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### K – Capitalism

#### Collective bargaining rights channel worker power into institutional channels that reinforce capitalism which dampens alternatives to private control over the economy.

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This article discusses a newly emerging historiography of post New Deal United States collective bargaining law.1 Critical labor law will be depicted primarily by highlighting its main lines of attack on traditional learning. Most contributions to the literature of collective bargaining law are overwhelmingly doctrinal and rule-focused in emphasis. They are written, explicitly or implicitly, from the perspective of beliefs and values about the social function of collective bargaining drawn or inferred from the stated purposes, the legislative history of and judicial glosses upon the major federal labor statutes.2 This litera ture takes as given and unquestioned the desirability of maintaining the basic institutional contours of the liberal capitalist social order.

By contrast, although the critical labor jurisprudence exhibits widely divergent political views,3 it tends to challenge or at least to question the adequacy of established social institutions to protect the needs and interests of working people, particularly with respect to the openness of those institutions toward worker participation in the deci sions affecting their industrial lives.4 Likewise, critical labor law is skeptical that the stated purposes and received wisdom of federal labor law adequately explain either the developmental path of collective bar gaining law itself or its broader social functions.

Critical labor law has therefore attempted to reconstruct the ideo logical content and political and institutional implications of collective bargaining law by "decoding" its doctrinal literature. By this I mean that critical labor law focuses on analysis of important texts within their social and historical settings. The effort is to uncover the constellation of assumptions, values and sensibilities about law, politics and justice these texts evince, to reveal their latent patterns and structures of thought about legal and industrial issues and about the possibilities of human expression in the workplace.5 An underlying assumption of this methodology is that the intellectual history of labor law is a significant and neglected component of the social and political history of the American working class since the New Deal. Another is that because it is such a powerfully integrated structure of thought, deeply resonant with other aspects of the hegemonic political culture and closely articu lated with important collateral developments in intellectual history (e.g., in political and managerial theory), liberal collective bargaining law is itself a form of political domination.6

Despite sharp differences on other matters, two common themes run throughout critical labor jurisprudence. First, we argue that collective bargaining law articulates an ideology that aims to legitimate and justify unnecessary and destructive hierarchy and domination in the workplace. The second theme is that collective bargaining law has evolved an institutional architecture, a set of managerial and legal ar rangements, that reinforces this hierarchy and domination. Viewed as a component of public policy, the two central goals of the collective bargaining laws are to integrate the labor movement into the mainstream contours of pressure-group politics and to institutionalize, regu late and thereby dampen industrial conflict. Viewed as a component of managerial practice, the collective bargaining laws seek to formalize industrial dispute-resolution and thereby to reinforce management control over enterprise goals and the direction of the work process. In fulfilling its public policy and managerial functions, collective bargain ing law frequently aims to restrain labor unions from serving as vigor ous, uninhibited representatives of employee interests. Rather it seeks to place unions in the uncomfortable position of serving as fiduciaries of an imagined societal interest in industrial peace7 and of serving spe cific managerial8 and disciplinary9 functions. I believe that a primary initial achievement of the critical labor jurisprudence is its demonstra tion that the doctrine of collective bargaining law has been systemati cally fashioned, particularly at the Supreme Court level, to serve these goals.10

However, the intellectual history of the field is complicated by the fact that from its outset modern collective bargaining law has endorsed and to some extent has actually engendered the democratic participa tion of employees in workplace governance. Quite apart from their manifest achievements in improving the working and living conditions and economic security of organized workers, labor unions protect em ployees from unilateral and arbitrary dictates of management. Unions provide an institutional context within which workers can formulate and express their aspirations, aggregate their voices and experience the dignity that comes with having some power to affect the decisions gov erning one's life. Since the battles of the New Deal period, labor law has grown up in a national political climate that mandates legal ac knowledgment, authorization and legitimation of economic conflict and that requires recognition by our institutions of the fact that workers do and should have power."

The internally contradictory roles and setting of collective bar gaining law have precipitated two great challenges to theorists guiding and fostering its development from the traditional liberal perspective.12 The first is to explain how and why collective bargaining law simultaneously encourages and represses workers' self-expression through the medium of industrial conflict. While the collective bargaining laws on the one hand invite and authorize workers to voice and advance their needs through self-organization and collective action,13 they at the same time limit worker self-expression through industrial conflict by establishing a coopting, atomizing, struggle-dissipating framework that narrowly circumscribes the lawful boundaries of col lective action. That is, the ultimate impact of collective bargaining law in many settings may well be to impede solidarity and mutual aid and to narrowly channel collective action into limited, institutionalized forms.14

Traditional liberal theorists of collective bargaining law have had to explain, secondly, how this body of law simultaneously authorizes and limits employee participation in workplace governance. For, although the collective bargaining laws acknowledge the justice of worker participation in the industrial decisions affecting their lives,15 they also carefully control and restrict this participation. Collective bargaining law limits worker participation in workplace governance by deflecting the intervention of workers' power away from such concerns as the organization of the work process, enterprise management and goals, and the internal direction of labor unions. Rather, the legitimate exercise of workers' power is generally confined to occasional conflict outside the workplace, in the market for the sale of labor power, i.e., to the economic strike.16

In sum, traditional liberal labor law thinking has confronted the enormously complex challenge of inducing organized workers to consent to and participate in their own domination in the workplace.17 In this sense, the development of collective bargaining law is paradigmatic of all public policy in liberal capitalism. I believe liberal capitalism is a social order founded upon enormous inequality and historically unnecessary constraints upon human freedom, coexisting with political insti tutions and a political culture premised on democratic ideals.18 Public regulation of class struggle through collective bargaining law replicates the role assigned to the state in the classics of liberal political theory, namely to manage and contain conflicts said to inhere in the sphere of social and economic activity ("civil society"). The philosophy of collective bargaining law, elaborated since the 1930's in doctrine, law review commentary and management literature, is an important effort to conceptualize, justify and legitimate the modern, regulatory state in the period of advanced industrial capitalism. As such it is a premier mode of elite ideological practice and an enduring contribution not just to law but to liberal political theory generally.19 It is this fact which opens the greatest promise to critical labor jurisprudence, affording us the opportunity to make a contribution to political theory as well as to histori ography and doctrinal analysis.

#### Capitalism fuels extinction through pandemics, biodiversity loss, warming, and war. Only a new political economy solves.

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The idea of a global extinction triangle linking capitalism, environmental destruction (including climate change, pandemics, and biodiversity collapse), and militarism (especially nuclear war) will be viewed in many nations, and especially the United States, as itself madness. It is so taboo that most analysts of climate crisis, pandemics such as COVID-19, and nuclear war – and indeed much of the climate and peace movements – avoid the subject of the capitalist system and the need for systemic transformation like the plague.

To take just climate, the notion that the capitalist system drives climate change is highlighted by only a few leading analysts, mainly on the Left. One is Naomi Klein, who argues that extinction arises from “the collision between capitalism and the planet” and that:

We have not done the things that are necessary to lower emissions be- cause those things fundamentally conflict with deregulated capitalism, the reigning ideology for the entire period we have been struggling to find a way out of this crisis. We are stuck because the actions that would give us the best chance of averting catastrophe – and would benefit the vast majority – are extremely threatening to an elite minority that has a stranglehold over our economy, our political process, and most of our major media outlets.2

Klein acknowledges that “autocratic industrial socialism” can also cause cli- mate change, but argues that the ruling capitalist model is the major risk and we need to pursue a democratic “eco-socialism” to save the planet. Joining Klein in the laser-like but lonely focus on the capitalist DNA driv- ing extinction is the journalist, George Monbiot. He writes that: Ecologically, economically and politically, capitalism is failing as cata- strophically as communism failed. Like state communism, it is beset by unacknowledged but fatal contradictions. It is inherently corrupt and corrupting. But its mesmerising power, and the vast infrastructure of thought that seeks to justify it, makes any challenge to the model al- most impossible to contemplate. Even to acknowledge the emergencies it causes, let alone to act on them, feels like electoral suicide. As the famous saying goes: “It is easier to imagine the end of the world than to imagine the end of capitalism.” Our urgent task is to turn this the other way round.3

Monbiot is not joking when he says our most important task is to “turn this the other way round.” While this sounds daunting, imagining systemic change in the global capitalist economy has become essential to human survival. In a period when there is a new awakening about “systemic racism,” we need now to expand our consciousness about our economy, recognizing that we are now living in a new stage of “extinction capitalism.” Only systemic change in our political economy can save us.

Klein is Canadian and Monbiot is British. These are both societies where it has long been possible to offer critiques of capitalism without sounding like a crackpot. Both Britain and Canada have labor or socialist parties, and main- streamed the idea that large parts of the society should be separated from profit- making and organized for the provision of public goods. These societies are less complicit than the United States in climate and military policies fueling extinction.

In the United States, mainstream socialist political parties do not exist, and “big government” and universal welfare programs are seen as enemies of lib- erty, with the exception of an enormous military. Klein and Monbiot have an audience in the United States, but their views that to survive means moving beyond capitalism and especially neoliberalism capitalism runs into huge hur- dles, especially in American political discourse, even among liberals. However, we shall see that it is not an impossible dream, and that even a President as moderate as Joe Biden, pushed by people of color, young people, and social movements, has begun to break with neoliberalism and shift toward a public goods economy that could help save the planet.

Crossing the Threshold: Humanity Confronts Its Final Stage

Beginning in the mid-1940s, when the United States attacked Japan with nu- clear weapons, we saw the emergence of the first period in human history – now known as the Anthropocene – in which capitalism began to threaten both nuclear and climate extinction. As Noam Chomsky writes: Review of the record reveals clearly that escape from catastrophe for seventy years has been a near miracle and such miracles cannot be trusted to perpetuate.

On that grim day in August 1945, humanity entered into a new era, the nuclear age. It’s one that’s unlikely to last long, either we will bring it to an end or it’s likely to bring us to an end. It was evident at once that any hope of containing the demon would require international corpora- tion ….

It was not understood at the time but a second and no less critical new era was beginning at the same time. A new geological epoch, by now, called the Anthropocene–an epoch defined by extreme human impact on the environment.

The Anthropocene and the nuclear age coincide, a dual threat to the perpetuation of organized human life. Both threats are severe and immi- nent. It’s widely recognized that we have entered the period of the sixth mass extinction.4

Extinction denialism has limited public awareness of the new stage that arose in the late 1940s but is rooted in the foundations of our economic system. Indeed, capitalism, even as it historically helped build new economic growth and innovation and pulled millions out of poverty, has always created war and environmental destruction. Its historical progress fueled “development” that catapulted the European and American world toward prosperity and material well-being for two centuries. But that huge leap forward also froze into so- ciety an unsustainable quest for unfettered growth threatening military and environmental catastrophe and externalized multiple costs onto the peoples of the Global South. The history of capitalist successes disguised latent crises now surfacing in the extinction stage. The historical benefits of capitalism have not disappeared, but their relative value has declined compared to the costs and risks – ultimately of extinction.

The Triangle of Extinction: Mad Money

To save humanity and all life on the planet, we need to understand the new extinction stage as rooted in a causal triangle of three intertwined threats. The only way that humanity will survive is if the world – including all states, peoples, and social movements – come together to dismantle the triangle and create a new circle of sustainable life systems.

Capitalism drives the triangle of extinction. Its very nature, as a system, foments militarism and drives environmental destruction. In Chapter 2, we argue that capitalism’s constant need to expand both its resource base and its markets fosters a militarism to pry open markets and “protect” investments. Territorial expansion across national borders has a corollary in the capitalist dynamic to test and break ecological thresholds, producing the third corner of the triangle, environmental destruction.

However, these two corners – militarism and environmental destruction also feed back into, affect, and reinforce the logic of capitalism. Both create the disasters that leave communities and states turning to capitalists for solutions. The soil fertility depletion, for example, that capitalist agriculture produces, leaves us all more dependent on the petrochemical and agro-industrial corpora- tions selling fertilizers and pesticides. Similarly, capitalism’s inherent instability, particularly in the American case, produces a “military Keynesianism,” using state spending to increase production and profits of military companies. This, in turn, compromises democracy, giving weapons contractors privileged access to the state, rendering the latter dependent on the “market” fortunes of these corporations (Figure 1.1).

A diagram of a diagram of a different way

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Figure 1.2 omitted

As we contemplate this triangle, we must recognize that its dynamics play out in social and historical structures that are profoundly intersectional, ones characterized at the global, regional, and national levels by evolving hierarchies including those of race, gender, class, and states. A more complete picture of the triangle therefore looks like this (Figure 1.2).

This second diagram spells out the variety of forms of environmental de- struction and militarism that create existential and extinction threats, whether they be, in Bostrom’s terms, forms of bang, crunch, shriek, or whimper risks. In both pictures, we are adhering to the idea that existential threats – and extinction itself – should not be defined exclusively as total annihilation. The second picture shows that there are several major existential risks; among the risks in the environmental destruction corner are three well-known ones, climate change, pandemics, and biodiversity loss. But these interact with the others listed, as well as with the many other risks that are less well known. Similarly, militarism produces nuclear, biological/chemical, and cyberwar risks. All of these six varieties of existential risk are extremely important, and all are “systemic” in that they are partly caused and fueled by the United States and global capitalist system. All deserve urgent study leading to emergency transformative change because each of them could create devastating mass death from which humanity might not be able to recover. In addition to these six existential risks, the clusters around each corner of the second diagram also name other risks that may escalate into either existential risks or radically re- duce the quality of life and pose civilizational risks.

In this book, mainly to keep the book shorter, we do not analyze biodiver- sity collapse, cyber war, or biological war, focusing instead on nuclear war, cli- mate change, and pandemics. If we were to write a second volume, we would analyze with the same sense of urgency the other three incredibly dangerous threats; they are growing and increasingly intertwined with the threats we focus on here.

