider the transitions that overthrow their leaders “coups,” but the mechanisms aren’t extra-constitutional. “Soft coups” or “self-coups” are the preferred methods by which a sitting executive consolidates his or her power. (The term, in Spanish, is autogolpe.) In 1992, in Peru, democratically elected president Alberto Fujimori sent tanks to the legislature so he could reform the system to guarantee his own power. Neither Erdogan in Turkey nor Putin in Russia found the need. There is a way to walk the line: following constitutional procedures while ensuring that all the power concentrates in the hands of the executive. A self-coup is well underway in America already. The rise of executive power is the rare case of a truly bipartisan trend. The use of executive legislation, bypassing Congress, began in earnest with Ronald Reagan, continued under Clinton, expanded under Bush, and became standard under Obama and Trump. What was once an exception made for cases of national emergency now goes unremarked. The Prospect of Trying to Control the United States For Mansoor, the sheer scale of the United States in terms of geography and population would present a massive military problem. “You need a troop ratio where you have a lot of security forces to clamp down on violence. The United States is a very large continent with a large population. I’m not sure we could ever have that many people in uniform to make it happen. What you would see is the rise of militias on both sides.” The military’s role will be to clamp down on violence. The only way to clamp down on violence would be to put the country on lockdown. “You have to control the population,” Mansoor says. “In Baghdad we did that by segmenting off the city with cement barriers, by instituting martial law and censuses. There was a curfew. There were checkpoints all over the place. We went into people’s homes in cordon-and-search operations looking for arms and munitions. We had a full-scale intelligence operation to ferret out the terrorist and insurgent leaders. We had an unblinking eye over the city taking 24/7 surveillance. It’s very invasive for civil rights. It became essentially impossible for the terrorists and insurgents to move or communicate.” Areas of population were broken down by ethnicity and by twelve-foot, steel-reinforced blast walls. Citizens were interrogated every time they left or entered their neighborhoods. Anyone suspicious was arrested. “This is the other thing that would occur. Massive detention centers across the United States, where people who were suspected of being disloyal or who were disloyal would be warehoused on a massive scale,” Mansoor adds. The United States is already the most incarcerated society in the world. A civil war would make it vastly more so. An insurgent conflict in America, the only country in the world where there are more guns than people, would eclipse all previous insurgent conflicts. It is much more diverse than any other country in the world, with a hugely heterogeneous population. It exists in explicit resistance to state control. The Cycle of Spectacular Violence and Repression Spectacular violence isn’t new to America. In 1867, the New York Times reported on a public fund set up in Colorado. “At a mass meeting held in one of the little towns in that Territory recently, a fund of $5,000 was subscribed for the purpose of buying Indian scalps, and $25 each is to be paid for scalps with the ears on. From this it would seem that the citizens of that delectable Territory cannot trust each other in a matter which they represent to be of such vital importance to themselves, and so require the ears to be produced with each scalp lest some dishonest cut-throat should make two out of one, and so obtain more than his share of blood money.” If a second civil war comes to America, it will not lack for precedents of annihilating fury and indiscriminate murder. The horrors of this kind of conflict are bottomless: the rage feeds on itself, the spectacle builds. In the Syrian civil war, government forces stuck heads on pikes to display their intent of total war. Insurgent resistance forces committed genocides against smaller tribes. Any international agreements about the Laws of War—the ban on chemical or biological weapons, say—meant nothing quickly. Torture became standard practice. The use of torture is the ultimate folly of counterinsurgency. Whatever its uses in individual cases, which can be significant, torture has never been broadly effective. You cannot clamp down on violence by elaborating suffering. The French learned its corrupting seduction during the Algerian war of independence. Without torture, by almost all assessments, they would have lost the Battle of Algiers, and if they had lost the Battle of Algiers, they would have lost Algeria. But by their use of torture, they lost Algeria anyway, and their own souls besides. Albert Camus had the clearest view of it: “Torture has perhaps saved some at the expense of honour, by uncovering thirty bombs, but at the same time it has created fifty new terrorists who, operating in some other way and in another place, would cause the death of even more innocent people.” Pierre-Henri Simon, a close observer, witnessed the deeper futility of the whole process. By the use of torture, the policeman “injures in himself the essence of humanity.” But it is worse with the military: “It is here that the honour of the nation becomes engaged.” America is already engaged in torture, and has been for generations. In 1999, the US Congress voted to close the United States Army School of the Americas, acknowledging the atrocities they had spawned. How long could such repression last? “We’re talking about a future civil war in the United States, so the effort would extend indefinitely because of the passions that would invoke,” Mansoor says. For Bolger, as a historian as well as a retired officer, what is extraordinary is how little the United States has learned from even the insurgencies on its own soil. The British Army won nearly every pitched battle in the Revolutionary War. They could not hold the country against the will of its inhabitants. “The United States has had and has dealt with a significant amount of political violence from the beginning,” he says. The Constitution is the document of a revolutionary people. Like the Yugoslavian and Algerian constitutions, the document retains elements of its revolutionary origins; the Second Amendment insists on the rights of militias. It was written by militia men. The failure of Reconstruction after the first Civil War reveals the near impossibility of holding Americans under a political regime they won’t tolerate. The North won the war but couldn’t stomach occupation. “What really happens? The Northern forces struggle, undergunned, undermanned, with provisional support from the government, a very small occupying force up to 1877, and every year everybody’s looking at their watch saying ‘Are we done yet?’ ” Bolger says. “So what happens? The African American population that’s nominally free becomes peons with almost no rights by 1877, basically disenfranchised in every practical sense, and the people in the North accepted it because they knew they couldn’t do anything about it. They weren’t going to kill every single Southerner.” The compromise of 1877 was ultimately the retreat of federal power. “The South got essentially home rule,” Bolger says. Reconstruction was in a sense the first failed American occupation. The Exhaustion You won’t recognize your own country. You won’t recognize your own time. You’ll still have a job. You’ll go to work. You’ll raise your kids. It will be possible, just, to cling to a sense of normalcy, although it is exactly normal life that becomes impossible. Your city will burn. Your hospitals will fill. Your police will take sides. You will have to have papers to go out and to go home. Your children will need papers to get into school. You will constantly be in contact with military personnel. Rights that you’ve taken for granted your entire life will be suspended. The stories will accumulate: ever-expanding factionalism, ever-deepening loathing, the stakes of the monstrous spectacles rising. You won’t know what to believe after a while. All information will become propaganda. The news will fill with hate crimes, public lynchings, summary executions of right-wing figures in retaliation, urban riots that spill over, people dragged to their deaths behind trucks. When will you be one of the stories? The De Facto End of the Union To ordinary people, to Americans trying to live their lives caught between the random violence of terrorists and the grinding repression of the state, victory and defeat will look much the same. “If you’re in a situation where you’re using armed force to try and quell a population, you’re either going to have to kill a bunch of them or you’re going to pull out and let them have local control,” Lieutenant General Bolger says. “You’re never going to talk them into seeing it your way.” The United States, as an entity, survived one civil war. The question for the next civil war is not necessarily whether the United States would survive but whether it would be recognizable afterward. What Victory Would Mean

The typical conclusion of insurgency conflicts is not victory by either side but exhaustion by all. Exhaustion would reshape the American political landscape. “What bargains or deals would be struck with local authorities to stop the violence?” Bolger wonders. A devolution of power wouldn’t even require any formal legislation. The transition could be quite surreptitious. It’s a question of what laws the federal government would choose to enforce. There is precedence. Women in some states could vote fifty years before it was federal law. “Would what resulted look much like the America we know today?” Bolger asks. “I don’t know. The question is at what point does it cause the society as a whole to fracture. At what point does it go too far, and you say ‘Okay, this is no longer a country’? We’re all just pretending it’s the same thing.” That question is not just for future Americans. It is impinging on the present. With or without a civil war, Americans are going to face an existential question: Are they the same country anymore? Or are they just pretending?

#### Specifically, work stoppages disrupt military supply chains.

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Corey R. Payne, “Labor Unrest, Global Military Supply Chains, and the Chokepoints of Just-In-Time War,” Submission to American Sociological Association Conference, February 2023, https://ssha2023.ssha.org/uploads/230054

The COVID-19 pandemic revealed significant vulnerabilities in global supply chains. Public health shutdowns, a tight labor market, and volatile economic conditions led to significant disruptions to the flow of global trade. While disruptions to consumer industries have received considerable attention, the US military’s networks have also faced similar challenges: supply chain woes have “dealt a significant blow” to military industries, having “upended the plans of defense firms of all sizes” (Losey 2021). Pentagon officials noted that the pandemic heightened awareness of “vulnerability within the supply chain” that had existed before 2020 (Mayfield 2020). Indeed, long before the pandemic, some were sounding the alarm about supply chain vulnerabilities stemming from the “just-in-time” organization of the US military’s global supply chains (e.g. Adams 2013). The US response to Russia’s invasion of Ukraine has only compounded these challenges (Bender and Seligman 2022; Rathbone, Pfeifer, and Chavez 2022).

An analysis of labor relations can help us better understand these supply chain vulnerabilities. In the world economy writ large, labor unrest was a key component of supply chain disruption during the initial years of the COVID-19 pandemic, as workers struggled against dangerous working conditions and mounting deprivation in the face of an economic downturn (e.g. Covert 2020). The same held true in military supply chains: In 2020, for example, workers at Lockheed Martin and Boeing protested their being forced to work in dangerous conditions, while workers at GE’s Lynn, Massachusetts, plant organized a one-day strike—not just over their own safety concerns, but to pressure GE to swap production of armaments for the production of “life- saving ventilators the whole country so desperately needs” (Lacy 2020). Combined with a series of strikes over pandemic health and safety conditions in Mexican maquiladoras, many military officials and observers saw a coming crisis due to workplace disruptions (Sieff 2020).

While the pandemic brought the disruptive power of workers and the vulnerabilities of military supply chains into stark relief, their origins lie far earlier. Using new data on labor unrest in the US military’s global supply chains, this paper examines twenty-first century work stoppages in historical perspective. It argues that twenty-first century labor disruptions in the US military’s global supply chains directly stem from the decades-long embrace of neoliberal restructuring. In the mid-twentieth century, wartime challenges stemming from disruptive labor unrest and inefficiencies in mass mobilization led many officials and managers to seek a change in the way war was supplied (Payne 2023). While initial attempts at transformation emerged in the wake of World War II and the Korean War, restructuring took off after Vietnam—intertwined with the neoliberal changes in the world economy more broadly (Cowen 2014).1 The US military and its industrial base reorganized armaments production, privatized logistics services, embraced flexibilization and just-in-time networks, and racialized the workforce. By the 1980s and 1990s, labor costs were lowered, work stoppages declined, and a new form of “just-in-time warfare” (Hazlett 1995) warfare—exemplified in the technological and logistical prowess on display in the 1990-1 Gulf War—was on the horizon.

In the twenty-first century, the wars in Iraq and Afghanistan, combined with a global “war on terror,” placed significant strain on the military’s just-in-time supply chains. Careful observers have explored the industrial challenges of these wars (e.g. Hasik 2016), and some work has been done on strikes by industrial armaments workers in the twenty-first century (Payne 2020). Less attention has been paid to the significantly more disruptive labor unrest in global logistics networks. Using a new dataset to explore this unrest, this paper shows how the privatization, racialization, and flexibilization of logistics networks has yielded a new class of workers at the chokepoints of military supply chains. These workers often face poor working conditions, and they are able and willing to stop work in struggles to improve their conditions.

The response to this unrest from firms and military officials has thus far been to double- down on neoliberal restructuring. This only serves to heighten the conditions that place disenchanted and structurally empowered workers at the chokepoints of military supply chains. Instead, this paper argues that military officials should return to some of the lessons of World War II—when labor unrest was pacified through mutually beneficial social compacts with workers— but on a necessarily wider scale today than in the mid-twentieth century.

#### Robust military supply chains are the nexus of power projection.

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If logistics wins or loses wars, what wins or loses logistics? U.S. military doctrine has the answer: “The U.S. military supply chain (to include the defense industrial base) represents a major competitive advantage that underpins deterrence and allows the United States to project power.” Despite being established in doctrine, it took a global pandemic for the Department of Defense to take notice of the fragility of its supply chains and the full impact of China’s global economic expansion. However, acknowledging vulnerability, understanding it, and doing something about it are not mutually inclusive. While awareness in the Department of Defense is rising, the lack of visibility into defense supply chains makes easy targets for adversaries seeking to insert undetected risks into supply chains — silently biding time until they choose to exploit them. It is difficult to fix what you can’t see. It is time for the Department of Defense to take bold steps to gain full visibility into defense supply chains to help mitigate the risk of acquiring U.S. equipment from foreign adversaries and/or shoddy suppliers.

Supply chains underpin the global market. Every product has a network of interconnected companies that must come together at the right time and place to deliver a timely product. The more complex the product, the more nodes the network has. Each node has its own material, logistics, personnel, processes and stakeholder challenges. A disruption in one node will sweep quickly throughout the entire system and upend the supply chain.

The military supply chain is a complex system comprised of a network of suppliers, expanding beyond the known large defense contractors out to thousands of low-tier suppliers. Each tier of the network is critical to the success of the tiers above and below it. Within these networks, there are nexus suppliers critical to the success of the entire system. We argue that it is not too hard and not too expensive to gain full visibility over all of these supply chain nodes. To do so, the Department of Defense should capitalize on proven commercial supply chain software suites, work with Congress to set visibility mandates and reimagine its approach to supply chain management in the 21st century.

#### Lapses in power projection cause extinction.

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We are now, once again, living in the preliminary phase of an international confrontation that will rapidly evolve into a world war if the democracies do not shore up nuclear and conventional deterrence against territorial conquest. Full spectrum nuclear and conventional deterrence and Soviet appreciation of the costs of war kept the Cold War stand-off from escalating into a Third World War. However, nuclear deterrence will not on its own prevent World War III (over either Ukraine, Taiwan, the Straits of Hormuz, or the Korean peninsula), just as the prospect of incendiary and nerve gas assault against European capitals by bomber fleets did not deter the outbreak of the Second World War.

Instead, German leader Adolf Hitler chose to fight by armored conquest, and all of his adversaries complied. World Wars are never an intention of foreign policy. Instead, they escalate from failed attempts at a quick land grab by authoritarian states in the face of an unprepared and slowly coalescing democratic coalition. Washington must be on the lookout for deterrence crises in these minor theatres, as war will not start with an immediate Russian attack on Poland or even a direct Chinese amphibious landing on Taiwan’s coast.

Despite the enormous death toll among soldiers and non-combatants, neither the First nor Second World Wars had actually satisfied the complete definition of total war or reached Karl von Clausewitz’s definition of an absolute war. The First World War began, for both the Central Powers and democratic Allies, as quick campaigns, primarily focused on Berlin blocking the interference of France in German Imperial designs in Ukraine. Neutral world opinion likely deterred the use of gas against population centers in 1915 and thereafter, despite the war resembling a total effort in almost every other respect.

The reason the widely predicted incendiary and gas bomber attacks against the respective capitals of Paris, Berlin, and London never took place at the outbreak of the Second World War was that Hitler intended to achieve victory through a series of limited and rapid fait accompli conquests, including, in sequence, Czechoslovakia in March of 1939, and Poland in September, France in May of 1940, and culminating in a victory over Moscow by the end of 1941. In his 1938 Germany and a Lightning War, Fritz Sternberg argued that the experience of the First World War showed that Germany, even with its military-technical expertise, could not win a protracted total war. It was conceivable that an under-industrialized Russia could be defeated in the First World War. Still, there were absolutely no Nazi plans for defeating a USSR backed by U.S. industrial might.

While totalitarian propaganda could temporarily neutralize the German people’s reluctance to fight (11 million former Communist party voters still lived in Germany), Germany lacked the oil, food, and other resources necessary for an attritional contest. Hitler knew that given the political shock in Washington after the fall of France in June of 1940, it was only a matter of time before the United States would exploit an excuse to enter the war as it had previously in the First World War. Hitler was almost certainly aware that after the Japanese attack on Pearl Harbor in early December of 1941, and with the Wehrmacht’s failure to take Moscow a month later, Germany had one more campaign season to neutralize the Soviet Union before it would face the fate of inevitable defeat.

Contrary to popular histories, the September 1939 French and British declarations of war against Germany in response to its invasion of Poland were not intended to herald the beginning of the Second World War. As with the dispute between Sparta and Athens over Corcyra, which was to escalate into the Peloponnesian War, or the assassination of Archduke Ferdinand in Sarajevo in June 1914, the local conflicts evolved into World Wars as major powers saw opportunities to resolve long-standing strategic dilemmas.

According to the venerable Australian historian Geoffrey Blainey, wars that draw in originally neutral states into one of the two opposing alliances, thereby removing the uncertainty of the foreign policy of uncommitted states, cancel the deterrence against the attack calculations of the aggressor states (those states most intent on replacing the status quo with a new revisionist territorial, commercial and international institutional order). The mutual understanding between Germany and Hungary, Italy, Japan, and the Soviet Union (in the Molotov-Ribbentrop Pact), as well as the persistent isolationism of U.S. public opinion, made Berlin feel that an attack on Poland was safe from the further widening of the conflict. Beijing may today hope that the Russian and Iranian distraction of Europe and the United States, respectively, would allow it to move against Taiwan.

There does not need to be an existential threat to a country for its leaders to think it is worth the risk to trigger a war. While the sustainability of Nazi Germany’s autarkic and price-controlled economy and the reputation of the Nazi Party tied to it were doomed, Adolf Hitler gambled against a world order that blocked his aspiration to drastically enlarge German territory and population. Neither Russian President Vladimir Putin nor Chinese Communist Party General Secretary Xi Jinping faces an existential threat to their countries. Still, both believe it is worth staking the survival of their respective authoritarian regimes on a high-risk strategy to grasp at becoming a world power through regional conquest.

University of Chicago professor John J. Mearsheimer has demonstrated in his 2001 Tragedy of the Great Powers that continental states will risk their territorial futures for the opportunity of becoming regional hegemons because of the obvious benefit of near total security that dominating a region allows. Regional hegemons, of which the United States is the only example (completely dominating North and Central America, including Canada and Mexico), are able to exclude foreign powers from their own region through the low-cost expedient of interfering with them in their respective region.

China is too busy preparing for war against Taiwan to establish a major base and alliance against the United States with Venezuela, Mexico, and Brazil (although the USSR did try and set up a strategic base in Cuba and Nicaragua during the Cold War). In this fashion, the United States has preoccupied India with Pakistan, China with Japan, Russia with Germany, Egypt with Israel, Iran with Saudi Arabia, Indonesia with Australia, and Thailand with Vietnam. It would, if required, back Argentina against Brazil, Angola against South Africa, Cote D’Ivoire against Nigeria, and Kenya against Tanzania and Ethiopia.

There are three necessary requirements for deterrence to succeed against escalating local threats to global war. First, the democracies must have at least a single member incentivized to provide both strategic nuclear deterrence and the conventional trans-oceanic forces necessary for regional intervention in situations where a stability-instability paradox cancels out opposing nuclear arsenals. For example, the United States needs “escalation dominant” nuclear weapons to deter China’s use of nukes while also being able to land U.S. Marines on Taiwan to defend or liberate it. This is currently being undermined by an isolationist-populist trend within U.S. politics, largely the consequence of the perceived abandonment of the blue-collar class by both the Democratic and mainstream Republic political parties. This is, in turn, the result of deindustrialization, contested immigration policy, and the genderization of the law and voting patterns.

Second, the democracies must form a credible alliance framework for mobilization. NATO and its partnership architecture are well-suited for this purpose, especially given the challenges of setting up a similar alliance in East Asia and the Persian Gulf. Ironically, the lack of policy controversy so common during the Cold War, over command of the integrated Mediterranean fleet strategy, over nuclear weapons sharing, about whether a tactical nuclear war should be initiated at the East German border or the Rhine, indicate the lack of serious consideration of the implications of deterring China, Russia, and Iran. During the Cold War, Tehran was as hostile to Moscow as it was to the United States, a situation that now no longer holds. It is conceivable today that a Russian airborne division landing on the southern littoral of the Straits of Hormuz would now be conducted with the coordinated support, air cover, and supplies of Iranian forces at Bandar Abbas.

What democratic coordinated efforts do exist, such as the Interparliamentary Alliance on China, are rudimentary synchronization efforts by a minority of elites that hardly influence their domestic politics. In Canada, for example, the federal government has refused to identify those members of parliament who have been recognized by Canada’s intelligence service (CSIS) as colluding with hostile foreign powers. NATO membership is being used as a substitute rather than a focus of national defense efforts, as demonstrated by the repeated failure of Brussels to solve the collective action problem of producing artillery shells for the war in Ukraine.

Third, there have been few explicit warnings about what would happen, except in the broadly vague sense of triggering NATO’s Article Five, if any of the vital interests of the democracies is threatened or attacked. Rational deterrence theory has argued that there are three necessary conditions for deterrence to succeed: sufficient military capabilities, credible willingness to use force, and communication of that threat. Far too much discussion has focused on the sufficiency of force and credibility issues, and far too little has been focused on the most easily forgotten ingredient of communicating a warning. It was the simple error of excluding South Korea from the U.S. sphere of protection that made Beijing and Moscow feel safe to back the 1950 North Korean invasion of South Korea. Pakistan was emboldened to initiate the 1965 War because of reluctance in New Delhi to warn against any adventurism in Kashmir. The reasons for the failure to communicate are always the same. There is, first, a reluctance to alarm and appear irresponsibly belligerent to the domestic electorate. Second, there is the misguided notion that not mentioning a dispute will reduce the likelihood that it will become inflamed and lead to war.

