# 1NC---Run for the Roses---Round 1

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Settler Colonialism K

#### Collective bargaining rights are an alibi for continued settler domination, allowing colonialism to recuperate AND further dispossess the ‘Indigenous other.’

Englert ’20 [Sai; November 2020; Lecturer at Leiden University; Antipode, “Settlers, Workers, and the Logic of Accumulation by Dispossession,” vol. 52]

A growing number of authors have made the link between settler colonialism and primitive accumulation (for example, Coulthard 2014; Harris 2004; Nichols 2017; Simpson 2014). Most important here is Coulthard, already discussed above, who, in his Red Skins, White Masks, has emphasised the centrality of primitive accumulation to the settler colonial world and its specific expression in that context. He showed convincingly that in North America primitive accumulation had taken place by eliminating the indigenous population and replacing it with a new—settler—population, which would in turn be submitted to the tyranny of the market in its stead.

It was this attention to settler accumulation that led Coulthard (2014:125) to identify settler colonialism as “territorially acquisitive in perpetuity”, thereby complicating, as already pointed out in the first section, the concept of elimination as an outcome rather than a strategy. He further writes:

In the specific context of Canadian settler-colonialism, although the means by which the colonial state has sought to eliminate Indigenous peoples in order to gain access to our lands and resources have modified over the last two centuries … the ends have always remained the same: to shore up continued access to Indigenous peoples’ territories for the purposes of state formation, settlement, and capitalist development. (Coulthard 2014:125)

This approach, by focusing on the aims of settler colonial regimes rather than fetishising its methods, further leaves open an analysis, developed in this paper, of the multiplicity of settler strategies within an overall strategy of accumulation. This can include, as Harris (2004:172) shows within the late 19th century Canadian context, incorporation of indigenous populations into the workforce. If Canadian settler colonialism has pursued “state formation, settlement, and capitalist development” primarily through elimination, other settler states in different contexts could pursue similar goals by different means. It is this point that Kelley (2017) made in relation to South Africa (see above), where settler colonial dispossession removed indigenous populations from the land and forced them into the colonial labor market.

More recently, Nichols (2015, 2017), echoing Harvey and Coulthard, has discussed the importance of considering the relationship between primitive accumulation in the original formation of capitalism and in its later reproduction and spread across the globe, with a specific focus on settler colonial contexts. He argues that the incorporation of indigenous people into the workforce is not a necessity for settler regimes because the colonial process is incorporating their land into an existing global capitalist system, which has already generated surplus labor in other places. As such labor could be extracted from indigenous people or from settler populations proletarianised in different locales. This approach then also underlines the diversity of strategies available to settler regimes, including exploitation and/or elimination of the natives.

This analysis of accumulation by dispossession, lays the theoretical foundations to approaching contemporary settler colonialism as a process within a broader framework of capitalist accumulation. This can both open up reflections about its specific characteristics as well as its continuities with broader logics of exploitation and/or dispossession.

Settler Accumulation and Settler Quietism

In order to reflect on the particular nature of accumulation by dispossession within a settler colonial context, another issue should be raised: that of the internal social relations within settler colonial societies. Indeed, the most striking aspect of settler colonial societies is the development of a colonial polity in which settlers live, produce, and reproduce themselves socially. They do so on the back of the dispossession of indigenous populations through which they acquire land, resources, and, depending on the context, labor. This—perhaps obvious—characteristic leads to the development of internal class relations and conflicts, alongside confrontations between settlers and indigenous peoples.

The history of settler colonialism underscores the conspicuous absence of involvement by settler working classes (as opposed to individuals or limited networks) in mass, sustained challenges against the process of settlement and indigenous dispossession.3 In fact, more often than not, settler labor movements fought for the intensification of settler expansion and racial segregation (see “An Alternative Reading: Settler Colonies and the Exploitation of the Native” above), through colour bars, boycott campaigns and demands for expulsion. In the process, bitter confrontations emerged between settler labor and capital, when the latter attempted to increase its profit margins through the exploitation of indigenous labor—for example in the context of the white labor movements in Australia and South Africa.4 Yet these conflicts can be resolved, especially while the settler colony continues to expand, by intensifying the dispossession of indigenous populations in order to improve the material conditions of settler workers (see “Case Studies” below).

Here, the question of accumulation by dispossession returns to the fore. If settler workers are exploited as workers within the settler colony, they remain settlers. As such they participate in the processes of accumulation by dispossession through the occupation of lands, the elimination or exploitation of indigenous peoples, and the extraction of expropriated resources. For example, at a very basic level, their houses, workplaces, and basic infrastructure such as roads, railways, etc., are all premised on the capture and control of indigenous land. Settler workers are both exploited by settler bosses and their co-conspirators in the dispossession of indigenous peoples. As such, class struggle within a settler society has a dual character: it is waged over the distribution of wealth extracted from their labor as well as over the colonial booty.

In the case of Zionism in Palestine, the current associated with the publication Matzpen (“Compass”) developed a class analysis of Israeli society. They came to the conclusion that because the Israeli economy was heavily subsidised from the outside (first primarily by Britain, then by the US) and that this subsidy was not simply going into private hands but was used by the Labor Zionist bureaucracy to organise the development of the Israeli economy and infrastructure, class antagonisms were diverted within its society. Hangebi et al. (2012:83) wrote:

The Jewish worker in Israel does not receive his share in cash, but he gets it in terms of new and relatively inexpensive housing, which could not have been constructed by raising capital locally; he gets it in industrial employment, which could not have been started or kept going without external subsidies; and he gets it in terms of a general standard of living, which does not correspond to the output of that society … In this way the struggle between the Israeli working class and its employers, both bureaucrats and capitalists, is fought not only over the surplus value produced by the worker but also over the share each group receives from this external source of subsidies.

If this analysis was essentially correct, it underplayed, however, the consequences of an important aspect of Israeli wealth creation (which Matzpen otherwise recognised): the Israeli state, its infrastructure, and its economy were made possible by colonial expansion, land confiscation, the expulsion of Palestinians and the expropriation of their wealth and property.

Affordable housing, for example, an issue discussed further below, was not only possible because of the subsidies the Israeli state received from abroad. It was possible because the land on which new houses were built, as well as existing Palestinian houses, had been confiscated by the Israeli army, Palestinians had been expelled in their hundreds of thousands, and the spoils were re-distributed amongst settlers. It was—and remains—the collective dispossession of the indigenous population by the Israeli population as a whole, which ties the settler community together, despite internal class, ethnic, and political divisions.

The settler class struggle is fought over the distribution of wealth extracted from settler labor power as well as over the share each group receives from the process of accumulation by dispossession. This dual class and colonial relationship helps explain the relative absence of settler workers’ resistance against settler colonial expansion or alliances with Indigenous peoples.5 This tendency can be understood as “settler quietism”: even if working-class settlers are exploited by their ruling classes, overthrowing the settler state would mean overthrowing a system in which they share, however unequally, in the distribution of the colonial loot. Participating in the process of dispossession and fighting for a greater share of the pie leads to more important and immediate material gains.

It also follows, as many anti-colonial thinkers and activists, not least among them Fanon (2001) in the Wretched of the Earth, have argued that indigenous people face the settler population as a whole in their struggle for de-colonisation. This is not to say that individual settlers or specific settler organisations cannot or have not supported struggles for decolonisation. It is however to point out that this is not the case for the majority of the settler working class, while it continues to depend on the continued dispossession of the natives for the quality of its living standards.

Whether the settler colony is organised on the basis of an eliminatory or an exploitative model, what remains constant is that the entirety of the settler polity will participate in the process of accumulation by dispossession, and that the different settler classes will struggle both against the natives to impose and maintain this dispossession, as well as amongst themselves in order to determine the nature of its internal distribution. More than that, the specific structural forms of settler rule over the indigenous population is best understood as the outcome of struggle, both between settler classes and between settlers and indigenous populations. This paper now turns to two brief case studies demonstrating this process in the context of Zionism in Palestine.

Case Studies

The specificity of Zionism in the history of settler colonialism, its lack of a colonial metropolis, had real consequences for the Zionists in Palestine. Firstly, it could not impose—at first—its control over the land through military force. Secondly it could not organise the transfer of populations to the colony in the same way a state could. In the words of Shafir (1996:155): “Zionism, then, was a colonisation movement which simultaneously had to secure land for its settlers and settlers for its land”. The dual need for land and labor was at the heart of many political developments in the Yishuv.

If the question of land was resolved first through acquisition from largely absentee land owners and then (and most extensively) through military violence, the question of immigration came close several times to bringing the whole colonial project to its knees, as the European Jewish population tended to reject Zionism as a political response to the poverty and discrimination they faced. Two distinct political responses emerged within the early settler population. On the one hand, the Jewish farmers and their sponsors hoped to develop a cash crop producing agricultural sector focused on export to Europe and the exploitation of cheap Palestinian workers. This vision was based, as demonstrated by Shafir (1996), on the model of other European projects—especially the French settler colonies of North Africa.

On the other hand, the nascent Labor Zionist movement demanded better wages and working conditions for Jewish workers in Palestine, which they argued would be the only way to attract and retain new settlers. This, they claimed, necessitated full separation between the Jewish and Palestinian sectors, removing thereby the “unfair competition” of the cheaper indigenous labor force. This led to the development of a series of new Labor Zionist institutions to organise this “Conquest of Hebrew Labor”, by organising strikes, pickets, and boycotts of Jewish owned businesses that employed Palestinian workers or sold products made by them.

The Kibbutzim, the Histadrut,6 and the early Zionist militias were all born out of the process of organising this campaign (Lockman 1996). For example, the Histadrut’s constitution, passed at its founding congress, made clear that it was a Zionist body committed to the project of settlement through the development of an exclusively Jewish society. It stated that the Histadrut’s goal was to:

… unite all the workers and laborers in the country who live by their own labor without exploiting the labor of others, in order to arrange for all settlement, economic and also cultural affairs of all the workers in the country, so as to build a society of Jewish labor in Eretz Yisra’el. (quoted in Lockman 1996:68)

The similarity between the logic of this statement and that of the white South African strikers mentioned above is remarkable.

This struggle—waged against Palestinian workers and Jewish farmers—led to a partial victory for the Labor Zionist movement (Lockman 2012). Key industries, such as construction and agriculture, were taken over by Labor Zionist institutions such as Solal Boneh and the Kibbutzim. At the same time, Jewish representation in colonial institutions was increased through collaboration with the British Mandate authorities especially in the context of crushing the Arab Revolt of 1936-1939. The Labor Zionists took over the Yishuv’s political leadership and created a dominant Jewish sector, without however being able to establish a fully segregated one. It did set in motion the logic of separation as well as laying the infrastructure for a Jewish state, which would be made a reality by its militias’ military violence and mass expulsion of Palestinians during the Nakba.

This case study shows that the Labor Zionist movement developed on the basis of opposing Jewish farmers as well as Palestinian workers, a political focus that also shaped its key institutions. The campaign for Hebrew Labor also demonstrates that the “elimination of the native” in the settler colonial context is not a given, as in the Wolfe-an framework, but the outcome of a specific set of struggles that pit both the indigenous population against the settlers, as well as different settler classes against one another.

This approach is not only applicable to historical processes but also contemporary ones. In 2011, an Israeli social movement emerged from a small activist encampment protesting the cost of housing in Tel Aviv into a two and a half month long protest in which hundreds of thousands of people joined demonstrations and square occupations all over the country. The movement was supported by a large majority of Israelis, regardless of political persuasion or ethnic background (Perugorria et al. 2016), as well as by key institutions of the historic Labor Zionist movement, including the Histadrut and the national students’ union.

It was an expression of class struggle within the settler population, where the victims of neoliberal economic reforms fought for greater redistribution of wealth. This process was self-consciously an internal one: the movement actively presented itself as made up of loyal, serving, citizens—an impression that was reinforced by the organisations that supported it—while keeping Palestinians and their demands at arm’s length. The Palestinian question remained taboo (Honig-Parnass 2011).

The Netanyahu government’s response to the movement’s demands was to deepen settler dispossession. The question of unaffordable housing could be resolved easily, so the argument went, by expanding settlements. MK Arye Eldad argued that “[t]ens of thousands of Israelis can live in Judea, Samaria [the West Bank] and Jerusalem” (quoted in Harkov 2011). Similar proposals were a significant current among Israeli politicians. In August 2011, a group of 41 MKs (out of 120), including representatives from the Labor Zionist camp, called on Netanyahu to expand settlement construction in response to the demonstrators’ demands. Indeed, governmental initiatives have since focused on developing housing in East Jerusalem on the one hand, and in the Israeli periphery—more specifically within areas with high Palestinian populations, such as the Naqab in the south—on the other.