The arrows in the diagrams reflect causation. Capitalism itself creates a threat of extinction, independent of environmental death and war. But it also causes and fuels the environmental threats of climate change, pandemics, and loss of biodiversity, which multiply the extinction threat. And capitalism, es- pecially the militarized hegemonic form modeled by US neoliberal capitalism, causes war, which further multiplies the extinction threat embedded in the possibility of nuclear war. Climate change, pandemics, and extreme war could arise from other systems than capitalism, but capitalism is a leading cause and accelerator of all these threats, which in turn intensify the extinction dangers of each other. Climate change is a major driver of war and war has become a leading cause of climate change. Scholarship on climate change and broader environmental matters typically recognize several major tipping points and en- vironmental thresholds beyond which abrupt and catastrophic outcomes are to be expected. While we do explore these in depth, we consider these important aspects of the three corners of the triangle of extinction.5

The causal chains of capitalism here are not the only causes; religion, na- tionalism, racism, sexism, population growth, and technological change, among other factors, contribute to extinction as well. Race and racism play an especially important role – since the initial violence and death of the extinction system target people of color most powerfully. Much of the entire system is legitimated as a defense against non-white races who are portrayed to be threats to the nation in the West especially by right-wing authoritarian and neo-fascist movements. The triangle of extinction is new but it grows out a long history of capi- talism, which laid the foundations over several centuries of unfettered global growth and profit-seeking. It is easy to say that it is simply technological inven- tions – such as the creation of the nuclear bomb – that defines the new stage of extinction. But such technological determinism, while attractive in United States and other capitalist nations, is far from a complete story. It neglects the historical choices and structural forces that led most recently to the neoliberal capitalist model in the United States that has made extinction a truly central systemic feature of both the United States and the global capitalist system it presides over.

The extinction stage – and the triangle of extinction that shows its inter- twined perils – is wrapped up not only with all kinds of technological innova- tions, but also with a huge complex of economic, social, and cultural historical choices foreshadowing and entrenching the path toward unsustainable growth, climate change, global pandemics, and genocidal war. Technological deter- minism is a way of diverting attention from the dominant economic and politi- cal structures creating and ruling the extinction stage. Elites are eager to focus on technology as both the cause and the solution to our current predicaments, and many environmental theorists embracing the “environmental moderniza- tion theory,” argue that new technologies will themselves liberate the world from dangers of extinction.6 Similarly, many focus exclusively on eliminating nuclear weapons without looking at the same time as the need to eliminate the militarized state which can always rebuild nuclear weapons, the techno- logical delusion we called earlier “weaponitis.”7 But those looking to sustain survival of humans and all life on the planet have to take a systemic perspec- tive, focusing on the power structures and elites that benefit the most from the current extinction stage, even though it will ultimately kill them along with everyone else.

Caveats on Capitalism and Extinction

First, the emergence of capitalism as a global extinction system is, ironically, a measure of some of its historic successes. Capitalism is not the only eco- nomic system causing climate change or war, as we have already highlighted, but it has emerged as the most powerful driver of these threats. This reflects in part its rise as the dominant global economic system of the 20th and 21st centuries, a reflection in turn of its superior capacity to create productivity, growth, and technological innovation. These “virtues” not only had real positive effects on economic growth but also had shadow sides that evolved into existential threats themselves, even beyond their contributions to cli- mate change and extreme war.

Second, market forces within capitalism, including its neoliberal system, can help begin to move energy production toward renewable energies. The price of oil was falling, even before COVID-19 reduced demand for carbon- driven transportation and products, and the costs of coal are rising sharply in relation to falling prices of wind and solar. Capitalist proponents argue that the market itself is driving Big Oil and Gas toward producing more green energy, the ultimate solution to climate change. But while these market factors are real and should be recognized as highly important, they do not create the scope and speed of change needed to prevent climate catastrophe. The oil and gas companies have too much profit “sunk” into the carbon infrastructure and the oil reserves they enjoy to jettison their short-term but vast returns; they will advertise themselves as “going green,” even as they commit themselves to getting as much profit out of dirty carbon energy as possible before shifting to a sustainable energy system. In the short to medium term, while the corpora- tions begin to shift toward major new green technologies such as electric cars, they will block the systemic change we need, pushing us in the name of green capitalism toward climate extinction.

#### The United States Federal Government should mandate transition to a democratically planned, worker-owned economy.

#### Abolition of private ownership and social management of production frees the economy from markets and corporate control. Only this creates genuine worker power and reorients the economy away from profit and towards collective need.

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Moreover, workers taking over all the various nodes where they work in the system of social production is strategically central to the working class gaining power in society. The syndicalist proposal is for the working class to socialize the economy “from below” through a process of workers taking over the various industries and creating their own democratic organizations to self-manage the work in that industry. Here is a basic truth: If workers do not control their own work activity and the workplaces, then some other class will, and thus the regime of class oppression will continue. So an essential task for worker’s liberation is the worker takeover of the various workplaces and industries and the creation of organizations of worker self- management. For workers to control the labor process, the organization of the work, and the control of the workplace, there must be face-to-face democracy of periodic assemblies of the workers in that facility. This is where the staff can deliberate and make decisions on the basic policies and the over-all governance of their facility and for their industry. For ongoing coordination of the labor, the workers can elect colleagues to a coordinating or administrative council. In a typical facility that is fairly sizable, there are often departments that have issues that pertain first and foremost to them, which suggests a kind of distributed decision-making structure where departments have their own periodic assemblies to make collective decisions for themselves.

However, this direct self-management of production does not mean that workers would be split up into competing cooperatives or “collectives.” Rather, as Diego Abad de Santillan put it during the Spanish revolution in 1936, the worker production groups are not “proprietors” of the industries but are “only administrators at the service of the entire society.” The goal of a syndicalist program is socialization, not converting workplaces into the collective private property of the workers there.

De Santillan justified the CNT movement’s goal of socialization in this way: “We are an anti-capitalist, anti-proprietor movement. We have seen in the private ownership of the instruments of labor, of factories, of the means of transport, in the capitalist apparatus of distribution, the primary cause of misery and injustice. We wanted the socialization of all the wealth in order that not a single individual should be left on the margin of the banquet of life.”

There is an assumption that worker self-management of the industries must be accountable to the whole society. When the CNT unions seized the various industries in the revolution in the 1930s, they expropriated the assets on behalf of all the people, implying a commitment to a form of planned economy where there is popular participation in working out the agenda for production.

Neighborhood Assemblies

Various decisions about an industry or workplace will impact people other than the workers in that workplace. Whether someone is working in the social economy or not, the people who live in a city neighborhood or rural area will have concerns that are common to those in their area—such as elimination of pollutants, or the character of the public goods and services available in their area. Thus residents of a city, neighborhood, or region need to be able to self-manage the planning about provision of services or protection from environmental degradation. These are decisions that affect everyone who lives in a region, and is where neighborhood assemblies come into play. Just as worker assemblies provide the base for workers self-management of workplaces, assemblies that bring people together can provide a social base for self-management of public affairs and public services by an area’s population.

A district of some thousands of residents might have its own periodic neighborhood meetings, its elected neighborhood committee, but also elect delegates to a city-wide or regional congress of delegates from all the neighborhoods. We might call this a Congress of Communities. The area of decision making that the neighborhood assemblies and the regional congresses of communities would work on would be the development of the plans for provision of public goods and services, protection of the interests of people as consumers, protection of the ecological commons, controlling the land use, and issues like emissions that affect air and water.

Different kinds of public goods and services affect people at different geographic levels. The neighborhood assembly might be concerned about the creation of new parks, a gym, or other recreational facilities, or better bus service. On the other hand, the overall operation of the transit system or major new services like a subway line would be a part of the planning of a congress for the whole metropolitan region.

The neighborhood assemblies and wider-scope congresses of communities would be developing requests to the worker-managed system of social production. When the regional congress of community delegates for the metropolitan region works up proposals for new bus lines or other transit system improvements, they do not hire managers to form an autocratic bureaucracy to control transit workers. Rather, the workers would self-manage the transit system.

A relevant example in recent times has been some cities’ attempts at “participatory budgeting”—based on participation by residents in neighborhood assemblies. An example was the participatory budgeting experiment enacted by the Brazilian Workers Party when they controlled the city government of Porto Alegre, Brazil. The city allotted control of planning to neighborhood assemblies for a limited part of the city’s discretionary budget, to determine what services the neighborhoods wanted. When I was in Brazil in 2003, I interviewed a member of the secretariat of the Federação Anarquista Gaúcha (FAG)—a sixty-member anarchist activist and organizing group in Porto Alegre. They told me that the neighborhood assemblies did develop plans but very often the mayor’s office would overrule them. This is a limitation due to the fact the assemblies were embedded in the existing bureaucratic state, but this does show that neighborhood planning is possible through a participatory process.

No to Market Socialism

If we reject the state-organized central planning model, what is the alternative? One option proposed by some socialists is a “market socialist” economy of competing worker-controlled enterprises or cooperatives (as in the proposals of David Schweickart and Bhaskar Sunkara). Syndicalists have historically been opposed to market socialism. When the revolutionary syndicalist unions came together to form the International Workers Association in 1922, they defined their programmatic goal as “libertarian communism,” referring to a non-market form of socialized economy. The word “libertarian” refers to positive liberty, and thus to the rebuilding of all social institutions on the basis of self-management. They did not conceive of the goal as private ownership of the means of production by workers via competing “collectives” or cooperatives. To build the fighting capacity to replace capitalism with worker power over production, a working-class movement that could drive this change would be likely to have developed a high level of solidarity and a major united front within the groups subject to exploitation and subordination in capitalist society. Why would they want to then pit groups of workers into competition with each other in separate enterprises? Moreover, if the market-governed character of the capitalist set-up is the basis of the ecologically destructive cost-shifting dynamic, market socialism is no solution.

Economic Planning through Popular Participation

The alternative to market socialism and central planning is a distributed model of democratic planning. A socialized economy requires that the worker-managed industries produce the goods and services that the masses of people want. How do we ensure effective accountability? This leads to what I call the dual governance model for a socialized economy. This means that we take seriously the idea of popular self-management for decision making about the concerns that people have as consumers, users of public services, or as residents affected by environmental issues. With the dual governance model, we keep worker self-management of the industries but we add self-management rooted in assemblies of the residents in neighborhoods, and election of delegates from these geographic areas to congresses of delegates over wider regions. This provides a basis for self- management of communal, consumer, and environmental protection issues. A distributed planning system needs to have a way to effectively coordinate between the many centers of self-managed planning in the society— workplaces, coordinated industrial self-management organizations, and planning for social benefit that can occur through delegate bodies over wide geographic scope as well as by local communities.

We’re familiar with the way that prices enable different companies and households to coordinate or adjust their plans to each other within the present society. As we will see, a non-market price system can be used in a planned economy also as a means for coordination between the plans of communities for public goods and services, households in their consumption decisions, and worker production organizations. Because it is a socially controlled price system, the destructive cost-shifting of capitalism can be eliminated. As a non-profit, coordinated economy, the competitive drive for profits is replaced by an economy geared to cooperation, worker mastery of production, and human well-being.

Protecting the Ecological Commons

The potentially catastrophic effects for humanity from global warming illustrate the danger from treating the atmosphere as a free “sink” for emissions. In this case, carbon dioxide from burning fossil fuels, or methane from leaky gas fields, are putting humanity on track to very dangerous levels of heating of the atmosphere and oceans—leading to deadly heatwaves, rising seas, and intensified storms. A lot of the technical changes needed to move away from this path are known or being developed. We can see how this catastrophic direction comes from the cost-shifting dynamic of capitalism. A power firm in Texas burning coal contributes greatly to global warming, and is also damaging the respiratory systems of people downwind from the plant. But the power firm doesn’t have to pay anything for these costs. If they had to pay an appropriate fee, methods of power generation that don’t rely on burning fuels would look a lot better for the financial balance sheets of the power firm.

Protecting the ecological commons means that the society has to take collective responsibility for protecting the air and water, the forests, and so on. My proposal here is to “socialize” the access to the ecological commons by giving control over this access to all the people who are locally affected by a particular commons or by possible emissions into the air or water, or drawing down of a regional aquifer. The population who live in particular areas or regions would have the power to protect themselves against being polluted.

As we will see below, this approach will allow us to calculate prices for ecological damage. These prices can then figure in costs assigned to the balance sheet of production groups, giving them a positive motivation to reduce ecological costs. This allows us to define a concept of ecological efficiency. Following Robin Hahnel, I define throughput as consisting of all the natural resources that we extract (wood from forests, limestone from a quarry, hydrocarbons from the subsoil) and all the negative effects of pollutants that are emitted. To the extent we reduce throughput required per unit of social benefit from social production, we have improved ecological efficiency. The ability to assign accurate prices to throughput enables us to have an economy that generates a tendency toward greater ecological efficiency. Thus, if the ecological efficiency of production is improved, some element of growth can occur without increasing ecological damage.

Some radical environmentalists say that the source of the ecological devastation of the capitalist regime is “growth.” But growth in regard to what? It is true that the non-profit-driven planned economy proposed in this chapter would be lacking the capitalist regime’s obsessive drive for profit. Nonetheless, growth is going to be needed along various dimensions —growth in equipment needed in the shift to a non-fossil fuel based electricity system, growth in free-to-user health provision, growth in rehab of buildings to make them more ecologically sound, and many other areas. And this also means we need a way to ensure a shift in the production system so that it works at reducing its damaging ecological impacts.

Replacing the State

An important lesson from the revolutions in the twentieth century is that the initial steps in the process of social transformation need to avoid creating new institutions that will simply continue some system of class oppression over the working class. Thus a key part of the syndicalist program is the initial moves to take over the workplaces and re-organize production under worker self-management, which gives the working class the power to shift the priorities of the production process on issues such as ecological impact, quality of the products, improved health and safety for the workers, etc. This differs from a Marxist conception of social transformation, which sees the key aim as the capture of state power by a “worker’s party.” Through this “worker’s state” the party would implement a socialist program. In fact, “proletarian state” is a contradiction in terms. States are based on top-down managerialist bureaucracies where public sector workers are subordinate, so class oppression is built into the structure of the state. When the Bolsheviks got control of the central state in Russia in 1917, they proceeded over several years to build a system of top-down central planning with managerialist bureaucracies installed from above over the workers in the various industries. Thus they set in play a process that created a new class-divided economic arrangement, based on the power of the bureaucratic control class.