Washington persists in its vague assurances about the defense of Taiwan, refusing to deploy ground troops as it had done as recently as 1979. This made sense at the time since Washington was exploiting the Sino-Soviet split that had developed since 1959. Siding with Beijing compelled the Soviets to shift one-third of their entire military and tactical nuclear arsenal to the East of the Ural Mountain range.

Today, the long frontiers of Norway and Finland and the former’s Arctic possessions, if violated by Russia, would likely produce an immobile stand-off. This dysfunctional response during the Second World War, the Sitzkrieg (or “sitting war”), was a seven-month period of inactivity after the September 1939 attack on Poland, during which Germany was afforded the time to build up and then conquer Denmark, Norway, the Netherlands, Luxemburg, Belgium, and France, by June of 1940.

Fortunately, today, declaratory policy and operational plans are far more explicit for the defense of Baltic NATO allies and Poland, the Straits of Hormuz, Filipino South China Sea islands, South Korea, and Japan, largely because U.S. forces are deployed there on the ground. In some instances, such as the war in Ukraine, deterrent ambiguity is useful because it robs Putin of the ability to activate outrage among Russia’s mobilization-age cohort. Thus, Moscow is trapped in a war whose expense is multiplied by the need to employ relatively ineffective technical expedients, such as using rocket bombardments to shift Ukrainian public opinion, and the predicament of having to hire overpaid foreign mercenaries and contractors.

U.S. Presidents Franklin D. Roosevelt and Harry S. Truman were constrained by American public opinion and their own strategic myopia about abandoning the people of Eastern and Central Europe to Bolshevism at the end of the Second World War, without which a confrontation with the Soviet Union would have been far more short-lived. Obviously, the American and British populations were hardly in the mood to support a new war aimed at pushing the large Soviet army back to its borders. However, as with the implied nuclear threat by President Truman against Soviet forces backing the Azeri separatists in the Iranian civil war in 1946, the United States could have intimidated a Soviet retreat out of much of Eastern Europe and thereby avoided the Cold War confrontation with the Warsaw Pact.

Consequently, contesting local threats to allies today, by Russia, China, and Iran, is vital because authoritarian states have repeatedly proven that they are capable of accumulating occupied people and redirecting their productive efforts against the spread of democracy. We see this coercive harnessing of free people into supporting authoritarian economies in how Beijing has suppressed the people of Hong Kong and how Russia has demonstrated its brutal occupations of Chechnya and parts of Ukraine, such as Mariupol.

The theory of the stability-instability paradox explains that the reciprocal deterrence by the 12,000-ton Nazi arsenal of Tabun nerve gas and Allied VX gas and biological weapons defaulted the Second World War to be fought by tanks and incendiary bombs. A very similar dynamic could neutralize the nuclear arsenals of China and the United States, leading to a conventional war over Taiwan, or at least delay the first desperate use of a nuclear weapon to signal a desperate resolve from the loser.

Deterring China, Russia, and Iran under these circumstances will require NATO and its democratic allies to focus on defending the smaller states on the peripheries. China will not attack Taiwan directly, nor will Russia drive directly into Poland, nor will Iran seize both shores of the Straits of Hormuz. Rather, by applying erosion tactics, they will all attack easier tangential targets that can be accumulated and later contribute to a major attack. China will boldly seize the offshore Taiwanese Islands, including Pratas and Taiping Island, Russia will target Norwegian Arctic island possessions, and Iran will push cohorts more deeply into Iraq. To preserve the peace, the democratic frontline should be pushed out to the periphery.

#### Furthermore, work stoppages ripple across agriculture.

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A. Ford Ramsey, “Labor Dynamics and Supply Chain Disruption in Food Manufacturing,” National Bureau of Economic Research, June 2021, https://www.nber.org/system/files/working\_papers/w28896/w28896.pdf

A major risk in agricultural supply chains arises from the diverse skills required of workers in the agriculture and food industry labor forces. These risks are compounded by consolidation and increased concentration in food manufacturing and processing, including meatpacking, which has resulted in increased plant size (MacDonald, 2014; MacDonald, Ollinger, Nelson, & Handy, 2000; Wohlgenant, 2013). Although varying in significance by industry within the food manufacturing sector, labor is a critical input to most manufacturing operations. Huang (2003) shows that changes in labor inputs to food manufacturing are heterogeneous across industries; meat products and miscellaneous foods saw increased employment between 1975 and 1997, while other food industries saw decreased employment of production workers. The meatpacking industry employs the most production workers of all food manufacturing industries. Given heterogeneity in the types and uses of labor in food manufacturing, firms face an array of operational and disruption risks related to their labor inputs.

Operational risks can be characterized by empirically modeling industry operation and assessing the flexibility of supply chain participants in responding to changes in the operating environment. For instance, if meatpacking labor is more specialized and harder to acquire than labor in other areas of food manufacturing, we might expect employment in the meatpacking sector to respond more slowly to changes in demand or other factors. There may be significant temporal relationships that aﬀect the ability of firms to adjust to changing market conditions. Accurate assessment of labor and wage flexibility is necessary for characterizing labor-related operational risks faced by firms.

In contrast to operational risks, disruption risk arises from events that may entail a sudden and complete break in the supply chain or firm operations. Probabilities of loss and magnitudes of loss are diﬃcult to assess for disruption risk as disruptive incidents usually occur with low probability and potentially large losses. These characteristics of disruption risk make it diﬃcult for firms to perform cost-benefit analyses or other studies for risk management as the results of such studies can be highly dependent on a small number of disruptive events (Tang, 2006). Firm management may view the probability of such events to be so low that they are not worthy of incorporation in risk management strategies (Kunreuther & Useem, 2018). Despite diﬃculties in modeling disruptive events, such events often lead to calls for public policy actions to improve resilience of a system.

The COVID-19 pandemic illustrates the impact of a major disruption in the food manu- facturing sector. Impacts occurred at all stages of the supply chain with eﬀects across both demand and supply sides of markets. In particular, labor inputs to food manufacturing were disrupted due to the nature of work in manufacturing facilities. Work routines in food manufacturing plants make workers particularly susceptible to infection by respiratory viruses such as SARS-CoV-2. Disruption was most evident in the animal slaughtering and processing sector. On April 12, 2020 Smithfield Foods announced that it would temporarily suspend operations at a plant in Sioux Falls, Idaho in response to a surge in the number of infected workers. At the time, the plant was one of the largest sources of COVID-19 infection in the United States (Bunge, 2020a, 2020b). Many other plants experienced similar local outbreaks of COVID-19 resulting in temporary closures. Plants that remained open and operated at increased speed were associated with higher rates of infection in the counties in which they were located (Taylor, Boulos, & Almond, 2020).

The supply chain implications of COVID-19 in agriculture have received significant attention. Hobbs (2020) discussed the potential for supply-side disruption due to labor shortages in downstream food processing and transportation. She notes that the nature of the COVID-19 pandemic aﬀorded manufacturing facilities a period of time to make adjustments to manufacturing processes and working environments. Labor issues up and down the supply chain are discussed in Larue (2020). Within food manufacturing, he notes that firms have the ability to reallocate capacity and an industry-wide shutdown would be the most diﬃcult to manage. However, complete shutdowns are extreme measures - likely to be only temporary - and he suggests the sector will switch to operation below capacity to implement mitigation measures.

Temporary plant closures and changes in capacity utilization have the potential to result in stockouts and shortages of food at retail. Stockouts were observed in retail establishments for specific products as consumers stockpiled in the early days of the pandemic. However, widespread shortages of food, whether meat, vegetables, processed items, or other items, did not occur (Hobbs, 2021). Many manufacturing plants were operating near capacity by the middle of 2020. While COVID-19 did create a major and unprecedented disruption for food manufacturers and meat processors, rapid response on the part of market participants indicates a degree of resilience.

#### Disruptions in ag supply chains cause extinction.

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David Harvey, “Global Unrest,” *The Anti-Capitalist Chronicles*, Edited by Jordan T. Camp and Chris Caruso, Published by Pluto Press, ISBN 9781786807748, p. ebook

There are many contradictions in the capitalist system, and some are more salient than others. The incredible class and social inequalities and collapsing environmental conditions are obvious priorities. But then comes the “too big to fail, too monstrous to survive” contradiction. Neither the social inequality nor environmental degradation issues can be addressed without taking on this underlying contradiction. A socialist and anti-capitalist program will have to negotiate a knife-edge path between preserving that which services the world’s population and which appears too big and foundational to fail while confronting the fact that it is becoming too monstrous to survive without sparking geopolitical conflicts that will likely turn the innumerable small wars and internal struggles already raging across the planet into a global conflagration.

This is the core of the problem. In Marx’s time, if there was a sudden collapse of capitalism, most people in the world would still have been able to feed themselves and reproduce. They were reasonably self-sufficient in their local area procuring the kinds of things they needed to live and reproduce. People could put some sort of breakfast on their table irrespective of what was going on in the global economy and in global markets. Right now, that’s no longer the case in many parts of the world. Most people in the United States, in much of Europe, in Japan, and now increasingly in China, India, Indonesia, and in Latin America are depending more and more on the delivery of food through the circulation of capital. In Marx’s time, perhaps 10 percent of the global population was vulnerable to disruptions in the circulation of capital, as opposed to many more who were subject to famines, droughts, epidemics, and other environmental disruptions. The crisis of European capitalism in 1848 was part a product of harvest failures and part produced by a speculative crash focused on railroad finance. Since then, capital operating in the world market has largely eliminated the prospect of starvation due to supposedly natural causes. If there is famine the underlying causes (as opposed to the immediate triggers) can invariably be traced to failures in the social and political system of capitalist governance and distribution. Much of the world’s population is now dependent upon the circulation of capital to procure and ensure its food supply, access the fuels and the energy required to support daily life, and to maintain the elaborate structures and equipment of communication that facilitate the coordination of basic production requirements.

Capital, right now, may be too deeply implicated in the reproduction of daily life to fail. The economic consequences and social impacts and costs of a massive and prolonged failure in the continuity of capital circulation will be catastrophic and potentially lethal for a significant portion of the world’s population. To be sure, indigenous and peasant populations in the Andean highlands may survive quite well, but if the flow of capital shuts down for any prolonged period, then maybe two-thirds of the world’s population would within a few weeks be threatened with starvation, deprived of fuel and light, while being rendered immobile and deprived of almost all capacity to reproduce their conditions of existence effectively. We cannot now afford any kind of sustained and prolonged attack upon or disruption of capital circulation even if the more egregious forms of accumulation are strictly curbed. The kind of fantasy that revolutionaries might once have had – which was that capitalism could be destroyed and burned down overnight and that something different could immediately be built upon the ashes – is impossible today even supposing there ever was a time when such a revolutionary overthrow might have happened. Some form of the circulation of commodities and therefore of money capital has to be kept in motion for some considerable time lest most of us starve. It is in this sense that we might say that capital appears to be now too big to fail. We may aspire to make our own history, Marx observed, but this can never be done under conditions of our own choosing. These conditions dictate a politics that is about sustaining many existing commodity chains and flows while socializing and perhaps gradually modifying them to accommodate to human needs. As Marx noted in his commentary on the Paris Commune,

in order to work out their own emancipation, and along with it the higher form to which present society is irresistibly tending by its own economical agencies, they [the working classes] will have to pass through long struggles, through a series of historic processes, transforming circumstances and men. They have no ideals to realize, but to set free the elements of the new society with which old collapsing bourgeois society is pregnant.

The task is to identify that which lays latent in our existing society to find a peaceful transition to a more socialist alternative. Revolution is a long process not an event.

#### Independently, industrial peace is vital to every metric of economic strength.

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Dr. R. Velanganni, “Impact of Industrial Relations on Efficient Labor Management,” Journal of Development Economics and Management Research Studies, December 2024, https://www.cdes.org.in/wp-content/uploads/2024/10/2-Impact-of-Industrial-Relations-on-Efficient-Labor-Management.pdf

Scholars and researchers have examined the role that industrial relations play in India's effective labour management. Ojo and Adeyemo (2017) state that this research has provided significant new insights into the dynamics of labor-management relations and their effects on productivity, job satisfaction, and the general efficacy of organisations. The following are some important findings from these studies:

Improved Communication: When there are good industrial relations, there may be more effective communication between employers and employees. This facilitates understanding of one another's needs, concerns, and expectations, which leads to a more tranquil workplace. Resolution of Conflicts: When it comes to resolving disagreements between employers and employees, industrial relations are essential. By providing avenues for dialogue, mediation, and arbitration, industrial relations assist people resolve disputes amicably and keep them from getting worse (Oladele & Akinbode, 2020).

Enhanced Productivity: Studies have shown that positive labour relations can increase the productivity of businesses. When management and labour have mutual trust and collaboration, workers are more motivated to give their best job, which boosts production and efficiency (Onakoya & Oyewunmi, 2019). Job Satisfaction: Workers who have positive workplace dynamics express greater job satisfaction. When workers feel their rights are respected and are happy with their working conditions, their morale and loyalty to the company increase (Ogunlana, 2016).

Increased Productivity: Studies have shown that positive labour relations can lead to higher levels of productivity in businesses. When management and labour have mutual trust and collaboration, workers are more motivated to give their best job, which boosts production and efficiency (Onakoya & Oyewunmi, 2019). Job Satisfaction: Workers who have positive workplace dynamics express greater job satisfaction. When workers feel their rights are respected and are happy with their working conditions, their morale and loyalty to the company increase (Ogunlana, 2016).

Economic growth: Industrial relations are important for a nation's general economic development as well as for specific businesses. An atmosphere that is conducive to labour relations attracts foreign investment, stabilises the labour market, and increases GDP in general. These findings highlight the necessity of maintaining positive labour relations for effective labour management in Nigeria. By promoting open communication, resolving conflicts, increasing productivity and job satisfaction, and supporting economic growth, industrial relations can have a substantial impact on an organization's success as well as the general well- being of its workers (Adeyemi & Adeniji, 2014).

#### Growth prevents extinction from a host of existential threats. Stagnation causes it.

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Phillip Trammell and Leopold Aschenbrenner, “Existential Risk and Growth,” 12-07-2024, https://www.aeaweb.org/conference/2025/program/paper/Af8HRE23

Technology brings prosperity. Its impact on existential risk—the risk of human extinction, or, equivalently for decision purposes, of an equally complete and permanent loss of human welfare—strikes many as ambiguous at best.1 Advances in vaccine technology render us less vulnerable to devastating plagues; advances in gain-of-function virology arguably make them more likely (Millett and Snyder-Beattie, 2017)

This raises the possibility of a tradeoff: concern for the survival of civilization may motivate slowing development, at least outside some narrow domains. Environmentalist sentiments along these lines go back at least to the Club of Rome’s 1972 report on the “Limits to Growth”, and have recently reemerged with calls to pause AI development (Future of Life Institute, 2023). Jones (2024) explores how to make the tradeoff between AI development and AI risk, assuming the tradeoff exists.

To shed light on this question, we begin in Section 2 with a simple model in which the hazard rate—the probability of catastrophe per period—is a positive function of the technology level. Here, an existential catastrophe must occur eventually unless in the long run higher technology levels carry hazard rates that fall toward zero.

This leaves two possibilities. If advanced technology does not eventually drive the hazard rate toward zero, then a catastrophe is inevitable, so accelerating technological development cannot increase its probability. Otherwise, however, a catastrophe is avoidable, and acceleration can lower its probability by hastening the arrival of safety.

This simple model formalizes two observations. The first is that if we believe that the hazard rate is currently high, our only hope for a long and valuable future is the hope that we are living through a temporary “time of perils”. This view was famously expressed by Sagan (1997), who coined the phrase, and its implications for those especially concerned about the long-term future are emphasized by Parfit (1984), Ord (2020), and others. The second is less widely appreciated: that if we are in a time of perils, with the hazard rate a positive function of the technology level, then, though technological development has increased the hazard rate so far, deceleration for the sake of long-term survival is misguided. Speeding technological development may be temporarily risky, but it is safer in the long run.

The model of Section 2 is not “economic”. It studies the impact on risk of quickly escaping risky states, not optimal policy under constraints. It thus leaves open the possibility that, when consumption–risk tradeoffs are navigated by a policymaker with little concern for long-term survival, technological acceleration can increase risk after all. Section 2 also offers no reason to believe that future states will be safe. If one believes that technology has historically increased the hazard rate, the hope that this relationship will reverse in the future may seem naive.

In Section 3, we therefore introduce an environment in which technology grows exogenously and its risks can be mitigated by policy. As new potentially dangerous technologies are introduced, a planner, discounting the future at an arbitrary rate, decides how much consumption to sacrifice to lower the hazard rate.

We illustrate that, even if technological advances in isolation always raise the hazard rate, optimal policy can generate an “existential risk Kuznets curve”, with the hazard rate rising and then falling as technology advances. Early, when the expected discounted value of the future of civilization is low and the marginal utility of consumption is high, it is worthwhile to adopt risky technologies as they arrive. Later, when the discounted future is more valuable and the marginal utility of consumption has fallen, substantial risk mitigation becomes worthwhile.

The possibility of a policy response thus offers an economic justification for the view that we may indeed be living through a once-in-history time of perils. Safety is a luxury good, and technological development generates a wealth effect. If the wealth effect is strong enough, then optimal policy eventually lowers the hazard quickly enough that the probability of escaping the time of perils is positive.

This insight mirrors the logic of Stokey (1998) and Brock and Taylor (2005), on which environmental damages rise and then fall with economic development, and of Jones (2016, 2024), on which growth yields increases in the value of life relative to marginal consumption. Like the analysis presented here, these papers find that, given sufficiently concave utility functions, wealth increases motivate large reallocations from consumption to safety. None of these sources solve for the optimal path of a hazard rate over time, however, or characterize conditions under which the probability of a binary event (here, existential catastrophe) under optimal policy is less than 1.

Our model of catastrophic risk differs more significantly from those of Martin and Pindyck (2015, 2021) and Aurland-Bredesen (2019). That literature studies a society’s willingness to pay to reduce the risk of catastrophes that are, or are equivalent to, proportional consumption cuts. In such a context there are no wealth effects: the fraction of consumption one is willing to sacrifice to avoid a proportional consumption cut is, by definition, independent of one’s consumption.

For the reasons that policy facilitates survival on a given (increasing) technology path, optimal policy tends to magnify the extent to which technological acceleration decreases long-term risk. As in the policy-free model, acceleration decreases the time spent in any given risky state. Under optimal policy, however, the wealthier future states pulled forward by an acceleration are systematically inclined to be safer, due to the wealth effect. Furthermore, given an increase to the future growth rate, even before actual productive capacity has yet increased, the anticipation of a more valuable future motivates more stringent safety policy in the present.

This analysis might be compared with that of Baranzini and Bourguinion (1995). Baranzini and Bourguinion find conditions under which the growth path that maximizes expected discounted utility also minimizes the probability of existential catastrophe. In our model these objectives never perfectly align, but we explore how technological advances, when regulated with a view to maximizing expected discounted utility, can lower the probability of an existential catastrophe.

Sections 2 and 3 explore models in which the state of technology at a given time contributes to the hazard rate. Section 4 considers the possibility that risk is “transitional”, increasing in the rate of technological development.

Absent policy, the effect of acceleration on long-term transition risk is ambiguous. In particular, acceleration has no effect on long-term risk under the assumption that the “experiment” associated with developing a given technology poses a risk that is independent of how many experiments happen concurrently. This is the assumption of e.g. Jones’s (2016) “Russian roulette” model of risky technological development. If the future contains a sequence of experiments, each of which will induce some probability of existential catastrophe, then stagnation can lower risk by avoiding advanced experiments altogether, but a technological acceleration that only pulls forward their date leaves the probability of catastrophe unchanged.

As in Section 3, introducing an optimal policy response facilitates survival due to wealth effects, potentially replacing an ever-increasing hazard rate with a Kuznets curve. Also, though the effect of acceleration on long-term transition risk remains ambiguous given policy, policy can shift the conditions under which acceleration has a given effect on risk. At least in the particular model of transition risk studied in Section 4, the existence of a policy response significantly widens the conditions under which acceleration lowers transition risk.