An interesting episode in the summer of 2015 highlighted this approach. The government was in the process of negotiating a new agreement with the Chinese state over permits for up to 20,000 Chinese construction workers to come to Israel. When criticised, Netanyahu defended the deal on the basis that “the ability to build many apartments, thereby increasing supply, will, in the end, allow us to change price trends” (quoted in Reed 2015). Moshe Kahlon, the then finance minister, also explained that “the plan to bring thousands of Chinese workers into the country is intended to speed up construction work to solve the housing problem and bring down prices” (MEMO 2015). The government’s response to the demonstrations has been to provide affordable housing to the settler working class while simultaneously increasing its control over Palestinian land.

A “settler colonial fix” is available to the Israeli elites, through which they can soften the blow of internal inequality through colonial expansion. The state’s response to the 2011 social movement’s demand for affordable housing through the intensification of indigenous dispossession, and the silent acceptance of this solution by a movement that had gathered such considerable public support, further underscores the claims made by this paper. Settler class struggle is waged over both the distribution of wealth within the settler population, but also over the distribution of the settler colonial loot.

The participation of the settler workers’ movement in the process of accumulation by dispossession, through capturing land, resources, and labor, or through the expulsion of the indigenous population is a specific characteristic of settler colonial regimes. Indeed, whereas the theoreticians of accumulation by dispossession, discussed above, understood it as a process directed against workers and peasants, we see here settler workers actively participating in the process and enjoying its spoils. Furthermore, the discussion of this process within the framework of Zionism in Palestine, shows that this struggle takes place both within exploitative (first case study) and eliminatory (second case study) contexts. It is in part through this internal struggle over the distribution of the settler colonial loot, alongside the struggle against the indigenous population, that the nature of the settler colonial regime is determined, as discussed in the first case study, which described the shift in the process of settler accumulation from exploiting the indigenous population to attempting to eliminate it.

#### The logic of elimination is grounded in the collective unconscious AND exists beyond utility, derailing any attempt at statist reform---vote neg for preconscious, absolute refusal of settler control.

Kouri ’23 [Scott, Hans Skott-Myhre, and Kathleen Skott-Myhre; Spring 2023; Ph.D. in Human and Social Development from the University of Victoria; Professor in the Social Work and Human Services Department at Kennesaw State University; Professor of Psychology at the University of West Georgia; Cultural Critique, “The Perversity of Colonial Desire: The Erotics of the Settler Unconscious,” no. 119]

In the one-man play, A Huey P. Newton Story (Lee 2004), Roger Guenveur Smith, playing Huey, talks briefly about hippies wearing buckskin and fringe. He says, "White people in America are a trip, they exterminate the Native Americans and then they try to dress up just like 'em. What kind of necrophilia is that?" The raw, complex, and ambivalent set of relations that comprises the question of appropriation and desire for those who are the inheritors of the colonial legacy is both powerful and deeply troubling. While the colonial project certainly reshaped geographies, lives, modes of governance, and made every attempt to eviscerate entire modes of value and ways of life, it simultaneously operated as a force that reconfigured subjectivities and the ability to know who one is or what one might become. In this, it reshapes its own historical legacies of brutality and genocide by restructuring what Lacan would describe as the relation between the real, the symbolic, and the imaginary of those it deems to be settlers and those it designates as other. As Frantz Fanon (1963) put it, "Colonialism is not satisfied merely with holding a people in its grip and emptying the native's brain of all form and content. By a kind of perverted logic, it turns to the past of the oppressed people, and distorts, disfigures, and destroys it" (210).

In this article, we will engage a Lacanian psychoanalytic reading of the process of subjectification (1) that produces the settler as a social subject. (2) We acknowledge there are limitations and significant issues with traditional psychoanalytic readings of colonialism rooted in modernist psychoanalytic constructions that make claims to universal and essentialist understandings of human behavior. However, our reading here is rooted in a reading of Lacan via Deleuze and Guattari that may offer an alternative nonessentialist and more historically grounded analysis. We would also note that our reading of the unconscious here is not the individual unconscious of traditional psychoanalysis, nor the Jungian collective unconscious, but the sociopolitical unconscious proposed in the work of Deleuze and Guattari (1977).

Specifically, we will attend to the role that the fetish plays in the ongoing cultural appropriation of Indigenous spirituality and culture within an ongoing neocolonial material context. (3) Deploying Lacan's concept of dialectical lack as foundational in the production of social forms, we will diagram the ways that lack drives catastrophic modes of appropriation and genocide as an erotic form of murderous arousal. We will unpack the colonial Freudian/Lacanian unconscious that produces the settler as both a mythical subject free of the disruptive and forbidden activities engaged in during the extensive historical conquest of Indigenous peoples and as a social discourse that obscures and eviscerates memory, producing the settler as innocent within a utopic desire for democracy and opportunity. In particular, we investigate the role of the phallic as foundational to the colonial project and the resultant modes of fetishization. In this, we are hoping to extend lines of inquiry that engage psychoanalysis as inseparable from material modes of analysis that delineate the colonial process and its effects. We would align ourselves with McClintock (4) (2013) when she calls for "a renewed and transformed investigation into the disavowed relations between psychoanalysis and socio-economic history" (8). In what follows, we will diagram both the process of subjectification that emerges in the development of the settler unconscious, as well as an alternative to the settler subject as a set of unconscious coordinates.

AMBIVALENCE

It is Marx (1972) who proposes that the development of modes of subjectivity is subsequent to the mode of production, while being absolutely necessary to the continuance of systems of rule within any given historical period. Within the historical establishment and expansion of the mode of production defined as capitalism, there have been and will always be forms of subjectification appropriate to the necessities of colonial subjugation of noncapitalist forms of community, value, and life. However, as Marx (1972) points out, any given mode of production and consequent system of rule is shot through with antagonisms and contradictions. We would argue, following Negri (1996), that these antagonisms and contradictions manifest as inherent alternatives to the given system of value, mode of production, and system of rule. As Guattari (2005) points out, while it might appear as though the process of subjectification that arises out of a given system of production is seamless, it is, in fact, riddled with fractures and ruptures that point toward alternative sets of social relations not yet realized.

Certainly, the "settler," as a mode of subjectification, deployed by capitalism in the ongoing colonial project, is a case in point. Indeed, we might suggest that the advent of the settler, as a certain subject that acts with genocidal fury in pursuit of absolute appropriation, might be seen as a symptom of the perversion of unconscious desire. Following Deleuze and Guattari (1977), we would define unconscious desire as sheer productive living force. This definition, we would note, is in contradistinction to the more dialectically informed definition of Lacan (1988), who proposes desire as premised in lack. To a degree, we would argue that it is the operation of both forms of desire in capitalism that are in play here. Capitalism, as a system premised in the absolute lack of the purely symbolic, is simultaneously dependent upon the productions of living form responsible for both the brutality and violence of the settler, as well as the ruptures and fractures that may signal an alternate set of relations and forms of subjectivity.

This double mode of desiring subjectification as perversion is characterized by a profound ambivalence in the settler psyche to all things Indigenous. On the one hand the settler fetishizes Indigenous women, masculinities, culture, art, and history, while on the other, he relegates them to the sacrilegious, primitive, barbarian, and demonic. Neither dialectically nor temporally contained, the simultaneity of these two positions creates a psychic impasse in the settler that expresses itself in the most violent and horrific displays of genocide. Indigenous people, land, and culture are produced in the psyche of the settler as the other that is both threat and salvation.

In his work on the excessive brutality and violence perpetuated on Shamanic cultures in Columbia during the colonial period, Michael Taussig (1987) notes that the violence perpetrated by colonists against the Indigenous populations exceeded any necessity for colonial control of the area. Indeed, the degree of genocide was counterproductive to capitalist interests because it reduced the level of the Indigenous labor force needed for rubber production. He suggests that there was a complex interplay of the effects of intra-European colonization and the colonizing activities in Columbia.

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The colonists who were sent to Columbia in the late nineteenth and early twentieth century were often from those classes whose own historical Indigenous practices, beliefs, and modes of life had been subjected to the brutalities of the inquisition of the Catholic church and to the "civilizing" imperatives of the subsequent enlightenment. Caught between the overt violent repression of their own peoples as uncivilized heathens, pagans, and witches and the valorization of rationality and reason in European thought, Taussig suggests that these colonists rejected, through sheer projection, anything considered wild or irrational. He proposes that colonists constructed the Indigenous people of the region as a savage antiself. (5) In a review of Taussig's work, Valter (2008) describes the antiself as, not well-defined and clear-cut, but... swathed in what Taussig calls 'epistemic murk': the colonists worried incessantly about the Wild Man, and this worry infected their imagination with terrible nightmares of Indian attacks, conspiracies, uprising, treachery, etc. It was the unclear, murky nature of the wildness ascribed to Indians in colonial fabulation that gave this wildness such a powerful, obsessing hold on the imagination of the colonists. (para 3)We would argue that this radical repudiation of the wild in one's own psychic, emotional, and spiritual constitution, under the historical conditions of colonial subjectification, expressed itself in a kind of terroristic mob mentality, through which a certain purging of a forbidden self was accomplished through the destruction of the other. (6) However, it is impossible to purge the demon within through the slaughter of the other. The resonances of commonality that drove the terror are, instead, displaced into mythologies of symbolic affiliation. In the case of the rubber plantation colonists, this takes the shape of a profoundly ambivalent relation between colonists and the wildest of the wild: the shamans. In what might well be seen as a nearly psychotic projection of purely imaginary force, the very colonists who sought to slaughter and eliminate any trace of the "savage other" perversely sought healing from shamans of the people they had killed. Not surprisingly, they sought assistance with maladies associated with hauntings from the ghosts of those killed in the genocide. This action, premised in the profound ambivalence of constricting, purging, being haunted by and seeking absolution from one's own antiself, is indeed a mad form of ambivalence. (7) We would suggest that it is just such ambivalence that, in a broader sense, may be the key to understanding the brutality of colonization that exceeds the requirements of land theft or even the logic of capitalism itself. That is not to say that the logic of land theft and the unrelenting appropriation of natural resources was in any way secondary to the psychic ambivalence of the settler project. As we will propose later, land is also subject to a colonial reconfiguration premised in the projective imaginary of the settler. (8) We will argue that a reading of the colonial project as a project of conquest alone does not adequately explain the horrors of colonialism. Instead, we would suggest that a psychoanalytic investigation of the settler imaginary, particularly its appropriations and fetishisms, may provide some avenues for grasping, and hopefully de-potentiating, the ongoing madness of colonial logic. While Freud provided the theoretical foundation for attending to the psychosexual elements at play in fetishism, it is Lacan's expansion of psychoanalytic theory into the realm of linguistics that allows a transversal mapping of sexuality onto the settler unconscious in its colonial mode of ambivalence. FETISH Freud (1905, 1927, 1940) theorizes that a fetish item stood in for a male child's apprehension of a woman's lack of a penis, her castration as understood in the mind of the child. The psychic pain and frustration a male child experiences when he realizes his mother is missing a penis creates a wound that he later attempts to deny. The psychic trauma of this wounding, according to Freud, is rejected and displaced through the adoption of a symbolic substitute. In male perversion, fetish items come to take the place of the missing penis in an effort to reintroduce the mother into the phallic order. For the male child, this complex psychic algebra allows for the completion of the mother. In this way, the fetish item provides a continuation of the joy, excitement, and arousal that was frustrated by lack. Not only does the fetish attempt to overcome lack and reintroduce joy, it attempts to overcome the anxiety caused by the thought of castration. The child can persist in his love for his mother without fear that he will be castrated by his father (as his mother was) for competing with him for the mother. The mother, as lack, introduces the possibility of castration generally and hence the male child's castration in particular. Castration anxiety is therefore being equated with emasculation and emasculation with the feminine or, in another term, the "other." Fetish perversions, by reintroducing the woman into the phallic order, disavows castration--no one can lose their penis--and, more subtly, the differences between the sexes. The fetishist defends against the full force of encounter with the woman by maintaining an imaginary in which the fetish item stands in for the penis. The fetishist holds an ambivalent relation to women in that they are both women and not women simultaneously. Freud described this defensive stance as a split in the male ego that maintains denial and reduces anxiety. Elsewhere we have discussed Freudian denial as constitutive of the settler subject (Kouri & Skott-Myhre, 2016); here we need to move to Lacan to understand the full force of the analysis of fetishism in the ambivalence which characterizes and sustains the ruthlessness of colonialism as we know it. (9) LACAN AND FETISHISM For Lacan, the tables are somewhat reversed. Where Freud saw fetishism as a defense against anxiety based in denial, Lacan (1997) sees it as a pact that establishes an ambivalent bond between the symbolic and the imaginary. In the realm of the symbolic, it is no longer the actual father and his penis that is the force in play. Instead, for Lacan, it is the symbolic Name-of-the Father as the master signifier. Rather than the individual male penis of the father, there is the universal phallus, which is generative not only or even primarily of the individual unconscious but of society itself. In this sense, the individual father with only a penis is always under threat of castration in relation to the phallic register as the father in the form of the state, law, or authoritative other. For Lacan, the symbolic father constitutes the threat of ongoing castration to the actual living father as the imaginary of absolute law and universal definition. Lacan, however, noted that the realm of the phallic as universal signifier can never function fully or seamlessly. The regime of the phallic is always incomplete. This is because there is something that Lacan names jouissance, which describes the lack that escapes the Other. This is the realm of what Lacan calls the Real, that which cannot be symbolized. It is the realm that constitutes the limits of the Other, as it is the limit of the subject itself. This is "exactly what permits the emergence of desire; a desire which is structured around the unending quest for the lost/impossible jouissance. Impossible because if the subject does not have it, neither does the big Other, the socio-symbolic system. Both subjective lack and the lack in the Other are lacks of jouissance. Lost because it is posited as lost, introducing thus the idea that it can be refound" (Bohm and Batta 2008, 353).The fetish as a symptom of symbolic lack then serves to refigure Freud's symptom that speaks an unconscious truth and can disrupt the ego's smooth functioning. Lacan's definition of fetish is the lie that allows the ego to reduce levels of anxiety in the face of an unbearable truth. The truth of absolute lack and the threat of castration is no longer denied but managed by seizing upon an object that facilitates an ambivalent attitude toward the actual relations within the symbolic register. In this, the actuality of the Real as that which eludes capture by the phallic register constitutes a set of relations/subjectivities/systems of value that are ineffable and unable to be articulated within universal signification.