A key task the working class must accomplish in a period of social transformation is the breaking down or dismantling of the State. Taking over the various industries and establishing worker self-management of production is a central task, but changing the system of political power in society is equally important. A society must have a method to decide basic rules and enforce them. This is the core of the governance system of that society. Breaking down the State means changing the governance system so that the formerly oppressed majority gain control over governance.

We are used to thinking of a geographic basis for “democratic government” in which people elect politicians to represent the people in a district, based on universal right to vote. Thus it might be thought that the neighborhood assemblies and congresses of delegates from neighborhoods might be sufficient for a new government system. I think this is likely to be a mistake. A revolutionary process that works to liberate the working class from subordination to the capitalist and bureaucratic control classes needs to expropriate the means of production from the old owning class but also needs to break the power that the bureaucratic control class has wielded over workers and over the state. This process is likely to lead to major opposition from the people in these classes who lose power. The college- educated managers and top professionals whose power is threatened or removed are likely to oppose their loss of power. Moreover, they have the speaking and writing and organizing skills to build organizations and organize in neighborhood assemblies and congresses of neighborhood delegates to advance their class interests and try to maintain a powerful role for their class. They can build “political parties” that push a program that would shift power to the high-end professionals and managers. To prevent this, I believe that the working-class mass organizations must build political power based on workers and their assemblies and organizations in production.

This is where the syndicalist proposal for worker congresses comes into play. These would be congresses of elected and revocable worker delegates, elected from the various worker assemblies throughout a metropolitan area, a larger region—or throughout the region transformed by the revolution. Bringing together all the neighborhood and workplace organizations from the region being transformed creates what we might call the Social Federation. I would see the regional and Social Federation-level worker congresses as akin to a legislature, having the power to craft a new charter for society and set out the division of powers of the various organizations. The worker congresses are a key aspect of working-class political power.

A part of the governance system is the way that social self-defense is organized. There is the potential of foreign invasion—such as a force trying to restore capitalism. People are also going to want protection from individuals or gangs who act in predatory, anti-social, or violent ways—who commit assaults, try to bully their neighbors, engage in theft or sexual violence. At the same time, there needs to be a fair process of finding out if a person accused of such crimes is actually guilty—based on evidence and activities of workers such as those in forensic labs. People want to be free of the insecurity from the threat of violence. Of course, in a society where a movement of the oppressed majority has gained power, the self-defense roles—such as policing or segregating people for violence offenses—would need to be done differently than under the kind of massively violent police and prison regime that exists in the United States at present. The police in the US currently operate with virtual impunity when they engage in violent or repressive behaviors. Since their origin in the early-nineteenth century, American police have been a central part of a racialized regime of class oppression. They know that their role is to defend propertied interests and keep the masses in check. Thus enforcement of the basic rules of the society needs to be rebuilt on a different basis.

For syndicalists, a crucial issue is going to be “Who controls the dominant armed power in society?” The idea that the worker mass democratic organizations need to gain control of the dominant armed power in society in a revolution is a long-standing syndicalist principle. As such, the 1922 principles of the syndicalist International Workers’ Association said: “Syndicalists do not forget that the decisive struggle between the Capitalism of today and the Free Communism of tomorrow, will not take place without serious collisions. They recognize violence, therefore, as a means of defense against the methods of violence of the ruling classes, in the struggle of the revolutionary people for the expropriation of the means of production and of the land. Just as this expropriation cannot be commenced and carried to a successful issue except by the revolutionary economic organization of the workers, so also the defense of the revolution should be in the hands of these economic organizations.”

This would mean the development of a worker’s militia or “people’s militia,” drawn from the communities of the oppressed and exploited majority. Although some aspects of social self-defense require full-time trained people, such as the forensics staff, much of the activity can be performed by people who are trained, but do the work part time and have other work activity they do at other times. People who do policing as a full- time job have a tendency to develop a view of themselves as a group set against the population. But in a war situation, on the other hand, the military role of the militia would require full-time work.

The governance institutions here are a form of government. Although states have been the way government has been carried out for centuries, a form of government need not be a State. Under a libertarian socialist proposal, governance is rebuilt on the basis of self-management—rooted in the face-to-face democracy of the neighborhood assemblies and worker assemblies. All the public services are self-managed by democratic staff organizations. There is no paid bureaucracy of professional politicians and state managers set over the population and engaging in top-down control through the state managerial hierarchies. Governance still exists but is conducted through organizations that are grounded in democratic participation.

In what follows I am going to flesh out more of the program for building self-managed socialism.

Industry-wide and Society-wide Worker Coordination

If workers don’t control their own work activity and the workplaces, then some other class will, and so class oppression will continue. Thus an essential task for worker’s liberation is the takeover of the various workplaces and industries “from below” and their re-organization under worker self-management. Workers will need to bring the different facilities together into an industrial federation to do planning and coordination for an entire industry—such as healthcare, railways, or agriculture. Without a means to coordinated control and policy for an industry, worker groups controlling particular facilities might be pitted against each other in competition. Workers would be atomized and their social power diminished.

The kind of movement that gives the working class the power to challenge—and to ultimately defeat—the capitalist regime would be based on an increasingly intense class-wide solidarity, as the oppressed majority coalesces its forces in a united front around the basic changes needed in society. With this growing level of solidarity, why would workers who take over the workplaces in their industry want to suddenly put themselves into competition with each other as competing cooperative “businesses”? In the situation where the capitalist facilities are taken over, different companies may have stronger or weaker competitive positions, and some workers may receive lower pay or experience worse conditions. A basic principle of industrial unionism is to fight to “take wages and conditions out of competition.” An advantage of coordination of the whole industry through an industrial federation is that it enables workers to achieve better conditions for the worse off. Moreover, splitting workers up into competing firms would atomize the working class, putting them in a weaker position in society. In the period that ensues from the major struggle over liberation from the oppressor class regime, people who have been in the habit of giving orders to workers or holding elite professional or managerial positions will be pushing to retain or regain the power the bureaucratic control class has over workers. Workers will need strong organizations to prevent the continuation of the bosses’ class power.

The goal of a syndicalist program is socialization, not converting workplaces into the collective private property of the workers there. The process that played out in the “expropriating general strike” (generalized worker takeover of industry) in northeast Spain in 1936 provides a useful experience we can learn from. The CNT’s aim was to group together all the industry workplaces into an industrial federation that would be responsible for managing that industry. Social accountability would be reflected in the development of social plans to which the various industrial federations would be expected to adhere in their work. The industrial federations are not “proprietors” of the industries but are “only administrators at the service of the entire society,” as de Santillan put it. We can think of an industrial federation as rooted in the workplace assemblies in the various facilities throughout an industry. Periodically these assemblies would send delegates to an industry-wide convention to decide basic policy, coordination, and goals. The assemblies can also elect an ongoing coordinating committee with delegates in the various facilities.

For the Spanish syndicalists, there were two aspects or phases to syndicalist socialization. The first phase was expropriation of assets of the capitalists and creation of an industrial federation—suppressing market competition between firms in the industry. The second phase would be the creation of overall social planning. For this they envisioned regional and national Worker Congresses with delegates elected from the workplace assemblies. Apart from local exceptions, the Spanish revolution never got to this second phase of overall social coordination.

The CNT’s national industrial federation of telephone workers seized the assets of the Spanish National Telephone Company (the largest subsidiary of ITT). In some cases an industrial federation was created as a joint project with the UGT (aligned with the Socialist and Communist parties). This happened in industries where the UGT was a major part of the workforce—as in the railway industry and on the big hydro-powered electric monopoly in northeast Spain. After railway worker militants seized the Madrid-Zaragoza-Alicante railway—the largest privately owned railway in Spain—they moved to create a single Revolutionary Railway Federation to manage it, and soon merged other railways into this federation, such as the Barcelona commuter railways. The railway federation was coordinated by a twelve-person “Revolutionary Committee” and a full-time Executive Director. The Revolutionary Committee was made up of working delegates. The two unions present on the railways—the UGT and CNT—each had six delegates. Assemblies of the rank and file were held every two weeks in the railway terminals. The delegates gave reports, and could be removed by the assemblies.4 During the course of the revolution the forty-thousand- member CNT health-worker federation built Spain’s first socialized health care system, taking over hospitals and drug factories and setting up health clinics.

In a number of industries, the CNT industrial unions merged the assets of that industry’s businesses (as in the furniture and entertainment industries). The CNT woodworkers union took over the sawmills in the Pyrenees mountains and seized all the furniture factories and mom-and-pop cabinet-making shops in both Barcelona and Valencia. The union used the assets from the shuttered workplaces to build a new factory with the latest American equipment, which had better safety features. The new factory also had a gym and swimming pool where the workers could relax. “The concept that prevailed,” a wood union member recalled, “was that the working class should have good furniture at cheap prices.”5 An internal caucus in the union—an FAI group—disagreed with this focus on mechanized production and wanted to reorganize the industry into self- managed work groups. That might be a better way for the workers to learn and practice furniture design and craft skill, but their critics in the union described this as a throwback to the pre-capitalist era of self-employed artisans. This debate shows that there’s not just one cookie-cutter solution to industrial self-management.

The goal needs to be the creation of a horizontally federated system of production that can implement planning and coordination throughout industries and over a wide region. This would enable workers to: • Gain control over technological development. • Re-organize jobs and education to eliminate the bureaucratic concentration of power in the hands of managers and high-end professionals, develop worker skills, and work to integrate decision making and conceptualization with the doing of the physical work. • Reduce the workweek and share work responsibilities among all who can work. • Create a new logic of development for technology that is friendly to workers and the environment.

## 2

### T – No New Subject

#### Interpretation – strengthen means enforcement. Expanding negotiable subjects increases the scope, not strength of CBR.

Schauer 82, Cutler Professor of Law at William and Mary College of Law, JD from Harvard University, MBA from Dartmouth College (Frederick Schauer, 1982, *Free Speech: A Philosophical Enquiry*, Cambridge University Press, pp. 134-5, University of Kansas Libraries, Watson) \*Italics in original.

It would seem therefore relatively uncontroversial to assert that freedom of speech is not and cannot be an absolute tight. This broad statement, however, must be tempered by two highly pertinent qualifications. First, it is important to recognize not only the distinction but also the relationship between the strength of a right and the scope of a right. This terminology is but another way of expressing the distinction between coverage and protection that I discussed earlier, but the terms ‘strength’ and ‘scope’ are particularly illuminating here. The scope of a right is its range, the activities it reaches. Rights may be narrow or broad in scope. Defining the scope of free speech as freedom of self-expression is very broad, defining it as freedom of communication substantially narrower, and defining it as freedom of political communication narrower still. The strength of a right is its ability to overcome opposing interests (or values, or other rights) *within* its scope. This distinction is nothing new, although it is often ignored in popular dialogue about freedom of speech. The point I wish to make here is that although the scope of a right and the strength of a right are not joined by a strict logical relationship, they most often occur in inverse proportion to each other. The broader the scope of the right, the more likely it is to be weaker, largely because widening the scope increases the likelihood of conflict with other interests, some of which may be equally or more important. Conversely, rights that are narrower in scope are more easily taken to be very strong within that narrow scope. It is much easier, for example, to say that there is a very strong, almost absolute, right to purely verbal political speech than it would be to say that a right to self-expression can be as strong. Any examination of rights must first recognize this interrelationship and then try to preserve some equilibrium between scope and strength. This is easiest but not necessarily best at the extremes. Meilkejohn, for example, defined freedom of speech as freedom of political speech by those without profit motives. Within this narrow scope it was easier for him to define the right as absolute (which he did) than it would have been had he broadened the scope to include other forms of communication. Yet the more narrowly we define a right, the more likely we are to exclude from coverage those acts that may fall within the justification for recognizing the right. Freedom of speech as freedom of political deliberation gains simple absolutism at the cost of excluding much that a deep theory of the Free Speech Principle would argue for including.

#### Violation – the plan makes automation a new mandatory subject. That expands scope, not strength

TUC 19, Trade Union Congress (“A stronger voice for workers How collective bargaining can deliver a better deal at work,” https://www.tuc.org.uk/sites/default/files/2019-09/Astrongervoiceforworkers.pdf)

Even where union recognition is in place, there has been a substantial reduction in the scope of collective bargaining, with a shrinking number of topics regularly included in collective agreements. In 1990, aspects of managerial relations such as staffing levels and redeployment were subject to negotiation in over half of workplaces recognising unions. By 1998, this was the case in only around 10% workplaces recognising unions and by 2011 pay was the only issue still covered in a majority of collective agreements39. This reduces the influence of collective representation on the quality of working life.

Research presented above showed that where unions were involved in discussions on equal opportunities, workplaces were more likely to have equal opportunities practices in place. If, however, there was a workplace union but it was not consulted about equal opportunities issues, this benefit was not found40. This shows the importance of extending the scope of collective agreements and making sure that all the issues that are important to the workforce can be discussed.

#### Vote negative for limits and ground.

#### 1. Limits. There are hundreds of negotiable issues, and subsets of those.

#### 2. Ground – their interp obviates the core resolutional controversies, which are wages and hours – those are the internal links to econ, productivity, and core neg Ks of labor. Also enables bidirectionality by only bargaining over subjects bosses want.

## 3

### CP – Ban

#### The United States Federal Government should eliminate its existing collective bargaining rights for private workers in the United States.

#### The counterplan sparks a labor movement. Labor innovation and state fill-in.

Velazquez 25, Professor of Law @ Indiana (Alvin, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper Number 543)

The elimination of the NLRA as outlined above will leave labor in a pre-Act situation that will resemble “the law of the jungle” and what Justice Oliver Wendell Holmes observed as the “power of combination”, but with some new tools that labor did not fully utilize in the 1930s.139 In their article urging scholars to study labor unions as a social movement, Fisk and Reddy describe how law “channeled labor from its mass movement origins in the 1930s, into a powerful institution from the 1940s through the 1960s, to its much weakened form today.”