Section 5 summarizes these analyses and their limitations. 5 2 State risk without mitigation 2.1 Model The hazard rate — The “hazard rate” δt is the flow probability at t of anthropogenic existential catastrophe. Assume that it is a continuous function of the technology level At: δt = δ(At). Assume that At is exogenous and strictly increasing without bound in t. Fur ther assumptions on the technology path can be made without loss of generality, as they simply amount to re-indexing technology levels without changing their ordering. Assume therefore without loss of generality that A(·) is differentiable and that its derivative is everywhere positive. Finally, assume that δ(A) > 0 for all A. Survival — The probability that civilization survives to date t is given by St ≡ e− t 0δsds ⇐⇒ ˙ St = −δtSt, S0 = 1. The probability that human civilization avoids an [anthropogenic] existential catas trophe and, at least in expectation, enjoys a long and flourishing future3 is S∞ ≡ lim t→∞ St = e− ∞ 0 δsds. (1) We will refer to {δt}∞ t=0 as the hazard curve, to the area under the hazard curve ( ∞ 0 δtdt) as cumulative risk, and to S∞ as the probability of survival. Note that 3In the face of natural existential risk, this will entail succumbing to a natural existential catas trophe instead. From very-long-run historical data on large-scale natural catastrophes, and the typical survival rate of other mammalian species, Snyder-Beattie et al. (2019) estimate that human ity’s natural existential hazard rate is below one in 870,000 per year. Throughout this paper we ignore the possibility that technological advances may mitigate natural existential risks. Accounting for this possibility would only strengthen the headline results. 6 the probability of survival decreases in cumulative risk, and that survival is possible (S∞ > 0) iff cumulative risk is finite. 2.2 How does acceleration affect risk? Absent a negative shock severe enough to induce stagnation or recession, technology crosses every value from A0 to ∞ exactly once. So the area under the hazard curve can be defined by integrating with respect to technology instead of time: ∞ 0 ∞ δ(At)dt = A0 −1 δ(A) dA dt dA = ∞ A0 δ(A) ˙ A−1 A dA, (2) where, somewhat abusing notation, ˙ AA denotes the value of ˙ A when the technology level equals the subscripted A. This change of variables makes it easier to see how various shocks to the growth path affect cumulative risk. Instantaneous level effects — Consider a shock to the technology level for a short period beginning at t, so that the technology level over this period is approximately ˜ Arather than At (and the subsequent technology path is unchanged). The sign of the impact of this shock on cumulative risk depends on whether δ( ˜ A) is greater or less than δ(At). From the leftmost integral of (2), we see that the impact on cumulative A, equals risk per unit time of an instantaneous shock to the technology level at t, from At to ˜ δ( ˜ A) −δ(At). Instantaneous accelerations — Consider the impact on cumulative risk per unit time of an instantaneous shock to technology growth at t, so that the technology growth rate at t is ˙ ˜ A rather than ˙ At, and the subsequent technology growth rate at each level of technology is unchanged. From the rightmost integral of (2), we see that the impact of this shock on cumulative risk per unit of increase to the technology level during the acceleration is δ(At)( ˙ ˜ A−1 − ˙ A−1 t ). Multiplying this by the new rate of 7 technology growth per unit time, the impact on cumulative risk per unit time is −δ(At) ˙ ˜ A/ ˙ At − 1 . Accelerations — Choose technology level A > A. Since the baseline technology path increases continuously and without bound, A = AT for some T > t. Consider the effect of increasing the technology level at t from A to A, and sub sequently maintaining the technology path As = As+(T−t) (s ≥ t). This shock to the technology path amounts to a “leap forward in time”. The impact of this shock on cumulative risk is therefore to cut a slice cut out of the hazard curve. Cumulative risk falls from (2) to At A0 That is, it falls by ∞ δ(A) ˙ A−1 A dA+ A AT δ(A) ˙ A−1 δ(A) ˙ A−1 A dA. A dA. At More generally, define a temporary acceleration as an increase to ˙ A at some range of technology levels: say, from At to AT. Because the exponent on ˙ A in the integral is negative, the acceleration lowers the risk endured at the given range of technology levels. A discontinuous jump in the technology level amounts to raising ˙ AA to ∞, and thus lowering ˙ A−1 A to 0, from A = At to AT. A jump in the technology level from At to AT temporarily increases the hazard rate if δ(AT) > δ(At). Likewise, an acceleration to technology growth accelerates an increase to the hazard rate if δ(·) is increasing around At. It may therefore appear to contemporaries that a given permanent level effect decreases the probability of survival. Here, that would be incorrect. If (2) is infinite, the probability of survival is zero with or without the permanent level effect.4 If (2) is finite, the permanent level effect increases decreases cumulative risk and increases the probability of survival. 4 AT At δ(At)dt is finite by the continuity of δ in A and of A in t. 8 Define a permanent acceleration to be a permanent increase to ˙ A from some time t— or, equivalently, some technology level At—onward. As is plain from (2), a permanent acceleration, like a temporary acceleration, must lower cumulative risk if cumulative risk is finite on the baseline technology path. Unlike temporary accelerations, however, permanent accelerations can render sur vival possible when it would otherwise be impossible. Shrinking a heavy-tailed curve with an infinite integral can yield a thin-tailed curve with a finite integral. To state this lesson in reverse, consider stagnation: a permanent “negative accel eration” setting As = At for all s ≥ t. The hazard rate is then permanently positive, and survival impossible, even if it might have been possible at any positive technology growth rate. More concretely, consider the implications of a large negative technology shock today which returned the world to a state of ignorance about every technol ogy developed since 1924. Perhaps the hazard rate was much lower in 1924 than today, but even if so, this reset would largely doom us to relive the nuclear standoffs, emissions-intensive industrializations, and biotechnological hazards of the past. With enough replays of the past century, a catastrophe would presumably be inevitable. 3 State risk with mitigation 3.1 Motivation If technological progress has historically increased the hazard rate, the message of the previous section is that those who wish to reduce existential risk should accelerate technological progress in the hope that the relationship between risk and technology eventually reverses. This may seem naive. Perhaps the more natural assumption is that, all else equal, technological progress will only increase the hazard rate, bringing the inevitable catastrophe sooner. But the hazard rate presumably depends also on policy. If the hazard rate has increased historically, this represents a failure of policy to keep up with new risks as 9 they have arisen. In light of the interaction between technology and policy, could existential risk be lowered by developing technology more slowly? If the path of policy is not optimal, yes. E.g. if policy is exogenous, cumulative risk is lower when periods of especially risky technology are timed to coincide with periods of especially stringent policy. For illustration, suppose that δt = Atxt, xt = (1+t)−2, where x denotes a policy variable. Then consider an acceleration from the technology path At = (1 + t)k to the technology path At = (1 + t)˜ k, where k < 1 < ˜ k. This acceleration increases cumulative risk from ∞ 0 (1 +t)k−2dt to ∞ 0 (1 +t)˜ k−2dt. The former is finite, because k − 2 < −1. The latter is infinite, because ˜ k − 2 > −1. In this case, acceleration lowers the probability of survival to zero. Less obvious is whether acceleration can increase cumulative risk when the policy re sponse is optimal, within a plausible model of the feasible policy set. One might worry that, during an interval in which more advanced technology carries higher hazard, a planner will adapt policy to the degree of risk, but too weakly for acceleration to lower cumulative risk on balance—perhaps in part because she cares too little about the future to sacrifice much present consumption for safety. To evaluate this possibility, this section introduces a policy channel through which a planner, discounting the future at an arbitrary rate, can sacrifice consumption to lower the hazard rate. As we will see, when policy is set optimally—with respect to any discount rate—the conclusion that acceleration lowers cumulative risk is generally not only maintained but strengthened. As in the tech-only model of Section 2, survival can only be achieved by pulling forward a future that asymptotically approaches perfect safety. Whereas the earlier 10 model is agnostic about whether more advanced technology will in fact carry a lower hazard rate, however, a policy response introduces a tendency for faster technological development to carry lower risk in the long run. This is because technology increases consumption, which both decreases the utility cost of a marginal consumption sacrifice and increases the value of life. Furthermore, the prospect of a future acceleration now lowers the present hazard rate, because when the value of the future is greater, it is worth sacrificing more today to prevent its ruin. These dynamics are illustrated in a simple model of technology and optimal policy in the rest of this section. Generalized results are given in Appendix A.3. 3.2 The economic environment 3.2.1 Technology Themaximumfeasible level of consumption at t equals the technology level At. Actual consumption is At multiplied by a policy choice xt ∈ [0,1]: Ct = Atxt. (3) The tradeoff at the heart of this section is that a technologically advanced civilization can risk self-destruction, but that this risk can be lowered at some cost to consump tion, as represented here by a choice of x below 1. (We denote the choice variable x to remind the reader that higher choices of x come with higher existential risk.) Choices of x below 1 may constitute bans on the adoption of consumption-increasing but risky production processes and/or allocations of resources to the production of safety-increasing goods and services like pandemic monitoring. The technology frontier A grows at a constant rate g: ˙ At = Atg, g >0,A0 >1. (4) 11 3.2.2 Hazard rate The hazard rate δt is now a function of the technology level At and the policy choice xt ∈ [0,1], and is increasing in xt. In this simple model, the elasticities of the hazard rate in A and in x are constant, so that δ(At,xt) = ¯ δAα txβ t, ¯ δ > 0, β > α > 0, β > 1. We impose the three inequalities of β > α > 0, β > 1 to satisfy three desiderata.5 (5) The first is that, fixing xt > 0, δt increase in At. This imposes α > 0. The assumption that δt increase in At is necessary if we are to concede that technological development has rendered existential catastrophe more likely now than it was long ago, and that this trend would continue absent a change in policy. The proportion 1 −x of potential consumption sacrificed for the sake of existential safety has only increased alongside technological development: having once been zero, it is a small but positive share today.6 If it had remained fixed, the hazard rate would presumably have followed a weakly higher path. Second, the elasticity of δt with respect to xt is assumed to exceed the elasticity of δt with respect to At; i.e., β > α. This is equivalent to the condition that, when technology advances, it is always feasible to lower the risk level by retaining the former consumption level, allocating all marginal productive capacity to existential 5Hazard function (5) is closely analogous to the environmental damage function of Stokey (1998). While Stokey focuses on the implications of the damage function for the chosen path of x (or “z” in her notation), we will study how accelerations to the path of A affect the probability of a binary event: the occurrence of an anthropogenic existential catastrophe at any time. 6Ord (2020, p. 313) estimates that, as of 2020, approximately $100M/year was spent specifically on reducing existential risk. This is likely a great underestimate of existential safety expenditures in the sense relevant here, for two reasons. First, explicit expenditures do not include foregone con sumption due to regulatory barriers. Second, many catastrophic risk reduction efforts are motivated both by the desire to reduce existential risks and by the desire to reduce smaller-scale damages. By contrast, Moynihan (2020) argues that the very concept of an anthropogenic existential catastrophe essentially did not exist 300 years ago; it appears there were then no efforts taken to prevent one. 12 safety measures. This may be seen by substituting xt = Ct/At (from (3)) into the hazard function (5), yielding δt = ¯ δAα−β t Cβ t . Fixing C, the hazard rate falls over time iff β > α. If it is (indefinitely) infeasible to lower the hazard rate while fixing consumption, as it is in this model if β ≤ α, then an existential catastrophe is unavoidable unless consumption falls to zero. This degrowth would amount to the destruction of advanced civilization by other means. If β ≤ α, therefore, speeding or slowing growth can have no impact on the probability of an existential catastrophe broadly construed. Third, fixing At > 0, δt is assumed to be strictly convex in xt. This imposes β > 1. The convexity implies diminishing returns to existential risk mitigation efforts. We take this to be a reasonable assumption both from first principles and from Shulman and Thornley’s (2024) recent estimates of the cost-effectiveness of existential risk mitigation efforts (Appendix A.1). The relationship between a hazard curve and the corresponding probability of survival S∞ is described in Section 2.1. 3.2.3 Preferences A planner seeks to maximize ∞ 0 e−ρtSt u(Ct)dt; u(Ct) = C1−γ t −1 1 −γ , γ>1. (6) That is, flow utility u(·) is CRRA in consumption for some coefficient of relative risk aversion γ > 1. Flow utility is discounted at exponential rate ρ > 0, representing the sum of some rate of pure time preference, if any, and some rate of natural and unavoidable existential risk.7 7One valid interpretation of these preferences would be that the population is fixed and (6) is the expected utility of a representative household. Another would be that population grows 13 The utility of death is implicitly normalized to 0 and the death-equivalent con sumption level to 1. Equivalently, we are normalizing to 1 the technology level at which, when consumption is maximized, flow utility equals 0. The planner chooses the path of x to maximize (6) subject to (3)–(5). Like Martin and Pindyck (2015, 2021), we assume that γ > 1 throughout the rest of the paper, except in Section 3.3.4. We assume this in part because it appears to be true, as documented by Hall (1988), Lucas (1994), Chetty (2006), and others. Also, however, the results are otherwise relatively uninteresting. This is for two reasons. First, observe that when γ > 1, flow utility is upper-bounded by 1 γ−1 > 0. Acceler ating consumption growth, from a baseline of positive consumption growth, therefore yields a stream of utility benefits that eventually shrinks over time. This dynamic produces the key tradeoff: concern for the future may cast doubt on the value of speeding technological development, because the consumption benefits of doing so primarily accrue in the short run, whereas the costs of an existential catastrophe are everlasting. By contrast, when γ ≤ 1, flow utility can grow without bound, so acceler ations to consumption growth and reductions in existential risk can have comparable long-term benefits. Second and relatedly, when γ ≤ 1, the marginal utility of consumption does not decline quickly enough (relative to the rising value of civilization) to motivate rapid increases in consumption sacrifices for the sake of safety. As a result, the probability of long-term survival is always zero on the planner’s chosen path, and accelerations or decelerations to technological development have no impact on the probability. This is detailed in Section 3.3.4. exponentially at rate n < ρ, that the rate of pure time preference and exogenous risk is in fact ρ+n, and that the planner uses the total utilitarian social welfare function. 14 3.3 The existential risk Kuznets curve 3.3.1 Optimality Summarizing the environment of Section 3.2, the planner chooses {xt}∞ ∞ e−ρtSt u(Ct)dt, 0 u(Ct) ≡ C1−γ t −1 1 −γ , γ>1 subject to A0 >1, ˙ At = gAt (g > 0), Ct = Atxt, S0 = 1, ˙ St = −δtSt, δt = ¯ δAα txβ t (¯ δ > 0, β > α > 0, β > 1). t=0 to maximize (7) (8) (9) This section finds the path of the hazard rate in the planner’s solution, observing that it rises and then falls with time. In the next section we will explore what this implies for the impact of acceleration on cumulative risk. The planner faces one choice variable, xt, and one state variable, St. Her (expected) f low payoff at t is Stu(Ct). Her problem can be represented by the following current value Lagrangian: Lt = Stu(Ct) +vt ˙ St + µt(1 −xt) =St (Atxt)1−γ − 1 1 −γ −vt ¯ δAα txβ tSt +µt(1−xt). µt is the Lagrange multiplier on x, positive iff the xt ≤ 1 constraint binds. ∞ vt = e−ρ(s−t)Ss St u(Cs)ds t is the costate variable on survival: the expected value of civilization as of t.8 (10) (11) 8The fact that the costate variable on survival must equal (11) can be seen immediately by reflecting on the fact that, in effect, the value of saving the world must equal the value of the world. It is also derived formally in Appendix B.1. 15 On an optimal path, the first-order condition on (10) with respect to the choice variable xt is satisfied. Differentiating (10) with respect to xt, we have StA1−γ t x−γ t −¯ δAα tβxβ−1 t vtSt ≥ 0, (12) with inequality iff the left-hand side is positive at xt = 1, in which case xt = 1 is optimal.9 Thus, • As long as (12) is nonnegative at xt = 1, the optimal xt ∈ [0,1] equals 1. Any consumption sacrifices would carry greater flow costs than expected benefits. • When (12) is negative at xt = 1, the optimal choice of xt is interior. It sets (12) equal to zero, maintaining the condition that the marginal loss of flow utility from lowering consumption equals the expected benefit via risk reduction.10 In fact there is a unique11 optimal path, characterized by first-order condition (12), a first-order condition corresponding to the state variable St, and identity (11). This is shown in Appendix B.1. For now, our discussion will rely only on the observations that (12) is satisfied on any optimal path, and that vt is upper-bounded by ¯ v ≡ 1 ρ(γ −1) . 3.3.2 Initial risk increases (13) The condition that (12) is nonnegative at xt = 1 is equivalent to the condition that A−(α+γ−1) t ≥ ¯ δβvt. (14) The continuation value of civilization at t given survival to t, vt, always strictly rises over time. This follows from the fact that, given the optimal paths {Cs}s≥t and 9The second derivative with respect to xt is negative by the assumption that β > 1. 10We can ignore the possibility that optimal xt equals 0 because this yields infinite flow disutility. 11Given piecewise continuity. If path x is optimal, measure-zero deviations from x are of course also optimal. 16 {δs}s≥t achievable at a given initial technology level At, a higher initial technology level allows for a path with an equal hazard rate but more consumption at each future period, by the assumption that β > α. A higher initial technology level always enables the planner to implement a preferred future. Suppose inequality (14) is satisfied strictly at t = 0. Then early in time, when At is low, the optimal policy choice is x = 1, and the hazard rate rises at rate gδt = αg. 3.3.3 Eventual risk declines and survival As the left-hand side of (14) falls exponentially with At and the right-hand side rises, there is a unique time t∗ at which (14) holds with equality. After t∗, the optimal choice of xt is interior and sets (12) equal to zero. Setting (12) equal to zero and rearranging, we have the optimal choice of xt after t∗, and thus the optimal choice of xt in general:    xt =   1, ¯ δβAα+γ−1 β+γ−1 t vt − 1 t ≤t∗; , t >t∗. (15) Taking the growth rate of each side, we can find the growth rate of the policy choice variable after t∗: gxt = −α+γ−1 β +γ−1g− 1 β +γ−1gvt, (16) where, given a time-dependent variable y, gyt ≡ ˙ yt/yt denotes its proportional growth rate at t. The hazard rate in turn grows as gδt = αg +βgxt = −(β −α)(γ −1) β +γ−1 g− β β +γ−1gvt. Because β > α and γ > 1, (17) is negative. (17) Furthermore, though gvt is always positive, gvt → 0. This roughly follows from 17 the fact that the expected value of the future vt is bounded above by ¯ v.12 This gives us the asymptotic long-run negative growth rates gx and gδ. Finally, since Ct = Atxt, we have gCt = g +gxt = β−α β +γ−1g− 1 β +γ−1gvt. Because β > α, long-run consumption growth is positive: x declines to 0, but A grows more quickly than x declines. Indeed, the growth of consumption is key to the growth in sacrifices for safety. With decreasing marginal utility to consumption and decreasing marginal returns to sacrifices for safety, potential consumption is split between the former and latter so that the marginal value of each stays equal. To summarize: Proposition 1. The existential risk Kuznets curve On the path defined by (7)–(9), there is a time t∗ ≥ 0 such that for t < t∗, xt = 1, gCt =g >0, gδt =αg >0 and for t ≥ t∗, lim t→∞ gxt = −α+γ −1 β +γ−1g 0, lim t→∞ gδt = −(β −α)(γ −1) β +γ−1 g 0. (18) (19) (20) The corollary follows from (20) and the definition of S∞. Because δt ultimately falls exponentially, ∞ 0 δtdt < ∞, so S∞ ≡e− ∞ 0 δtdt > 0. Note that δt → 0 is insufficient for survival. If δt fell to 0 too slowly, the integral would diverge, and we would have S∞ = 0. 12The gvt → 0 limit is shown formally in Appendix B.2. 18 3.3.4 No survival with γ ≤ 1 As noted in Section 3.2.3, one reason for assuming γ > 1 is that, when the marginal utility of consumption declines too slowly, a rapid shift from consumption to safety effort is not implemented, and the probability of long-term survival is always zero. This result recalls the “Russian roulette” model of Jones (2016). There, it is found that a planner will choose to sacrifice enough consumption for safety that a technologically induced catastrophe is not inevitable iff γ ≥ 1. In that model, however, risk is posed by the development, rather than the existence, of advanced technologies. It is thus more closely analogous to (indeed, essentially a special case of) our “transition risk” model of Section 4, and is discussed further there. The result also recalls, and sharpens, Jones’s (2024) observation about the impor tance of the coefficient of relative risk aversion for the willingness to avoid existential risk. Jones finds in a single-period setting that when γ is low, the planner is willing to tolerate a high risk of existential catastrophe in exchange for a spurt to consumption growth. In a single-period setting, the tolerated risk is continuous in γ; no disconti nuity is observed at γ = 1. In the dynamic setting studied here, however, a planner effectively chooses how much risk to tolerate period after period. When γ ≤ 1, enough risk is tolerated each period that an eventual catastrophe is guaranteed. Proposition 2. Policy choice and risk with γ ≤ 1 Suppose a planner faces problem (7)–(9), but with utility function (8) replaced by    u(Ct) =   log(Ct), γ = 1; C1−γ t −1 1−γ , γ ρ≡ (β−α)(1−γ) β Then there is a time t∗ ≥ 0 such that for t < t∗, g. xt = 1, gCt =g >0, gδt =αg >0 (21) (22) 19 and for t ≥ t∗, lim t→∞ gxt = −α βg < 0, lim t→∞ gCt = β −α β g>0, lim t→∞ δtt = δ∗ ≡ lim ρ (β −α)g > 0, γ =1; t→∞ δt = (ρ−ρ)(1−γ) β +γ−1 >0, γ< 1. This is essentially because, when γ < 1, consumption and thus flow utility grow at a higher exponential rate in the long run when g is higher, so the effect of raising g is similar to the effect of decreasing the discount rate ρ. Understanding the path of policy choice and risk is somewhat more complex when γ ≤1 than when γ > 1, because we do not have the result that vt is asymptotically constant, but a sketch is as follows. As in the γ > 1 setting, early in time inequality (14) holds and it is optimal to 20 set xt = 1. Likewise, later in time, optimality requires setting xt < 1 to maintain Atu′(Ct) = ∂δ =⇒ AtxtC−γ t ∂x ·vt = ¯ δAα tβxβ tvt =⇒ δt = C1−γ t βvt . (26) Observe from (11) that vt grows roughly with flow utility u(Ct). Flow utility, for large Ct, then grows approximately like C1−γ when γ < 1. So, though consumption grows t exponentially in the long run for any γ, δ is asymptotically constant when γ < 1. Intuitively, for the policy path to be optimal, it must maintain a) the flow utility to proportionally increasing consumption, Ct · C−γ t = b) the damage done via proportionally raising the hazard rate, which equals the hazard rate × the value of civilization. When the value of civilization also grows like C1−γ , as it does when γ < 1, the hazard t rate must be constant for (a) and (b) to grow at the same rate. When γ > 1, the value of civilization is asymptotically constant, so the hazard rate falls like C1−γ . t When γ = 1, given that consumption grows exponentially, log(Ct) and thus vt grow linearly. The hazard rate then falls proportionally to 1/t. 3.3.5 Simulation The paths of policy choice and the hazard rate are simulated below, for the parameter values listed in Table 1. The values of ρ, γ, and g have been chosen as central estimates ρ 0.02 γ 1.5 g 0.02 A0 2 α 1 β 2 δ 0.00012 Table 1: Simulation parameters for Figure 1 from the macroeconomics literature. A0 = 2 is chosen so that the value of a statistical life-year at t = 75 is four times consumption per capita, roughly matching estimates 21 from Klenow et al. (2023).13 That is, the first year of the simulation might be taken to denote 1949, when a nuclear war between superpowers first became possible, in which case the 75th year denotes the present. ¯ δ, α, and β are chosen so that the hazard rate today is approximately 0.1%, matching Stern’s (2007) oft-cited figure; so that the hazard rate begins to fall at approximately t = 100; and so that the growth rate and then the decay rate of the hazard rate are non-negligible, for clarity in illustration. The probability of survival S∞ under these parameters, from t = 75 onward, is approximately 65%. 1 0.8 Policy choice x 0.6 0.4 0.2 0 0 50 100 150 200 250 300 350 0.2 0.15 0.1 0.05 0 400 Time (%) Hazard rate Figure 1: Evolution of the policy choice and the hazard rate along the optimal path Calculations and code for replicating the simulation and corresponding probability of survival may be found in Appendix C. As Figure 1 illustrates, one potentially unappealing feature of this simple model 13They estimate that this ratio was roughly 5 in the United States in 2019. The figure must be adjusted upward for economic growth since 2019, but downward insofar as we are considering optimal policy across all countries advanced enough to be deploying existentially hazardous technology. 22 is that it implies that, on the optimal path, the hazard rate only rises while no sacrifices whatsoever are made for existential safety. In this it resembles Stokey’s (1998) “environmental Kuznets curve”, whose damages also rise exponentially with growth and then fall sharply once it becomes optimal to take action. As in Stokey (1998), this dynamic is driven by the lack of a lower Inada condition on 1−x. If marginal “safety expenditures” lower the hazard rate infinitely per unit spent at x = 1, then as long as vt > 0 it is optimal to set xt < 1, even if at first the hazard rate is allowed to rise. Rising δ can thus be found alongside falling x by tweaking the hazard function around x = 1. Such tweaks do not affect the long-run behavior of policy or risk as given by (18)–(20), which are set by the shape of the hazard function around x = 0. This is discussed further in Appendix A.4.1. 3.4 Acceleration and state risk As in the tech-only model of Section 2, the impact on cumulative risk of a temporary shock is ambiguous, but the impact of an acceleration—e.g. a permanent level or growth effect—is always to lower cumulative risk. 3.4.1 Preliminaries Let A(·) denote the baseline technology path, given by (4). Let A∗ ≡ At∗, where t∗ is defined as in Proposition 1. Absent a negative shock severe enough to induce stagnation or recession, A crosses every value from A0 to ∞ exactly once, so the area under the hazard curve can be defined by integrating with respect to A instead of t. We will let X denote cumulative risk given that the technology path is A(·) and the policy path x is optimal given A(·): ∞ X ≡ 0 ∞ ¯ δAα txβ tdt = = A0 ∞ A0 −1 ¯ δ Aαxβ A dA ¯ δ Aαxβ A ˙ A−1 dA dt A dA, (27) 23 where we will again abuse notation somewhat by letting xA and ˙ AA denote, respec tively, the optimal value of x (given technology path A(·)) and the value of ˙ A when the technology level equals the subscripted A. We will define vA and δA likewise. Note that δA ≡ ¯ δAαxβ A, without dividing this expression by ˙ AA. That is, it is still a hazard rate: it represents the probability of catastrophe per unit time at technology level A, not the probability of catastrophe per unit of technological development. ˜ A(·) is an acceleration from A ∈ [A0,∞) to A ∈ (At,∞] if ˜ A0 = A0 and ˙ ˜ AA = ˙ AA, A ˙ AA, A∈(A,A); = ˙ AA, A≥A. The acceleration is permanent if A = ∞ and temporary otherwise. Let ˜ A(·) be an acceleration from A. Define ˜ vA such that at A < A, ˜ vA = vA, and at A ≥ A, ˜ vA is the costate variable on survival at A given that the subsequent technology path is ˜ A(·). Then ˜ xA is defined to equal (15) with A,˜ vA in place of At,vt; ˜ δA ≡ δ(A,˜ xA); and ˜ X ≡ ∞ A0 ˜ δA ˙ ˜ A−1 A dA. Given a baseline technology level A and a technology growth rate ˙ ˜ by ˜ A(·)[ϵ] the acceleration from A to A + ϵ with ˙ ˜ AA = ˙ ˜ A, A ∈[A,A+ϵ). A> ˙ AA, denote Then the effect on cumulative risk, per unit of technological development, of instan taneously accelerating to ˙ ˜ A at A is defined to be ∆A, ˙ ˜ A ≡ lim ϵ→0 where ˜ X[ϵ] is cumulative risk ˜ ˜ X[ϵ] −X/ϵ, X, as defined above, given acceleration ˜ A(·)[ϵ].14 14The effect on an instantaneous acceleration on cumulative risk per unit time is ∆A, ˙ ˜ A ˙ ˜ A, since 24 3.4.2 Three shocks Instantaneous level effects — The effect per unit time of a positive shock to the tech nology level At, letting policy adjust instantaneously, depends on whether the shock occurs before or after the regime-change time t∗. At t < t∗, temporarily multiplying the technology level by m > 1 has no impact on the optimal choice of x.15 The hazard rate thus rises. The future hazard rate is unaffected, so cumulative risk increases by δt(mα −1) > 0 per unit of time that the technology level is raised. At t ≥ t∗, temporarily multiplying the technology level by m > 1 multiplies the policy variable by m−α+γ−1 β+γ−1 , by (15). In combination, the positive shock to tech nology and the negative impact on the policy variable multiply the hazard rate by mα−βα+γ−1 β+γ−1 =m−(β−α)(γ−1) β+γ−1 1 lowers cumulative risk (per unit of time that the shock lasts) regardless of t. It does so only because the shock decreases the time spent at technology levels around At. The shock has no impact on the policy associated with any technology level. As in the tech-only model, therefore, we see that the impact of this shock on cumulative risk per unit of increase to the technology level during the acceleration is δt((m ˙ At)−1 − ˙ A−1 t ) < 0. Accelerations — Consider a sharp temporary acceleration, in which the technology level jumps at t from At to A > At and exponential technology growth is subsequently maintained. Since in this model optimal policy is independent of history, this technol ogy shock amounts to a “leap forward in time”. The resulting impact on cumulative risk is A − At δA ˙ A−1 A dA. More generally, an acceleration from A to A can lower the risk endured at the given range of technology levels for two reasons. 1. As in the tech-only model, increasing the technology growth rate at A always lowers cumulative risk directly because the exponent on ˙ AA in integral (27) is negative: ˙ ˜ A−1 A < ˙ A−1 A . 2. Going beyond the tech-only model, given A ∈ [At,A), the value of the future at A is higher given faster future technology growth: ˜ vA > vA. By (15), this motivates weakly more stringent policy ˜ xA ≤ xA and thus a weakly lower hazard rate ˜ δA ≤ δA. If ˙ ˜ AA ˙ AA decreases cumulative risk per unit of technological development during which it endures: a) ∆A, ˙ ˜ A = δA( ˙ ˜ A−1 − ˙ A−1 A ) < X, with equality strict only if A ≤ A∗. The impact of a shock to growth on the probability of survival is explored in the strictly more general model of Appendix A.3. The generalized results are given and proved there in Proposition 8. 3.4.3 Simulation The effects of a sharp temporary acceleration are illustrated in Figure 2. The pa rameter values used to illustrate the baseline path are the same as those used to simulate Figure 1. The acceleration takes place “today”, at t = 75, and multiplies A by e0.2 ≈ 1.22, so that at g = 0.02, it amounts to a 10-year leap forward. Recall from Section 3.3.5 that the probability of survival (from t = 75 onward) on the baseline path is approximately 65%. The proportional increase in the probability of survival can be found analytically. Cumulative risk X declines by precisely the area under the baseline hazard curve from t = 75 to 85; and since δ75 = 0.1%, g = 0.02, and α =1, this difference equals ∆X =−0.001 10 0 e0.02tdt = −0.05(e0.2 − 1). S∞ =e−X is then multiplied by e−∆X ≈ 1.011, so that in absolute terms S∞ rises by approximately 0.65 · 0.011 ≈ 0.7%. 27 1 0.8 Policy choice x 0.6 0.4 0.2 0 0 50 100 150 200 250 300 350 0.2 0.15 0.1 0.05 0 400 Time Figure 2: Acceleration shrinks cumulative risk (%) Hazard rate Calculations and code for replicating the simulation may be found in Appendix C. 3.4.4 Discussion