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Lacan (1997) specifically notes woman as the other who does not exist in relation to universal signification. In Deleuze and Guattari's (1977) explication of Lacan, they expand this category of woman as other to what they term the "minoritarian." In their work, minoritarians are those subjects constitutively incapable of belonging within the symbolic registers of the master signifier or phallic register. Such "others" invoke an unconscious founded in the Real rather than the symbolic. These minoritarian others signal the death of the father as a loss of coherent social reason and stand as an ongoing threat to the sovereign rule of the law of the father. The fear and anxiety provoked in subjects inducted into or seeking entrance to the law of the father is derived from the threat to language as a universally understood set of terms and definitions. For what Deleuze and Guattari define as majoritarian subjects, the possibility that language might fail could well result in psychosis and the loss of familiar forms of patriarchal society.

This is the threat of symbolic castration that implies the loss of social order and all the benefits for those who are constituted within the phallic register of the father. The anxiety that one might fall afoul of the father and be cast out is overwhelming and impossible. For those subjects of dubious class affiliation and social standing sent to colonize a world composed almost entirely of subjects and territories that lay outside the phallic register of the phallocentric European State form, this becomes an unbearable threat of excommunication and symbolic castration. The possibility that the settler might fall into the abyss of the Real as unstratified and open desiring production is an unbearable threat of madness.

But it is madness that results--genocidal psychosis on a continental scale. The brutality of the settler, as we have noted above, steps aside and outside the laws and logic of the father. It is the unbearable truth of this violation that requires the fetishizing of the other who was the very object of murder, rape, and theft. The fetish mediates the horrors embedded in the traumatic memory of the violation of all social law. It opens a field of ambivalence that allows for a certain kind of forgetting premised on the appropriation of the symbolic objects of the violated other. This is exactly the case with the settler subject who appropriates Indigenous artifacts while complicit in land theft. And to paraphrase Huey Newton, it is indeed a perverse form of necrophilia.

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CONSTRUCTING THE SETTLER UNCONSCIOUS In the context of Lacanian thought on the role of the fetish, we might well argue that what is at stake in the construction of the settler unconscious as a field of perverse desire is the question of an infinitely deferred master signifier. For the production of the settler as subject requires a narrative of obfuscation and homogenization premised on the "mirror" construction of the colonial "other." As Fanon (2008) points out in Black Skin White Masks, On the basis of Lacan's concept of the mirror stage it would be certainly worthwhile investigating to what extent the imago that the young white boy constructs of his fellow man undergoes an imaginary aggression with the appearance of the black man. Once we have understood the process described by Lacan, there is no longer any doubt that the true "Other" for the white man is and remains the black man, and vice versa. For the white man, however, "the Other" is perceived as a bodily image, absolutely as the non ego, i.e., the unidentifiable, the unassimilable. (139)The "raced other," then, is a fundamental element of the colonial other; and while the relation between race and indigeneity is neither simple or clear cut, within the discursive regimes of colonial phallic logic, it remains a defining template. In her Desiring Whiteness, Seshadri-Crooks (2002) asserts that the templates for race are rooted, as we have noted above, in the issue of sexual difference. In her work, she attempts to demonstrate how "race articulates itself with sex to gain access to desire or lack-the paradoxical guarantee of the subject's sovereignty beyond symbolic determination" (3). While she is clear that there is no equivalent relation between race and sex, there is a complicated resonance related to the way that race holds a relation to the ineffable. The ineffable here might well be understood as the ways in which both race and sex, as modes of subjectification, are produced simultaneously as modes of subjection and sets of alternative liberatory possibility in relation to the phallic as master signifier. This relation, as delineated by Seshadri-Crooks, we would argue, involves the definition of the subject's sovereignty as derived from Hegel's master-slave dialectic and explicated in the work of Simone de Beauvoir. (10) Lloyd (2013) notes that the use of term "sovereign subject" in Beauvoir is not a straightforward appropriation of the term. In the first place, although Beauvoir refers to the sovereign as the masculine and the female as its object, there is a subtler dynamic at play. In Lloyd's reading of the sovereign as master in Beauvoir, he postulates that Hegel had little interest in equating the sovereign with the master. Lloyd attributes this differentiation from Hegel to the influence of Bataille's reading of the sovereign in Beauvoir's work. While the argument Lloyd makes is complex, of particular note to our interests here is the way that the sovereign as master is posited within an understanding of sexual difference. In this context, the sovereign is not powerful as master but has force through the exclusion of the sovereign as an object of fear. For Bataille, societies are held together by what is excluded or sustained as taboo. (11) Lloyd notes that what is taboo is central to what constitutes the sovereign. It consists essentially in the expulsion of certain objects into a region that is impossible to penetrate. These objects have, if you will, the power to send away, or at least keep at a distance, all the individuals who participate in the institution. That is, in essence, not a case of objects consecrated by beliefs or fixed rituals--it is corpses, blood, especially menstrual blood, menstruating women themselves... These objects... are impure and untouchable, and they are sacred. (11)In the set of relations outlined above, the king or sovereign as the representative of the divine as an inaccessible realm is also taboo. In being excluded, the sovereign becomes the unifying element of all that is disparate. In short, the sovereign becomes the master signifier that defies castration by being excluded from difference. This is not the power of the master but power through exclusion and implacable homogeneity. The sovereign force in any given society is then the master signifier that seeks to sustain the homogenous undifferentiated truth. The enemy of the sovereign is the heterogeneous elements of any given social system: those elements that defy homogenous definition. In terms of subjectivity, the exclusion of heterogeneous elements from the homogeneous realm of consciousness formally recalls the exclusion of the elements, described (by psychoanalysis) as unconscious, which censorship excludes from the conscious ego... Taboo and repression are mechanisms of the exclusion of the heterogeneous from the homogeneous realm of consciousness. And eroticism, par excellence, is a matter of taboo and transgression; much of Bataille's studies of eroticism consist of a study of the complementary relationship uniting taboos which reject violence, with acts of transgression which set it free. These counterbalanced urges have a kind of unity "transgression does not deny the taboo but transcends it and completes it." (Lloyd 2013, 14)For us, the question of what constitutes the sovereign subject vis-a-vis Beauvoir is profoundly entangled with the deployment of "whiteness" as a master signifier. This signifier seeks to homogenize the social field by redacting actual cultural difference. It then reconstitutes it within the symbolic register of "whiteness" as equivalent to conscious awareness. It produces living alternative difference as a repressed unconscious of forbidden desire. The relation of all subjects within the social field of colonial relations must submit their living heterogeneous differences, forged over millennia and particular to geographies and historical contingencies, to the subjectifying process of colonial consciousness. In this process, an erotic relation is formed between the elided aspects of those subjects admitted into "whiteness" with the attendant repression of any grief or loss of previous habits of culture, living practice, and the displacement of the lost objects onto those subjects excluded from the realm of the master signifier. This complex construction that produces actual living historical heterogeneity as taboo creates what Bataille calls an "erotic relation" that we described above as fetishistic. The erotic relation is a "complementary relationship uniting taboos which reject violence, with acts of transgression which set it free." (Lloyd 2013, 14) Here we can begin to see how the erotic charge of the other can be transgressed only through actual or symbolic acts of violence that release the trauma of assimilation through the expression of sublimated rage. The use of the fetishized relation to the Indigenous other is an attempt to escape the law of the father as the master signifier. It is the violation of the law that fuels the eroticism of perverse desire in a gambit to produce a subjective sovereignty outside the law of the father, that is to say, outside the realm of symbolic determination. It is a bid to seek anonymity in the other so as to not be accountable to the universal signification of the moral and ethical imperatives of the father. We might then ask, what are the implications for this vanishing into the Indigenous other as a flight from the legacies of genocide? If we follow Fanon (2008) in his explication of the effects of colonial subjective aggression on the others of the colonial project, specifically, Black subjects, then the question of subjective production of settlers in our contemporary period becomes quite troubled. When Fanon cites Lacan's mirror stage in relation to racial identification, we understand that, for the settler, the racialized other resides outside the phallic register of the symbolic. It is an empty space wherein the white settler sees an open subjective territory in which to seek refuge by reconstituting the other as all of us together. In a strange way, putting on a headdress and burning traditional medicine provides settlers a way to reduce the full shock of colonization. However, this time it is not through strict denial but through a joy of transgression, or rather, jouissance. Fetish items, in the Lacanian register, gain an erotic charge specifically because they represent a counterpoint to the socially accepted codes. Where Freud theorized the unconscious as the realm of forbidden desires and overwhelming anxieties, Lacan posed a realm where the unarticulated became charged. The return that promised a jouissance taken during the castration that language imposed. THE FORCE OF THE SYMBOLIC

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As we have seen, the colonial other represents a fundamental unspeakability in the symbolic and imaginary registers of the settler. This has profound consequences for the colonial other as the settler seizes on this as an opportunity to elide the actual materiality of that which can't be articulated in the master tongue. At the symbolic level, this is most clearly demonstrated by the colonist's insistence on renaming the Indigenous people of North America along with every aspect of geography and culture. The capacity of the colonial other to name themselves or to have any overt recognition at the level of the symbolic is absolutely denied. At an imaginary level this takes place through the production of terra nullius, literally, empty land.

Without a doubt, settler colonialism is specifically about land (Tuck and Yang 2012). For nearly four hundred years, European Christians, particularly, white males, made a new home for themselves in the lands of sovereign peoples. These lands are now known as North America. This homemaking took place through the most brutal of processes that included: starvation, the deliberate spread of disease, kidnappings, rape, the burning of sacred objects, and internment camps populated with children stolen from their families called residential schools. The capacity to elude the material actuality of living subjects who inhabited the land requires a rupture in the relation of the symbolic and imaginary of psychotic proportions. The land and the people residing on it must enter a landscape utterly produced by what Said (1985) references, vis-a-vis the Orient, the colonial imagination.