140 This Article seeks to build on their contribution. Law can again cause the repeat of that cycle. Specifically, the Court striking down the Act entirely and lifting preemption can create stronger conditions for organizing workers immediately under long dormant labor laws that U.S. territories as well as blue and red states have on their books.141 For example, Puerto Rico’s Constitution bluntly states: “Persons employed by private businesses… shall have the right to organize and to bargain collectively with their employers through representatives of their own free choosing in order to promote their welfare.”142 In the absence of NLRA preemption, residents of Puerto Rico would enjoy a constitutional right to collectively bargain. It is not alone. Union dense states such as Illinois have such laws on the books, and low-union density and politically conservative states including Missouri and Florida would as well.143

The potential for union growth would be significant. In 2024, only 234,000 workers, or 8.6% of the workforce, were members of a union in the state of Missouri, out of a total of 2.734 million total participants in the workforce.144 However, if Missouri’s protections go into effect after the Court strikes down the NLRA, then even a 10% increase in membership would significantly improve organized labor’s ability to build strength. The existence of more favorable laws from the past will not build worker power though. For these laws to provide an avenue for worker organizing, unions will need to prepare. As Sachs observes, the “preconditions for mobilization are common across multiple approaches to social movements.”145 In reality, unions will have to not only use what Michael Oswalt defines as “improvisational techniques” to compel their employers to come to the table and bargain, but advocate for improvisational laws.

146 Before getting into the role of social movements in a post-NLRA environment though, this Article will explore two tools that become available as a result of the Court setting aside the Act: (1) states crafting creative labor protections for workers and (2) the protections of the Norris-LaGuardia Act.

A. The Possibilities for State Collective Bargaining Reform

If the Court were to strike down the NLRA, then organized labor and its allies could leverage already existing protections on the books at the state level and push for further innovation without worrying that courts would preempt state and local labor legislation. As noted above, several states and Puerto Rico already have provisions in their statutes or in their constitutions protecting collective bargaining that would go into effect should the Court strike down the NLRA. Gali Racabi conducted a 50-state survey and concluded that nineteen states have laws providing for collective bargaining in the private sector already on the books.147 These laws set a baseline. There would be room for states to further experiment in the absence of preemption, including bargaining at a sectoral level rather than at the company level as NLRA provides.148

Of course, state level bargaining reform relies on collapsing the entire Act via the non-delegation or unitary executive doctrines in order to get rid of NLRA preemption. Befort notes that “[t]he federal preemption landscape consists of a complex web of rules and precedent, and courts often appear to decide cases on the basis of highly technical distinctions. In short, many perceive the topic of federal preemption as a great mystery to be avoided if at all possible.”149 If the Court interprets the severability clause as discussed in Part I, then organized labor and its lawyers can avoid the quagmire that is federal preemption.

## 4

### CP – Contempt

#### The United States federal judiciary ought to issue a court order finding federal failure to substantially strengthen collective bargaining rights for workers in the United States, including the conditions specified in the 1AC, with respect to automation-related bargaining an ultra vires exercise of authority punishable by exponentially-accruing contempt sanctions.

#### The CP unlocks court contempt power against sitting officials, giving judicial orders “teeth” and reviving checks on executive power.

Levitt 25, Professor of Law at Loyola School of Law, JD, magna cum laude, from Harvard School of Law (Justin Levitt, May 19, 2025, “Against a defiant White House, the courts should use this powerful tool,” The Washington Post, https://www.washingtonpost.com/opinions/2025/05/19/courts-civil-contempt-trump-administration/)

The American experiment is driven by three branches of government. In this unprecedented moment, one of those engines has flamed out (looking at you, Congress), and another is barely sputtering (hello, executive). But there’s more power in the third than we realize. Though Alexander Hamilton called the judiciary the “least dangerous” branch, the courts’ centuries-old civil contempt authority makes it plenty mighty when it wants to be.

It’s a measure of how far things have gone that contempt has entered the conversation at all. The second Trump administration took office bent on radically reordering the federal government — sometimes with legal authority, more often without. Judges appointed by at least eight different presidents, including Donald Trump, have been drawn into the litigation that has followed. Those courts have acted like courts, restrained and institutionally conservative.

The executive branch has not returned the favor. Some court orders are legitimately tricky to effectuate, and judges are accustomed to good-faith give-and-take with executive officials. But what’s happening now is different. This administration has increasingly openly defied straightforward judicial commands. A leading example: the order that the executive make its best sincere efforts at securing Kilmar Abrego García’s return to the United States for the basic hearing he was due. Efforts to date have been neither best nor sincere.

Contempt sanctions give judicial orders teeth. Sometimes they’re levied as punishment, including prison for truly defiant officials. But such orders are executed by U.S. marshals, who sit formally within the Justice Department. And some have fretted that the marshals might in these times be less than eager to do their job.

The sort of authority used for punishment, to sanction past wrongdoing, is the criminal contempt power. But the version more likely to command executive attention is instead part of the civil law, and more forward-looking. It is immune from any power to pardon. It doesn’t rely on another branch to execute. And it’s less likely to be repurposed as a martyr’s badge of honor. All this makes civil contempt a more effective tool for extracting future performance.

Consider the matter of Abrego García, the legal U.S. resident who was wrongly deported to El Salvador. Administration officials first offered the mere pretense of compliance, with the departments of Homeland Security and State filing smug daily “progress reports” that reported no progress. Then Secretary of State Marco Rubio declared no progress report would be forthcoming — especially not to “some judge.”

What’s probably next is a specific, unmistakably clear court order aimed at a specific, named official — backed by the power of civil contempt. Imagine a $1,000 fine, to be paid personally and without indemnification by the official in question, doubling each day until the United States issues an official request for Abrego García’s return. The executive actor would have the “off” switch in their own pocket.

One thousand dollars doubling every day adds up to a total of $1 million in 10 days, $1 billion in 20 days and $1 trillion in 30 days. The structure should be the minimum necessary to produce compliance. But if more vigor is needed, nothing requires the fee to start that low or multiply that slowly.

No other branch of government is required for a levy like this to do its work. A court judgment is a legal debt from the moment it is issued, in which exponential compounding credibly threatens to destroy creditworthiness and supports the seizure or retitling of property to be sold in satisfaction of the judgment. If the marshals won’t do it, courts can appoint an executor who will.

#### An executive free from judicial checks causes extinction.

Koh 25, Sterling Professor of International Law and former Dean of Yale Law School, former Legal Advisor and Assistant Secretary of State at the US State Department (Harold Hongju Koh, May 2, 2025, “One Hundred Days of Lawlessness,” Project Syndicate, https://www.project-syndicate.org/onpoint/trump-100-days-of-lawlessness-what-to-do-about-it-by-harold-hongju-koh-2025-05)

Unilateralism Breeds Lawlessness

As executive power has become more concentrated, it has inevitably pressed the limits of law. Pressured executive branch officials do not think of themselves as dangerous, but rather as underappreciated public servants whose worthy motives have been misunderstood. Inside their bubble of “groupthink,” executives grow isolated, breeding a temptation to act alone, often in secret.

When executives’ power combine a capacity to act with a continual duty to react, it is only a matter of time before they see the advantages of going it alone. They find it better to ask for forgiveness than for permission. Or as Reagan reportedly said during the Iran-Contra Affair, “The American people will never forgive me if I fail to get these hostages out over this legal question.”

In time, feeling put-upon allows executives to convince themselves that their actions are justified by some external source of authority, such as competence or a “mandate,” derived from popular or legal legitimacy. They come to believe that because they can exercise executive power, they ought to. From there, it is just a short step to Nixon’s infamous claim that, “When the President does it, that means that it is not illegal.” Or as Trump recently put it, “He who saves his Country does not violate any Law.” The repeated exercise of executive power comes to validate itself.

This link between unilateralism and lawlessness has tightened with the two Trump presidencies. During his first administration, Trump’s activist impulses disrupted the global landscape with unprovoked trade wars, threat-based diplomacy, anti-immigration campaigns, and a wholesale denigration of alliances. He repeatedly relied on far-fetched claims of “national emergencies” to justify unilateral executive action in areas where the Constitution affords Congress primary authority – from immigration and war to international trade and the regulation of cross-border investments.

Trump, moreover, claimed legal power to terminate longstanding treaties at will, without even paying lip service to consultation with legislators. And he usurped Congress’s power of the purse by proceeding to build a border wall with funds that it had expressly withheld.

Along the way, Trump 1.0 amalgamated his predecessors’ worst national-security abuses. Like Nixon, he illegally used force abroad to kill Iranian General Qassem Suleimani in Iraq, and pressured his attorney general to weaponize the Justice Department against his critics. Like George W. Bush, he claimed a right to launch preemptive military strikes. And like Reagan, he condoned the privatization of foreign policy by allowing unaccountable cronies to intervene in official matters. His first impeachment – for turning an arms shipment to Ukraine into a de facto quid pro quo for his own political gain – recalled Marine Colonel Oliver North’s illegal diversion of proceeds from Iranian arms shipments to finance Nicaraguan guerrillas after Congress cut off funds.

Such a sustained presidential effort to dodge the rule of law could not have succeeded had constitutional checks and balances functioned as intended. Trump’s unilateralist project fed on the other branches’ willingness to normalize his aberrant behavior. Congressional Republicans repeatedly refused to assert their constitutional prerogatives, and the conservative majority on the Supreme Court deferred to fabricated presidential motives, particularly when it upheld the Muslim ban by accepting what Justice Sonia Sotomayor, dissenting, called a national security “masquerade.”

Then, in Trump v. United States (2024), the Court’s six-justice conservative majority weakened the former president’s accountability for any act that could be deemed “official.” In its obsession to avoid “enfeebling the presidency,” the Court never acknowledged the actual lawless acts undertaken by the once and future incumbent.

What made Trump’s first-term unilateralism constitutionally distinctive was his claim that “I have an Article II,” which “gives me the right to do whatever I want” as president. Trump and his supporters insisted that all of his actions were authorized, justified, and immunized from interbranch interference by his plenary constitutional powers. Under this sweeping theory of a “unitary executive,” any restraints coming from within the executive branch can be ignored, and any restraints coming from outside the executive branch can be treated as unconstitutional intrusions.

Ironically, this claim was bolstered by generations of executive branch lawyers who had sought to protect America by issuing opinions empowering the president to act as its prime defender against national-security threats. Until Trump arrived on the scene, those drafting such opinions could always assume that a president would have some internalized limit – a sense of public duty or shame that would dictate self-restraint. But Trump exhibits no such probity and has consistently shown contempt for legal constraints of any kind. Perversely, executive lawyers’ good-faith labors to empower the executive in the name of national security have helped transform the executive himself into a national-security threat.

Trump 2.0

During the first frenetic 100 days of his second term, Trump swiftly took executive unilateralism to new heights as he sought to nullify the rule of law for his own administration. While out of office, Trump was indicted in four separate cases and convicted on 34 felony counts. But after his re-election, these cases were all frozen or dismissed.

Moreover, after courts had issued hundreds of criminal convictions for those who had violated national-security laws and participated in the January 6, 2021, insurrection at the US Capitol, Trump used a “pardon whitewash” to grant amnesty to even the most violent offenders. He eviscerated checks and balances within the executive branch, firing 17 independent inspectors general, the director of the Office of Government Ethics, the chair of the Joint Chiefs of Staff and other military leaders, and key judge advocates general, who advise military officials on whether presidential orders are lawful.

Similarly, in the name of “government efficiency,” Trump has gutted the career civil service and concentrated power in the hands of his most loyal cronies. He has sought to dismantle congressionally established departments and independent agencies, mandating that only the president and his attorney general’s interpretations of law are controlling on the executive branch. He has deployed his billionaire backer Elon Musk to oust or place on administrative leave tens of thousands of federal employees, including agency heads, and question countless prospective employees about their loyalty to Trump.

As in his first term, Trump has favored impulse over strategy, transactions over relationships, hard power over diplomacy, and “resigning without leaving” over meaningful engagement with international institutions. He has continued to denigrate the truth and attack the press, international institutions, and government agencies in a rush to reverse Biden’s policies and confound longstanding bipartisan foreign-policy commitments. As always, he has sought to “flood the zone” with distracting daily initiatives designed to shift the “Overton Window,” so that the previously unimaginable quickly becomes the new normal.

But there are also important differences from the first term. Trump’s second administration, now comprised only of staunch loyalists, is even more vindictive, bellicose, and openly contemptuous of legal constraints. Trump has fully instituted government by decree, issuing 142 executive orders during his first hundred days – many advancing policies without any congressional authorization. He has also “paused” already appropriated expenditures for foreign aid to Ukraine and elsewhere, openly commandeering Congress’s constitutional power of the purse.

Even more ominous, Trump has threatened to invoke long-moribund statutes (like the Insurrection and Alien Enemies Acts) to deploy the National Guard and military domestically against claimed immigrant “invasions.” He has retaliated against perceived critics and enemies with bills of attainder, which the Constitution expressly forbids. To discourage collective resistance, he has targeted a long list of law firms, universities, and the media, cowing them into legally dubious “negotiated surrender” agreements. And he has deployed “shock and awe” tactics to encourage isolation, anticipatory capitulation, and self-silencing or exit by those who might otherwise defend the rule of law, undocumented immigrants, and career civil servants.

Trump 2.0’s early “foreign-policy” initiatives have amounted to an ad hoc sanctions policy, with the president invoking overstated claims of “national security” to demonize immigrants and promote mass deportations. Continuing the pattern, he has justified his disastrous tariffs against America’s closest trading partners on “national-emergency” grounds.

In his first term, Trump hesitated to use force; but in his second, he has already launched strikes on the Houthis in Yemen and advanced absurd territorial claims against Canada, Gaza, Greenland, and the Panama Canal. The same Trump who previously opposed nation-building now proposes that Gaza be transformed into an Atlantic City-style beach resort – though he cannot explain where the people of Gaza would go, or what role US armed forces might play in their displacement.

Meanwhile, Trump’s diplomacy has tipped even more heavily toward Russia. The administration is leveraging foreign aid and military intelligence to bully Ukraine’s government into surrendering territory without receiving any security guarantees. Trump has also vacillated between confrontational and conciliatory approaches toward China, as well as launching a systematic attack on America’s preparedness against natural disasters, global warming, future pandemics, cyberattacks, and crises that would demand the expertise and support of career bureaucrats and foreign alliances.