Slow growth makes catastrophe inevitable — As noted in Section 2.2, a permanent negative acceleration, or “deceleration”, can render survival impossible: e.g. if it induces stagnation.

In this simple setting, the technology conditions necessary for survival can be stated more precisely. Consider a permanent deceleration after which technology grows power-functionally, so that ˜ At = tk for some k > 0. The exponential growth rate of ˜ A, denoted ˜ g, is then not constant at g but time-varying, with ˜ gt = k/t. By (17) and since ˜ gv → 0, δt then falls to 0 like t−(α−β)(γ−1) β+γ−1 k. Since cumulative risk is finite for δt ∝ t−κ iff κ > 1, the probability of survival is positive iff k > β+γ−1 (α −β)(γ −1).

Growth vs. patience — Faster growth increases the willingness to pay for safety. By contrast, those concerned about the safety of the long-term future often attempt to increase others’ willingness to pay for safety via ethical arguments for a low rate of time preference. Consider e.g. the Stern–Nordhaus debate (and the long debate since) over the discount rate to use in climate policy, or the arguments for concern for the future made by philosophers such as Parfit (1984), Cowen and Parfit (1992), Ord (2020), and MacAskill (2022).

At any value of γ, stagnation at a low technology level A yields a permanent hazard rate of ¯ δAα. This may be arbitrarily low, so the expected duration until catastrophe 1/(¯ δAα) may be arbitrarily high. When γ < 1, an acceleration can quickly yield a hazard rate that permanently approximates δ∗ (25). The acceleration can thus lower civilizational life expectancy to approximately 1/δ∗. 29 4 Transition risk 4.1 Motivation A hazard function of the form δ(At,xt) captures what we have called “state risk”: δ depends on the level of technology. On this framing, it is perhaps unsurprising that escaping risky states more quickly lowers cumulative risk. But risk may instead be “transitional”: posed by technological development. This is the intuition captured by Jones’s (2016) “Russian roulette” model of technological development and (2024) model of AI risk, and by Bostrom’s (2019) analogy to drawing potentially destructive balls from an urn. Perhaps stagnation at a given level of tech nology is essentially safe, and risk arises in the process of discovering and deploying new technologies with unknown consequences. If so, given a positive-growth baseline, does accelerating technological development further increase cumulative risk? 4.2 A transition-risk-based hazard function To explore this possibility, suppose δ increases in ˙ At instead of, or as well as, in At. We will again restrict our consideration to a constant elasticity hazard function: δt = ¯ δAα t ˙ Aζ txβ t, ¯ δ > 0, ζ ≥ 0, β > 1. (29) Our original hazard function (5) is the special case of (29) with ζ = 0 (and β > α > 0). This model is thus a generalization of hazard function (5), complementary to that of Appendix A.3. If ζ > 0, however, the model is most naturally interpreted as one in which risk is posed by the introduction of new technologies—new “draws from Bostrom’s urn”— which consist of absolute increases to A. Fixing policy, introducing multiple technolo gies can pose more, less, or equal risk if done concurrently than if done in sequence, depending on the sign of ζ − 1. Introducing more advanced technologies can pose more, less, or equal risk than less advanced, depending on the sign of α. 30 Alternatively, to interpret one “new technology” as a proportional increase to A, simply rewrite the hazard function as δt = ¯ δAα+ζ t ˙ At At ζ xβ t. On this interpretation, α + ζ > 0 is the condition under which developing more advanced technologies poses more risk than developing less advanced technologies. Because ˙ A/A has been roughly constant through the last century, the view that the hazard rate has risen must be attributed to the increasing danger of each “technolog ical development” in this sense. Finally, consider the case of α = −1, ζ = 1, so that δt = ¯ δ ˙ At At xβ t. Here, fixing x, each proportional increase to A induces a constant hazard, indepen dently of how quickly the increase occurs. In the absence of policy—with x = 1 (or any other constant) permanently—this model is essentially equivalent to the “Russian roulette” model of Jones (2016)16 and the AI risk model of Jones (2024). 4.3 Acceleration and transition risk 4.3.1 Without mitigation Suppose that the baseline technology path A(·) is continuously differentiable, with a positive derivative. Let ˆ A≡limt→∞At be finite or infinite. As implied above, fixing policy, whether acceleration increases or decreases cumu lative risk depends on whether ζ is greater or less than 1. This can, as usual, be seen most clearly by integrating the hazard curve with respect to A: ∞ X = 0 16Our ¯ δ is the variable there denoted π. ˆ A ¯ δAα t ˙ Aζ tdt = A0 ¯ δAα ˙ Aζ−1 A dA. 31 Given acceleration ˜ A(·) from A ∈ [A0, ˆ A) to A ∈ (A, ˆ A], cumulative risk equals A ˜ X =X+ A ¯ δAα ˙ ˜ Aζ−1 − ˙ Aζ−1 A dA. The integral is negative if ζ < 1, zero if ζ = 1, and positive if ζ > 1. In the Russian roulette model, for instance, though there is a technology level ˆ A < ∞at which it is optimal to halt technological development (Appendix A.5), accelerating technological development before ˆ A does not affect cumulative risk. 4.3.2 With mitigation In Section 2, we saw that acceleration weakly lowered cumulative state risk absent policy. In Section 3, we saw that the tendency of acceleration to lower cumulative state risk was amplified by the presence of optimal policy. Here, we have seen that the impact of acceleration on cumulative transition risk is ambiguous absent policy. We will now see that it remains ambiguous given optimal policy, but that policy can reintroduce a tendency for acceleration to lower cumulative risk. For simplicity, we will now again impose the assumption that A grows at a constant exponential rate g. Also, since given exponential growth g ˙ A = g, we will impose β >α+ζ, (30) which, rather than β > α, is now the condition necessary for survival without Ct = Atxt → 0. Under these conditions, since ˙ A is proportional to A, the planner’s problem is precisely as described in Section 3.3, with α + ζ taking the place of α (up to a coefficient gζ that can be rolled into ¯ δ). Baseline x and δ paths, and S∞, are unchanged. The existential risk Kuznets curve remains. Let A∗ denote the uppermost technology level at which it is optimal to set x = 1 on the baseline technology path. Since the first-order condition ∂u ∂xt (At,xt) ≥ ∂δ ∂xt (At,xt)vt =⇒ A1−γ t x−γ t ≥ ¯ δAα tβxβ−1 t vt 32 must be satisfied everywhere and hold with equality for x < 1, we have    xA =   1 A≤A∗, ¯ δβAα+γ−1 ˙ Aζ AvA − 1 β+γ−1 A >A∗. Substituting (31) into the expression for cumulative risk ∞ X = we have X = A∗ ∞ ¯ δAα ˙ Aζ−1 A dA+ A0 ¯ ¯ δ Aα ˙ Aζ−1 A xβ AdA, δ1−γββA(β−α)(γ−1)vβ A − 1 β+γ−1 ˙ A ζ γ−1 β+γ−1−1 (31) (32) A dA. (33) A0 A∗ Recall that a technology path ˜ A(·) is an acceleration if ˙ ˜ AA > ˙ A for technology levels A ∈ [A0,∞) to A ∈ (A ≤ ∞]. With or without policy, an acceleration affects cumulative risk directly, by changing the technology growth rate from A to A. With policy, an acceleration also affects cumulative risk indirectly by affecting vA for A ∈ [A,A), which affects policy at this range of technology levels. Under the hazard functions of the previous sections, as we have seen, faster tech nology growth is always weakly preferred. This follows from the fact that it is feasible to offset higher values of At with lower choices of xt, such that the original consump tion path is maintained, and from the assumption from β > α that given this policy response, the hazard curve is weakly lowered. Since a future with faster growth is more valuable, an acceleration from A to A raises vA for A ∈ [A,A). Under hazard function (29), this argument is no longer valid. This is because, un like an increase to At, an increase to ˙ At brings no contemporaneous benefit, though it imposes risks that can still be mitigated only with less contemporaneous consump tion. And indeed, under hazard function (29), faster technology growth is no longer always preferred. We can see this most straightforwardly in the case of α = −1, ζ =1: again, this is the Russian roulette model of Jones (2016), and as Jones finds, with γ > 1, it is optimal for technology to grow only to a finite level. In the more 33 general model here, the result that stagnation is optimal is knife-edge, as discussed in Appendix A.5. Nevertheless, the result that an acceleration from A to A does not necessarily yield ˜ vA ≥ vA for A ∈ [A,A) holds more generally. These complexities are avoided when we focus on instantaneous accelerations. The impact of an acceleration from A to A on vA, for A ∈ [A,A), falls to zero as A−A → 0. The impact of a brief acceleration on cumulative risk is therefore approximately the impact found when we ignore impacts on vA. Proposition 4. Instantaneous acceleration and transition risk Given hazard function (29) and technology path (4), choose a technology level A > 1 and growth rate ˙ ˜ A> ˙ AA. If a. A ≥A∗ and ζ )1+ β γ−1 , or b. A )1, and ˙ ˜ A maintains (31) = 1 at A = A, then ∆A, ˙ ˜ A < (=,>)0. Proof. See Appendix B.3. The result follows essentially immediately from the exponent on ˙ AA in (32). In particular, instantaneous acceleration after A∗ lowers cumulative risk as long as ζ γ−1 β +γ−1−1< 1. The α ≥ −1, γ ≤ 2 case follows from the fact that if α ≥ −1, then, by (30), ζ < β + 1, so ζ β+1 < 1. Since macroeconomic estimates of γ ≤ 2 are standard, this result suggests that accelerations lower cumulative risk on the optimal path in the context of transition risk, at least if they occur late enough in time that mitigation is already underway. 34 Furthermore, this is, again, even without considering the fact that an increase to future growth can change the value of the future. Though the direction of this change is in principle ambiguous, most observers today take it for granted that, at least on a conventional discount rate, faster technology growth would be a benefit on the current margin. This would then be another channel through which a (positive duration) acceleration would motivate greater concerns today for safety. It may be counterintuitive that instantaneous acceleration reduces risk only when γ lies below a bound, because when γ is higher, the marginal utility of consumption is lower and it is optimal to shift resources from consumption to safety more rapidly. The result stems from the fact that, when γ is high, the marginal utility of consump tion rises rapidly as x is cut, so following an acceleration, a small cut to x suffices to equalize the marginal utility of consumption with the marginal value of safety spend ing. The higher γ is, the more quickly x falls as A rises, but the less sensitive x is to a change in ∂δ/∂x—e.g. an increase due to higher ˙ A—at a given value of A. 4.3.3 Discussion The nonrivalry of safety effort — Hazard function (29) is explored here mainly for its simplicity and similarity to (5). One valid criticism of this functional form is that it overemphasizes a channel through which the risks posed by a series of technological developments can be cheaper to mitigate if they occur at once than if they occur in sequence. Suppose that β ≈ 1, that ζ = 1, and that two small increases to ˙ A—let us call them two “experiments”—can occur in sequence or simultaneously. If they occur in sequence, halving the risk posed by each requires halving x and thus consumption for two periods in a row. If the experiments occur simultaneously, the same reduction in cumulative risk only requires halving consumption once. For some kinds of experiments and some kinds of safety infrastructure, the as sumption that safety efforts are “nonrival” in this sense is reasonable. Wastewater monitoring for the sake of early pandemic detection reduces the risk posed by poten 35 tially pandemic-inducing biological experiments by a proportion independent of how many experiments are underway. In other cases, however, it is not reasonable. It does not apply, for instance, to the costs of the safety equipment that must be used at each lab. Safety efforts of this kind might be better modeled by a modified version of the “safety in redundancy” model of Appendix A.4.2. A thorough attempt to shed light on the relationship between growth and transition risk would require further study. Nevertheless, the basic model explored here offers two lessons. First, in the absence of policy, the effect of acceleration on transition risk is ambiguous, and there is no effect in the arguably central “ζ = 1” case assumed by Jones (2016, 2024). Second, the presence of an optimal policy response can shift the relevant “ζ” threshold, in particular significantly shifting it upward to the extent that safety efforts are nonrival across contemporaneous risks. Stagnation vs. deceleration — When ζ > 0, complete stagnation ( ˙ A = 0) is always the safest path of all. Nevertheless, we have seen with and without policy that given a positive growth rate, faster growth can decrease risk. The key to this puzzle is that, given stagnation at ˆ A, levels of A > ˆ A are never attained. Cumulative risk is therefore not (32) but (32) with the ∞ replaced with ˆ A. Absent stagnation, however slow the growth rate, all levels of A are attained. The growth rate only determines the risk endured at each one. The direct cost of faster progress during a given range of A-values (higher risk per unit time, to the extent that ζ > 0) is partially, and may be more than fully, outweighed by the fact that faster progress motivates more mitigation at each point in time, in combination with the now familiar fact that when progress is faster we do not linger in a given range of A-values as long.

Human activity can create or mitigate existential risks. The framework presented here illustrates that, under various conditions, existential risk should be expected to exhibit a Kuznets curve. This observation offers a potential economic explanation for the claim by some prominent thinkers that humanity is in a critical “time of perils”. We may be advanced enough to be able to destroy ourselves, but not yet enough that we are willing to make large sacrifices for the sake of safety. If we are indeed living through the time of perils, reductions to existential risk today have massive expected long-term consequences.