To produce this imaginary landscape of pure potentiality for the settler, what is encountered as material actuality must be reconfigured so as to meet the requirements of the new imaginary. This opens the production of settler subjectivity to a certain kind of, what Brennan terms, a "psychotic fantasy" that conceives of the subject (in our case the settler subject) "as the origin cause and end of knowledge" (cited in Sheshadri-Crooks 2002, 4). This level of foundational denial allows for the settler subject to repress any knowledge the colonial other has of themselves, so that a purely imaginary projection of truly psychotic proportions can come to stand in for the material actuality of genocidal trauma. In this regard, Hardt and Negri (2001) note that the North American Terrain can be imagined as empty only by willfully ignoring the existence of the Native Americans--or really conceiving them as a different order of human being, as subhuman, part of the natural environment. Just as the land must be cleared of rocks in order to farm it, so the terrain must be cleared of native inhabitants. (170)To accomplish the obfuscation of what Foucault (1980) has termed "subjugated knowledge," Indigenous people were fiercely punished for practicing their languages and traditions. Their ecological and spiritual connections to the natural world were subjected to the stratification, nominalization, and territorializations of the imperial code of land management. This articulation of the colonial subject as an indeterminate, ahistorical open signifier allows for the ability to literally colonize everything both symbolically and physically as far as the eye can see.

As Brennan points out, the imaginary process of fixing the other is not only confined to seeing; it also involves naming. More accurately, naming is part of how the other is seen, as well as being part of the way out. In sum, when the master becomes the master, identified with and as a name-shaper, released into and through a cultural linguistic tradition, the master simultaneously directs aggression towards the one who is seen to be pacified. But this leaves the pacified in the position where they are dependent (at least at the level of ego) on the image they receive from the other. (cited in Seshadri-Crooks 2002, 5)This process of naming in order to deny the material actuality of what the settler can see is at the root of the perverse relation of colonial desire. The entire symbolic and imaginary systems of Indigenous people required castration in order to constitute the settler subject. Such castrations, however, do not disappear but enter into the unconscious. In the Freudian reading of the unconscious, denial allows for the production of a new subject, but castration anxiety returns through symptoms of this original repression: the fear of being themselves castrated fuels an unparalleled savagery that maintains the new patriarchal order. Turning to Lacan, however, we have a better analysis of the paradoxical desire to appropriate and possess that which is Indigenous. The colonial other, through castration and the imposition of a new symbolic and imaginary order, becomes the lost joy of the settler, the promise of a presymbolic or preoedipal jouissance.

In contemporary settler societies, the jouissance that the colonial other represents is in a fully fetishized mode, one characterized by ambivalence. The violation of the law of the father that results in the genocidal project of colonialism is buffered by an appropriation of Indigenous symbols and imaginaries. Not that the settler has access to these registers but rather that transgressing the settler's own symbolic order brings a painful intensity. Settler appropriations are telltale signs of fetishisms where the significance of the object is increasingly detached from the signifying system, while the affective charge is intensified. Indigenous art therefore mediates, as fetish, an ambivalent relationship that denies the horror of colonization while producing the object's lost castration as desire. Attempts to possess the other by signifying within the register of the father cannot be sustained, and therefore new atrocities are bound to continue even while Indigenous arts and artifacts are produced on a mass scale as objects of capitalistic value. Similarly, Indigenous ways of knowing and relating to the environment are reproduced in innumerable books while Indigenous people continue to be dispossessed of land for resource extraction. The colonial other, in the psyche of the settler, is pure unconscious abstraction: a denied signifier with no corporeal existence, returning only as a mediator of anxiety and excitement.

THE UNCONSCIOUS WE DESERVE

Felix Guattari (2010) tells us that we have the unconscious we deserve. In our writing here, we have attempted to sketch out the profoundly problematic forces that have constituted the ambivalent psychic relation that has characterized the settler regimes of dominance, subjugation, genocide, and appropriation. We have proposed that the ongoing fetishizing of all things Indigenous by settler subjects is deeply rooted in a psychotic disavowal of a deeply ambivalent historical legacy. At this point in our writing, it is important to note that all three authors are settler subjects. As such we are not attempting to articulate any proposals or theoretical framework that would reflect on or inform Indigenous projects or scholarly work. Our project here is to inform ourselves about ourselves and, in so doing, to make us visible. It is to claim the unconscious we have as our legacy in order to realize the possibility of reconfiguring it to different ends. It is to suggest the possibility of removing the mediating fetishistic defenses we have deployed through the appropriation of the other so as to face more clearly our own relation to the law of the father.

We argue that a reconfiguration of the settler unconscious could not occur in the realm of the symbolic or the imaginary but only through a reversal of the process of the logic that originally produced it. That is to say, this can only occur through a process of reconfiguring the question of sovereignty outside the registers of phallic law. Settler relations with Indigenous peoples cannot continue to be configured through the preexisting universal symbolic patriarchal systems of meaning that are comfortable and familiar to majoritarian subjects.

As we enter the twenty-first century, Canada has engaged in a process to ostensibly address issues of colonization through the Truth and Reconciliation Commission of Canada (TRC). We would argue that this effort is riddled with the problems we have been identifying above. Indeed, we might argue that this effort to remediate the traumatic effects of colonization effectively fetishizes colonial trauma by deferring any material or actual mechanisms of decolonization. As Tuck and Yang (2012) point out, decolonization is not a metaphor and cannot be accomplished through mechanisms such as apology or moderate reformation of government policy toward Native peoples. Decolonization requires the repatriation of Indigenous land and the reestablishment of Indigenous sovereignty.

In our terms, the TRC operates specifically with the logic of phallic law. It appears to be an effort to redress and remediate colonial injustice through inquiry into the residential school system (2015a) and published Calls to Action (2015b), whose agenda advocates closing the gap between Indigenous and non-Indigenous health services and outcomes, increasing health practitioners' cultural competence, and including Elders and traditional healing in education and health service provision.

The TRC has also worked to increase awareness about the residential school system and therefore places the current conditions of Indigenous people into a colonial context. The TRC's Calls to Action, however, falls short of naming the attempted genocide of nations of Indigenous peoples, instead reframing colonization as "cultural genocide" (155). Furthermore, it elaborates a path forward without a word about decolonization as land return, thereby offering reconciliatory roadmaps for Indigenous futures within the neocolonial nation-state. The TRC operates as mediation, which allows the settler state of Canada to sustain its colonial sovereignty. It fetishizes the practice of apology over any actual shift in colonial relations. It perpetuates the process of colonial appropriation and control of Native land and resources through substituting unconscious abstraction for any kind of actual reversal of settler logic. We would argue that settler practitioners have a responsibility to work with other settlers to undo this repressive fantasy and engage in the hard work of land repatriation and equitable sovereign relations.

We would argue that to decolonize in good faith requires relinquishing our addictive relation to the castrating fear of lack. The symbolic is not our progenitor but only our father-in-law. As Ettinger (2006) points out, our common progenitor is the womb, the feminine, the ineffable ecological relation of mutuality, and permeable borders. To remember this as the source of our unconscious productive desire means that we as settlers must be willing to break down. We cannot simultaneously support the system of father law and make no claims to its effects. To hide ourselves from ourselves in psychotic paranoiac projection in the other is an act of moral and ethical cowardice.

Deleuze and Guattari (1977) tell us that the form of unconscious is derived from what they term preconscious social investments. They describe the force of the capitalist unconscious as a kind of antiproduction that is loved by itself for itself. They describe induction into such a system as a deep preconscious investment in the realm of the purely symbolic.

Oh, to be sure, it is not for himself or his children that the capitalist works, but for the immortality of the system. A violence without purpose, a joy, a pure joy in feeling oneself a wheel in the machine, traversed by flows, broken by schizzes. Placing oneself in a position where one is thus traversed, broken, fucked by the socius, looking for the right place where, according to the aims and interests assigned to us, one feels something moving that has neither an interest nor a purpose. A sort of art for art's sake in the libido, a taste for a job well done, each one in his own place, the banker, the cop, the soldier, the technocrat. (346-347)And, of course the settler. Certainly, if we are to see the other as having a material actuality and sovereign status beyond European colonial paradigms of the master-slave dialectic and the law of the symbolic father, then we must repudiate these kinds of preconscious investments by seeking the production of a new kind of unconscious, or perhaps an unconscious we have always had but somehow couldn't locate in our lived role of settler.

Such an unconscious cannot be found in social productions of the system of colonial and capitalist rule. If we wish to desettle, then we can no longer perpetuate the Eurocentric patterns of family, law, sexuality, education, politics, economies, and so on. These forms are not translatable into the necessarily heterogeneous and fluid borders between radically disparate others. We must find new preconscious social investments in new forms of collectivity. As Anne Querrian (2011) points out, Guattari argued that "capitalism relentlessly destroys collectivities and constructs a direct equivalent between individuals" (86). This production of the western individual depotentiates the full force of bodies operating together. For capital, this production isolates the subject and creates it as a space of lack. Lacking the most primordial of relations, the womb is never an individual space but always a space of becoming multiplicity. The womb is a shared space of joint production of both mothers and children (Ettinger 2006). Our collective unconscious and our living force is rooted in this relation and only secondarily articulated in the realm of language or the phallus. But even in the realm of language, capitalism must be assured that our world is defined by universal signifiers that create hierarchies and taxonomies of abstract relations. To rediscover an unconscious adequate to the dismantling of settler identity and, more importantly, settler actions, it is essential that we recognize an ecological collective sociality.

Finally, we as settlers must repudiate all forms of denial. We cannot seek absolution or forgiveness. We are accountable (and not just historically) for our ongoing predations, appropriations, and subjugations of Indigenous peoples. This does not entail a wallowing in shame and guilt. That is an indulgence that no one can afford. We do not need to have conversations in which we "hear" our Indigenous neighbors and where they can "hear" us. We don't need more conferences exploring the rich culture of our Indigenous brothers and sisters. We don't need to erect monuments or placards memorializing horror and genocide.

We do need to enter into serious self-evaluation of everything we can do concretely to materially affect a change in the politics of land and sovereignty in each and every settler state (in our case that is the United States and Canada). This means serious engagements that prioritize reparations, land claims, and the establishment of sovereign relations with nonsettler peoples.

We do not own this land. At best, we are long-term guests who have treated our hosts with appalling savagery. To some degree, the fact that we have not seriously engaged the rampant contradictions and antagonisms of our own European history has led us into deep patterns of psychic malaise with horrific results. It is time we faced our demons and recognize our complicity in taking joy in the system we have built that is destroying us and everything around us. This is our responsibility. As we have noted above, we don't need to educate ourselves about the rich culture of our Indigenous brothers and sisters. This is not because this culture is not worth finding out about but because we are not yet mature enough as a people to recognize the worth of what we are seeing, hearing, and experiencing. We need to first educate ourselves about ourselves as settlers and with some diligence as a people free of an abusive father and neglected mother. Perhaps then we can learn to recognize ourselves within a world of heterogeneous others including our human and more-than-human (12) relatives. Therein lies the possibility that we will cease to desire the other in order to consume them and instead desire the other in order that we might form a world of infinite creativity and love.

### 1NC

Remand CP

#### The United States federal judiciary should decline to protecting the right of federal workers to bargain collectively because the national security rationale provided for sweeping denial of such rights lacks plausibility on the grounds that it ought to avoid abstract issue creation in the presence of significant reliance interests, announce support for the legal modification and remand the issue, grant certiorari and expedited review upon appeal, and declare that judicial precedent requires this process in future cases that involve significant reliance interests.

#### It competes and solves---remanding never mandates the plan but strongly induces lower courts to uphold its legal effect. Empirics prove they’ll comply, forcing the Supreme Court to revalidate the ruling BUT the process shores up reliance interests by promoting adjudicative consistency.