Throughout these chaotic 100 days, Congress has remained startlingly compliant, dutifully confirming Trump’s extreme – and often extremely unqualified – cabinet nominees. But the lower courts have pushed back, with more than 50 of them blocking early Trump initiatives across seven federal circuits. These decisions have come from judges appointed by five presidents, from both political parties.

As the current cases work their way through the appellate process, the burning question has become whether and when a majority of the Supreme Court will emerge to rebuff Trump’s unilateralist constitutional theory. Despite clear constitutional barriers, Trump has repeatedly raised the prospect of running for a third term, which the White House social-media team indulges with declarations of “LONG LIVE THE KING!”

What Is to Be Done?

For those who would defend the rule of law, the most pressing political challenge is deciding how collectively to stem the flood of lawlessness, while at the same time rebuilding the constitutional dam. A meaningful response would comprise a concerted sequence of revival, resistance, resilience, and reform.

Most immediately, we must revive traditional constitutional restraints on executive overreach, such as the Bill of Attainder Clause and Congress’s authority over the purse, foreign commerce, and immigration. At the same time, global human-rights and humanitarian institutions that Trump does not control can investigate his shipment of US detainees to extraterritorial prisons, his compliance with the laws of war in the Red Sea, and Russian or Israeli violations of international law in Ukraine and Gaza, respectively.

Medium-term strategies of resistance and resilience would use domestic and international law to push back on illegal initiatives. As Justice Louis Brandeis famously observed, the purpose of separation of powers is “by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.”

Such frictions are already beginning to be felt, not just from Democrats in Congress and statehouses, but also from factional clashes within Trump’s political base. Overconfidence has caused Trump to overplay his hand on issues such as immigration, government downsizing, tariffs, and tax cuts. Those policies are widely expected to hurt middle-class Americans and alienate those who voted for him unenthusiastically.

In time, what Albert O. Hirschman called “countervailing passions” will likely kick in, as the most extreme “movement supporters” clash with those who have merely sought to gain personally from Trump’s re-ascendancy. Trump’s undisciplined impulses will make it impossible for his administration to maintain a durable, coherent approach on any complex issue. If faced with sustained opposition, Trump’s focus will shift to easier symbolic targets.

Even more frictions will arise as institutional counterweights activate and coalesce. These include states and localities (especially on climate change and immigration); uncowed independent media; international institutions; and powerful interest groups (including some technology companies, former military leaders, and nongovernmental organizations promoting democracy and civil liberties). Bureaucratic resistance, leaking, and whistleblowers will help make executive branch actions more transparent.

On the international stage, Trump’s policies will face frequent and forceful pushback from democratic allies. As I described in The Trump Administration and International Law, the rule of law is sticky and bends more easily than it breaks. Because autarky is not the global norm, domestic and international law have become intertwined in a “transnational legal process” and patterns of law-observant behavior that even a willfully lawless president cannot easily discard.

This transnational legal process is bigger than Trump, and so are challenges such as climate change and pandemic prevention. International bureaucracies and alliances assume legality and therefore resist repeated insults to the rule of law. Violations tend to provoke global blowback, hamstringing the lawbreaker elsewhere. Trump’s perceived lawlessness will dilute American power and – as happened during his first term – turn his “America First” strategy into “America Alone.”

But rule-of-law advocates cannot be content with plugging leaks. Over the longer term, Americans will need to pursue thoroughgoing institutional reform. To that end, the final chapters of my latest book detail a long list of proposals. The US needs better congressional tools to restrain unilateral warmaking and clarify international lawmaking and unmaking. It also needs stronger intelligence oversight, information control, and protections for the electoral process.

After the twin debacles of Vietnam and Watergate, Congress enacted a series of framework statutes that reasserted its constitutional role in such areas as warmaking, emergency economic powers, budgetary matters, intelligence oversight, and international agreements. Today’s Congress could similarly start adopting legislative proposals to restrain government by secret law; maintain America’s adherence to international law; clarify constitutional restraints on unilateral abrogation of treaties and agreements; and encourage judicial readings of presidential power more in line with Youngstown than Curtiss-Wright.

The second Trump administration’s tumultuous opening has finally awoken the world to the existential dangers posed by America’s imperial presidency. US allies have now been thoroughly schooled about the risks of relying too much on responsible bipartisan foreign-policy leadership – something that the US political system may no longer be able to provide.

## 5

### K – Disability

#### Labor protections entrench capitalist labor-normativity, commodify disability, and exclude those deemed precarious from social life.

Smilges 23, Assistant professor of English language and literatures at the University of British Columbia (Logan, 2023, Crip Negativity, “Life Strike,” p. 57-60)

Bringing questions about disability and labor together, as a life strike does, is a well-established practice in the disability community. Labor politics have been at the center of disability activism in the United States since the latter’s inception. As I describe in the first chapter, much of the impetus behind the disability rights movement in the 1970s was to advance educational and career opportunities for disabled people, thereby providing more accessible pathways to enter the workforce. As Tanya Aho argues, however, disability’s labor politics have historically done less to radicalize either labor or the category of disability than it has to produce variations of “labor-normativity” that domesticate the disabled citizen through waged work. Labor-normativity instrumentalizes the language of access and accessibility to secure disabled people’s employment “as a driving force of one’s life, a significant site of identity construction, and the major influence on one’s life cycle, daily rhythm, and imagined future” (2017, 322). By consistently centering issues of labor access and workplace accessibility without attending to the violence of labor-normativity, much of disability rights activism has embraced labor-living as necessary to our liberal citizenship and to our legibility as subjects.

Despite the importance of securing equitable opportunities and protections for disabled workers, we cannot forget that neither opportunities nor protections within neoliberal capitalism address the fundamental problem of liberal humanism—the true target of crip negativity’s bad feelings. Regardless of the efforts we make toward more and better jobs for disabled people, it remains the case that labor-normativity is designed to produce labor-living; that is, to induct disabled people into a socioeconomic system that disguises labor as life. This disguise works effectively so long as some forms of difference can be recuperated as marketable commodities while others continue to mark fungible populations for targeted debilitation. In the context of disability, access to labor cannot be achieved under capitalism without crystalizing the boundaries around the category of disability. Such crystallization ultimately obfuscates people’s crip labor, which does not aid the means of production, and further ossifies the disposability of people living on or beyond the margins of disability. In other words, it becomes more difficult to adduce the debilitating, stratified violence of labor-living when laboring itself is cited as evidence only of a person’s successful rehabilitation into social and civic life. How can we recognize when life isn’t working, for ourselves or others, if work is meant to make life worth living?

Unfortunately, answering this question becomes all the more challenging when we begin to unpack the layers of labor-normativity that have come to structure the scope and terms of contemporary disability politics. Some layers are relatively easy to parse, such as those commercialized variations of disability activism that trade in representation and visibility. A recent Victoria’s Secret ad campaign featuring multiple disabled models comes to mind (Miranda 2022). Efforts such as these are typically engineered to demonstrate a company’s or institution’s inclusivity by displaying disabled workers (e.g., lingerie models) or by acknowledging disabled people as a contingent of consumers (e.g., lingerie buyers). Bestowed with the capacity to both produce and consume, labor-normativity suggests, disabled people can effectively fold themselves into the social citizenship of neoliberal capitalism.

Other layers of labor-normativity can be trickier to identify. Consider, for instance, the forms of disability advocacy that aim to broaden the horizon of employment opportunities for disabled people (Owen and Harris 2012). Since many welfare programs, excluding the dramatically underfunded Supplemental Security Income (SSI), require a current or recent employment record, disabled people are often forced to compete for unsafe and underpaid jobs. Even with antidiscrimination laws in place, many disabled people struggle to find work, especially work that is relevant to their passions and interests. As a result, those who do secure employment wind up hesitant to raise concerns about the conditions of their labor for fear of retaliation (Kumar, Sonpal, and Hiranandani 2012). Expanding employment opportunities promises to alleviate the pressure placed onto disabled workers to settle for undesirable jobs, and it shifts the burden of competition to employers, encouraging them to improve working conditions to attract and retain employees. Within this framework, the law of supply and demand is reappropriated to demonstrate a demand for work among disabled people with the hopes of stimulating a rise in the supply of accessible and desirable jobs.

The problem with reappropriating the law of supply and demand is that it acquiesces to capitalism as a necessary condition for achieving equity for disabled people. As Nirmala Erevelles argues, creating more jobs neglects to address the fact that access to waged work is an individual solution to a systemic problem. Increasing employment opportunities may extend social citizenship to some disabled people, but it also reinforces the contingence of social citizenship on employment—a contingence that capitalism weaponizes against the most vulnerable populations. Under capitalism, there will never be enough work to go around; labor must remain competitive. Those individuals deemed least likely to aid in “the accumulation of profit,” which generally include people with intellectual disabilities, folks with limited access to education, people with a history of incarceration, and undocumented people, will never be offered safe and reliable employment—at least, not until another fungible population comes to take their place (2002, 19). People occupying this category of state-sponsored precarity become “immaterial citizens” whose primary function is to bear the brunt of capitalism’s failures (21). Since it is an essential condition of capitalism that demand outpace supply, an entire class of individuals must remain out of work in order for the total supply of jobs to remain lower than the demand for them. The resulting, requisite class of nonworkers is not only blamed for failing to fulfill their civic-qua-consumer responsibilities under neoliberalism but also strategically excluded from social citizenship in order to preserve the currency of citizenship itself.

Efforts to improve employment opportunities for disabled people are steeped in the rhetoric of integrative access that fuels labor normativity. Entrance to the workforce only appears liberatory in a context in which labor remains a metric for human valuation. It seems to me that the most productive—by which I mean politically generative—relationship between disability and labor is one that refuses to be such a metric. Rather than wedging the category of disability into neoliberalism as a meager modification to capitalism, it is worth asking whether disability might launch a more fundamental challenge to labor-normativity. What if there were a crip labor politics that cared less about disabled people’s employment or employability than about cripping labor and interrogating the ableist conditions under which labor-living is rendered quotidian?

#### Collective bargaining locks access behind labor normativity. That entrenches eugenicist labor politics.

Williams 19, assistant prof @ Birmingham Law School. (Clare, 2019, “Ability Capitalism: Law’s Constitutive Role in Constructing Disability,” Industrial Law Journal)

Firstly, disability discrimination ‘is a distinct but complex form of oppression, based on the (negligibly to substantially) greater expense to capital of the labour power of impaired people’.158 Reasonable adjustments, as well as sick leave and so on, cost money. But the reproduction of disabled labourpower, including required assistive aids and additional care, also entails greater expense. In a system of capitalist logics where individual competition between workers informs the production of surplus value, those unable to normalise themselves fully—that is, inter alia, to reduce the costs of the reproduction of their own labour-power—are inevitably likely to realise reduced wages when selling that (devalued) labour-power. The funding of social care, for example, then emerges as one decommodification strategy with potential to challenge the devaluing of disabled labour-power and the resulting disability employment and pay gaps. However, social welfare as decommodification strategy seeks the normalisation of the disabled bodymind, aligning it ever more closely with the ableised ideal worker. It does little to challenge the underlying capitalist logics which produce the oppression, and which rely on concepts of inclusion and its dialectical inverse, exclusion, for the form and function of markets in the first place.159

Secondly, despite above-average union representation of disabled workers, the lack of effective collective bargaining mechanisms in recent decades on matters of disability equality suggests a disinterested union sector and a reduced bargaining power in the labour market.160 Diversity of ability differentiation means that collective bargaining potential is reduced, especially considering that different disabilities are likely to require different adjustments. A one-size-fits-all decommodification strategy challenging ability oppression is likely to satisfy no one. Similarly, ongoing stigmatisation of disabled people disincentivises workers from identifying or declaring themselves as ‘disabled’, further limiting the pool of potential collective bargainers. Additionally, membership organisations like trade unions cannot represent people who cannot be members, even if they would like to be. Thus, exclusion from the labour market precludes organised collective bargaining against said exclusion, echoing a consensus that disability equality is more a matter for government policy than collective bargaining.161

Thirdly, in contrast to other grounds of oppression, ability has come to be a defining rationality determinative of the productive-reproductive boundary, and it both structures and populates these locations of activity. The universally inclusive welfare state was premised on the basis of ‘industrial citizenship’, which similarly presupposes labour market activity.162 While ableised labour markets presume labour mobility, this ableist norm is frequently unattainable to those with non-standard bodies, minds and energy, especially in a wider, relational context of relying on (local) healthcare provision and (local) family and community support. This creates a double-bind for disabled workers who, facing increased barriers to labour market participation in the first place, are less likely to enjoy the ‘industrial citizenship’ and social welfare protections that derive from labour market participation and are thus similarly excluded from the possibilities of labour migration, be this local or global.

#### Collective bargaining is a rehabilitative project that seeks incorporation insofar as it can make the disabled worker productive again.

Grover and Piggott 15, Senior Lecturer in Social Policy at Lancaster University, UK; lecturer in Applied Social Science at Lancaster University. (Chris and Linda, 2015, “DISABLED PEOPLE, WORK AND WELFARE Is employment really the answer?,” ISBN: 978-1-4473-1835-4, luna)

The Danish system of collective agreements has a major influence on trade union links with the activation system. The shift in focus away from subsidised employment to providing more intensive support for people in receipt of sickness benefits may be related to trade union criticisms of flex-jobs. These have focused on their displacement and substitution effects (Mailand, 2012, p 17) and the potential for ‘parking’ of disabled people in poor-quality workplace schemes that do not result in sustained employment in the open labour market. This tension has manifested in conflicts within the corporatist institutions (such as the regional and local labour market committees), with flex-jobs being perceived as potential threats to employment and collective bargaining.

Within the collective agreements between the local authority trade unions and the Local Government Association, an employer cannot recruit someone under the flex-jobs scheme without consulting the shop steward and the agreement states that the shop steward should take an active involvement in the recruitment process. Research undertaken for the public sector trade unions (Ipsen and Hansen, 2009) found that a third of shop stewards had not been involved and, where they had been consulted, in most cases decisions had already been made by department managers (FOA, HK and 3f, 2010). Nevertheless, in general, the trade unions have supported the principle of activation, as long as it does not negatively impact upon their members. Two aspects ensure some protection for vulnerable groups when accessing employment and activation programmes. First, trade unions are consulted (although this can be uneven) when activation placements are being established by the job centres. Second, employment placements provided under activation programmes are guaranteed at negotiated wage rates under sectoral collective agreements.