At the same time, this framework highlights a channel through which some ef forts intended to reduce existential risk may backfire. In the absence of policy, when risk is posed by the existence of advanced technologies, broad-based decelerations to technological development typically worsen or do not affect the odds of long-term survival. Given an optimal policy response, even by a policymaker with little care for the long-term future, this impact is magnified. The impact can be significant, with proportional consumption decreases having comparable impacts to proportional in creases in the planner’s rate of time preference. In the extreme, permanent stagnation can make a catastrophe inevitable that might otherwise have been avoided.

### Solvency---1AC

#### Plan: The United States Federal Government should substantially strengthen collective bargaining rights for workers in the United States by establishing that they supersede workers' contrary statutory interests.

#### The plan permits workers and employers to bargain below the federal floor.

Cass 21 – Chief Economist at American Compass, J.D. from Harvard Law School.

Oren Cass, “A Better Bargain: Worker Power in the Labor Market,” American Compass, 09-21-2021, https://americancompass.org/a-better-bargain-worker-power-in-the-labor-market/.

To give workers and employers greater control over their own workplaces and expand the scope of bargaining in ways attractive to both sides, federal policymakers should also permit broad-based collective bargaining agreements to depart from federal regulatory standards. Today, federal regulation serves as the floor atop which any bargaining must occur. It should instead provide the default, in effect wherever workers lack the power to bargain collectively, but accepting of departure where workers and employers on equal footing might agree on some other approach.

This paper explains the advantages of broad-based bargaining, the key parameters that policymakers must establish, and the gradual process of experimentation by which it could gain prevalence in the American economy.

Introduction

The American labor movement has been in decline for decades. In 2020, collective bargaining agreements covered just 7% of private-sector workers. A lower share, 6%, were union members themselves.

Some economists and commentators theorize that an efficient labor market renders collective representation unnecessary, because the market’s self-regulating forces will ensure that individuals receive compensation commensurate with the value they create. Adam Smith did not share this view. “Upon all ordinary occasions,” he warned in The Wealth of Nations, employers “have the advantage in the dispute, and force [workmen] into a compliance with their terms.” Likewise, John Stuart Mill, a favorite of libertarians, lamented that without sufficient union strength, “the laborer in an isolated condition, unable to hold out even against a single employer … will, as a rule, find his wages kept down.”

Smith and Mill were correct. The American Compass Better Bargain Survey shows that, absent collective representation, employers largely dictate labor-market outcomes. Two-thirds of workers have not requested and achieved a significant change to their compensation, benefits, or some other term or condition of their employment in the last five years; for most, the last time this occurred was “never.” Employers surely respond over time to competitive and regulatory pressures, but markets do not move by magic, they move through the push and pull of offer and counteroffer, leverage and concession. If workers are unable to engage effectively in that process, they will not fare well.

Flourish logoA Flourish chart

And indeed, they have not. While GDP per capita rose 92% from 1979 to 2019 and corporate profits per capita rose 77%, wages for nonsupervisory workers rose only 9%, according to the Bureau of Labor Statistics. Over the same period, average compensation for CEOs at the 350 largest, publicly traded U.S. firms went from being roughly 30 times larger than the average worker’s to being 300 times larger. Nor has the rise in national wealth and productivity translated for the typical worker into the sort of secure employment that policymakers and their staffs take for granted. The American Compass Better Bargains Survey finds that less than one-third of nonsupervisory workers in July 2021 held secure jobs, defined as annual income of $40,000 or more, predictable earnings, steady hours, and health benefits. Among workers without college degrees, that figure falls to one-in-five.

#### Union density has been low for decades because employers have every incentive to fight it. The plan solves by giving employers an incentive to permit unionization and come to the table. It’s a win-win.

Finkin 20 – Professor of Law Emeritus at the University of Illinois College of Law, where he previously held the Swanlund Endowed Chair and the Albert J. Harno / Edward W. Cleary Chair

Matthew W. Finkin, American legal scholar whose work has significantly shaped modern understandings of labor law, comparative labour law, and academic freedom, LL.M., Yale Law, and LL.B., NYU Law, former Fulbright Professor at Münster University, a German Marshall Fund Lecturer at Konstanz University, a Resident Fellow of the Institute for Advanced Studies in Nantes, France, a visiting professor at Bocconi University, Milan, and at the then Interdisciplinary Center (IDC) in Herzliya, Israel, “Union Dispossession of Labor Protection: A Paradox, in Two Legal Systems,” 36 Intl J Comp Lab L & Ind Rel 1 (2020)

Third, to the extent a union is capable of creating a more flexible and less costly workforce by agreeing to derogate from legal entitlements, employers might be more willing to moderate their resistance to unionization. This could conduce toward the strengthening of union density that would inure to the benefit of the workforce over time.

These reasons have been invoked in both the U.S. and Germany to justify the capacity of unions to bargain the law away. 12 What these laws do is sketched in below.

IV.Dispossession Law in Comparative Context

A.The United States

The system of collective bargaining in the United States is one of exclusive representation by majority rule. There is a “bargaining unit,” either agreed-to by the employer and the union or defined by the government agency that administers the Labor Act, the National Labor Relations Board (NLRB). The bargaining unit consists of the cluster of jobs the incumbents in which share such a “community of interest” – as determined by common employment policies, working conditions, tasks, skills, training, supervision, and the like – to warrant having them select a union to bargain for them. The union must be independent of the employer – it is a violation of the law an employer to “dominate” or provide unlawful financial or other “support” to the union – and it must have the support of a majority of the workers in the unit. If a union secures majority support, it represents all the workers in the unit exclusively: those who refuse to join the union or do not support it have no alternative right to be represented either individually (self-representation) or through another union; but, the collective bargaining agreement binds all members of the unit irrespective of non-membership or non-support. As a corollary of exclusive representation, the United States Supreme Court has fashioned a “duty of fair representation” the union owes to all whom it represents irrespective of membership. The United States Supreme Court has also made clear that the states and, by extension, those municipalities with power to act under their state laws to enact labor protective ordinances, relationship has changed. Unions must be presumed to carefully consider members’ interests and thus there are no serious reservations to permitting collectively agreed derogations.

Stein Evju, Imperative Law, derogation and collective agreements in FESTSCHRIFT FÜR ROLF BIRK 61, 68 (2008). Note that the justifications offered in Norway have been operative in the U.S. and Germany: that the unions are representative of the workers; that the unions have countervailing power; and that trade-offs responsive to worker concerns and managerial interests should be facilitated. But, one consideration argued to in the United States and Germany does not apply to Norway: the need to bolster union representation. From 1999 to 2011/12, union density in Germany declined from 25 to 18% and in the U.S. from 13 to 11%; but density in Norway remained constant, at over 54%. Stephanie Lucie, LABOR MOVEMENTS: GLOBAL PERSPECTS Table 1.1 at 8-9 (2014). Electronic copy available at: https://ssrn.com/abstract=3460120 7 are free to enact laws that provide a floor of labor rights below which unions cannot derogate. Such measures do not disrupt the federally-created system of collective bargaining insofar as the law applies to all, whether represented or not. For example, a state can mandate that employersponsored group health insurance plans must provide coverage for mental health even if a bargaining unit of unionized employees would rather not have that more expensive coverage and would rather devote the funds saved by reduced coverage to some other compensatory end.13 However, state law can allow a collective bargaining agreement to derogate from the statemandated floor. The state, for example, may mandate severance pay in the event of plant closing; but, allow unions to substitute negotiated severance plans, the public mandate being, for the unionized, a default rule.14 The U.S. Supreme Court has made clear that the Labor Act is not hostile to labor protective provisions exempting union contracts from their reach 15; and several states and cities do.

These opt-outs cluster under the theoretical justifications discussed above: (1) where the law is arguably ill-suited to local conditions, i.e. where there is need felt by management or the workers or both for greater flexibility; (2) where the provision confers a benefit that can be used by the union to trade-off for something more desired; and (3) where the waiver can be of such economic advantage to the employer as to render the employer more amenable – or less resistant – to the unionization of its workforce.

Flexibility. The earliest provision for union waiver is found in the 1949 amendments to the federal Fair Labor Standards Act of 1938, which had set a national minimum wage and required payment of a fifty percent premium on the hourly rate for work in excess of a forty-hour 13 Metropolitan Life Ins. Co. v. Commonwealth of Mass., 471 U.S. 724 (1985). 14 Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987). 15 Livadas v. Bradshaw, 512 U.S. 107 (1994). Electronic copy available at: https://ssrn.com/abstract=3460120 8 work week. The 1949 amendment was intended to allow “for greater flexibility” in required overtime compensation for those workers covered by “annual employment plans established by bona fide collective bargaining agreements.”16 Along this line, Alaska exempts individual workers from overtime payment under state law when part of a “voluntary flexible work hour plan” subject to state certification; but, it also exempts work performed under “a flexible work hour plan if the plan is included as part of a collective bargaining agreement”17 which is subject to no test of voluntariness and to no state oversight. The need for “voluntariness” is eclipsed by union agreement; the need for state oversight is eclipsed by an assumption of union presence and power in the workplace. Some states allow collective bargaining agreements to make provision for meal breaks that differ from those established by law18; Massachusetts restricts this allowance to specified continuous process work, 19 an obvious situation calling for adjustment to those circumstances. Trading Material. Federal law does not permit a union to waive overtime premium pay other than the circumstances set out in the FLSA. But state wage and hour law may cover employees to whom the federal law does not apply; and some states – Oregon20 and Nevada21 - allow broadly for collective opt out; to that extent, these offer some potential economic advantage to employers that could be used as an offset by unions for other worker benefits depending on the usage of overtime and the importance employees attach to it. 16 H.R. Rep. No. 1453, 81st Cong., 1st sess. (1949) at p. 18 explaining 29 U.S.C. § 207(b). 17 Alaska Stat. § 23.10.060(d)(13) and (14) (italics added). 18 N.D. Admin Code § 46-02-07(5); 820 ILCS 140/3 [Illinois]; Or. Admin. Rules § 839-020-0050(7) and § 839-020- 0025(3) allowing collective agreements to provide for employers to deduct cost of meals from wage payment; Minn. Stat. § 177.253. 19 Mass. Gen. Laws Ann. ch. 140, § 101. 20 Or. Rev. Stat. § 652.020(7). 21 Nev. Rev. Stat. § 608.018(3)(e). Electronic copy available at: https://ssrn.com/abstract=3460120 9 The payout of accrued benefits – vacation pay, sick pay – on an employee’s departure can aggregate into significant amounts for an employer. Even so, it may be that some work groups do not attach much if any value to these benefits, the work is too casual or intermittent to allow for much, if any, vacation time let alone its accumulation.22 Illinois allows a collective agreement to waive the payment of accrued vacation pay on an employee’s termination23 and Arizona does the same for accrued sick pay.24 In contrast to the Massachusetts law that disallowed any opt-out from mandated group medical plan coverage for mental health,25 Washington, which requires group medical plans to provide for chiropractic care, allows collective bargaining agreements to forego that coverage. 26 These laws create tradeable public goods.

Deepening Unionization. By far, the dispossession that has drawn the most attention in the United States concerns the minimum wage. Employers of workers paid at or just above the federal minimum wage – in fast food service, hotel and leisure, janitorial, retail, and other services – also tend to be among the most resistant to unionization, these employees tend to be the least unionized. However, these employers are also subject to state and local minimum wage increases well above the non-waivable federal minimum; and several of these laws, especially in California, have allowed opt-outs by collective agreements. The agreement to opt out could be a quid pro quo for some other possibly more economically advantageous term, a reduction in medical insurance costs, for example27; but it also could serve as a strong economic incentive for those employers to be favorable toward union representation, for a union opt-out would give them an advantage over their non-union competitors who have no means of paying below the level set by the law. The irony of unions pleading for legislation for higher wages for the worst paid whilst simultaneously seeking the power to relinquish workers’ rights to that pay has not passed unnoticed. 28 The opt-out has been the subject of sharp criticism as well by organized business interests.29

B. Germany The system of collective bargaining in Germany is one of “members only” representation: unions represent those who have chosen to join them; there are no bargaining units nor does the government play the role in the selection of union representation that it does in the U.S. Because the union represents those who have feely chosen to join it, the American concept of “fair representation” is unknown, indeed, would be discordant inasmuch as the dissident is free to “vote with her feet” and, technically, opt out of union representation. According to section one of the Law on Collective Agreements (Tarifvertragsgesetz) (TVG), a collective agreement performs two functions: it establishes the right and duties of the parties to it – the “obligatory” part; and it sets out collective norms that, like legislation, govern the member’s terms and conditions of employment – the “normative” part. However, in order to make a collective agreement with legally binding normative effect the union must have the capacity to contract, it must have Tariffähigkeit. Whether it does or not can be adjudicated in the Labor Court which would look to such indicia as the size of the organization’s membership, its finances, its independence of the employer, its record of militance, to decide whether it possesses 28 Jana Kasperkevic, LA unions call for exemption from $15 minimum wage they fought for, The Guardian (April 12, 2016); Peter Jamison, Outrage after big labor crafts law paying their members less than non-union workers, latimes.com (April 9, 2016); Peter Jamison, Why union leaders want L.A. to give them a minimum wage loophole, latimes.com (July 27, 2015). 29 U.S. Chamber of Commerce, LABOR’S MINIMUM WAGE EXEMPTION: UNIONS AS THE “LOW-COST” OPTION (2016 update). Electronic copy available at: https://ssrn.com/abstract=3460120 11 and has exercised real power – sociale Mächtigkeit or soziale Durchsetzungsfähigkeit – on its members’ behalf. In some cases, work groups with strategic situation in the workplace have manifested sufficient militance and power, Tariffähigkeit, to force bargaining with them – the pilots of Lufthansa, for example. But a collective bargaining agreement made with a union that lacks the capacity to contract lacks legal validity. German unions bargain on a narrow range of issues – primarily wages and hours – usually with employer associations on a sectoral basis. Much that American unions do on the shop floor or in the office is done in Germany by works councils (Betriebsräte) selected by the workforce. They are legally independent of the unions and have the capacity to make contracts – plant agreements – with their employers within the works councils’ legal remit. The German legislation also addresses specific workplace issues, sometimes in exacting detail. Invariably, these establish minima to which derogation for the benefit of employees, upward, has been allowed and commonly exercised. However, some laws allow for derogation downward by collective agreement made with a union or, in some cases, by plant agreement with the works council. These have been discussed and analyzed in the academic literature under the general head of collectively disposable labor law – Tarifdispositives Arbeitsrecht – the justifications for which track those in the United States. Flexibility and trading material. Section 622 of the Civil Code (Bürgerliches Gesetzbuch) (BGB), sets out a period of notice for ordinary dismissals from employment depending on length of service. Subsection (4) allows for lesser period of notice by collective bargaining agreement. The Act on the Continuation of Payment in the Case of Sickness and Public Holidays (Entgeltfortzahlungsgesetz) (EFZG), provides in section (4), subsection (4), for a downward Electronic copy available at: https://ssrn.com/abstract=3460120 12 deviation by collective agreement in the method of calculation of remuneration in specified cases. The Law on Working Time (Arbeitszeitgesetz) (ArbZG), regulates working time, rest periods, on-call work and more. Section 7 provides for derogation by both unions and agreements made with works councils to change work hours and notice of work assignment, use of on-call work and more in an extensive list of derogations from the provisions of the law, each concerning specific circumstances that would allow the parties to act. The Federal Law on Holidays (Bundesurlaubsgesetz) (BUrbG), sets out the right to various entitlements to vacation time, but section 13 gives discretion for collective agreements to depart from them. Under the Part-Time and Fixed Term Employment Law (Teilzeit-und Befristungsgesetz) (TzBfG), room for derogation by collective agreements is allowed at several points. For purposes here it is useful to observe that one of the more controversial aspects of the law was to require employers to accommodate individual employee demands to be given part-time work; the employer must give the employee good business reasons, in writing, to decline to accommodate her request, the merits of which could be litigated in the Labor Court. However, section (8), subsection (4), allows a collective bargaining agreement to supply the reason for refusal. Deepening unionization. The most controversial derogations allowed in German labor law, analogous to these laws allowing opt-outs from the minimum wage in the United States, are – or, possibly, were – contained in the Temporary Employment Act, the Arbeitnehmerüberlassungsgesetz (AÜG). It deals with the situation of a worker – a Leiharbeiter – who has a contract of employment with a lending company. The lending company provides the worker to a using company (or “borrower”), supposedly for short periods of time. The Electronic copy available at: https://ssrn.com/abstract=3460120 13 Leiharbeiter works under the direction and control of the borrower, but is paid by the agency which takes its fee from the borrower. The borrower gains in flexibility as its decision to discontinue the agency worker is not a dismissal subject to notice or to the fair dismissal law. The AÜG provided that agency workers should be paid equally with the borrowing company’s regular employees and capped the period of use by the borrower, i.e. the extent to which short term contracts could succeed one another with the same borrower. By a complicated cascade of law a temporary worker who works for the borrower in excess of the time restriction for such work becomes a regular employee of the borrower entitled to all the rights attached to that status. But, the AÜG provided that union collective bargaining agreements with the leasing company could derogate from the equal pay principle. It also allows union collective bargaining agreements with the borrower to extend the period over which the agency worker could work. Allowing opt-out by collective agreements with the lending company was thought, akin to allowing union opt-outs from local minimum wage ordinances in the United States, to encourage unionization; that is, it would encourage employers to join the sectoral employers associations, membership in which has been eroding, that have secured such derogations.30 This experiment failed. In fact, the allowance of derogation from the equal pay obligation resulted in something of a scandal.31 Outside the largest German trade union federation, the DGB, which consists of eight unions with a membership of about six million, is the much smaller Christian Trade Union Federation. It and two other small unions joined in the Collective Agreement on Temporary Employment and Service Agencies (CGZP) which granted generous concessions to service agencies derogating from the equal pay principle – agreeing to what in the 30 I am indebted to Rüdiger Krause (Göttingen) for pointing this aspect out in colloquy on the paper in Porto. 31 Monika Schlachter & Melanie Klauk, Tarifdispositivität – eine Zeitgemäße Regelung?, AuR 2010, 354. Electronic copy available at: https://ssrn.com/abstract=3460120 14 U.S. would be called “sweetheart” agreements.32 In other words, the allowance of an opt-out facilitated a race to the bottom on wages33 allowing these companies to enjoy a competitive advantage over their competitors whose collective agreements were with DGB – Tarifgemeinschaft-Zeitarbeit – which required equality in wages. The capacity of these Christian unions to make these “sweetheart” contracts, their Tariffähigkeit, was successfully challenged on the basis of their lack of militance in defense of the workers they represented; these agreements were held invalid. Apart from that, some unions, I G Metal, for example, sought to correct for those wage equality opt-outs by securing collective agreements whereby companies that used temporary workers from service agencies agreed that they would contract only with those lending companies that adhere to wage equality or, if in derogation from it, to derogations in accord with DGB agreements.34 In 2017, the AÜG was overhauled in significant regards, but of relevance here is the capping of the period during which a union may agree to less than equal pay, no more than the 15 months, and to the period for which they may allow temporary work, to eighteen months.35 However, the former has been avoided in some cases by means unrelated to the opt-out allowance under the AÜG, by releasing temporary workers just short of the time trigger and securing others on which the clock starts afresh or by “swapping” longer-term temporary workers with other employers to the same effect. The latter is more complicated. A mainstream 32 Heiner Dibbusch & Peter Birke, supra n. 8 at 8. This drew press notice as early as 2007. Was sich hinter den christlichen Gewerkschaften verbirgt, Report Mainz, SWRide (Dec. 10, 2007). Ordinarily, only members of a union are bound by the normative provisions of collective agreements; but, quite understandably, employers could extend those terms to non-members. Not without criticism, that notion has been applied even when the union contract waives a legal right it is allowed to waive, allowing the employer to require the non-members to accept those terms. 33 Eva Völpel, Lohndrücker im Namen Gottes, taz (Dec. 24, 2009). 34 E.g., Agreement between Southwestern Metal [employer association] and IGMetal Baden-Württenberg § 5.3 (Dec. 16, 2018). 35 The background and charges were explained in the legislative report. Deutscher Bundestag, Entwurf eines Gesetzes zur Änderung des Arbeitnehmerüberlassungsgesetzes und anderer Gesetze, Print 18/9232 (20 July 2016). Electronic copy available at: https://ssrn.com/abstract=3460120 15 union that engages in collective bargaining with employers desirous of using temporary workers would seek to preserve the work of its core constituency. It may bargain about the use of these workers just as U.S. unions bargain over the subcontracting of unit work. The allowance of derogation under the AÜG has been used to accommodate the employers’ demands for flexibility – and, possibly, as a quid pro quo on other issues – to extend the period of temporary work, in some cases to a maximum of 48 months.36 C. Legal Constraint on Collective Disposition Union dispossession of legal protection has been allowed on the assumption that a union, itself a generator of collective goods, could be trusted either to drive toward the purpose for which the protection was enacted more flexibly or efficiently, to substitute for it some other collective good more valued by the workers, or for something of greater value to the union as an institution. The allowance for dispossession proceeds on an assumption that any possible abuse of that power could be corrected by existing restraints the law imposes on union action. As we have seen, in Germany in order for a union to make a collective bargaining agreement, it must have Tariffähigkeit. The law is rich in the judicial and academic discussion of this multi-factored test: the extent of the organization’s membership; the solidity of its finances; its independence; the democratic nature of its governance; its possession and exercise of power including its willingness to strike; and more.37 A union that gives away the shop, that makes a “sweetheart agreement” that concedes to employer demands to derogate downward from 36 E.g. agreement supra n. 34, § 2.3 (subject to other conditions regulating the purposes for which temporary workers can be contracted-for). 37 See generally, Otto Kemper & Ulrich Zachert (eds.), TARIFVERTRAGSGESETZ §2 ¶s 13-68 (4th ed. 2006) (examining each of these extensively). Electronic copy available at: https://ssrn.com/abstract=3460120 16 legislated terms with little or no offsetting advantage to the employees would lack Tariffähigkeit; the agreement would be void.38 The United States also requires unions to abide by democratic rules of governance and to be independent of employers, but it has no analogous requirement for union strength and militance: a “sweetheart contract” is enforceable so long as the union is not dominated or financially supported by the employer. 39 However, as a corollary to its status as exclusive representation, the union owes a “duty of fair representation” to all those it represents which applies to the terms it negotiates. The doctrine originates in an agreement by a white union to displace black workers (who were ineligible for union membership) and bears the imprimatur of wrongful discrimination as the core of the doctrine’s concern: the union may not act with hostile discrimination, in bad faith, or arbitrarily toward any group it represents. 40 Even so, as the U.S. Supreme Court has made clear, The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.41 Where a union negotiated the recall rights of laid-off pilots that left them worse off than if it had made no agreement at all the U.S. Supreme Court held the union had not breached its 38 Id. More recently, BAG 26.6.2018, 1 ABR 13/16, AuR 2019, 93. 39 Where a union sought an employer not to oppose its campaign to unionize its workers, offering in return an accommodative framework for negotiations should the union secure majority support that included a “no strike” pledge, the agreement was held not to violate the Labor Act. Dana Corp., 356 NLRB No. 49 (2010). A management lawyer was quick to condemn it as a “sweetheart” contract despite its legality. Jon Human, NLRB to permit “sweetheart” contracts, Ohio Employer Law Blog (Dec. 20, 2010). Inasmuch as the union traded its capacity to strike, which today is rarely actually exercised, in return for a conditions conducive to its securing an institutional presence in the workplace, the criticism seems to be rooted more in the critic’s distress over the effectiveness of the agreement to secure union recognition than in any genuine solicitude for the workers. 40 See generally Robert Gorman & Matthew Finkin, LABOR LAW: ANALYSIS AND ADVOCACY Ch. 30 (2013)(“The Union’s Duty of Fair Representation”). 41 Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953). Electronic copy available at: https://ssrn.com/abstract=3460120 17 duty fairly to represent them: the agreement was within the “wide range of reasonableness” a union is allowed in bargaining; even a “bad settlement” might prove its value in the long run.42 In sum, the comparative framework is this: In Germany, a fatally feeble union can make no collective agreements; but a powerful union, one that has Tariffähigkeit, is permitted to exercise the power to dispossess employees of rights they would possess were there no union agreement. The law considers the union’s internal political process to be an adequate safeguard for those employees adversely affected by its agreements.