Siegel ’17 [Neil; May 2017; Professor of Law and Political Science at Duke University, Ph.D. in Jurisprudence and Social Policy from the University of California, Berkeley, J.D. from the University of California, Berkeley, M.A. in Economics from Duke University; Vanderbilt Law Review, “Reciprocal Legitimation in the Federal Courts System,” vol. 70]

Much scholarship in law and political science has long understood the U.S. Supreme Court to be the "apex" court in the federal judicial system, and so to relate hierarchically to "lower" federal courts. On that top-down view, exemplified by the work of Alexander Bickel and many subsequent scholars, the Court is the principal, and lower federal courts are its faithful agents. Other scholarship takes a bottom-up approach, viewing lower federal courts as faithless agents or analyzing the "percolation" of issues in those courts before the Court decides. This Article identifies circumstances in which the relationship between the Court and other federal courts is best viewed as neither top-down nor bottom-up, but side-by-side. When the Court intervenes in fierce political conflicts, it may proceed in stages, interacting with other federal courts in a way that is aimed at enhancing its public legitimacy. First, the Court renders a decision that is interpreted as encouraging, but not requiring, other federal courts to expand the scope of its initial ruling. Then, most federal courts do expand the scope of the ruling, relying upon the Court's initial decision as authority for doing so. Finally, the Court responds by invoking those district and circuit court decisions as authority for its own more definitive resolution. That dialectical process, which this Article calls "reciprocal legitimation," was present along the path from Brown v. Board of Education to the unreasoned per curiams, from Baker v. Carr to Reynolds v. Sims, and from United States v. Windsor to Obergefell v. Hodges--as partially captured by Appendix A to the Court's opinion in Obergefell and the opinion's several references to it. This Article identifies the phenomenon of reciprocal legitimation, explains that it may initially be intentional or unintentional, and examines its implications for theories of constitutional change and scholarship in federal courts and judicial politics. Although the Article's primary contribution is descriptive and analytical, it also normatively assesses reciprocal legitimation given the sacrifice of judicial candor that may accompany it. A Coda examines the likelihood and desirability of reciprocal legitimation in response to President Donald Trump's derision of the federal courts as political and so illegitimate.

INTRODUCTION

Given its legal and cultural significance, Obergefell v. Hodges has to be one of the most widely read and discussed Supreme Court decisions in recent memory. 1 Yet judging from the reactions in the law reviews, the casebooks, the blogosphere, the media, and even the dissenting opinions in the case, no one seems to have emphasized a potentially significant feature of the majority opinion. 2 The Court repeatedly implied that it was responding to developments in the federal courts, suggestions that were nothing but the truth. But they were not the whole truth. In all likelihood, the Court itself was partially responsible for causing those developments in United States v. Windsor 3 and its aftermath. 4 What is more, the Court may have intended to cause those developments.

In explaining why it had to decide whether states may prohibit same-sex marriage, the Court in Obergefell pointed to the existence of a circuit conflict. 5 And in holding that same-sex marriage falls within the scope of the fundamental right to marry, the Court made clear that it was adopting the majority view in the federal district and circuit courts--all listed in Appendix A to its opinion. 6 What the Court did not do is acknowledge that all of the federal court rulings in favor of same-sex marriage came after Windsor. Nor did the Court acknowledge that its opinion in Windsor seemed tailor-made to generating a lopsided circuit split in favor of same-sex marriage. The Court in Obergefell seemed to be trying to legitimate its controversial conclusion in part by portraying federal court decisions concerning same-sex marriage as if they were entirely independent of its decision in Windsor, when in all likelihood they were not.

The Court's conduct in Windsor and Obergefell is not sui generis; it is generalizable in at least two ways, one common and the other uncommon. First, the Court often alters judicial precedent, impacts the course of legislation, or affects public opinion and then later cites those changes in support of its own further conclusions. In so acting, the Court often does not acknowledge that it played a role in producing those changes. Second, when the Court takes on issues that deeply divide Americans, it characteristically takes steps to protect its public legitimacy, often in ways that are not fully candid. One way in which it may do so is by interacting dialectically with other federal courts.

The dialectical nature of the Court's interaction with other federal courts in Windsor and Obergefell was also evident (with a notable twist) in the conduct of the Court that decided Brown v. Board of Education, 7 the subsequent federal court decisions that expanded the scope of the Court's holding in Brown to racial segregation in other public settings, and the Court's unreasoned per curiams that validated the expansion. 8 A similar dialectic was present (with an important difference) in the Court's reapportionment decisions, beginning with Baker v. Carr 9 and culminating in Reynolds v. Sims. 10 By contrast, reciprocal legitimation has so far failed to result from the Court's decisions in District of Columbia v. Heller 11 and McDonald v. City of Chicago, 12 although what the Court intended in those decisions is unclear at this point.

The judicial phenomenon that this Article documents and generalizes can be understood as a process of reciprocal legitimation. The process is reciprocal because lower federal courts and the Supreme Court each enlist the support of the other. Specifically, district and circuit courts seek to legitimate their decisions by relying upon an initial Supreme Court decision (e.g., Windsor) as authority for expanding the scope of the decision, and the Supreme Court in a later decision (e.g., Obergefell) seeks to blunt threats to its own legitimacy by invoking those district and circuit court decisions as authority for validating the expansion.

Reciprocal legitimation takes two basic forms: it is either intended by the Court as an original matter, or it is unintended. In a case of intended reciprocal legitimation, such as Brown, the Court first intends for other federal courts to expand the scope of its initial decision and then later relies on those federal court decisions as authority in eventually validating the expansion. In a case of unintended reciprocal legitimation, such as Baker, the Court causes other federal courts to expand the scope of its initial decision without intending that result but nonetheless relies upon those federal court decisions as authority in eventually validating the expansion. This Article, while mindful of the perils of speculation absent internal evidence, will suggest that the Court may have intended reciprocal legitimation in Windsor. If that is correct, it is worth exploring why the Court deemed it desirable to proceed in that fashion. But even if the Court did not intend reciprocal legitimation in Windsor, it set the process in motion, and that process constitutes a potentially important part of how the American constitutional system functions.

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The process of reciprocal legitimation has not previously been recognized. The closest idea to it in the law review literature is Professor Richard Re’s astute observation that federal courts sometimes narrow Supreme Court precedent because of (among other possibilities) signals from the Court that the precedent should be narrowed.13 Re does not suggest, however, that in certain circumstances the Court may invoke the fact of such narrowing as authority for validating it. The analysis that follows has implications for constitutional law scholarship that emphasizes the role of political forces in identifying mechanisms of constitutional change, including Professor Bruce Ackerman’s theory of “constitutional moments,” Professors Jack Balkin and Sanford Levinson’s theory of “partisan entrenchment,” Professor Barry Friedman’s theory of the agency of public opinion in shaping the Court’s decisions, and Professors Robert Post and Reva Siegel’s theory of “democratic constitutionalism.”14 One lesson of recent gay rights litigation is that, to a greater extent than is recognized by any of those theories, constitutional change can be driven not just by political actors, but also by legal elites—by judges. Instead of simply responding to the gestalt or public opinion, judges on different courts may work together to actively shape public opinion through orchestration behind the scenes. This Article also has implications for scholarship in the fields of federal courts and judicial politics. Much of that scholarship either studies the Supreme Court without regard to its relationship to other courts, or else conceives of the Court and other federal courts as relating hierarchically—as principal and faithful agent—and therefore as constituting distinct institutions with different jobs to do. In contrast to such top-down models, other scholarship takes more of a bottom-up approach, either viewing the lower federal courts as unruly agents or analyzing the phenomenon of issue percolation in the lower federal courts before the Supreme Court decides. As already noted, however, another lesson of recent gay rights litigation (and desegregation and reapportionment litigation before it) is that the Court and other federal courts interact dialectically in interesting ways; they are part of the same federal courts system—a system in which lines of communication and influence can run back and forth, not just down or up. If one models that system as consisting of both nodes and links between nodes, the nodes begin to look different—and sometimes appear more, rather than less, alike—when viewed in the light cast by the links. The dialectical, side-by-side model of judicial interactions developed in this Article is distinct from approaches that emphasize either top-down hierarchy or bottom-up resistance or percolation.15 Part I documents the interaction between the Supreme Court and other federal courts beginning in Windsor and culminating in Obergefell. Part II generalizes by explaining that this episode is one instance of two larger judicial phenomena. Part III draws implications for the study of constitutional change and the study of federal courts in law and political science. Part III also identifies extensions of the model to state courts and non-judicial actors and to judicial phenomena like experimentation and learning, which can blend into reciprocal legitimation. This Article is primarily interested in identifying a judicial phenomenon and analyzing its implications, not praising or burying it. Nonetheless, reciprocal legitimation—especially, but not only, its intentional variant—implicates difficult questions about the circumstances in which, and the extent to which, it is permissible for judges to be less than fully candid about what they are doing.16 Accordingly, Part IV normatively assesses the Court’s conduct in Windsor and Obergefell. The Conclusion summarizes the argument, and a Coda suggests that it is reasonable to anticipate—and to defend— reciprocal legitimation in response to President Donald Trump’s repeated attacks on the legitimacy of federal judges who rule against him. Before proceeding, however, two clarifications are in order. First, for the most part this Article conceptualizes “the Court,” not individual Justices, as the relevant unit of analysis, even though it is familiar learning that a collegial court is a “they,” not an “it.” The Article proceeds in that fashion for two reasons. First, it is often impossible to know what recently happened at the level of individual Justices. For example, one suspects that Justice Ginsburg asked Justice Kennedy to include some equality reasoning in the majority opinion in Obergefell, 17 but that is just speculation, and, even if true, it is also speculative whether Kennedy agreed to do so because he thought it was a good suggestion or because he wanted to avoid separate opinions from Justices in the majority. Second, the idea of collective intent is more coherent than is suggested by academic criticism of the concept (often, but not only, when analyzing claims about original intent).18 It sometimes (although not always) makes sense to view the members of an institution or organization as sharing an objective, particularly when the institution is composed of a small number of people.19 Second, where to start a story depends upon one’s purposes in telling it. Just as Brown is not the beginning of the Supreme Court’s dismantling of an apartheid social order in the American South, Windsor is obviously not the beginning of the Court’s gradual insistence that gay people possess constitutional rights that government is required to respect.20 But Windsor is a useful starting point for documenting the reciprocal reliance between the Supreme Court and other federal courts that is the focus of this Article. If the focus were instead on the interactions between the Court and state courts concerning same-sex marriage, a better starting point would be Lawrence v. Texas, 21 including Justice Scalia’s dissent.22 As suggested by Appendix B of the Court’s opinion in Obergefell, and as explored in Part III.C, some state courts began invalidating bans on same-sex marriage after Lawrence. I. AN ACCOUNT OF WINDSOR AND OBERGEFELL A. Federalism as a Way Station As developed elsewhere, the Windsor Court appeared to use “federalism as a way station” by “combining equal protection reasoning with the analytical and rhetorical resources of federalism both to self-consciously lean in the direction of marriage equality and to not yet embrace it entirely.”23 On the one hand—the hand that conceives of federalism as limiting federal power—the Court emphasized that the all-purpose restriction of marriage to opposite-sex couples in the federal Defense of Marriage Act (“DOMA”) was constitutionally suspect because of its extraordinary interference with state control over domestic relations law.24 That reasoning seemed to imply that the states, not the federal government, are authorized to decide who may marry whom. Chief Justice Roberts, in his dissent, so read the majority opinion.25 On the other hand—the hand that used federalism in the service of living constitutionalism and emphasized the equal dignity of gay people—the Court celebrated the minority of states that were allowing same-sex marriage while ignoring the majority that were banning it; qualified its discussion of state control over domestic relations law by stating three times that states must respect constitutional rights; and emphasized (based on DOMA’s title, legislative history, and consequences) that the statute had the purpose, effect, and social meaning of demeaning the dignity of same-sex couples and their children.26 That reasoning seemed to imply that state bans on same-sex marriage are at least as constitutionally problematic as the federal ban at issue in Windsor. Justice Scalia, in his dissent, so read the majority opinion.27 Why did the Court issue such an opinion? As discussed further in the next Section, it is hazardous to speculate about the collective intent of the Justices in the majority absent access to the Court’s internal proceedings. But by resisting any dispositive “equality” or “federalism” interpretation and preserving for itself a certain Delphic obscurity, the Court in Windsor may have intended to generate a circuit conflict: there was something for both sides in the opinion, and the appellate courts were understood by the Court to be ideologically diverse. What is more, the Court may have intended to create a lopsided split in favor of marriage equality: there was much more in the opinion for gay rights advocates to use than their opponents.28 In addition, public opinion was moving with dispatch in favor of same-sex marriage, as the Court surely knew.29 That, of course, is exactly what happened. Federal courts, in invalidating state bans on same-sex marriage, invoked Windsor in two primary ways. (This Article discusses the decisions of the federal circuit courts, not the district courts, both because there are fewer of them and because they are more influential.) First, the Supreme Court in 1972 had held in a one-line summary decision that a state law preventing same-sex couples from marrying did not present a substantial federal question.30 In explaining why that decision, Baker v. Nelson, was no longer controlling, appellate courts invoked the Court’s decision in Windsor, which did not discuss Baker. “[S]ince Windsor was decided,” the U.S. Court of Appeals for the Tenth Circuit reported, “nearly every federal court to have considered the issue—including the district court below—has ruled that Baker does not control.”31 Typical was the reasoning of the U.S. Court of Appeals for the Fourth Circuit, which wrote that “[t]he Supreme Court’s willingness to decide Windsor without mentioning Baker speaks volumes regarding whether Baker remains good law.”32 Second, circuit courts leaned heavily on Windsor in ruling in favor of marriage equality either on substantive due process grounds33 or on equal protection grounds.34 For example, in holding that Virginia’s ban on same-sex marriage violated the fundamental right to marry, the Fourth Circuit reasoned that “Lawrence and Windsor indicate that the choices that individuals make in the context of same-sex relationships enjoy the same constitutional protection as the choices accompanying opposite-sex relationships.”35 And in holding that Idaho’s and Nevada’s bans on same-sex marriage unconstitutionally discriminated on the basis of sexual orientation, the U.S. Court of Appeals for the Ninth Circuit expressly applied heightened scrutiny,36 which it had previously read Windsor to require.37 At the same time, almost every dissenting judge in those cases distinguished Windsor as a federalism decision.38 “In Windsor,” Judge O’Scannlain of the Ninth Circuit observed, “the Court struck down a federal law that intruded on a state’s prerogative to define marriage.”39 “If anything,” he continued, “Windsor’s emphasis on the unprecedented federal intrusion into the states’ authority over domestic relations reaffirms Baker’s conclusion that a state’s definition of marriage presents no ‘substantial federal question.’ ” 40 Along similar lines, Judge Kelly of the Tenth Circuit asserted that “Windsor protected valid same gender, state law marriages based on federalism concerns, as well as Fifth Amendment due process and implied equal protection concerns.”41 “Given an unusual federal intrusion into state authority,” he reasoned, “the Court analyzed the nature, purpose, and effect of the federal law, alert for discrimination of ‘unusual character.’ ” 42 In the wake of those appellate decisions, the Supreme Court further nudged the federal courts in the direction of marriage equality by denying certiorari in all of them.43 The Court also remarkably declined to stay the judgments of courts in subsequent cases that ruled in favor of same-sex marriage.44 From a realist perspective, those last moves made it inconceivable that the Court would subsequently issue a decision effectively un-marrying thousands of couples it had just freed to marry. When the U.S. Court of Appeals for the Sixth Circuit generated the split by reading Windsor as imposing no constitutional limits on the states,45 the Court granted certiorari. In resolving the circuit conflict, the Court in Obergefell listed in Appendix A the many federal court decisions that had addressed state bans on same-sex marriage; it did not acknowledge that those decisions—in contrast to the state legislation and judicial decisions listed in Appendix B—were overwhelmingly decided post-Windsor. 46 Nor did it acknowledge that all of the federal court decisions invalidating state bans were post-Windsor. The Court referenced Appendix A three times in its opinion. It explained that there was both a split that needed resolving47 and a majority view in the circuits that it was adopting.48 The Court largely took itself out of the deliberative interactions it described. For example, in rejecting the argument that it should await further developments before declaring a right to same-sex marriage, the Court detailed the participation of almost every actor but itself in debates over same-sex marriage: The Court portrayed the opinions of the federal courts as having been informed directly or indirectly by the arguments of litigants, lawyers, and society—not in part by the Court itself in Windsor. In sum, the Court in Obergefell invoked the authority of the many federal court decisions that had invalidated state prohibitions on same-sex marriage, which in turn had relied on the Court’s own decision in Windsor. The Court did not disclose the existence of any reciprocal reliance—of any reciprocal legitimation. It instead presented federal court decisions as independent developments to which it was required to respond in order to ensure uniformity in the interpretation of important questions of federal law.50 It is common, although not inevitable, for the Court to invoke the prevailing view in the circuits as confirming its own conclusion—for example, when it rejects the position of an outlier circuit.51 What is different about the phenomenon discussed here is that the Court, through its decision in Windsor, likely played a causal role in determining which view would prevail in the circuits. What is also potentially different is that the Court may have intended to do so. B. A Preliminary Defense of the Account The foregoing interpretation is unlikely to satisfy scholars who are skeptical of claims of subjective judicial intent—and for good reason. Absent “smoking gun” evidence, which is currently unavailable, it is impossible to establish the subjective intent of any—let alone all—of the five members of the Windsor majority. It remains possible that the Court was uncertain about what to do, was simply awaiting further developments and learning, and was pushing its decision off for another day, which came sooner than expected. That interpretation seems unable to account for the extent to which the majority opinion in Windsor leaned in the direction of marriage equality, but perhaps another interpretation can. It matters if the Court in Windsor intended what followed, both because it raises the question of why it acted with such an intent (see Part II.B), and because such an intent may affect a normative assessment of the Court’s conduct (see Part IV). But it also matters that reciprocal legitimation subsequently occurred regardless of the intent of the Windsor majority. That is, even if the Court in Windsor caused subsequent events without intending to do so, other federal courts still invoked its decision as authority for invalidating state bans on same- The foregoing interpretation of events is also unlikely to satisfy empiricists. It is difficult to demonstrate empirically the extent to which the Court’s opinion in Windsor caused the reactions of the federal courts in its wake (just as it is difficult to establish the causal relationship between those reactions and the Court’s opinion in Obergefell). Perhaps the Court and other federal courts were moving independently in response to the same general conception of human rights52 or the same changes in public opinion, which were reflected in the position of the Obama Administration that classifications drawn on the basis of sexual orientation warrant heightened scrutiny.53 Although this Article cannot rule out that possibility, it likely does not tell the whole story. The probable consequences of the Court’s decision in Windsor were predictable—and were predicted—at the time it was decided.54 sex marriage, and the Court in Obergefell still invoked those decisions as authority in validating the result that most federal courts had reached. As Professor Katie Eyer observes, moreover, “[T]he history of gay equality claims in the lower federal courts suggests that such courts may be slower and more hesitant than the Supreme Court to make doctrinal moves responsive to broader shifts in constitutional culture, particularly in the absence of some clear doctrinal signal from the Court itself.”55 Windsor offered such a signal, even if (perhaps by design) it was not an entirely clear one. It was clear enough to embolden willing federal judges to go where they wanted to go—and where, perhaps, their grandchildren wanted them to go. (The fact that those federal judges wanted to decide in favor of marriage equality is what makes the legitimation reciprocal, as opposed to one-sided.) But the Court’s signal was not so clear as to effectively require unwilling federal courts or judges to go there as well. Is it accurate to characterize the Court as involved in persuasion, not compulsion, when it is an authority vis-à-vis the group (other federal courts) with which it is communicating? A skeptic might wonder what kind of communication from the Court would count as persuasion that would not also count as either precedent or strongly worded dicta. Such skepticism draws attention to the important point that hierarchy is always present to a non-trivial extent, and a fuller discussion of the issue must await Part IV.B. For now, it is worth reiterating that the Windsor Court seemed to go out of its way to offer something to both sides in the debate over same-sex marriage, even as it offered more to one side. In addition, there is a difference between a nudge and a shove. The Windsor Court, in essence, offered a nudge. II. TWO GENERALIZATIONS OF THE ACCOUNT Although the short amount of time that elapsed between Windsor and Obergefell may be uncommon and indeed dizzying, little else about the Court’s behavior in those cases is unprecedented. This Part identifies two ways, one common and the other not, in which the Court’s conduct constitutes one instance of more general judicial phenomena. A. Judicial Precedent, Legislative Trends, and Public Opinion