In this chapter we have seen that the exclusion of the social partners from meaningful dialogue with respect to influencing economic and social policy at the national level has been an important feature of changes and sources of tensions in the governance of activation in Denmark (Kongshøj Madsen, 2013b). In addition, the municipalisation of employment services is seen by the trade unions as a threat to the control of UI benefits. There is a view that the municipalities could take over their administration, which would weaken the links between the trade unions and ALMPs (Jørgensen and Schulze, 2012). Furthermore, the tightening of conditions in terms of access to benefits while employment policies take on an increasingly work-first orientation has, unsurprisingly, been met by a critical response from the trade unions as being ‘substandard’ and is viewed as potentially ‘parking’ disabled people into poorer-quality schemes (FOA, HK and 3f, 2010; Andersen, 2011).

This said, there is evidence that the trade unions and social dialogue still have an important role in terms of the retention of the redistributive element (that is, income security), which is crucial for marginalised groups in the labour market (Kongshøj Madsen, 2013b). The attempt by the Social Democratic government from 2011 to refocus policies for people in receipt of sickness benefits towards rehabilitation and supported employment has been matched with significant resources. For example, €370 million (approximately £275 million) has been allocated until 2020, with an additional €500 million (approximately £371 million) on a longer-term basis (Brix Pedersen, 2013). The Koch Commission’s recommendations for overhauling the activation system include the empowering of individuals, key institutional and governance reforms and an increased emphasis on education and training. The last of these has for a long period been the focus of campaigns by the trade unions. However, in the context of the recession, austerity and difficult labour market conditions, the calls from trade unions and other social movements for job creation programmes are likely to reinforce existing tensions around social dialogue.

The Danish model has focused on supporting disabled people to remain in or enter the labour market and this has undoubtedly been facilitated by social partner involvement. Furthermore, participation in flex-job programmes also means that wage rates are set by collective agreements and that disabled people will have access to trade union representation. In this respect, the model of collective bargaining where workplace conditions and wages are covered by agreements must be seen as an important factor in terms of the employment rights of people who are disabled and who live with long-term health conditions. However, the focus on labour market participation has to an extent been compromised by the shift towards workfare. The more recent moves towards the co-production of rehabilitation pathways is important, on the one hand, in incorporating the voice of disabled people, but, on the other hand, the potential for the creation of quality, sustainable jobs for disabled people in difficult labour market conditions remains a challenge.

#### Scenario planning’s narrative of linear and utopic redemption concretizes neurodivergence as wasteful excess.

Wälivaara ’22 [Josefine; July 19; Ph.D. in Culture and Media Studies and Staff Scientist at the Department of Historical, Philosophical, and Religious Studies, Umea University; SFRA Review, vol. 52, no. 3, “Out of Time: Crip Time and Fantastic Resistance,” https://sfrareview.org/2022/07/19/out-of-time-crip-time-and-fantastic-resistance/]

Time is often considered a linear process, from the past to the present and towards the future. This notion is fraught by discourses of progression and development and can often be found in science fiction, where disability often is considered in terms of medical or technological developments, progress, and cures (Wälivaara). Not least in adherence to what Alison Kafer calls “disability-free” futures leading to the notion that a better and more desirable future is a future without disability (3). This linear and progressive notion of time also applies to our thinking about the structure of lifetimes, that a person, during their lifetime, should develop from birth to death via certain phases such as childhood, adolescence, adulthood, and old age. During this time, one is supposed to experience certain life events in an expected order—at the right time—such as entering the labor market, finding a partner, getting married, having children, retiring, and so on.

However, not everyone follows this normative organization of time and life course, and those who do not are often considered deviant. As shown by research about temporality in, for example, feminist, queer, and disability studies, the way we organize time is normative, and based on white, cis-gendered, heterosexual, able-bodied and able-minded people (Freeman; Halberstam; Kafer). Kafer, for example, charts how disability is conceptualized in terms of temporality and “how disability might affect one’s orientation to time” (26). Crip time, according to Kafer, requires us to reimagine normative time and recognize that it is based on “very particular minds and bodies” (27). The impulse is not to assimilate disabled bodies into normative time, but instead reconsider how normative time can be challenged by crip time. She states: “Rather than bend disabled bodies and minds to meet the clock, crip time bends the clock to meet disabled bodies and minds” (Kafer 27).

While crip time can be used to indicate subversive ways of living in time, Ellen Samuels offers a reflection on the “less appealing aspects of crip time” in a creative non-fiction essay published in the academic journal Disability Studies Quarterly. Samuels highlights the ways in which not being in-sync, aligned, and part of a world structured according to normative time can leave marks. I read it as a type of testament to the force of normative time and the strain it can put upon those of us living in crip time.

Crip Time and the Fantastic

Notably, two of Samuels’s six perspectives on crip time are illustrated through connecting them to concepts drawn from fantastic fiction: “Crip time is time travel” and “crip time is vampire time.” Not only do these make up a sizable part of the essay, two out of six, but they also serve as a framing for the entire essay, its beginning and ending. As a scholar of science fiction and disability, I find myself intrigued by the connection Samuels establishes between her own more negative experience of living in crip time and how it is described through the language of fantastic fiction. I am, however, not surprised by this analogy. Perhaps the fantastic, and the stories in which the laws and taken-for-granted truths of current reality can be set aside in favor of an exploration of other realities, provides a language and an analogy of recognizable narratives seldom found elsewhere. While much mainstream fiction does not depict the experiences of people with disabilities, much less the experience of living in crip time, much fantastic fiction deals explicitly with explorations into the nature of time itself. Fantastic genres recurringly tell stories about characters with alternative or non-normative relationships to time: characters controlling time or losing control of time, becoming stuck in time, or being pulled/scattered across time; characters having unlimited time or being out of time. Such fantastic narratives can indeed provide us with numerous examples that can challenge normative ideas of time as linear and progressive, as the Doctor kindly reminds us: “People assume that time is a strict progression of cause to effect, but actually from a non-linear, non-subjective viewpoint – it’s more like a big ball of wibbly wobbly… time-y wimey… stuff” (“Blink”).

Looking at this preoccupation of time in science fiction and those characters experiencing time in non-normative ways from the perspective of disability might shed light on the ways in which such narratives can provide theorization about the relationship between normative time and crip time. For example, characters with unlimited lifetimes can put into question and defamiliarize to us the very ways in which we think about life, its phases, and transitions. By living multiple lifetimes, at different pacing, outside of the linear and progressive time of normative society they exist very much outside of normative time, or in vampire time, to borrow Samuels’s phrasing.

Those characters out of time, which will be my focus here, can also pose a similar challenge to normative notions of time. I have very tentatively begun to define such characters in science fiction as characters that are manufactured only to have limited lifespans or expiry dates. Their limitations in lifespan are not motivated by illness or disabilities itself, but applied to fantastic, unrealist, and seemingly able-bodied characters. Moreover, these characters are, or become, aware of this out of timeness during the course of the narrative. This potentially covers an assortment of texts and characters including for example the films The Island (2005), Parts: The Clonus Horror (1979), Never Let Me Go (2010), and Moon (2009) all focusing on clones.

I thus suggest a reading of these as “bodies of crip time”: a reading that takes as its starting point Samuels’s notion of crip time as time travel. She writes:

Crip time is time travel. Disability and illness have the power to extract us from linear, progressive time with its normative life stages and cast us into a wormhole of backward and forward acceleration, jerky stops and starts, tedious intervals and abrupt endings. […] we who occupy the bodies of crip time know that we are never linear, and we rage silently—or not so silently—at the calm straightforwardness of those who live in the sheltered space of normative time. (n.p.)

While these characters are undoubtedly able-bodied or even extraordinarily able-bodied, this crip reading of such characters can reveal ways in which discourses of disability and ability are utilized in science fiction. Indeed, elements such as characters with non-normative relationships to time can play a role in subverting the way we think about disability and ability as a system of power and privilege. Rosemarie Garland-Thomson suggested that in Never Let Me Go,the roles of normate and disabled are reversed through the strange logic of the story and that this reversal challenges assumptions about disability and ability. I argue that similar challenges can be made in other examples precisely through the storytelling conventions of fantastic fiction, in this case through the depiction of characters out of time that can serve to defamiliarize the familiar and taken-for-granted truths and norms of our current society that are closely intertwined with normative time. This is not to suggest that these stories are to be seen as subversive texts or characters, far from it, but that such a reading can provide new ways of understanding these narratives from a disability perspective.

Out of Time and Resistance

As an example, I am going to briefly discuss the two films The Island and Parts: The Clonus Horror. Two quite similar films, which is not surprising as shown by the lawsuit filed by the creators of Clonus against The Island (Booker 184). Both films follow a similar narrative arc beginning with the protagonists unaware of their status as both clones and captives manufactured to provide spare parts for a wealthy elite. They are held in confinement without any knowledge of the everyday-life or even existence of the outside world, with the exception of respective film’s utopia: the Island or America, where the lucky few eventually are chosen to go. However, these utopias do not exist, and those chosen to go there are instead harvested for organs. The protagonists begin to question the word of authorities, the taken-for-granted life of their society, and the awful truth is eventually revealed to both audience and protagonists. The protagonists then flee, seek help, and try to expose the injustice.

Both films begin with clearly establishing the clones’ physical prowess, in Clonus through depiction of athletic competition, pushups, and cycling; in The Island through health controls, exercise, restricted and controlled diets, and the announcement that “A healthy person is a happy person.” The films thus set up a premise in which these characters are to be understood as able-bodied, or even extraordinarily able-bodied. These characters, like those in Never Let Me Go as described by Garland-Thomson, have the status of disability, but the embodiment of the normate. This reversal potentially puts into question normative notions of disability and ability through defamiliarizing it by using storytelling conventions offered by the fantastic.

These clones are indeed characters out of time in at least two ways. First, they are outside of normative time—extracted from linear, progressive time and its normative life stages. They are held apart from the rest of society, living according to their own temporality, and governed by a medical and scientific authority. For example, in The Island,the clones’ lives are limited to work, sleep, exercise, and controlled entertainment while waiting to go to the Island, for the protagonist a tedious existence. Sexual impulses are removed, thus hindering the possibility of reproduction. In Clonus,a similar structure is in place, with the addition that most clones, except for the protagonist, have had their intelligence reduced during the cloning process, and if they are disobedient, they are lobotomized.

Second, they are running out of time—at any moment, they or those they love are subjected to organ harvest and death, which serves as a temporal driving force through the narrative when the protagonists uncover the truth. The films are constructed as narratives of resistance, of protagonists fighting against the odds against an overwhelmingly powerful force of immoral antagonists set to uphold oppressive structures. As the protagonists learn the truth of their existence, the ways in which their time is limited, and the ways in which others live their lives through love, reproduction, and freedom, they rage against the privileged positions of those “in the sheltered space of normative time.” They rage, not silently but violently, against the unjust and oppressive system that reduces them to something less than human, unworthy of life, and kept only to maintain the able-bodied population. The clones are reduced to something less than human, products, or things in order to justify the exploitation of their bodies.

Conclusion

Reading these characters as bodies of crip time can showcase the ways in which the characters experience being out of time (or indeed experience crip time) and the ways in which the narrative arc of resistance can be understood in terms of a challenge towards the privileges of those within normative time. However, as the resistance is over, the clones of The Island becomes integrated into the sheltered space of normative time and, while the main characters of Clonus are either killed or lobotomized, the final scene suggest that the resistance was successful as the existence of the clone facility reaches the press. The films emphasize the primarily negative experience of being bodies in crip time rather than the subversive aspects of crip time but, by doing so, they showcase the unjust and oppressive gatekeepers and the privilege of living within normative time. The depiction of non-realist characters experiencing time in non-normative ways can assist in reimagining, and defamiliarizing or making strange, the familiarity of the organization of time masquerading as a universal truth and highlight the privileges of those within normative time.

#### Embrace a critical phenomenology of accessibility. That brackets a rights-based approach in favor of relational understandings of disability justice.

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Critical phenomenology begins from a set of philosophical (and sociopolitical) assumptions concerning the self and the world that differs from rights-based approaches to accessibility. The subject of critical phenomenology is not the bounded, unified individual we find in rights-based approaches. Rather, in attending to the structures of lived experience, critical phenomenology provides a relational, intersubjective understanding of the self. Beginning from this notion of the self, the stakes of accessibility are (re)clarified. If our social world is not comprised of individuals conceived of as bounded units for accessibility programs to “bring into” its existing organization, then accessibility can be expanded to include attention to some of the most fundamental elements of our ways of living, acting, and being. Accessibility would thus be about intervention at the level of our sedimented patterns of relating and belonging. Additionally, critical phenomenology is particularly attentive to how our familiar patterns of inhabiting the world are informed by structural patterns of oppression. Methodologically, a critical phenomenological approach aims to “[suspend] commonsense accounts of reality in order to map and describe the structures that make these accounts possible, to analyze the way they function, and to open up new possibilities for reimagining and reclaiming the commons” (Guenther 2019, 15). Accessibility beyond a rights-based framework and informed by critical phenomenology would thus attend to a host of intersecting oppressions—ableism, racism, sexism, sizeism, classism, heterosexism—to name a few.

Fundamentally, I propose that access is not a practical and isolated thing or event. It is not about what one person or institution can do for another person but involves an ongoing, interpersonal process of relating and taking responsibility for our inevitable encroachment on each other. At base, access intimacy invites attention to our fundamental intersubjectivity, our inherent vulnerability, and the asymmetries of power in any relationship. Beginning from these assumptions, the question of whether access needs are met cannot fully be answered via attempts at equalizing or accommodating (though these are nonetheless necessary elements of access in our present moment). It must be answered through the development of individual and collective (re)orientations, ways of being responsive to our primary interdependence.