In the United States as in Germany where the legislation allows for it a union may dispossess groups of legislated public goods. As in Germany, the terms of a collective agreement are subject to judicial scrutiny and potential invalidation, not by any measure of the union’s militance, but in consideration of the nature of and reasons for the action adverse to the group dispossessed of the good.43 However, inasmuch as the legislature will have made the public good dispossessable by union action – the loss of access to chiropractic care, for example – it no less than any other “individual advantage” may go in as a contribution to the collective result under federal law of collective bargaining.44

IV.The Paradox A paradox is a self-contradictory proposition that might be true. The legislatures in Germany and the United States have entitled workers to public goods – entitlements workers are unable to achieve by individual bargains and which they cannot agree to waive – whilst allowing their unions by agreement with management to dispossess the workers of them. This seems self- contradictory. The allowance for dispossession rests first on the policy justifications offered for it, and, second, on an assumption that a union can be entrusted with that power. The policy justifications and the underlying assumption were addressed by Professor Stewart Schwab.45 He treats the former in detail. Of the latter, however, he treats the union as simply a go-between, a “broker,” between a company’s management and the union’s membership. He acknowledges the alignment of the interests of the membership and the leadership may be an issue, 46 and he acknowledges that the union has institutional interests independent of the immediate interests of its members47; but, for the most part, the union is conceived of as an intermediary, even if one with interests of its own, 48 for howsoever the union resolves itself on a disposable right the outcome will be part of a brokered deal. More needs be said. Attending to the deeper political realities puts what is at stake in the power to derogate from the law in sharper focus, even if the normative conclusion about the value of allowing it might or does remain largely unchanged. Ronald Ehrenberg and Robert Smith have emphasized that which is only tacit in Schwarb’s account: they see three parties at the bargaining table, not two: company management, union membership, and the union leadership, each with distinctive interests of their own.49 As Ehrenberg and Smith emphasize, the leadership’s perception of the union’s institutional interests in the longer run – and its own 45 The Union as Broker, supra n. 3. 46 Id. at 265. 47 Id. at 264 (emphasis added): “when it is less clear that workers value the right so highly, or the right clearly costs management a great deal to provide, the union may gain if the statute permits a brokering role.” 48 Id. at 266: “The union as a collective body is less susceptible to the particular weaknesses of the individual – a union has the power and resources to broker a right in favor of employees into even greater value for the workers it represents, the employer it bargains with, and society as a whole.” 49 Ronald Ehrenberg & Robert Smith, MODERN LABOR ECONOMICS 500 (6th ed. 1997). Electronic copy available at: https://ssrn.com/abstract=3460120 19 interests in remaining in power – have a role, sometimes, a key role to play.50 But even this account is oversimplified. The American scene was captured by Clyde Summers some years ago In negotiating an agreement, the union must accommodate the overlapping and competing demands of varied interest groups, surrendering or compromising some demands to achieve others. Relative advantages and disadvantages of different proposals to the various groups must be weighed both singly and in combination. The package put together represents not only a bilateral compromise between the union and the employer, but also a multilateral compromise among interest groups within the union.51 Schwab speaks of the union’s brokerage role as striving to reflect the interests of its “median members,”52 as if the location of the memberships’ center of gravity were all that is involved, were it readily to be ascertainable. For the reasons Summers sets out, the trope is inaccurate and misleading. 53 As much has been observed of Germany as well: Union leadership is constantly caught between attempting to provide comprehensive representation for all the interests of its working class constituency and being limited in 50 As an historical example of the latter one could point to how the autocratic president of the coal miners’ union, John L. Lewis, approached the issue of the mechanization of the mines: Lewis promoted modernization principally because he felt it better for the industry to support 200,000 wellpaid miners than 500,000 destitute ones. Yet his arrival at this policy was eased by the realization that the UMW’s strength would not suffer with a decline in membership. Lewis recognized that increased productivity would actually increase the income of the welfare and retirement fund, because it was based on a per ton royalty and not a payroll tax. Moreover, he knew that well-paid miners could afford higher dues and assessments than poorer men. And finally, even if fewer miners worked, the union would still retain control of all the jobs in and around the mines. Modernization, in short, did not threaten the UMW’s power base. Melvyn Dubofsky & Warren Van Tine, JOHN L. LEWIS: A BIOGRAPHY 505-6 (1997). 51 Clyde Summers, The Individual Employee’s Rights under the Collective Agreement: What Constitutes Fair Representation?, in THE DUTY OF FAIR REPRESENTATION 60, 64 (J. McKelvey ed. 1977). 52 The Union as Broker, supra n. 3 at 265. 53 In one case, a union representing a unit of several hundred security officers at a private hospital – a small group ostensibly sharing an uncomplicated community of interest – bargained not only for an across-the-board increase in wages and benefits, but also for provisions attending to the needs of specially situated work groups – shift differentials, differentials for those on dispatch duty, and the like. The bargaining history was summarized by an arbitrator: The entire package was put to a vote of the Union membership. The proposed collective agreement included three or four contentious items. The package was voted down. That had happened before; it was not unusual. The Union went back to the bargaining table, a new package was ironed out and put to a vote. Unusually, this time that, too, failed because, [the Union’s negotiator] testified, different groups were dissatisfied with different portions of it. Again, the Union went back to the table…. The result was a series of side agreements, Memoranda of Understanding (MOU), on these issues. The MOUs were made by the leadership, they were not put to a vote. [—] Hospital & Medical Center, (M. Finkin Arb., 2018) (unpublished). Electronic copy available at: https://ssrn.com/abstract=3460120 20 its ability to find a formula that reconciles these partly contradictory interests without endangering their internal acceptability and/or external negotiability.54 The justifications offered for union dispossession can usefully be viewed with this now more sharpened focus in mind. Flexibility. Allowance for a union to derogate from meal or break times in certain work settings – continuous production, for example – may, just as Schwab terms it, be a “win-win” proposition for management and for the workers involved.55 The same could be so of variations in overtime rules in the U.S. and many of the derogations regarding part-time work and work hours in Germany, more finely tuning the legal objective to local conditions and needs. Trading material. This is more complicated than achieving mutually desired flexibility, depending on what is being traded-away, for what in return – from and for whom. Some cases seem quite simple: Washington state’s requirement that chiropractic care be included in a group health plan could reflect more a successful product of lobbying by organized chiropractors than any deep desire for access to that treatment by prospective patients; it could be the case that relatively few workers deeply cherish chiropractic care and that the majority of workers are largely indifferent to it and are happy to forego that coverage in return devoting that portion of the medical premium to a bit more in the wage fund. However, other cases may be far more politically freighted: the use of supplied workers on temporary contracts in Germany is an example. The mainstream DGB unions, to protect the jobs of their core workers in the borrower companies, might insist on the lending companies’ adherence to pay equality; but they might also see advantage in allowing for a cushion of disposable jobs held by agency workers on temporary contracts. In addition, the unions might also see those workers as potential members, 54 Claus Offe & Helmut Wiesenthal, Two Logics of Collective Action: Theoretical Notes on Social Class and Organizational Form, 1 Pol. Power & Soc. Theory 67, 83 (1980). 55 The Union as Broker, supra n. 3 at 264. Electronic copy available at: https://ssrn.com/abstract=3460120 21 which they would more likely to become under German law if their temporary work exceeds the statutory time limit, which limit, however, the unions are allowed to exceed by collective agreement. The allowance for this derogation presents the union with a dilemma, possibly a zerosum game to which there is no “win-win” solution, just a tension-laden compromise. The crucial and vexing question is whether the legal entitlement should be subject to dispossession by majority rule. Schwab recognizes the conundrum, but it is more intractable than the example he gives, of union disregard of groups protected by anti-discrimination in employment law. 56 These laws constrain union as well as managerial action as does the union’s cognate duty of fair representation. Apart from these already legally insulated groups, as Summers emphasized, the constituency a union represents is a dense patchwork of groups each with discrete and sometimes conflicting interests. It is difficult to conceive of any metric, any principled ground to guide legislative judgment, when one of these groups has been endowed with a public good, on when dispossession should be allowed. It may well be, for example, that a union’s leadership is in full accord with the majority of the membership’s repugnance for the recreational use of drugs and would be quite willing to accede to management’s desire to truncate what they both see as unnecessary and obstructive provisions in state drug testing law. The question for the legislature is not whether the leadership will faithfully represent their “median members’” desires; it is whether an individual’s privacy should depend on the vote of a majority of her co-workers. 57 As disposability puts power in the union’s hands, Schwab seems to regard it as irrational that a union might wish the law to deny it that power. He takes the U.S. Supreme Court’s 56 The Union as Broker, supra n. 3 at 265. 57 Conn. Gen. Stat. § 31-51aa provides: “No provision of any collective bargaining agreement may contravene or supersede any provision of [state drug testing law] so as to infringe the privacy rights of any employee.” Electronic copy available at: https://ssrn.com/abstract=3460120 22 decision in 14 Penn Plaza LLC v. Piatt, 58 as a case in point. The Court held that a union could agree that any claim of violation of civil rights law – age or sex or race discrimination – be heard exclusively via the arbitration provisions of its collective bargaining agreement. The union local whose predecessor leadership had made that contract asked the Court not to enforce it. Schwab was incredulous: Why would unions want to eliminate the possibility of trading rights? Under the perspective of this chapter, this is like asking when unions might willingly blind themselves to the mast like Odysseus.59 Perhaps, he suggests, the trade-off might be too difficult to educate the membership to accept? That is one possibility; but in the event, the union saw the deal as imposing an unacceptable burden on it, putting it in the unenviable position of being the sole and exclusive guarantor of its members’ civil rights.60 That is one odyssey a union may well wish not to embark upon and for which a legislated preclusion of derogability would be a welcome prophylactic against the siren calls of management. In sum, it cannot be assumed that an allowance for collective dispossession of a public good is an unalloyed good in itself. As the experience in Germany and the United States suggests, legislatures need to exercise considerable care in deciding whether to subject a public good to private collective disposition: whether the matter should be made subject to trade-offs that will or, at least, may advantage some at the expense of others. This take-away is common to both jurisdictions; it transcends their legal differences. V. Dispossession as a Means of Union-Building 58 556 U.S. 247 (2009). 59 The Union as Broker, supra n. 3 at 264. 60 On how the union sought its way ‘round that see Abdullayeva v. Attending Homecare Servs., LLC, 928 F.3d 218 (2d Cir. 2019). Electronic copy available at: https://ssrn.com/abstract=3460120 23 On this point, the differences between the two legal systems become incommensurate. In the United States, the allowance for union derogation from local minimum wages, and, in Germany, the allowance of continued wage inequality for Leiharbeiters under the AÜG, rest on the role these derogations could play in deepening union density. But in Germany, a dispossessory contract can only be made by a union that enjoys strong financial support, that is militant, and has the respect of management as an independent force to be reckoned with. Consequently, when a German worker sees a union bargaining her legal rights away, she sees what Stefan Greiner called a “caricature of a union” (das Zerrbild einer Gewerkshaft). Why, Greiner asks, should a person ever join such an organization?61

The U.S. Chamber of Commerce has essayed a similar critique of opt-outs from state and local minimum wage law: it depicts the worker as duped into being enrolled in a union she did not want to join and which “might otherwise not have won [employer] recognition [as the worker’s bargaining agent].”62 In the United States, however, employer resistance is a powerful barrier to unionization. Unions succeed in securing a first collective agreement in only one of five organizing drives; half that number if the employer commits unfair labor practices to blunt the organizational effort.63 A union newly established in an enterprise must earn the support of the workers it represents and, by virtue of the power of that support, secure the respect and cooperation of management. Absent a union’s deception of its members in the making of it, 64 a collective agreement that dispossesses workers of a higher minimum wage could be made to secure employer recognition of the union as the employees bargaining representative, that is, to gain the union a foothold in the workplace in hope of building a strong institution over time. 65 That this might actually come about would seem to be the real basis of the Chamber of Commerce’s angst.

In comparative perspective, the take-away here is this: in Germany, a union must be strong in order to make a contract that dispossesses workers of their rights. In America, the union may have to make a contract that dispossesses workers of their rights in order to be strong. [Footnote 65] 65 In 1932, the Ladies’ Garment Workers Union called a strike in Philadelphia whose manufacturers has been adamantly anti-union. The union made a collective agreement, but achieved only a small wage increase. As a meeting called to ratify the agreement, a worker loudly remonstrated that what she got was not a living wage. The union’s president replied, “what I brought you is not wages but a union.” David Dubinsky & A.H. Raskin, DAVID DUBINSKY: A LIFE WITH LABOR 111 (1997) (italics in original). [End FN]

#### The union form is key. It uniquely flips employers to supporting.

Corbett 24 – Endowed Professor of Law, LSU; peer-reviewed by several other labor law professors, incl. Estlund

William R. Corbett, Frank L. Maraist, Wex S. Malone & Rosemary Neal Hawkland Professor of Law, Paul M. Hebert Law Center of Louisiana State University, and reviewed by Profs. Cynthia Estlund, Matthew W. Finkin, Stewart J. Schwab, and Steven L. Willborn, “The Case for Waivable Employee Rights: A Contrarian View,” 72 Buff. L. Rev. 179 (2024), available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol72/iss1/3

A second argument in favor of an expanded system of waivable rights is that it could break down, to some extent, the labor law/employment law dichotomy that has been detrimental to U.S. law regulating the workplace.301 Under this fractured regime, employees represented by unions have been able to bargain through representatives, trade rights, and receive in exchange terms and conditions more precisely tailored to their workplaces, while unrepresented employees have received terms and conditions that Congress has been willing to bestow on covered employees and impose on covered employers.302 Some measure of this bifurcation could be reduced. If waivable rights were expanded to include labor rights and employment rights, and the rights could be waived/traded only by unions, more employers may see mutual benefit in collective bargaining and become more supportive of, or at least less resistant to, union organizing efforts.303 Given the low union density in the U.S., however, I prefer a system in which unions would be the first option for collective representation, bargaining, and waiver, but not the sole option. Any system of expanded waivable rights, whether limited to union-represented employees or expanded to other options, could increase employee representation, voice, and participation in workplace governance.

304 It also could break down barriers and create a more unified and coherent body of law. Such a system could integrate to some extent the labor law of representation and collective bargaining and the employment law consisting of the common law of individual contracts and statutory minimum rights. The next argument is related. 302 See Schwab, supra note \_\_\_, at 248. 303 Finkin, supra note \_\_, at 5; Becker, supra note \_\_, at 173-80; Davidov, supra note \_\_, at 500. 304 See Estlund, supra note \_\_, at 443 (positing that waivable rights could be “potential leverage for the promotion of better forms of workplace governance in which employees have a real voice”). Electronic copy available at: https://ssrn.com/abstract=4322051 75

I think the most compelling argument for developing an expanded system of waivable rights is to empower workers in the U.S. There is general agreement that most workers are poorly informed regarding the law and their rights, they have little to no voice and participation in governance of their workplaces, and they do not have sufficient leverage to bargain for the terms and conditions of employment that they need and/or want. They get the rights/protections that lawmakers confer on them, and they cannot trade those rights no matter how poorly or well- suited the rights are to their particular workplaces and no matter what they may be able to get from their employers in an exchange. 305 This is not the best way to meet the needs of employers and employees.306 Moreover, most workers do not know of many of the protections/rights they have. 307 Even when they know of their rights, the enforcement mechanisms associated with the minimum rights law do not result in robust enforcement.308 If a system could be devised that overcame workers’ deficits in information and bargaining power, waivable rights could become valuable bargaining chips that empower workers. 309 It is hard to imagine more worthwhile objectives for labor law than to empower workers, to inform them of their rights, and to give them participation and voice in workplace governance.

For such a system to accomplish those objectives to any appreciable extent, it is necessary to craft a proposal that includes constraints/conditions on waiver that can be administered efficiently and fairly at reasonable cost, depending, in large part, on self-compliance/enforcement. 310 Such a system would be unlike the approach applied under current U.S. law to noncompetes and mandatory arbitration/waivers of class and collective claims.311

## CP

### Links to DA---1AR

#### That alsoproves triggeesr DA – didn’t say “links to nB in 2CA but makde this argument which is the same

Hammond 18 – Director of Social Policy at the Niskanen Center, former Fellow at the Mercatus Center, M.A. in Economics from Carleton University, M.A. in Economics from George Mason University.

Samuel Hammond, “Elizabeth Warren’s Corporate Catastrophe,” National Review, 08-20-2018, https://www.nationalreview.com/2018/08/elizabeth-warren-accountable-capitalism-act-terrible-idea/

Milton Friedman was simply wrong, descriptively and prescriptively. That does not mean, however, that Warren and Yglesias’s alternative theory of corporate social responsibility — what philosophers call “stakeholders theory” — is a good idea. As the influential business ethicist Kenneth Goodpaster once observed, simply multiplying the number of stakeholders blurs traditional goals in terms of entrepreneurial risk-taking, pushes decision-making towards paralysis because of the dilemmas posed by divided loyalties and, in the final analysis, represents nothing less than the conversion of the modern private corporation into a public institution.

This raises the question of why we have private corporations in the first place. Ever since the late Ronald Coase published his famous theory of the firm, economists have tended to argue for a view grounded in public policy. Namely, shareholder corporations dominate modern economies because they are, as a nexus of contracts, much more efficient at pooling capital and directing resources than any competing organizational form. Thus the normative foundation of corporate law is not any subset of stakeholders, but the welfare of society as a whole.

Business ethicist John Boatright makes the point a bit differently, noting that through bargaining, “any constituency or stakeholder group could conceivably make its interests the objective of the firm and the end of management’s fiduciary duty.” The fact that shareholders tend to bargain hardest for formal control simply stems from their greater exposure to losses as residual claimants.

Enforcing co-determination rules doesn’t change this fact. On the contrary, when scandal struck Volkswagen in 2005, the blame was laid squarely at co-determination’s feet. Members of Volkswagen’s supervisory board, widely seen as an “old-boys network” in its own right, were caught exchanging favors, including access to prostitutes, in exchange for union-member votes. It turns out Coase’s theory drives a hard bargain.

As the Democratic party debates whether or not to embrace “democratic socialism,” Warren, to her credit, claims she’s “a capitalist to my bones.” Yet the fact remains that the Accountable Capitalism Act is in many ways the most radical proposal advanced by a mainstream Democratic lawmaker to date. Not because Germany is a socialist dystopia, but because, unlike universal health care or increased spending on the poor, Warren’s proposal is to fundamentally upend the way the most productive companies in the American economy work from the top down.

Forget “If you like your doctor, you can keep your doctor.” Warren’s plan will have you asking if you can keep your retirement savings. As Yglesias notes in his piece, co-determination could cause average share prices to plummet by as much as 25 percent. But don’t worry, says Yglesias: “Cheaper stock would be offset by higher pay and more rights at work.”

Maybe. Or maybe, after the dust settles, we would find ourselves in a new, lower equilibrium — one with less inequality, perhaps, but even lower productivity, as America’s corporate unicorns are converted into glitter glue.