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First, when the Court seeks to alter substantially the course of the law, and even when it has no such conscious intention initially, it may affect the content of potential sources of legal authority—including judicial precedent, legislation trends, and public opinion—only to later invoke those changes in support of more aggressive doctrinal conclusions. For example, the Court in McLaughlin v. Florida justified its invalidation of a state law that punished interracial cohabitation more severely than intraracial cohabitation by citing (among other decisions) Brown v. Board of Education, 56 whose holding a decade earlier the Court had expressly limited to the field of public education.57 Three years later, the Court invoked McLaughlin in striking down anti-miscegenation statutes in Loving v. Virginia. 58 Similarly, the Court in Roper v. Simmons overruled earlier precedent permitting the juvenile death penalty by invoking, among other things, its intervening decision in Atkins v. Virginia, which prohibited the execution of the intellectually disabled.59

Examples of that kind of move abound not just in constitutional law, but also in the field of federal courts. For example, after the Court in Seminole Tribe of Florida v. Florida held that Congress is barred from using most of its Article I powers to override the states’ sovereign immunity from suit in federal court,60 the Court in Alden v. Maine held that, given Seminole Tribe, it would be anomalous to allow Congress to use those same powers to abrogate state immunity in state court.61 Dissenting, Justice Souter called out the Court for bootstrapping its way to an unjustified conclusion:

Using past decisions as authority for further extensions is broader than bootstrapping and is common.63 It is the progression of precedent characteristic of common law constitutionalism.64

When the Court leverages judicial precedent as justification for further expansions, it may seem relatively obvious (although see below) that the Court is responsible for having caused previous changes in the doctrine because the Court is citing itself. Likewise, the Court’s emphasis on reliance interests as one of several considerations in decisions about stare decisis transparently exemplifies the feedback loop discussed here. The Court explained in Planned Parenthood of Southeastern Pennsylvania v. Casey that when it reexamines a previous decision, “its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case.”65 Among other questions, the Court asks “whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation.”66 The Court is thus candid about its own previous role in causing other actors to behave in ways that it is currently taking into account in preserving a particular result.

Another “Casey” factor that the Court considers is changes in the law: “whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine.”67 As justification for overturning precedent, the Court may invoke tensions in the doctrine and countervailing lines of precedent, even though it obviously contributed to those tensions. An example from constitutional law is Lawrence v. Texas. 68 The Court reasoned that “[t]wo principal cases decided after Bowers cast its holding into even more doubt,”69 and proceeded to discuss Casey and Romer v. Evans. 70 An example from the field of federal courts is Monell v. Department of Social Services, 71 which overruled the holding of Monroe v. Pape that municipalities may not be sued under 42 U.S.C. § 1983.72 The Monell Court reasoned in part that “our cases—decided both before and after Monroe . . .—holding school boards liable in § 1983 actions are inconsistent with Monroe,” so that “it can scarcely be said that Monroe is so consistent with the warp and woof of civil rights law as to be beyond question.”73

Again, when the Court invokes its own precedent, it may seem obvious that the Court is relying upon changes that it caused. It may not, however, always be so obvious. One should recall that the Court is a “they,” not an “it,” not just at a particular point in time, but also over time. It may not be apparent to all consumers of its opinions whether the Court is citing a previous Court or the current one.

The Court can have an impact on the course of legislation that is similar to its impact on the course of judicial precedent, and it may subsequently take advantage of that impact without being entirely candid about what is going on. Perhaps the best example is Eighth Amendment jurisprudence, where the Court expressly looks in part to objective indicia of “evolving standards of decency” in order to determine whether a national consensus rejects a particular punishment for a particular crime.74 For example, in holding in Kennedy v. Louisiana that the Constitution categorically prohibits the death penalty for child rape, the Court emphasized that only six states permitted capital punishment for that offense.75 In dissent, Justice Alito charged that “this statistic is a highly unreliable indicator of the views of state lawmakers and their constituents.”76 Dicta in the Court’s decision thirty years earlier in Coker v. Georgia, 77 he explained,

gave state legislators and others good reason to fear that any law permitting the imposition of the death penalty for this crime would meet precisely the fate that has now befallen the Louisiana statute that is currently before us, and this threat strongly discouraged state legislators—regardless of their own values and those of their constituents—from supporting the enactment of such legislation.78

The Court is also characteristically not candid about its previous role in causing legal or social change when it invokes shifts in public opinion. The Court has a history of first affecting public opinion (admittedly, in complex ways79) and then later citing those effects in support of more controversial conclusions. One example is the Court’s notation in Loving of the fourteen states that had repealed their prohibitions on interracial marriage over the previous fifteen years.80 That development was likely affected by the Court’s decisions leading up to, including, and following Brown.