I. DISABILITY ACTIVISM: ACCESSIBILITY, RIGHTS, AND JUSTICE

Accessibility has been a vital concern for those concerned with disability rights and justice. The tensions between disability “rights” and “justice,” however, illuminate the different resonances “access” can have. In a rights-based framework, where the norms of inclusion and equality are paramount, access becomes mainly about specific logistical achievements of “accommodation” (Mingus 2017). For example, disability activism in the late 20th century U.S. succeeded in establishing legal provisions through the Americans with Disabilities Act (ADA) requiring most business and facilities to provide “reasonable accommodation” for all disabled clients, customers, and members of the public.2 This has mainly included addressing mobility constraints with ramps or elevators or providing communication accommodations such as braille or captions. More recently, this has also included the use of content or trigger warnings to address mental health conditions.

The radical nature of the ADA at the time of its inception and today should not go understated. Working against a history of social and physical isolation and discrimination of disabled individuals, the ADA helped to conceptually transform the focus on disability as a so-called “defective” state of an individual to a “defective” state of society, demonstrating the move from a medical model to a social model of disability (Silvers 1996).3

<<FN 3>>

The ADA did not create the social model of disability, which was born in the UK in the 1970s; rather, the ADA used the social model of disability in its language and policies.

<<END FN 3>>

At their best, legalistic approaches have fundamentally and forcefully altered built environments to allow for a range of individuals with various disability statuses to literally be together in space. The ADA signaled a public attempt at rectifying the exclusion of disabled individuals, thus contributing significantly to the necessary material and symbolic anti-ableist transformation of society. Yet too often in practice rights-based frameworks fall short of the radical transformative potential of disability activism by allowing legalistic, accommodationist inclusion to be its pinnacle achievement. Such accommodationist inclusion allows for change only insofar as the central structures and values of society are maintained. For example, independence remains valorized and so “access” amounts to disabled individuals independently accessing those spaces that non-disabled individuals can now access. The focus here is on individual inclusion into such spaces, rather than the radical alteration of these spaces to prevent the need for individual accommodations in the first place.4 The legalistic, rights-based framework of access ultimately assumes independence as a condition of equality and then presumes equality as a matter of sameness, thus leaving intact fundamental pillars of an ableist society.

Certain assumptions regarding the ontological status of the self, the sociopolitical landscape, and the goals of liberation are evident here. First, a rights-based platform holds a liberal, atomistic view of the self. That is, the bounded, singular individual is the locus of concern—access accommodations are directed at or for the individual. Additionally, rights-based frameworks employ a reactive approach to the way in which the organization of society is expected to change. The primary goal is fitting disabled individuals into a world constructed through ableist thought and practice rather than transforming the conditions of such a world in the first place. The goals of liberation in a rights-based platform thus include granting greater individual freedoms in an accommodationist fashion.

Various problems arise with the rights-based framework. First, accessibility remains positioned as a retroactive “fix.” This framework fails to anticipate disability in the world and correspondingly fails to build a world where disability is assumed, centered, and valued. Rights-based notions of accessibility generate the façade of aspirational total independence and self-reliance, neglecting to acknowledge the ways in which no one fully “independently” accesses spaces or relies on themselves to achieve their goals. Our agency or our ability to access spaces (both built and social) is supported (or not) given one’s proximity to the norms and values of a given society.5 Take for example the norms of our current capitalist society and the case of chronic illness, pain, or fatigue. In capitalist societies, bodies are evaluated in terms of their productivity and their ability to contribute to a competitive economic market. In this context, rights-based accessibility accommodations more often than not entail what Aurora Levins-Morales describes as “better access to exploitation [and] greater integration 4 Consider the discourse and practice of the accessibility philosophy of “universal design” here. In brief, universal design is defined as “the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design” (The Center for Universal Design, 2008). 5 Consider here María Lugones’s discussion of “active subjectivity” in Pilgrimages/Peregrinajes (2003). into a profit-driven society that is driving thousands of species toward mass extinction and making the planet uninhabitable for humans” (2019, 51). If this is the case, the “work” of rights-based accessibility ends where capitalism begins and a whole host of bodies and minds remain structurally precluded from access-related care and concern. Bodies and minds that cannot be accommodated by a capitalist system that emphasizes efficiency and productivity and produces alienation and exploitation (and oftentimes disability itself) are left out of rights-based discussion of access, narrowing our field of concern for fighting ableism and advancing more liberatory futures. Levins-Morales continues: “The last thing we need is more opportunities to do our part in keeping the interlocking wheels of class, white supremacy, heteromale supremacy, and imperialism turning” (51).

If we are to truly transform our present ableist world, we need to seek fundamental changes to such norms, values, and ways of being, knowing, and acting. Accessibility is not simply about logistics or building a “check-list” style response to inaccessibility (e.g., do we have ramps, braille, etc.). There is a difference between a reductive notion of physical access as accommodation and a more transformative notion of physical access that begins with a commitment to broaden access from the start. The latter views access as embedded in the reasoning for creating built environments themselves; bringing together differently embodied folks becomes a core design feature. Additionally, a radical conception of access goes beyond physical means and demands attention to the wealth of social, emotional, and mental diversities of ways to inhabit the world. The use of content warnings has marked a transition from ignoring to recognizing various psychological diversities. However, when used to “accommodate” students by merely excluding them from the classroom space or from engaging with the material, content warnings do little to anticipate and construct a space acknowledging a range of social and psychological backgrounds.6 Rather, understanding, anticipating, and valuing such a range of experiences is key to developing a more just and anti-ableist world. Transformative notions of access attend to the conditions in which we are able to (or not able to) materially and socially build the types of communities we want. In this way, a deeper understanding of accessibility concerns practices of world-making (and re-making) themselves rather than inclusion into an already existing (ableist) world.

## Solvency

### 1nc – Solvency

#### Collective bargaining rights are enforced through the NRLB – that means rights are ineffectual even if granted.

**McFerran 25**, Senior fellow at the Century Foundation, former chairman of the National Labor Relations Board “Trump Executive Order Could Prevent Independent Agencies from Protecting Workers’ Rights,” The Century Foundation, February 21, 2025, <https://tcf.org/content/commentary/trump-executive-order-could-prevent-independent-agencies-from-protecting-workers-rights/>) rose

On February 18, President Trump issued an [executive order](https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-accountability-for-all-agencies/) purporting to assume control over [independent administrative agencies](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=44-USC-496203623-1695366633&term_occur=999&term_src=title:44:chapter:35:subchapter:I:section:3502), including those that hear and decide individual cases involving workers’ rights and protections, such as the [National Labor Relations Board](https://www.nlrb.gov/) (NLRB). Independent agencies were carefully designed by Congress—decades ago—to ensure that they can act in accordance with the law, unaffected by political influence or presidential favoritism. Giving the White House such direct and unprecedented control over independent agency leaders’ decisionmaking—including the ability to override their legal judgments and defund their work on specific matters—destroys these agencies’ neutrality.

In terms of the workplace, this radical assertion of White House influence strongly suggests that critical worker rights and protections could go unenforced—or even that particular White House allies could effectively be treated as exempt from accountability for the laws that protect American workers.

The Executive Order Functionally Eliminates These Agencies’ Independence

The order, entitled “Ensuring Accountability for All Agencies,” purports to “improve the administration of the executive branch” and “increase regulatory officials’ accountability to the American people” by asserting unprecedented new presidential powers to control the operations and decisionmaking of agencies designed by Congress to be insulated from political influence. These new powers include:

giving the president and the U.S. attorney general the ability to override the agency’s own interpretation of the law it administers;

giving the director of the Office of Management and Budget (OMB) the authority to control expenditure of the agency’s funds, including defunding “particular activities, functions, projects or objects”;

requiring independent agencies to submit any new regulations to OMB for substantive review;

requiring all “agency heads” (including, it would seem, each individual member of bipartisan boards such as the NLRB, whether Republican or Democrat) to employ a “White House Liaison” as a senior staffer in their offices;

requiring independent agency chairmen to “regularly consult with and coordinate policies and priorities with the directors of OMB, the White House Domestic Policy Council and the White House National Economic Council”; and

giving the director of the OMB the authority to establish and evaluate the “performance standards and management objectives” for independent agency heads.

The scope of the order’s impact on the ability of independent agencies to make policies or regulations is clear on its face: instead of exercising independent, expert judgment (as Congress intended), these agencies would now make policy on behalf of the White House and serve their statutory missions only when expressly given White House permission. While the order purports to restore “sufficient accountability to the President,” it is more accurately viewed as a clear intrusion on the authority of Congress to determine that insulating such agencies from political control over their day-to-day decisionmaking serves the public welfare. Indeed, the full scope of the White House’s efforts to intrude on independent agencies’ autonomy is made clear by a [second order](https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/), issued the next day, requiring all federal agencies—including independent agencies—to work with their “DOGE team leads” and OMB and identify for possible elimination all existing agency regulations that are not, in the view of these external actors, based on the “best reading” of the underlying law. Independent agencies have not historically been subject to such a highly politicized regulatory review process, because they have, up until now, been treated as actually independent.

The Executive Order Will Especially Compromise Adjudicative Independent Agencies

The implications of such a radical takeover of independent agency autonomy are especially critical for the small group of independent agencies that do business primarily by adjudication—in other words, agencies that make law through the consideration of individual cases affecting specific parties, rather than through generally applicable rules or policies. The NLRB is one such agency, along with others such as the [Federal Mine Safety and Health Review Commission](https://www.fmshrc.gov) or the [Occupational Safety and Health Review Commission](https://www.oshrc.gov). Presidential control of the day-to-day decisionmaking of these agencies compromises the entire adjudicative process, denying the people involved in these cases the ability to get a fair and impartial consideration of their claims. For workers who rely on the NLRB and other independent worker protection agencies to protect [critical workplace rights](https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights), this directly impacts the ability of individual workers to get justice without bias from outside political influences; hypothetically, the president could affect the outcome of a charge filed against a company owned by political ally to the president, or prevent a union from being certified or a worker being reinstated to their job at a company owned by a donor to the president. The possibilities for abuse are alarming to contemplate.

In simplest terms, the NLRB is an agency with two separate functions: prosecuting (through the general counsel) and adjudicating (through the five-member board) complaints alleging unfair labor practices, such as when an employer disciplines or fires workers who speak up about their working conditions, or when an employer refuses to bargain with the workers’ union. The general counsel also oversees elections where workers determine whether they want union representation, and the board decides disputes that arise out of the election process.

While members appointed to the NLRB are all [politically accountable](https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act)—they are nominated by the president and confirmed by the Senate—the NLRB (and other independent agencies) was clearly intended by Congress to serve as an impartial, expert administrator of the law, free from political influence. The NLRB and other independent agencies were never envisioned to be supervised by the White House, much less function as a tool of the president.

To be sure, the new executive order does not expressly give the White House authority to dictate, decide, or override the outcome of individual cases before independent agencies like the NLRB. However, the unprecedented level of control that the White House is now asserting over these agencies could certainly be used that way. It is not hard to imagine how dangerous abuses could arise. To use the NLRB as an example, such abuses could include:

denying the NLRB general counsel the ability to use agency funds to prosecute particular types of complaints filed by workers, or even complaints against particular industries or parties;

instructing the NLRB chairman to “coordinate policies and priorities” with the White House by prioritizing consideration of cases brought by employers against unions over cases that would give backpay to discharged workers or affirm the results of union elections;

refusing to allow the agency to defend itself and its decisions in federal court if challenged by outside parties or industries that are friendly with the White House, or if the White House disagrees with the agency’s resolution of the case; and

working through the newly appointed “White House Liaisons” in each board member’s office to influence which cases are prioritized or compromise the confidentiality of the deliberative process, especially for minority board members from the political party opposing the president’s.

#### Rights can’t deter or control employers.

Magner 20, JD, Field Attorney at National Labor Relations Board (Brandon, “Does the NLRB Actually Matter?,” Labor Law Lite Substack, https://brandonmagner.substack.com/p/does-the-nlrb-actually-matter)

The National Labor Relations Board, the United States’ sole enforcer of federal labor law, turned 85 this year. It has few friends or allies. Conservatives condemn it as a nuisance that hinders corporate decision-making; libertarians want it abolished. The Left views it as an ineffectual and outdated hall monitor; liberals have long mostly ignored it.

The NLRB began its existence as arguably the most radical and successful agency of the New Deal, enthusiastically enforcing the National Labor Relations Act against many of the most powerful corporations in the country until it was red-baited into submission. The Labor Board’s statutory scheme has underwent only one major revision since its inception; its powers and procedures otherwise remain virtually frozen into their World War II-era structure.

For the uninitiated, that framework is as follows. The NLRB is empowered with overseeing and enforcing federal labor law. Its two primary functions are (1) the supervision of union representation elections to establish collective bargaining relationships and (2) the investigation and prosecution of unfair labor practices committed by employers and unions. The General Counsel acts as a prosecutor, sending cases to a five-person board which serves in a quasi-judicial role on appeal from decisions rendered by administrative law judges. The Labor Board’s headquarters lie in D.C., but the bulk of the investigative and case handling work is performed in its 48 individual field offices stationed around the country.

The agency’s workload has risen and fallen with the fortunes of the labor movement. In 1980, the Labor Board docketed a record 44,063 unfair labor practice charges and employed 2,921 full-time permanent staff. In 2019, those numbers stood at 18,552 charges and 1,286 personnel. Some of that decline is due to internal sabotage by Republican appointees, but the Labor Board undoubtedly has less to do when private-sector union density stands at 6.2%.

This decline in responsibility and prestige was predicted by the NLRB’s most frequent customer: organized labor. As early as 1984, then-AFL-CIO President Lane Kirkland—noting the many restrictions placed upon unions under the NLRA—argued that unions would be better off if the Act were repealed and replaced with the old “law of the jungle.” The current federation President, Richard Trumka, expanded upon this reasoning in a 1987 law review article written during his time leading the United Mine Workers. These arguments must be contextualized within the labor movement’s general disgust with the exceptionally anti-union Reagan Board, which Trumka artfully described as “that gulag of Section 7 rights.” But they were also part of unions’ increasingly negative rhetoric following the Labor Law Reform Act’s death-by-filibuster during the Jimmy Carter administration, which had promised to cut down on employers’ wanton violations of the NLRA primarily by bolstering the NLRB’s available remedies.