A wise person once said that a model based on preventing the worst-case scenario risks stopping the best-case scenario from ever coming about. The American system, whatever its flaws, is exceptional in its openness to visionaries. Warren’s plan, based on bad economics and worse business ethics, is nothing short of a plan to hold those with vision to account.

#### It squashes investment in startups.

Epstein 18 – Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, Laurence A. Tisch Professor of Law at New York University Law School, Senior Lecturer at the University of Chicago, LLB from Yale Law School.

Richard A. Epstein, “Elizabeth Warren’s Surreptitious Socialism,” Hoover Institution, 08-20-2018, https://www.hoover.org/research/elizabeth-warrens-surreptitious-socialism

Warren also misunderstands why it is a welcome development for corporations to increase their distributions to shareholders. These large distributions are not typically used for ostentatious consumption, but are reinvested in new businesses, often start-ups that carry both greater risks and greater returns. Successful firms create new opportunities for all of Warren’s stakeholders. Indeed, we should look askance at firms that harbor capital for low-value uses in order to pad the position of its corporate leaders. Decentralized capital allocations by many independent actors may well outperform large firms in innovative activities. Adroit small firms are able to turn on a dime to seize new opportunities. When the businesses grow larger, the original investors can sell their stock in an initial public offering, take their winnings, and start another high-risk venture. An increase in cash distribution is a good marker of increased competition. One telltale sign of this positive development is that the per-share value of corporations tends to increase with large distributions, so that everyone gains.

#### It raises firm cost

Constain 19 – Contributor at the Fordham Journal of Corporate & Financial Law, J.D. Candidate at Fordham University.

Julian Constain, “A New Standard for Governance: Reflections on Worker Representation in the United States,” Fordham Journal of Corporate & Financial Law, https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1475&context=jcfl

Scholars posit that adopting codetermination will result in a net increase in operating costs. 144 Theoretically, this newly-established “heterogeneity of interests”—as opposed to the unilateral system of board and management—will increase both the costs of decision-making and the agency costs related to overseeing management.145

By having anything other than a unilaterally-operated board, firms will have to expend additional funds when making important decisions, since more interests need to be taken into account to get the necessary votes.146 Even in systems without quasi-parity codetermination, worker representatives have the opportunity to “hold up” board proceedings by voicing their opinions, which takes up time and results in increased opportunity costs. 147 Such a diversity of interests is also thought to increase agency costs, as “it will be more difficult for a . . . board of diverse and conflicting interests to monitor management.” 148 Accordingly, mandatory codetermination may lead to increased agency costs for firms.

#### It zeros business growth across the board.

Allegaert 20 – J.D. from New York University, M.A. from Leipzig University.

Pierre Allegaert, “Codetermination and ESG: Viable Alternatives to Shareholder Primacy,” International Law and Politics, 06-16-2020, https://www.nyujilp.org/wp-content/uploads/2020/07/NYI206-1.pdf

Allowing one particular stakeholder—in this case, labor— to have a say in board decisions presents its own problems. While the U.S.-style unitary board maintains “flexibility and responsiveness” in order to “institute change quickly and take painful measures such as restructuring . . . . [T]he codetermined board . . . is unable to pursue shareholder value with the same vigour and instead must engage in ‘sub optimal compromises’ and ‘corporatist’ decision-making by appeasing the labour representatives.”103 Instead, the “possibilities on the shareholder side are correspondingly weakened,” and a decision making process which requires consensus between labor and capital, given their frequently divergent interest, is “more costly and slow.”104 The codetermined firm may “avoid painful measures such as redundancies, restructuring and plant closure . . . due to the inherently conservative interests of labour members.”105 These conflicts could ultimately lead to a reduction in capital stock, increased unemployment, decreased incomes, and a general decrease in output and a country’s prosperity.106 The firm that “keeps a relatively inefficient plant in operation, for example, . . . may have to charge more than competitors, lose business, and eventually be forced to change its practices or seek a governmental bailout.”107

## DA

### Firm Closures Now---1AC

#### Federal employment regulations impose burdensome compliance costs that choke out small businesses.

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John Kitching, “A Burden on Business? Reviewing the Evidence Base on Regulation and Small-Business Performance,” Environment and Planning C: Politics and Space, Vol. 24, No. 6, December 2006, https://journals.sagepub.com/doi/abs/10.1068/c0619

Compliance with regulation, like production of goods or provision of services, involves economies of scale. Every business must perform a mini- mum of monitoring, record keeping, and reporting in order to remain in regulatory compliance. These costs do not rise in proportion to produc- tivity, which means that small businesses will be relatively disadvantaged and in some cases may be precluded from entry into a market. The fact that small companies generally contribute proportionately less to the problems justifying regulation is often irrelevant to regulators, who treat all businesses alike, regardless of size. Thus the regulators essentially ignore the fact that the social impacts of noncompliance by large busi- nesses may exceed those of small businesses by several orders of magnitude.

The competitive disadvantages that small businesses suffer due to the lack of economies of scale are exacerbated by the politics of regulation. Because large businesses are better able to cope with regulation, they often become supporters of regulation because of the competitive advan- tage it provides them relative to smaller businesses. Advocates for free markets are often surprised and disappointed to find that the biggest of the regulated companies are the least supportive of deregulation, particu- larly where the regulatory agencies have been captured by the industry. While it is not unusual for businesses and their associations to support both sides of the political spectrum, I suspect that empirical study would evidence that big business is often supportive of the Democratic Party while small businesses overwhelmingly embrace the smaller government agenda of the Republicans.

Because of the competitive disadvantages that small businesses face, they are more likely to cut comers in regulatory compliance in an effort to remain competitive. For them, running the risk of an enforcement action is preferable to allowing the costs of compliance to drive them out of business. Even large businesses with well-financed compliance pro- grams find it very difficult to avoid noncompliance given the pervasive and complex regulatory climate. For small businesses, there simply is no way to avoid occasional, if not frequent, noncompliance. The monitoring, record keeping, and reporting requirements are beyond the capacity, both in terms of personnel and expertise, of many small businesses.

All of these factors contribute to the failure of small businesses, dis- courage the startup of new businesses, and encourage successful small businesses to merge with larger companies before an economic downturn or a significant regulatory violation leads to failure. Notwithstanding these disadvantages for small business, the American economy prospers because of the entrepreneurial efforts of small and emerging businesses. What we cannot know is how much our prosperity suffers because of a regulatory climate that is disproportionately burdensome for small business.

It is certainly reasonable to assume that innovation is stifled by a reg- ulatory system that requires large investments of time and capital before an idea can go to market. Large companies are able to cope with the costs and delays associated with the existing system by marketing some prod- ucts while others are in development. A small business with a single prod- uct may wither on the vine before the fruits of its innovation can be harvested.

#### That’s specifically true for compliance with labor law.

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Alexander Stöhr, “Small Business Exemptions in Labor Law: Necessity, Economic Analysis and Legal Structure,” Labor Law Journal, Vol. 69, No. 2, Summer 2018, https://www.proquest.com/docview/2051199706?pq-origsite=gscholar&fromopenview=true&sourcetype=Scholarly%20Journals

Legal regulation always incurs costs. Some of these costs are incurred by regulated fi rms. Th ese include costs resulting from monitoring and complying with regula- tions (compliance costs). Th e cost of legal regulation usually includes both variable and fi xed components, with the variable costs being dependent on the size of the regulated transaction.12

Steven Bradford illustrates this by the example of the regulation of basketball shoes:13 A fi ctitious regulation mandates that all basketball shoes must have restricted jumping ability to keep basketball players from being in- jured when they land. Each shoe manufacturer will incur information costs to determine the requirements of the regulation, and research and development costs to modify their shoes to comply. Th ose costs are fi xed, because they do not vary with the concrete output of shoes. In contrast, the cost of the additional materials needed to modify the shoes is variable, since it depends on the number of shoes each manufacturer produces. With regard to information costs, the U.S. Small Business Administration, Offi ce of Advocacy, noted the following:

“A significant body of knowledge must be gained by a firm do determine whether a regulation applies to it, whether it is in compliance, or what action must be taken to be in compliance. For example, a firm must first learn that a form is required by rule, determine if the firm is required to submit that form, and then determine how to complete the form correctly. These fixed information-gathering costs are the same for all firms, whether large or small.”¹⁴

It has been shown that, in particular, fixed costs hit small businesses proportionally harder than larger businesses.¹⁵ On average, a regulation that causes costs of one Euro per worker in large businesses causes costs of four Euros in medium-sized businesses and costs of up to ten Euros in small businesses.¹⁶

Hugh Karpen demonstrated that reporting and disclosure obligations forces firms with 50 or less employees to provide an additional half a job.¹⁷ The European Court of Justice also states that small businesses incur a relatively larger expenditures than larger businesses if they all have to fulfil the same requirements.¹⁸

A significant cost factor are rules designed to protect workers.¹⁹ This applies not only to direct payment obligations like continued remuneration in the event of sickness, but also to bureaucratic costs. These include, in particular, the time the employer or external employees have to spend in order to comply with regulations.²⁰ This is compounded by the lack of transparency, which is, for example, detected in German labor law.

#### Compliance costs are directly driving consolidation across industries. It’s reverse-causal.

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Chase C. Englund, “US Regulatory Complexity, Compliance Spending, and Market Structure,” US Treasury and Federal Reserve Board, 11/22/2025, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=5282859

Industry consolidation is an important and increasingly evident dynamic in many sectors of the US economy. To take one prominent example, the number of banks in the US has gone from nearly 24,000 in 1965 to less than 6,000 today (FDIC, US Bank Data, 2022). However, far from being an isolated phenomenon, similar patterns have played out across a significant share of the economy, ranging from industries as diverse as airline travel, beef packing, and communications. In many cases, a handful of firms may control over 80% of their respective markets in industries that were significantly more competitive merely a few decades ago (Boushey & Knudsen, 2021). While not all industry consolidation is necessary negative, the ongoing trend of concentration of economic influence across many areas of the economy has led researchers to look for causes to explain this phenomenon. While market factor such as technological advances1 and the natural lifecycle of maturing markets2 have been found to play important roles in enabling and encouraging greater consolidation, one of the primary drivers of consolidation in many industries is the cost and complexity of regulatory requirements, which disproportionately impact smaller firms.

This article develops a concept of “regulatory complexity”, which can be understood as a measure of the degree to which regulatory requirements create additional compliance costs. Regulatory complexity increases firms’ fixed and variable costs, and in doing so depresses margins. Regulatory cost has been found in a number of studies to create barriers to new firm entry and survival for this reason (Klapper et al., 2006; Dreher & Gassebner, 2013; Braunerhjelm & Eklund, 2014). Low margins often trigger industry consolidation as businesses seek to improve efficiency and market power by merging or acquiring competitors, or smaller firms die out (Bitzan & Wilson, 2007). For this reason, regulatory burdens have also been associated in some studies with market consolidation (Ollinger & Moore, 2009; Gaynor, 2011; Ryan, 2012; Calcagno & Sobel, 2014; Nations, Cole, & Hemley, 2022; Singla, 2023).

Regulation may increase costs through several mechanisms. Increased costs for licensing, fees, or other regulatory expenses are one primary channel. Regulatory requirements for expensive equipment or safety measures are another common cause (Lee & Braden, 2007). However, this article will examine another primary and understudied cause, which is the cost of labor associated with understanding and completing compliance activities. This article argues that greater regulatory complexity contributes to market consolidation through the mechanism of labor costs associated with completing regulatory compliance activities. This article uses data from QuantGov, an initiative developed at George Mason university, to study the relative number and restrictiveness of regulation in several different sectors of the US economy, and the associated share of labor in those sectors that is devoted to compliance activities. Next, it uses data from the US Census Bureau to estimate the share of labor devoted to compliance activities (used as a proxy for compliance-related labor costs) as a mechanism linking the concept of regulatory complexity with market dynamics in that sector, such as market concentration and large firms’ share of revenue.

This article finds that greater regulatory complexity is associated with a greater share of overall labor devoted to compliance activities. These labor activities represent labor costs for firms that are directly resultant of regulatory requirements. It also finds that higher compliance labor share (i.e. greater compliance labor cost) is positively associated with several measures of industry consolidation. In doing so, this article makes several contributions to the existing literature on this subject. First, it helps to establish compliance share of labor as a useful alternative to other direct measures of regulatory burden, which often have more limited data. It also highlights the importance of regulatory complexity in contributing to market structure dynamics, namely leading to more consolidated markets and smaller market shares for small business. This is an important consideration for policymakers, and may recommend the use of tools such as regulatory tailoring to reduce the distortionary effects of regulatory regimes.

The rest of this article proceeds as follows: The next section reviews the literature on this subject and lays out several formal hypotheses to test the associations I describe here. The following section outlines the data collection strategy and provides a summary of the primary measures. The fourth section utilizes the data to test the hypotheses using several models. The next section employs alternative state-level data to generate additional robustness for the findings. Lastly, the article concludes by discussing the findings and implications, as well as outlining steps for future research.

Regulatory Complexity, Firm Costs, and Market Structure

This article posits the term “regulatory complexity” as a description of the overall complexity of the aggregated regulatory requirements for a particular economic activity, with the idea that greater complexity results in higher regulatory-related costs. Regulations can be “complex” in several different ways. For example, requirements may be simple to follow, but there may be a relatively high number of them. By contrast, a small number of regulations may be particularly restrictive or require more work to comply with. In either case, when the overall body of regulations applicable to a particular economic activity is more restrictive, this results in greater complexity. This article’s primary contention is that greater regulatory complexity results in lower price-cost margins that result in more consolidated markets, and specifically uses the cost of compliance labor to link these outcomes.

#### Mass consolidation bankrupts tech innovation and structural dynamism.

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Mark A. Lemley, Matthew T. Wansley, Associate Professor of Law at Cardozo School of Law, “Coopting Disruption,” Stanford Law and Economics Olin Working Paper, 12/10/2025, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=4713845

While there are many reasons for the tech giants’ continued dominance, we think an important and overlooked one is that they have learned how to coopt disruption. They identify potentially disruptive technologies, use their money to influence the startups developing them, strategically dole out access to the resources the startups need to grow, and seek regulation that will make it harder for the startups to compete. When a threat emerges, they buy it off. And after they acquire a startup, they redirect its people and assets to their own innovation needs.

In this paper, we identify the phenomenon of cooption and discuss the various forms it can take, from seemingly innocuous investments in startups to selective sharing of data access to more pernicious “killer acquisitions.” We show how these seemingly different acts are part of a pattern tech companies and other incumbents use to maintain their dominance in the face of disruptive new innovations. And we document how three important new technologies— artificial intelligence (AI), virtual reality (VR), and automated driving—are be- ing coopted. This is a critical legal issue right now. Indeed, after we wrote this paper, the Federal Trade Commission (FTC) announced that it would review incumbent investments into startups in one of the areas we identified – AI.2

Coopting disruption is a challenging problem for the law. Cooption can look a great deal like competition and innovation. And partnering with an in- cumbent can sometimes offer real benefits to both startups and their custom- ers. Nonetheless, we think incumbents coopting disruption is bad for both competition and innovation in the long run. At best, consumers receive incre- mental improvements to the tech giants’ existing products. They miss out on the more fundamental innovations that an independent company would have developed – both innovations that threaten an incumbent’s core business and those that a company locked into an existing mindset (and revenue stream) might simply not appreciate. And cooption cements incumbency, undermining the Schumpeterian competition – competition to become the next dominant firm – that drove innovation in the tech industry throughout the 20th century.

We suggest several ways the law can reduce the harm from coopting dis- ruption. We can revitalize a century-old law that prevents people from serving as officers or directors of their competitors, extending it to prevent incum- bents from controlling the direction of startups. We can make it illegal for incumbent monopolies to discriminate in the access they provide to their data or programs based on whether the company is a competitive threat. We can ensure incumbents cannot use regulation as a mechanism to undercut compe- tition from startups. And we should make it presumptively illegal for incum- bent monopolies to acquire startups developing innovations that might prove disruptive.

In Part I, we discuss innovation, competition, and the structural ad- vantages to incumbency in the tech industry that set the stage for cooption. In Part II, we discuss the various strategies tech incumbents use to coopt disrup- tive technologies. In Part III, we explore several case studies of cooption going on right now in important new industries. Finally, in Part IV we discuss the policy implications of cooption and consider ways to combat it.

I. THE THREAT TO INNOVATION

In this Part, we start by acknowledging the ways in which large incumbents are better equipped to innovate than smaller, less established firms. Next, we explain why large incumbents nonetheless usually focus their R&D on incre- mental improvements, miss out on disruptive innovations, and get leapfrogged by startups. Then, we ask: if large incumbents are susceptible to disruption, why have the tech giants sustained their dominance for two decades? We eval- uate possible theories before introducing our own.

A. Advantages of Large Incumbents

Schumpeter argued that large incumbents were better able to innovate than other firms.3 First, he argued, large incumbents can take advantage of econo- mies of scale.4 They have already paid some of the fixed costs necessary for innovation by investing in talent, facilities, equipment, computing power, and data. Therefore, their marginal cost of commercializing a new technology is lower. Relatedly, large incumbents have pre-existing relationships with cus- tomers, distributors, suppliers, and regulators.5 They have built a brand that gives them credibility in these interactions. Consequently, they can bring new products to market more quickly. He thought these advantages were so great that serial monopolies were the normal outcome. Competition, to Schum- peter, would come not in the form of rivals selling the same goods, but com- petition to take over the market itself and become the next monopoly in the series.

Large incumbents can also take advantage of economies of scope.6 Inno- vation creates “involuntary spillovers”—new knowledge that has economic value beyond the specific product that the firm was developing.7 If a company sells a broader portfolio of products, it is more likely to take advantage of those spillovers. Imagine the value that Alphabet could extract from a machine learn- ing breakthrough in image classification—it might improve Google search, Google Maps, Android, YouTube, and other Alphabet products. The greater ex post value large incumbents can extract from innovation should make them more likely to innovate ex ante.

Perhaps most importantly, large incumbents can access capital at a lower cost.8 A profitable firm can use its internal cash flows to fund innovation rather than raising capital from outside investors. This means that the firm can avoid the conflicts of interest that outside investors can introduce. And they can re- tain a larger share of the profits that the innovation generates.

Some large incumbents may have another potential advantage—a longer investment time horizon. A secure monopolist might develop some insulation from market pressures and be able to invest in projects that will not come to fruition for many years. This is one reason offered to explain the research productivity of mid-century corporate R&D units like Bell Labs, IBM Re- search, and Xerox PARC.9 Startups, by contrast, must raise new rounds of capital every 12-24 months.10 And their VCs must exit within about five to seven years of their investment.11 But at the same time, large incumbents argu- ably face more pressure to deliver short-term profits than a startup would. Public companies must disclose their financial statements every quarter.12 Their executives must defend their investment decisions to analysts in quar- terly earnings calls. And public companies that make large, long-term invest- ments are vulnerable to attack by activist hedge funds.13 For these reasons, while some large incumbents may have a longer leash than other firms, that is not always true.

Still, time horizons aside, large incumbents appear to have significant ad- vantages in innovation. Why do they often lose out to new entrants riding an innovative idea? What happened to IBM? Chrysler? The answer is that large incumbents face predictable industrial organization problems that inhibit in- novation.

B. Disadvantages of Large Incumbents

Large incumbents struggle to innovate because (1) their success will can- nibalize their own market share, (2) their managers prefer to deliver incremen- tal innovations to their existing customers, (3) their single veto point decision- making structure encourages risk-aversion, and (4) they cannot appropriately compensate employees working on innovation projects.

1. Arrow’s Replacement Effect

The most important reason why large incumbents—and especially monop- olists—don’t innovate is that they don’t gain anything by stealing their own market share. To illustrate this point, consider a market with two firms, In- cumbent and Challenger.14 Suppose Challenger introduces a new product. Some of Incumbent’s existing customers will buy Challenger’s product instead of Incumbent’s product, so Challenger will “steal” some of Incumbent’s busi- ness. Incumbent might respond by lowering its prices. Or it might respond by adding new features to its existing products or introducing a new product of its own. Either way, consumers benefit.

Now suppose instead that Incumbent buys Challenger.15 After the deal, Incumbent no longer has to worry about Challenger stealing its business. And Incumbent could decide to sell the product that Challenger developed. But it has little incentive to do so because the sales of its former competitor’s product would simply replace sales of its own product. More generally, a monopolist has diminished incentives to introduce new products, improve product quality, or lower prices because any new sales generated replace its existing sales. This is Arrow’s replacement effect.16

The same applies to R&D.17 Suppose that another firm, Adjacent, develops R&D capabilities that overlap with Incumbent’s capabilities. Adjacent will not steal business immediately. But Incumbent will now expect that it is more likely that Adjacent will successfully commercialize a technology into a competing product that steals its business. Worse, R&D in a fast-moving industry might not just steal business; it might displace the market altogether by moving con- sumers to a new market. Ask the once-giant makers of photocopiers and film cameras how business is going.

Incumbent might respond by investing in its own R&D capabilities or by buying Adjacent.18 If Incumbent decides to invest in R&D, consumers gain a greater chance of benefitting from innovation. If Incumbent decides to buy Adjacent, the combined firm will internalize the business-stealing effects of the R&D capabilities. Incumbent might shut down one of the R&D divisions, reducing the chance that consumers will benefit from innovation. And even if Incumbent integrates the innovation into its own products, it is unlikely to do so in a way that eliminates or disrupts its core market.