Relatedly, the Court may affect public opinion in ways that it later invokes in order to maintain constitutional commitments it had previously made. An example is the Court’s invocation in Grutter v. Bollinger of a widespread societal commitment to “diversity,”81 an ostensibly non-remedial justification for affirmative action that Justice Powell fashioned in Regents of the University of California v. Bakke82 at a time when universities were expressly defending affirmative action admissions programs on remedial grounds.83 Another example is the Court’s reaffirmation of Miranda v. Arizona84 in Dickerson v. United States. 85 The Court there declared—in a majority opinion by Chief Justice Rehnquist, no previous friend of Miranda—that “Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture.”86

Reciprocal legitimation is like the foregoing phenomena in that the Court invokes changes that it played a part in causing without candidly admitting as much. Reciprocal legitimation is distinct, however, in that it involves a particular kind of relationship that the Court establishes with other federal courts when it perceives threats to its public legitimacy, and so is less common. The next Section documents instances in which the Court forged—or did not forge—such a relationship.

B. Public Legitimacy

There is a second way in which the Court’s conduct in Windsor and Obergefell is generalizable. When the Court intervenes to decide a question on which American constitutional culture is deeply divided, the Court often takes measures to safeguard its public legitimacy.87 Public legitimacy is distinct from legal legitimacy because each “is constituted by its collective acceptance” in the minds of a distinct audience.88 As Professor Richard Fallon has explained, “When legitimacy functions as a legal concept, legitimacy and illegitimacy are gauged by legal norms.”89 “As measured by sociological criteria,” Fallon continues, “the Constitution or a claim of legal authority is legitimate insofar as it is accepted . . . as deserving of respect or obedience—or . . . is otherwise acquiesced in.”90 Public legitimacy turns on whether non-legal actors, including the general public, different regions of the country, and government officials, view judicial decisions as deserving of respect or obedience or otherwise acquiesce in them.91

One way in which the Court may seek to shore up its public legitimacy is by participating in the process of reciprocal legitimation, which may initially be either intentional or unintentional. This Section canvasses a successful instance of intended reciprocal legitimation, a successful instance of unintended reciprocal legitimation, and a recent failure to achieve reciprocal legitimation that may or may not have initially been intended.

Before beginning the case studies, it is important to note that whether the words of a judicial opinion have any particular empirical effect, such as enhancing the public legitimacy of the issuing court, depends upon what Professor J.L. Austin called the perlocutionary force of those words. Austin observed that the perlocutionary force of speech turns on “what we bring about or achieve by saying something, such as convincing, persuading, [or] deterring.”92 The perlocutionary force of a judicial opinion is a matter of contingent causality that depends, among other things, upon how exactly the court speaks. For the Court’s speech to affect its public legitimacy, it is not necessary to assume that the public carefully parses Supreme Court opinions. Rather, it is necessary to assume only that the content of the Court’s opinion is relevant to the perlocutionary effect of its speech. It is no doubt true that the meaning of the Court’s opinions is conveyed to the public in complex, highly mediated ways.

1. The Segregation Cases

The Brown Court sought to protect its public legitimacy in numerous familiar ways. It set the case for re-argument twice, and it expended great efforts to publicly project unanimity even though the Justices were divided. The Court also expressly limited the holding to education (as noted above), did not moralize about a moral issue, and allowed desegregation “with all deliberate speed.”93

The Brown Court took those actions because it was concerned about the extent to which Southern politicians and citizens would comply with federal court orders to desegregate Southern public schools. The Court was less troubled by the prospect that a broader ruling condemning all state-mandated segregation would be unconvincing to legal professionals. Indeed, because purporting to limit Brown’s rationale to education predictably subjected the Court to harsh criticism from legal luminaries,94 the Court was willing to sacrifice a portion of its legal legitimacy in order to shore up its public legitimacy. Reciprocal legitimation concerns threats that the Court may at times perceive to its public legitimacy, not its legal legitimacy. The Brown Court was most concerned about protecting its public legitimacy, as was the Windsor Court when it declined to rule more broadly—say, by holding that discrimination on the basis of sexual orientation triggers heightened scrutiny.95

Brown is an extreme case because the Court perceived that its public legitimacy was under extreme stress. But evidence of similar behavior is discernible in Windsor and Obergefell. As documented in the previous Part, the Court’s opinion in Windsor may have been designed to set in motion the process of reciprocal legitimation, and, in any event, that is what happened: the Court and other federal courts invoked one another as authority in attempting to legitimate a controversial decision in the face of divided public opinion. That strategy is potentially risky for the Court because other federal courts may decline the Court’s invitation. But they also may accept it, as Windsor and Obergefell illustrate.

Notably, the reciprocal legitimation technique is also exemplified (albeit with an important twist) by Brown, the subsequent federal court decisions that expanded the scope of the Court’s holding in Brown to racial segregation in other public settings, and the Court’s per curiams that validated the expansion. As noted, the Court decided Brown in a way that self-consciously did not necessarily condemn all de jure racial segregation, all racial classifications, or all practices of racial subordination.96 During the opinion drafting process, Chief Justice Warren rejected a proposed addition offered by Justice Jackson because Warren “felt it could be interpreted as being directed toward segregation in general, not only in public education.”97 Warren wrote that the Court was limiting the rationale to education even though he clearly knew that the basic issue was much broader, and that the Court was encouraging litigants and federal judges to read it broadly. Among other things, Plessy v. Ferguson, whose reasoning the Court was rejecting, involved segregation in railroad cars.98 And almost immediately after Brown, the Court vacated the judgment of an appellate court that had upheld segregation in municipal recreational facilities and remanded for reconsideration in light of Brown. 99

In short order, many other federal courts leaned on the authority of Brown in expanding the scope of its holding to segregation in other public spaces in Southern life100—for example, public beaches and bathhouses,101 intrastate bus systems,102 and public parks and golf courses.103 In response, the Court leaned on those federal court decisions so heavily that it did not issue opinions and offer its own reasons. Instead, the Court simply affirmed the decisions summarily with citations to Brown, 104 while infamously postponing consideration of the constitutionality of anti-miscegenation laws.105 Fearful that giving reasons or condemning anti-miscegenation statutes so soon after Brown would only make Southern resistance more massive, the Court waited eleven years to speak loudly in Loving. 106 In the interim, the Court’s legitimacy became more secure,107 and so the Court developed sufficient confidence to write per curiam opinions invalidating segregation in various settings.108 Exuding self-confidence in Loving, the Court reinterpreted Brown as having condemned racial classifications that reinforce inferior social status.109

2. The Reapportionment Cases

Another example of reciprocal legitimation, albeit one that was not initially intended, is the reapportionment decisions of the 1960s, which were decided in the shadow of massive resistance to Brown. Prior to the 1960s, many state legislatures were severely malapportioned, with districts of vastly different populations. As cities and suburbs grew in population, election districts were not redrawn to reflect the population changes. For example, fifty thousand people might elect a representative in one district while two hundred and fifty thousand people in another district elected a representative to the same legislature. The same malapportionment problem existed in congressional districts in states across the country.110

Writing in 1946 for the Court in Colegrove v. Green, Justice Frankfurter admonished that “[c]ourts ought not to enter this political thicket” of legislative reapportionment, lest the public legitimacy of the court be imperiled.111 By 1961, his position had not changed, and he attempted to sway Justice Stewart to his side while Baker v. Carr112 was pending before the Court. He wrote to Justice Stewart that judicial intervention threatened to “bring the Court in conflict with political forces and exacerbate political feelings widely throughout the Nation on a larger scale, though not so pathologically, as the Segregation cases have stirred.”113 Justice Frankfurter would later write in dissent in Baker that “[t]he Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction.”114 “Such feeling,” he continued, “must be nourished by the Court’s complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements.”115

Justice Frankfurter failed to persuade Justice Stewart, and the Court forged ahead over Justice Frankfurter’s objections, notwithstanding reasonable concerns that state legislatures or Congress might not comply with federal court orders to reapportion.116 In responding to reapportionment cases, the Court proceeded in stages. First, it held in Baker v. Carr only that reapportionment challenges were justiciable, leaving it to other courts to initially decide whether to insist upon population equality, something close to equality with permissible deviations for sufficient cause, mere rationality, or some other standard.117 In rejecting the applicability of the political question doctrine, Justice Brennan wrote in part for the majority that “[j]udicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.”118 The Solicitor General and counsel for the plaintiffs had urged the Court to adopt a deferential approach.119 At that point, however, the Court was deciding only the question of justiciability.

Although “[s]ome commentators criticized the Court for laying down no more specific guidelines for lower courts to follow,” Professor Gordon Baker, writing in 1966, opined that the Court’s forbearance “may have been a calculated and perceptive move.”120 “By letting state and lower Federal courts tackle the specific problems in particular states,” Baker explained, “the supreme tribunal would be able to gauge the reactions—both political and judicial—before moving farther.”121 He added that the Court “must have been impressed with the ensuing flood of litigation,” as well as with “the alacrity with which many lower court judges moved to correct alleged malapportionments.”122 Political scientist Martin Shapiro was less pleased with the Court, opining that it “has, in a sense, not kept its word to those of its defenders who have relied on the initially limited arguments” and that “[i]t remains to be seen whether or not the tactical advantage gained by its ‘delayed action’ approach will compensate for the Court’s loss of that precious political asset, a reputation for candor.”123

Judging from the inside account of the Court’s deliberations recently offered by Professor J. Gordon Smith, however, the reason the Court decided only the issue of justiciability in Baker appears to have had much to do with unstable internal Court dynamics.124 Justice Brennan initially needed Justice Stewart’s vote in order to secure a majority, and Justice Stewart did not want to decide more than the issue of justiciability. Whatever the reasons for Justice Stewart’s minimalism (among other possibilities, perhaps Justice Frankfurter’s lobbying took a toll), Justice Brennan no longer required Justice Stewart’s vote when Justice Clark changed his mind after unsuccessfully attempting to write a dissent. What is more, Justice Clark expressed willingness to decide not only the issue of justiciability, but also the merits. After talking with Chief Justice Warren, however, Justice Brennan decided not to redraft the majority opinion so late in the term. Perhaps Justice Brennan did not push for a broader ruling at least in part because he perceived strategic advantage in delay— whether because he had intended reciprocal legitimation in mind, or because he did not want to alienate Justice Stewart. It also seems likely, however, that the Court would have issued a broader ruling had Justice Clark initially joined the majority. Moreover, there were not yet five votes for “one person, one vote,”125 so the Court could not then have been proceeding with that ultimate objective in mind.

Whatever the best explanation for the limited nature of the Court’s intervention in Baker, the “short-term response” to it was “nothing short of astonishing.”126 Writing in 1962, Professor Robert McCloskey observed that “not only federal judges, but state judges as well, have taken the inch or so of encouragement offered by the Supreme Court and stretched it out to a mile,” for “legislatures all over the country have been bidden to redistrict or to face the prospect of having the judiciary do the job for them.”127 In all, there were “more than seventy legislative and congressional reapportionment lawsuits filed in forty states in the aftermath of Baker v. Carr.”128 Baker set in motion a process, the next phase of which entailed federal and state judges leaning on its authority in moving toward population equality.

The final phase began when those decisions returned to the Court. Over the next few years, the Court decided the merits of various apportionment scenarios, roughly in order from least controversial to most controversial. In Gray v. Sanders, 129 the Court invalidated Georgia’s primary election law and county unit system.130 Writing for the Court, Justice Douglas declared that “[t]he conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”131 In Wesberry v Sanders, the Court turned its attention to the House of Representatives,132 agreeing with the dissenter on the three-judge district court, who had “relied on Baker v. Carr.”133 In a majority opinion written by Justice Black, the Court held that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.”134

More controversially, in Reynolds v. Sims, the Court expanded the scope of the principle of population equality to state legislative districts.135 The Court held that, “as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.”136 Writing for the Court, Chief Justice Warren observed that “[t]he spate of similar cases filed and decided by lower courts since our decision in Baker amply shows that the problem of state legislative malapportionment is one that is perceived to exist in a large number of the States.”137 The Court added in a footnote that “litigation challenging the constitutionality of state legislative apportionment schemes had been instituted in at least 34 States prior to the end of 1962—within nine months of our decision in Baker v. Carr.”138

The Court in Reynolds v. Sims did not expressly cite numerous federal and state court decisions as authority for its own resolution, as it did in Obergefell. As just noted, however, the Court did lean on federal and state court decisions in documenting the scope of the “problem . . . that is perceived to exist.” The Court did not acknowledge that Baker likely played a role in producing that perception, even as the Court observed that those decisions were rendered after Baker. As Professor Gordon Baker reported, moreover, “the ‘consensus of lower courts’ in moving toward representative equality” was a major theme of oral arguments in reapportionment cases that term.139 Thus, the reapportionment cases appear to be another instance in which the Court intervened in stages and interacted dialectically, not simply hierarchically, with other federal (and state) courts.