Those shortcomings persist today. As decreed by the Supreme Court, the Labor Board is without power to order punitive damages against violators of the law. It cannot compel parties to agree to any contract provisions, even ones that employers deliberately stonewall negotiations over. It cannot ban the use of permanent replacements, offensive lockouts, or management rights clauses. It cannot prevent employers from closing their plants for explicitly anti-union purposes and must allow the vast majority of partial closings to be completed without any sort of bargaining input from the affected unions. It must cede authority to commercial arbitration, federal immigration laws, and the vast universe of employers’ state property rights.

#### Decisions won’t go the way of labor, and if they do, they’ll take forever which kills unions.

**Tameez 25**, writer at Nieman Journal Lab, Harvard. (Hanaa’, “What will a conservative National Labor Relations Board mean for news unions?” Nieman Lab, January 30th, 2025, <https://www.niemanlab.org/2025/01/what-will-a-conservative-national-labor-relations-board-mean-for-news-unions/>) rose

A right-ward power shift on the already cash-strapped and short-staffed NLRB will likely make the agency more employer-friendly and union organizing [more difficult](https://www.law360.com/employment-authority/articles/2287984/unions-to-face-hurdles-organizing-under-trump-nlrb), the labor board’s observers say. Workers across industries, including in journalism, will have to be their own best advocates if they can’t expect enforcement of federal laws.

But first, what does the NLRB do exactly?

The NLRB is a “[quasi-judicial](https://www.nlrb.gov/about-nlrb/who-we-are)” body made up of presidential appointees (confirmed by the Senate) that upholds federal labor laws. It hears and decides cases on labor law violations under the [National Labor Relations Act](https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act), administers union elections, investigates unfair labor practice charges (ULP) by employers, workers, and unions, and can help mediate disputes between employers and employees.

In the news industry, that has looked like: [ruling](https://thenewsguild.wpenginepowered.com/wp-content/uploads/2021/07/BDO.02-CA-262640.DBD_.02-CA-262640.NBCUniversal-Final.docx-1.pdf) NBCUniversal couldn’t roll back staff wage increases in 2020; declaring McClatchy couldn’t impose pageview quotas on its journalists while [settling](https://newsguild.org/nlrb-rules-for-idaho-newsguild-pageview-quotas-are-not-allowed/) an unfair labor practice charge from the Idaho Statesman News Guild in 2021; and [seeking](https://onlabor.org/tracking-attacks-on-the-nlrb-mixed-result-in-dc-agency-wins-elsewhere/) an injunction against the Pittsburgh Post-Gazette in 2024 to stop alleged unfair labor practices while its unionized workers are on strike and trying to negotiate a contract.

The agency has 26 field offices across the country that [investigate](https://www.nlrb.gov/resources/nlrb-process) cases in their corresponding regions. If warranted, the regional office files a complaint and then an administrative law judge hears the case in a regional hearing to make a decision. Either party in the case can appeal the decision to a federal appellate court, which can decide to enforce or overturn the NLRB’s ruling. The NLRB itself can’t enforce its own rulings and its stances usually [correlate](https://www.jstor.org/stable/26356886) with those of the ruling party of the time.

The agency has been [chronically underfunded](https://www.epi.org/publication/bidens-nlrb-restoring-rights/) and [understaffed](https://www.theguardian.com/us-news/2022/aug/17/us-labor-agency-union-activity) with a [steadily increasing](https://www.nlrb.gov/news-outreach/news-story/union-petitions-filed-with-nlrb-double-since-fy-2021-up-27-since-fy-2023) workload in recent years, which has weakened its impact and reliability. It can take months or even years for the NLRB to issue a decision in a case, leaving workers in limbo.

[Hamilton Nolan](https://www.hamiltonnolan.com/) is a longtime labor journalist who covers unions, the labor movement, and inequality for In These Times. As a reporter for Gawker in 2015, he was part of the union organizing committee for the Gawker Media union. He said that with a Republican-led NLRB, newsroom unions in disputes with their employers will be less likely to rely on the government as a good-faith referee.

“It will be bad in the sense that Trump is breaking the government machinery that oversees the union organizing process,” Nolan said. “Republicans are making it bureaucratically harder to enforce labor law and get new unions certified. But the fact is that this will only be temporary, and it shouldn’t hold any workers back from organizing. We need unions now more than ever.”

According to [new data](https://www.bls.gov/news.release/union2.nr0.htm) from the Bureau of Labor Statistics, there were 14.3 million unionized workers in the United States in 2024, making up just 9.9% of eligible wage and salary workers. That’s a slight decline from [10.8%](https://www.bls.gov/news.release/archives/union2_01222021.pdf) in 2020 and [10.7%](https://www.bls.gov/news.release/archives/union2_01262017.pdf) in 2016. But according to [Jon Schleuss](https://www.linkedin.com/in/jonschleuss/), president of The [NewsGuild-Communications Workers of America,](https://newsguild.org/) the organization saw a huge wave in media union organizing during the first Trump administration. About 3,400 media workers unionized with The NewsGuild-CWA alone between 2017 and 2020, during Trump’s first presidency. Since 2016, nearly 8,000 media workers from 146 companies have unionized with The NewsGuild-CWA. Schleuss said he expects another wave of organizing during Trump’s second term.

“This is a moment when workers, regardless of industry, are going to be trying to reduce the chaos in their lives and especially at work,” Schleuss said. “They’re going to want to form unions, probably at a higher rate.”

Several media organizations in recent years have voluntarily recognized unions formed by their newsrooms. Among those are the [Texas Tribune](https://newsguild.org/the-texas-tribune-guild-formally-recognized-as-a-union/), [Politico](https://newsguild.org/politico-ee-staffers-win-union-recognition/), [The Atlantic](https://www.nyguild.org/front-page-details/the-atlantics-business-and-technology-workers-win-voluntary-recognition-of-their-union), [Grist](https://newsguild.org/grist-union-wins-voluntary-recognition/), and [ProPublica](https://newsguild.org/propublica-guild-wins-voluntary-recognition/), to name a few.

However news publisher resistance to the National Labor Relations Act of 1935 — the federal law that protects employees’ rights to unionize, collectively bargain, and advocate for better working conditions without retaliation — has been part of the story from the beginning. The 1937 Supreme Court ruling in [Associated Press v. Labor Board](https://supreme.justia.com/cases/federal/us/301/103/), for example, declared that the AP had illegally fired journalist Morris Watson in 1935 for his union organizing activity, and that “the publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others.” That type of hostility continues today, Media Guild of the West president [Matt Pearce](https://bsky.app/profile/mattdpearce.com) said.

“What we’re returning to is a kind of pre-1930s period where employer-labor relations were much more volatile, with more strikes and more disruption to commerce,” Pearce said. “The rules were put in place for a reason. And it’s entirely possible we’re all going to relearn what those reasons were.”

Long wait times

The NLRB has seen a [steady increase](https://www.nlrb.gov/news-outreach/news-story/union-petitions-filed-with-nlrb-double-since-fy-2021-up-27-since-fy-2023) in its workload in recent years; the NLRB received 3,286 union election petitions between October 1, 2023 and September 30, 2024, a 27% increase from the previous year and more than double since 2021. It also received over 21,000 unfair labor practice charges, up 7% from the year before. There are currently over 26,000 open unfair labor practice charges, according to the NLRB’s case search portal.

But the agency’s [chronic underfunding](https://www.epi.org/publication/bidens-nlrb-restoring-rights/) and [understaffing](https://www.theguardian.com/us-news/2022/aug/17/us-labor-agency-union-activity) have limited ~~handicapped~~ its ability to enforce labor laws in a fair and timely manner, labor leaders say. The NLRB went nine years without a budget increase between 2014 and 2023. The agency’s budget was $299 million in 2024, and requested an increase to $320 million for FY 2025, which the NLRB’s own union has said “[does not come close to providing us with the resources we need to enforce federal labor law](https://x.com/TheNLRBU/status/1767617322473206051).”

In 2023, the average processing time for a union petition request for an election was 37 days, while the processing time between a petition filing and the certification of election results was 56 days, according to a 2024 report [the agency issued](https://www.nlrbedge.com/p/nlrb-processing-times-have-dramatically). The average processing time for an unfair labor practice charge to be investigated and disposed (concluded) is 124.2 days (four months), up 50% from the year before.

“Sometimes **it’s as if there’s no NLRB at all**,” Pearce said. “Part of my skeptical reaction is that there’s not going to be much difference, because even if you have a conservative board, it could take a long time for charges to get processed even if you’re going to get rejected by a more employer-friendly, Trump NLRB board.”

Regardless of the board’s partisan slant, those long wait times have real-life implications, putting workers and their livelihoods at risk.

“If the employer is retaliating against employees – if it’s firing employees illegally or implementing changes to benefits or pay without negotiation – that’s harmful,” Schleuss told me.

The dangers of long processing times are already playing out in Connecticut. In August 2024, more than 100 Hearst Connecticut reporters, photographers, editors, and digital producers [formed](https://newsguild.org/newsletter-introducing-connecticuts-whale-union-%F0%9F%90%8B/) the Connecticut News Guild. Because Hearst said it would not voluntarily recognize the union, the union had to file a petition for its regional NLRB office to administer an [election](https://www.nlrb.gov/about-nlrb/what-we-do/conduct-elections#:~:text=Alternate%20path%20to%20union%20representation,filed%20within%20those%2045%20days.). As of this writing, the regional NLRB office still hasn’t set an election date. A union can’t bargain for a contract with an employer until after election results are certified by the NLRB.

According to Connecticut News Guild organizing committee member [Martha Shanahan](https://x.com/martha_shan), the No. 1 question she gets from guild members is when the election will be. She can’t give them an answer. “As it drags out longer and longer, people are going to get tired of hearing that,” Shanahan said.

“Our election being delayed this long is affecting us because it’s just getting much more likely that we might lose people’s hearts or people might get discouraged,” she added. “Our support is still strong, and we do still feel confident that we’ll win the election when we get there. But every week and month that goes by, it’s just that much more time for people to lose momentum.”

### 1nc – Offshoring Turn

#### Firms respond to strong labor protections by offshoring to maintain competitiveness and reduce bargaining power.

Weng and Peng 18, \*Assistant Professor, Economics and Business, Vrije Universiteit Amsterdam, \*\*O.P. Jindal Distinguished Chair and Professor, University of Texas at Dallas, (\*David H., Mike W., November 2018, “Home Bitter Home: How Labor Protection Influences Firm Offshoring,” *Journal of World Business*, Volume 53, Issue 5, Pages 632-640, https://doi.org/10.1016/j.jwb.2018.03.007)

Labor protection within the home country can affect firm business operations in two ways. First, whether labor protection is strong or weak will make a difference for firms to fully utilize employees’ skills and talents. When employment protection is not strong, firms can effectively motivate and discipline employees. For example, if employees do not perform satisfactorily, managers can discharge them without worrying about breaking labor laws (Gibbons & Katz, 1991). However, such managerial discretion may be low in countries with strong labor protection. Ichino and Riphahn (2001) find that when workers receive greater employment protection, the number of absence days per week doubled. For this reason international investors are often reluctant to acquire targets in countries where labor receives strong institutional protection (Alimov, 2015; Capron & Guillen, 2009).

Second, heavy labor protection may reduce workers’ motivations to develop new skills, thereby hampering firms’ adaptation capacities toward the changing world. When workers are highly protected, the labor market will become rigid because burdensome labor rules discourage firms from hiring new employees (Nickell, 1997). Firms are also less likely to hire new employees since heavy labor protection diminishes employee mobility. However, recruiting employees who possess new skills from the external labor market is critical for firms to remain innovative and competitive (Kaiser, Kongsted, & Rønde, 2015). When the hiring of new employees is hindered, firms may have difficulty updating and renewing their knowledge, resulting in competitive disadvantage.

Offshoring can be a way out of these problems. According to Oliver (1991), the pressure from operating in a given context may prompt firms to seek opportunities in other places. By doing so, firms can “escape from institutional rules and expectations” (Oliver, 1991: 154). Xia et al. (2014) suggest that as domestic competition increases, firms may actively consider going abroad as a way to cope with the uncertainty with home country operations. Witt and Jackson (2016) assert that when domestic operations become challenging, firms the firms may “move their operations, in part or in whole, to institutional contexts that better support these operations” (p. 797). This reasoning suggests that offshoring can be a valuable approach for firms in countries with stringent labor protection to enhance operational flexibility and efficiency.

In addition, offshoring can also help firms gain access to fresh ideas and knowledge beyond their home bases. Porter (1990) argues that countries have different strengths, while Hall and Soskice (2001) maintain that it is necessary for firms to engage in cross-border activities. Witt and Jackson (2016) contend that cross-border business activities may need to be initiated for firms to maintain a competitive edge. Since offshoring can help firms streamline their operations while achieving their goals (Castellani & Pieri, 2013; Mihalache, Jansen, Bosch, & Volberda, 2012; Nieto & Rodriguez, 2011), firms located within the countries with stronger labor protection may be apt to seek support from suppliers overseas. Specifically:

Hypothesis 1

The stronger labor protection is in the home country, the more likely that firms headquartered or located in that country would undertake offshoring.

Before proceeding, we must elaborate two clarifications regarding Hypothesis 1. First, there are two offshoring approaches: (1) offshoring where firms obtain needed input and services from independent suppliers located in other countries (Contractor et al., 2010; Doh et al., 2009; Lewin, Massini, & Peeters, 2009), and (2) captive sourcing where firms seek foreign materials via their foreign affiliates. Our study focuses on the former because it “requires a lower level of resource commitment and permits firms to choose the supplier that delivers the maximum advantage in each case” (Rodriguez & Nieto, 2016: 1738).1

Second, the literature also recognizes that location choices are important in offshoring decisions. Although one may intuitively associate offshoring locations with less developed countries (e.g., China or India), recent studies indicate that this may not necessarily be the case. For instance, Mudambi and Venzin (2010) argue that cost reduction is not the sole motivation for offshoring, and that knowledge seeking can be an important motivation (p. 1510). Other authors also maintain that firms may seek more advanced input and materials from more developed countries (Demirbag & Glaister, 2010). We accordingly consider both more and less developed countries as possible destinations for offshoring.