The general lesson is, all else equal, the larger a firm’s market share and the less it is threatened by competition, the weaker its incentives to innovate. So we should expect large incumbents to not innovate much. And if they can dispense with the competitors rather than have to compete with them, they will do that.19

2. Bias Against Disruptive Innovations

Arrow’s theory focuses on firm-level incentives. It dovetails with Christen- sen’s theory of disruptive innovation, which focuses on the career incentives of middle managers.20 Many managers, Christensen says, have built relation- ships with their firm’s customers and have become attuned to satisfying those customers’ needs.21 They aim to protect and maybe modestly improve on the status quo, not to disrupt it. Incumbent managers have an incentive to deliver sustaining innovations—incremental improvements in quality to the firm’s exist- ing products that will please its existing customers.22 But they have substantial disincentives to pursue projects that upset the apple cart, even if doing so would bring new customers to the firm.

Startup managers, by contrast, are not beholden to existing customers, so they are more willing to pursue disruptive innovations that target new customers and new markets.23 These disruptive innovations may be inferior to the state- of-the-art products on some dimensions.24 Think about the quality of photos on early generations of mobile phones. But startups can refine their disruptive innovations and ultimately leapfrog incumbents.25 Middle managers at a cam- era company might be happy to improve their cameras if it meant their cus- tomers bought new ones. But it would never occur to them to do away with the camera altogether – and if it did, they would be horrified by the idea. This, Christensen says, is why creative destruction generally comes from outside.26 Christensen also argues that large incumbents face structural obstacles to information sharing.27 The employees who have innovative ideas—the engi- neers who work on developing the firm’s technologies—are often unable to convey those ideas up the chain of command. Again, the incentives of middle managers are to blame. They may not stand to benefit personally from the innovative ideas, or they may not simply realize the value of these ideas to the firm’s overall strategy.28 Either way, they can serve as an information bottle- neck that prevents information from reaching executives. The leadership at smaller firms with less hierarchical structures are more likely to learn about their employees’ innovative ideas.29

Even if senior management is interested in disruptive innovation – and they face many of the same incentives against it – large companies generally don’t succeed at building disruptive innovation in-house. Housing an innova- tion project inside a firm with diverse lines of business creates conflict with those other businesses.30 Some firm assets—cash, cloud computing, equip- ment, facilities, and engineers’ time—are rivalrous and finite, so executives must be willing to fight internal constituencies to devote those resources to innovation.

3. Veto Points

Another way in which large incumbents differ from startups is how they seek out funding. Inside a large incumbent, decisions about whether to fund an innovative project must pass through one veto point.31 In the venture cap- ital market, many competing investors independently decide whether to fi- nance an innovative idea.32 Inside a firm, an employee with an innovative idea must pitch an idea to managers who ultimately report to one executive gate- keeper. In the venture capital market, if a would-be startup founder pitches an idea to ten VC firms, and nine of them are not persuaded, the idea gets funded. The advantage of market-based finance over internal finance applies not just to the initiation but also the continuation of an innovation project. Inside a firm, an executive who has soured on a project can terminate it. In the venture capital market, when a startup’s initial investors grow skeptical, the company can still pitch outsiders on infusing more cash.

### Productivity Decline Now---1AC

#### Union density has been low for decades because of sustained employer opposition.

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Heidi Shierholz, Celine McNicholas, Margaret Poydock, and Jennifer Sherer, “Workers want unions, but the latest data point to obstacles in their path,” Economic Policy Institute, January 23, 2024, https://www.epi.org/publication/union-membership-data/

More than 60 million workers wanted a union but couldn’t get one

The share of nonunion workers who would like to have a union at their workplace is far higher than the share who actually have union representation. In 2023, 11.2% of workers were covered by a union contract. Survey data from 2017 show that nearly half of nonunion workers (48%) would vote to unionize their workplace if they could. The 2017 figure is up substantially from previous decades; in 1977 and 1995, only about one-third (32–33%) of nonunion, nonmanagerial workers said they would vote to unionize if they could (Kochan et al. 2018; EPI 2021).

While 2017 is the most recent year the survey of nonunion workers was conducted, we presume that the share of nonunion workers who would like to unionize was at least 48% in 2023, if not higher, given the rise in the popularity of unions since 2017.3 There were 128.3 million wage and salary workers in 2023 who were not represented by a union; 48% of that is 61.6 million. That means that more than 60 million workers in 2023 wanted to join a union but couldn’t.

Attacks on unions have created a long-term decline

Despite the continued popularity of unions among workers and the public, we have yet to see this momentum translate into substantial increases in the number of workers represented by a union. It’s worth noting that the current trend is still unfolding. It takes time to organize and win union elections, and not all of the union activity of the last couple of years will have yet translated into increased unionization. However, it does not explain the long-term trend of declining unionization. In fact, today’s overall union density is lower than before the National Labor Relations Act was passed in 1935.4 What is causing this disconnect? Simply put, decades of policy decisions have made it harder for workers to form unions and bargain collectively.

Private-sector workers face barriers to union membership under weak federal law

In the private sector, decades of federal policy and court decisions have weakened labor law. Most notably, the passage of the Taft-Hartley Act in 1947 allowed new legalized forms of employer anti-union activity. Under Taft-Hartley, an “employer free speech” clause was added, mandatory captive audience meetings were allowed, and employers were given the right to file representation petitions to determine whether their workers want to form a union.

Starting in the 1970s, when the overall unionization rate was over 25%, employers began to exploit the weaknesses in the National Labor Relations Act (EPI 2023a). For example, employers use the lack of civil monetary penalties for breaking labor law to their advantage and interfere with workers’ right to organize with little to no repercussions. Today, employers continue to engage in aggressive, coercive, and intimidating opposition toward workers’ efforts to unionize. EPI research estimates that employers are charged with violating federal law in 41.5% of all union election campaigns (McNicholas et al. 2019).

The organizing effort at Starbucks stores is a prime example of how employers are willing to break labor law. Since December 2021, more than 370 Starbucks stores in 42 states have voted in favor of unionizing (More Perfect Union 2023). Over the last two years, the National Labor Relations Board has fielded hundreds of unfair labor practice charges from Starbucks workers and from Starbucks Workers United (Jamieson 2023). Further, employers spend more than $400 million a year on consultants to dissuade and weaken workers’ unionization efforts (McNicholas 2023). In the case of Starbucks, the company has retained Littler Mendelson, a law firm notorious for its union avoidance services (Wise and Iafolla 2023).

As a result of the growing employer opposition to unions and the failure of policy to stem it, workers are unable to organize new union members fast enough under current labor law to keep pace with the natural “churning out” of unionized jobs. Every year in the U.S. economy—even during times when the aggregate economy is healthy—hundreds of thousands of establishments close, leading to millions of workers losing their jobs (BLS 2023d). Some of these business closings and employment losses fall on unionized workers. When the economy is healthy, hundreds of thousands of establishments also open each year, leading to millions of workers finding new jobs. However, employer hostility and our dysfunctional system of labor law keeps new jobs from becoming unionized at anywhere near the rate at which unionized jobs are disappearing.

#### Independently, industrial peace is vital to every metric of economic strength.

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Dr. R. Velanganni, “Impact of Industrial Relations on Efficient Labor Management,” Journal of Development Economics and Management Research Studies, December 2024, https://www.cdes.org.in/wp-content/uploads/2024/10/2-Impact-of-Industrial-Relations-on-Efficient-Labor-Management.pdf

Scholars and researchers have examined the role that industrial relations play in India's effective labour management. Ojo and Adeyemo (2017) state that this research has provided significant new insights into the dynamics of labor-management relations and their effects on productivity, job satisfaction, and the general efficacy of organisations. The following are some important findings from these studies:

Improved Communication: When there are good industrial relations, there may be more effective communication between employers and employees. This facilitates understanding of one another's needs, concerns, and expectations, which leads to a more tranquil workplace. Resolution of Conflicts: When it comes to resolving disagreements between employers and employees, industrial relations are essential. By providing avenues for dialogue, mediation, and arbitration, industrial relations assist people resolve disputes amicably and keep them from getting worse (Oladele & Akinbode, 2020).

Enhanced Productivity: Studies have shown that positive labour relations can increase the productivity of businesses. When management and labour have mutual trust and collaboration, workers are more motivated to give their best job, which boosts production and efficiency (Onakoya & Oyewunmi, 2019). Job Satisfaction: Workers who have positive workplace dynamics express greater job satisfaction. When workers feel their rights are respected and are happy with their working conditions, their morale and loyalty to the company increase (Ogunlana, 2016).

Increased Productivity: Studies have shown that positive labour relations can lead to higher levels of productivity in businesses. When management and labour have mutual trust and collaboration, workers are more motivated to give their best job, which boosts production and efficiency (Onakoya & Oyewunmi, 2019). Job Satisfaction: Workers who have positive workplace dynamics express greater job satisfaction. When workers feel their rights are respected and are happy with their working conditions, their morale and loyalty to the company increase (Ogunlana, 2016).

Economic growth: Industrial relations are important for a nation's general economic development as well as for specific businesses. An atmosphere that is conducive to labour relations attracts foreign investment, stabilises the labour market, and increases GDP in general. These findings highlight the necessity of maintaining positive labour relations for effective labour management in Nigeria. By promoting open communication, resolving conflicts, increasing productivity and job satisfaction, and supporting economic growth, industrial relations can have a substantial impact on an organization's success as well as the general well- being of its workers (Adeyemi & Adeniji, 2014).

### Bond Collapse Inev---1AR

#### Low spreads are really scary.

Flynn 1/16 – Bloomberg Reporter.

Finbarr Flynn, “Global Corporate Bond Yield Premiums Fall to Lowest Since 2007,” Bloomberg, 01/16/2026, https://archive.ph/V8Eou#selection-1167.0-1167.62

Investors across global credit markets are accepting the lowest yield premiums on corporate debt in almost two decades, heartened by a resilient economic outlook.

Spreads have narrowed to 103 basis points, the least since June 2007 in the runup to the global financial crisis, a Bloomberg index of bonds across currencies and ratings shows. A gauge for junk notes set a similar milestone.

Money managers have been diving into the rally in credit due to the prospects of interest-rate cuts by the Federal Reserve and some other central banks. Such easing would help the global economy navigate threats from US President Donald Trump’s tariffs and geopolitical tensions. Earlier this week, the World Bank raised its forecast for global real gross domestic product to rise by 2.6%.

Declines in credit yield premiums, however, can present investors with a paradox. Money managers don’t want to miss out on a hot market. But they also must accept a smaller amount of compensation against risks, of which there are plenty swirling, including unpredictable US policy and the potential that easier monetary policy could allow inflation to quicken again.

“Complacency should be the scariest word in risk markets right now,” said Luke Hickmore, an investment director for fixed income at Aberdeen Investments. “All you can do is not lean too hard into high-risk areas.”

### No Link---2AC

#### Unions won’t weaponize CBA during bankruptcy.

Campello 18 – Professor of Finance at Cornell University.   
Murillo Campello, Janet Gao, Jiaping Qui, and Yue Zhang, “Bankruptcy and the Cost of Organized Labor”, 3/7/18, CATO Institute, Research Briefs in Economic Policy, Number 103, https://www.cato.org/sites/cato.org/files/pubs/pdf/rb103.pdf

Beyond receiving debtor-like recognition under Chapter 11, unions resort to other tactics to empower workers in bankruptcy. They organize strikes, boycotts, and public denouncements with the goal of forcing managers to acquiesce to their demands, so as to avoid disruptions that invite creditor control. When convenient, unions use their leverage in court so that bankruptcy proceedings allow for disruption of absolute priority rules, whereby unsecured creditors’ claims lose seniority. Unions can also make bankruptcies last longer, using the courts to force parties into repeated, costly negotiations over workers’ demands. In securing continued employment for their members, unions often favor inefficient reorganizations in lieu of liquidation. This is a key concern because firms that emerge from reorganization often reenter bankruptcy, as unions resist asset sales and worker layoffs.

### No Link---Courts---1AR

#### They hate labor

Budow 21 – Labor and Employment Attorney, Kauff McGuire & Margolis LLP, and Adjunct Professor of Law, Fordham University School of Law

Scott A. Budow, “How the Roberts Court Has Changed Labor and Employment Law,” Illinois Law Review Online, September 12, 2021, https://illinoislawreview.org/online/how-the-roberts-court-has-changed-labor-and-employment-law/.

Supreme Court justices collectively cast 134 votes in the 15 cases discussed in this article. Those cases spanned civil procedure, constitutional law, and statutory interpretation. There is no unifying judicial philosophy—such as originalism or textualism123—that neatly explains why conservative justices would reliably vote in one manner and liberal justices in the opposite manner for these cases. Yet, if all one knew was that conservative justices favor employers and liberal justices favor workers, that person would have correctly predicted 132 of the 134 votes cast (98.5%).124

[Footnote 125] There is no such thing as a judicial philosophy that explicitly favors workers or employers. See e.g., Noah Feldman, Democrats’ Misguided Argument Against Gorsuch, Bloomberg (Mar. 15, 2017, 7:30 AM), https://www.bloomberg.com/opinion/articles/2017-03-15/democrats-misguided-argument-against-gorsuch [https://perma.cc/WQ6V-KBWV] (“But the thing is, siding with workers against employers isn’t a jurisprudential position. It’s a political stance.”). [End FN 125] If judicial philosophy rather than political motivation explained the underlying dynamics, and we assume that judicial philosophy in the abstract is no more likely to favor employers than workers,125 then the Court’s collective votes are the equivalent of flipping a coin 134 times and getting heads 132 times. Statistically, this is virtually impossible, occurring just 1 out of every 2.4 x 10^21 times *[\*ed: this is 1 in 2.4 sextillion, or 1 in 2.4 thousand trillion]*. Even if one assumes that the conservative wing is one ideological bloc and the liberal wing another ideological bloc, rather than a collection of individual votes, the numbers are still startling. In the 15 cases noted here, the blocs voted in unison as one would expect 29 of 30 times. Using the coin flip analogy, this should occur 1 in every 34.6 million times.

Justices Souter and Stevens often voted with the liberal wing despite being appointed by Republican presidents. Focusing on the 11 cases mentioned in this article since they retired, one could have correctly predicted 96 of 98 votes based on the party that nominated the justice (with Democrats favoring workers and Republicans favoring employers), which is also virtually impossible, occurring just 1 out of every 6.53 x 10^22 times. Alternatively, analyzing ideological blocs reaches substantially the same conclusion: the Democratic-appointed bloc voted for workers in each of the 11 cases, and the Republican-appointed bloc voted for employers in 10 of the 11 cases. Using the coin flip analogy, this should occur 1 in every 182,361 times.

Indeed, other studies analyzing voting patterns have demonstrated that each Republican appointed justice is “more favorable to business” than each Democratic appointed justice,126 which would be a remarkable coincidence if each justice was truly motivated by judicial philosophy.127

Justices on either side of the divide of the Roberts Court may find it both individually and institutionally expedient to claim that they are merely applying an objective judicial philosophy. At least on labor and employment law, that theory does not appear explanatory. Instead, the sizable percentage of the public that believes that the Court is driven by politics128 may have a point, despite what the justices on that Court may claim.

The result of that pattern is a legal playing field that significantly favors employers relative to the rules that existed prior to 2005. Further, with the confirmation of Justice Coney Barrett, the Court now has six conservative justices, none of whom appear close to retirement based on their age.129 As a result, the Court is likely to continue issuing decisions, perhaps for decades to come, consistent with its recent practice.

#### SCOTUS is immovable.

Boehm and Ta 24 – Trial Attorney at the National Labor Relations Board.

David Boehm and Lynn Ta, “The Promise of America’s Forgotten Labor Law,” LPE Project, 09-26-2024, https://lpeproject.org/blog/the-promise-of-americas-forgotten-labor-law/

In the late nineteenth and early twentieth century, the labor movement faced a nearly immovable obstacle: the federal judiciary. Courts frequently deployed antitrust law, meant to restrain monopolists, as a bludgeon against organized labor. They also regularly enjoined strikes and solidarity activities. In one particularly infamous 1927 case, for instance, the Supreme Court essentially shut down all union organizing in West Virginia’s coalfields and prohibited, among other things, holding meetings, distributing information, distributing funds for striking workers, and urging workers to join the union.

In response, organized labor successfully agitated for a labor-rights provision in the Clayton Antitrust Act of 1914. In evocative terms, the Act declared that “the labor of a human being is not a commodity or article of commerce,” and that labor and agricultural organizations could lawfully carry out their “legitimate objectives.” While it was hoped that this would be labor’s magna carta, the courts simply ignored it. Under the prevailing judicial view, employees could form unions, but they had no right to engage in self-help that would interfere with employers’ unfettered access to laborers, which was framed in property terms. This deflationary view of the Clayton Act would reach its highest prominence in the Supreme Court’s Tri-City Foundry decision, which found that the Act was simply declaratory of “what was the best practice always” and did not protect the means by which unions could accomplish their objectives, such as strikes and boycotts.

### No Internal---2AC

#### No bonds or restructuring impact.

Skinner 21 – Assistant Professor, The Wharton School of the University of Pennsylvania.  
Christina Parajon Skinner, “Central Banks and Climate Change”, Vanderbilt Law Review, Volume 74, Issue 5, 2021, https://wp0.vanderbilt.edu/lawreview/wp-content/uploads/sites/278/2021/10/Central-Banks-and-Climate-Change.pdf

Perhaps most squarely to the point, it appears that banks may not presently hold sufficient concentration of carbon-intensive credit assets for physical or transition risks to threaten their solvency. 70 Consider a snapshot based on existing data. These big bank balance sheets are geographically and sectorally diversified.71 Consider recent data from the balance sheets of the largest, most systemically important banks. For example, at year end 2019, JPMorgan Chase had $41,570 million in wholesale credit exposures in its oil and gas portfolio.72 While that number seems enormous, it is 4.6 percent of that bank’s total credit exposure. (That number decreased to $37,516 million by the end of 2020.73)

At the highest range is Citigroup, whose credit exposure in the energy and commodities industry constitutes around seven percent of its total credit exposure for its corporate credit portfolio.74 Yet other globally systemically important banks such as Wells Fargo, BNY Mellon, and Barclays fall at the lower end of the four to seven percent exposure range in their portfolios (when looking at their exposure to the oil and gas industry respectively).75 Meanwhile, the amount of equity capital available to absorb loan losses is triple or quadruple credit exposure at all of these big banks.76

Taking automotive industry loans into account changes these banks’ exposure slightly, but not significantly. 77 For example, JPMorgan’s and Wells Fargo’s wholesale credit exposure increases by less than four percent each, while Citigroup’s credit exposure increases by 6.86 percent.78 This remains true even when panning out wider to account for loans across the entire transportation industry. Including transportation increases JPMorgan’s credit exposure by less than two percent, Citigroup’s by less than four percent, Wells Fargo’s by around 2.5 percent, and Barclays’s around one percent.79 Banks are otherwise diversified across a range of sectors: real estate, consumer and retail, technology, industrials, asset managers, banks and financial companies, healthcare, utilities, state and municipal governments, automotive, chemicals and plastics, metals and mining, central governments, transportation, insurance, securities firms, and financial market infrastructures.80

Events of 2020 lend support to the narrative suggested by the balance sheet data discussed above. Specifically, in spring of 2020, large banks faced historic declines in oil prices (which fell below zero dollars) thanks to COVID-related shelter-in-place orders. 81 While banks suffered some losses on their wholesale credit portfolios connected to the oil and gas industry,82 their soundness or solvency did not come into question.83 Indeed, the Fed’s own data shows no statistically significant increase in nonperforming loans between Q4 2019 and Q1 2020 for the largest banks84—for further context, while nonperforming loans were at about one percent of these banks’ balance sheets after these events of 2020, shortly after the financial crisis of 2008 they hovered around 3.5 percent. 85 These recent events—and banks’ balance sheet reactions—suggest that even significant exogenous climate-related shocks cannot so drastically impair asset quality so as to push banks toward insolvency. 86 The lesson here is that where banks remained resilient, in accordance with Basel III requirements, they have been able to withstand significant exogenous shocks.

#### Welfare solves

Taylor 23 – Environment Correspondent for The Guardian.  
Matthew Taylor, “Loss of fossil fuel assets would not impoverish general public, study finds”, The Guardian, 6/22/23, https://www.theguardian.com/environment/2023/jun/22/fossil-fuel-assets-loss-study

Research allays fears that rapid scaling back of production would hit people’s savings and pensions hard.

A rapid reduction in fossil fuels, essential to avoid devastating climate breakdown, would have minimal financial impact on the vast majority of people, new research has shown.

Urgently cutting back on fossil fuel production is essential to avoid the worst impacts of climate breakdown and the economic and social turmoil that would ensue. However, some opponents of climate action claim it is too expensive. They argue that rapidly scaling back fossil fuel production would leave billions of pounds of “stranded assets”, leading to an economic slump that would impoverish the public through a fall in the value of savings and pension funds.

Research published on Thursday finds that the loss of fossil fuel assets would have a minimal impact on the general public.

“We find that the bulk of financial losses associated with rotten, polluting assets is borne by the wealthy,” said the co-author Lucas Chancel, a professor of economics at Sciences Po in Paris. “Only a small share of financial losses is borne by the working and middle class because they have no or relatively little financial wealth.”

The study, published in the journal Joule, found that in high-income countries two-thirds of the financial losses would be borne by the most affluent 10%. In contrast, governments could easily compensate for the minimal impact on those on middle and lower levels of wealth.

Chancel said: “These latter groups have nothing to fear from rapid action, in particular if governments decide to compensate for their losses, which can be done at relatively low cost.”

The study found that in the US, two-thirds of the financial losses from lost fossil fuel assets would affect the top 10% of wealth holders, with half of that affecting the top 1%.

Because the wealthiest people tend to have a “diverse portfolio of investments”, it found, any losses would still make up less than 1% of this group’s net wealth.

Just 3.5% of financial losses from stranded assets would affect the poorest half of Americans and could easily be compensated for by government.