In another way, the majority opinion in Reynolds v. Sims quietly sought to ameliorate threats to the Court’s public legitimacy. Chief Justice Warren offered the reassurance that controversies over reapportionment did not simply involve “urban-rural conflicts,” notwithstanding how they “are generally viewed.” This was because “fast-growing suburban areas . . . are probably the most seriously underrepresented in many of our state legislatures,” and because “malapportionment can, and has historically, run in various directions.”140 Those observations were irrelevant to the constitutional question, as Warren acknowledged.141 But he included them anyway.142

#### The plan’s unexpected legal change shatters reliance interests---that cascades, destabilizing the entire edifice of regulatory law.

Bridgens ’21 [Gary; 2021; J.D. from the Antonin Scalia Law School at George Mason University; George Mason Law Review, “Demystifying Reliance Interests in Judicial Review of Regulatory Change,” vol. 29]

Reliance interests cannot be described as a neat set of criteria that are easily identified. Due to their nuance and often-backward-looking nature, reliance interests regularly go unconsidered. However, reliance interests play a rather large role in stabilizing other legal functions and can play a similar role in stabilizing regulatory judicial review. For instance, reliance interests are a well-understood element of “stare decisis,” the legal concept that a court “should adhere to [the] rules [of] its prior decisions.”164 Reliance interests embody the idea that “private parties may . . . shape their behavior around [regulatory and] judicial precedent such that sudden or significant change in . . . applicable legal rules [may] be costly [or] unfair.”165 While it would be reasonable to say that a private actor should expect regulations to change, it is not reasonable that the change should happen under wildly erratic or frequently recurring conditions.166 Accordingly, reliance interests should be understood to protect against changes in rulemakings that, due to their irregular or sudden nature, implicate the unrealized investments of private parties in that regulation.

Perhaps the foremost argument for consideration of reliance interests is that considering the impact of a regulatory action on real stakeholders promotes stability in the law. Individuals and institutions operate around and build upon official representations of the law. That is, “private parties can and do shape their behavior around administrative regulations and adjudicative orders.”167 Generally, private stakeholders are incapable of managing the risk of legal change in a rational and effective manner, as they are unable to inoculate themselves against unforeseeable, broad swings in policy.168 This is particularly true in a hyperactive regulatory environment, where regulated entities expect that they will at least have the opportunity to comply with a regulation, let alone benefit from it over time. Stability in regulation promotes efficiency, transparency, and ensures accountability upon departure from the status quo.169 Judicial consideration of reliance interests thus functions to protect private stakeholders against those regulations that are both sudden and drastically alter the status quo.170 While there may be a time and place for sudden or drastic regulations, regulatory procedures, such as data publishing requirements and the notice-and-comment rulemaking processes, indicate that this sort of agency action ought not be the norm. Regulation, when necessary, should be deliberate and inclusive.

Private actors are not the only stakeholders who rely on legal consistency for efficiency in operational planning. Congress regularly builds upon the legal rules established by judicial interpretations and agency actions,171 such that administrative law can fairly be characterized as a tangled web. This practice is so commonplace that “overruling an established judicial interpretation could, therefore, ‘unsettle a vast cluster of public and private expectations.’”172 This argument applies with equal vigor to hyperactive regulatory change. As more regulations are prematurely altered or rescinded, operating costs and mid-to-long-term planning become more unpredictable, and thus costly.173 Consideration of reliance interests in judicial review of regulatory change would provide important protections against regulations that fail to consider their practical impact on stakeholders and thus contribute to the stability of the regulatory sphere.

Without a common understanding of reliance interests, it will be difficult for courts and agencies to strike an appropriate balance in the application of reliance-interest considerations. This Comment recommends the following definition of reliance interests as it relates to regulatory change: Interests established or entered into by private parties for the purposes of adherence to a rulemaking or attendant requirement, or with an understanding that the rulemaking or attendant requirement would remain law for a period sufficient to justify investment by private parties.174 The interest must have been established in reliance on the rule in question.

This definition of reliance interests accounts for both physical and non-physical investment in dependence on a rule. Understating that reliance-interest review is not dispositive, but rather a reliance interest will be weighted according to its role in a case, it is similarly important to be as inclusive as possible here. Any rule contemplating reliance interests must account for both physical and circumstantial investment. For example, an agency’s assessment should account for the physical investment that must be made by private actors in energy, infrastructure, and in other sectors that are largely capital-intensive. These industries largely involve fixed assets, which must be altered, or their processes adapted, when regulations change.175 Similarly, a reliance-interest definition must capture investment similar to that sustained in Regents.176 Where a regulation has encouraged individuals to invest in a certain way, or has incentivized certain economic behavior, it is reasonable that those individuals should expect to receive the returns on those investments. Accordingly, any reliance-interest assessment must capture these individuals’ reliance interests for consideration by a reviewing court. In sum, a proper understanding of reliance interests considers both the industrial and individual, and the economic and the personal; these are the areas of life most susceptible to a loss of welfare due to hyper-regulatory activity.

B. The Supreme Court and Administrative Agencies Must Demystify Reliance Interests

The issue of unconsidered reliance may be addressed through clear statements from the Supreme Court and dedicated efforts by administrative agencies. This Comment suggests that Courts should establish triggers for consideration of reliance interests, and that agencies should establish commitments to and procedures for accounting for reliance in rulemaking. Further, dedicating CBA resources to reliance considerations will not only enhance the staying power of reliance interests generally but will enhance the usefulness of CBA.

1. The Court Should Establish Triggers for Reliance Consideration

Most importantly, the Court ought to designate triggering circumstances which would require the assessment of reliance interests in judicial review. When the Supreme Court says that it will give weight to reliance interests in cases where rules have engendered them, it should do exactly that. Rather, the Court has eschewed reliance interests at nearly every opportunity, creating a patchwork of decisions which offer little-to-no clarity on how reliance interests will be assessed.177 As such, this Comment proposes that a court should examine, and an agency be required to address, reliance interests in the following cases:

#### A hyper-volatile administrative landscape jumpstarts backlash to containment of emergent technology---extinction.

Li ’25 [Jieli; May 16; Professor of Sociology in the Department of Sociology and Anthropology at Ohio University; Fudan Journal of the Humanities and Social Sciences, “Governing High-Risk Technologies in a Fragmented World: Geopolitical Tensions, Regulatory Gaps, and Institutional Barriers to Global Cooperation,” vol. 18]

The erosion of trust in governance institutions, as explained by Habermas’ concept of the “legitimation crisis,” highlights the growing disconnection between modern governance structures and the public they serve. Habermas (1975) argues that as modern states struggle to maintain security and stability, public confidence in institutional frameworks deteriorates, leading to a crisis of legitimacy. This issue is particularly relevant in the governance of emerging high-risk technologies, where regulatory bodies often fail to keep pace with rapid innovation in fields such as nuclear power, synthetic biology, and artificial intelligence. The growing dependence on expert systems and technocratic governance further distances the public, intensifying concerns over democratic accountability and transparency in the decision-making process (Jasanoff 2011). In this context, global technology governance is caught in a double bind—striving to build public legitimacy and trust while also maintaining the efficiency and technical expertise needed to regulate fast-moving industries. Without inclusive, participatory mechanisms, governance institutions may become detached from the public sphere, leading to heightened skepticism, resistance, and potential regulatory failures.

The growing uncertainty and unpredictability of technological risks align with Beck’s “risk society” thesis, which describes modernity as a system increasingly defined by man-made risks rather than natural ones. Beck (1992, 2009) argues that societies today face systemic and unpredictable risks that arise from technological and industrial developments, many of which go beyond national boundaries. He distinguishes between “voluntary risks” (e.g., workplace hazards) and “involuntary risks” (e.g., large-scale technological disasters and climate change), emphasizing that the latter are becoming harder to control. He asserts that “in advanced modernity, the social production of wealth is systematically accompanied by the social production of risks” (Beck 1992, p. 19). This paradox presents a unique challenge: While technological advancements offer efficiency and progress, they also introduce profound vulnerabilities that are difficult to predict, mitigate, or regulate.

The acceleration of such vulnerabilities in a globalized world, as suggested by Giddens’ “runaway world” thesis, highlights how technological change often outpaces governance structures, leaving regulatory mechanisms struggling to keep up. Giddens (1990, 2003) describes how globalization has intensified risks while simultaneously diminishing the regulatory capacity of national governments. He explores the concept of “disembedding,” wherein traditional social structures are supplanted by abstract systems, leading to an increased reliance on expert knowledge while simultaneously eroding public engagement and trust. This growing detachment complicates regulatory efforts, as governance mechanisms often struggle to keep pace with rapid technological advancements.

Similar to Beck, Giddens argues that modern society is increasingly shaped by “manufactured risks”—threats that emerge from human innovation rather than natural processes. The acceleration of such risks is evident in phenomena like AI-driven disinformation, climate change fueled by industrial emissions, and financial crises triggered by algorithmic trading. Given the inherently global nature of these risks, effective international governance mechanisms are essential. However, their development remains constrained by geopolitical rivalry, economic disparities, and national security concerns, which hinder coordinated responses and the establishment of effective regulatory frameworks.

The instability and unpredictability of global governance structure in the modern world align with Bauman’s concept of “liquid modernity,” which depicts a world where regulatory institutions and governance mechanisms are increasingly fragmented and volatile. Bauman (2000) contrasts “liquid modernity” with the solid and predictable governance structures of the past, arguing that contemporary political and economic institutions are increasingly characterized by instability. This fluidity heightens uncertainty and insecurity, making political, social, and economic conditions more volatile. Bauman’s theory is particularly relevant to the governance of high-risk technologies, where regulatory frameworks are in constant flux in response to technological developments. The rapid progression of AI, biotechnology, and cybersecurity threats exemplifies the challenge of establishing stable governance mechanisms. Cultural shifts, evolving legal standards, and geopolitical uncertainties further complicate efforts to develop consistent global governance strategies.

The inevitability of failures in complex technological systems is central to Perrow’s “normal accidents” theory, which suggests that failures in highly interconnected, tightly coupled systems are unavoidable. Perrow (1984) argues that large-scale technological systems—such as nuclear plants, chemical factories, and air traffic control networks—are inherently vulnerable to unforeseen failures, regardless of safety measures. Despite efforts to design fail-safe mechanisms, complex interdependencies between system components make catastrophic failures inevitable. The 2011 Fukushima nuclear disaster serves as an example of how multiple failures within a tightly coupled system can escalate into large-scale catastrophes, even in the presence of extensive precautionary measures (Perrow 2011). Similarly, the increasing complexity of digital infrastructures—particularly those powered by artificial intelligence—heightens the potential for cascading failures with far-reaching global consequences, including financial crashes and large-scale cybersecurity breaches (World Economic Forum, 2023).

Synthesizing the above theoretical perspectives reveals a common theme: the governance of high-risk technologies is increasingly constrained by complexity, unpredictability, and transnational interdependence. Habermas’ “legitimation crisis” highlights the political dimensions of risk management, illustrating how declining public trust in governance structures complicates regulatory efforts. Beck’s “risk society” underscores the uncertain and pervasive nature of technological risks, emphasizing their global and systemic implications. Giddens’ “runaway world” aligns with Beck’s arguments, demonstrating how globalization accelerates technological change, often outpacing regulatory adaptation. Perrow’s “normal accidents” theory further reinforces this challenge, arguing that failures within highly complex systems are not only inevitable, but also difficult to contain. Meanwhile, Bauman’s “liquid modernity” provides a broader sociological framework for understanding the instability and fluidity that characterize contemporary governance structures, emphasizing their struggle to keep pace with rapid technological transformations.

These theoretical perspectives highlight the urgent need for innovative global governance structures to manage emerging technological risks. Given the deeply interconnected nature of emerging technologies, national policies alone are insufficient for mitigating systemic risks, thereby necessitating coordinated international regulatory responses. As technological advancements continue to accelerate, governance institutions must adapt to the challenges of complexity, unpredictability, and interdependence. In the absence of comprehensive regulatory mechanisms, the risks posed by high-tech innovations may outpace society’s capacity for oversight and control, further deepening the crisis of legitimacy in both national and international governance systems. A forward-thinking, collaborative approach is therefore essential to ensuring that technological progress aligns with societal well-being and long-term global stability.

3 The Catastrophic Potentials of High-Risk Technologies

A defining feature of the “risk society” is the proliferation of high-risk technologies, as modern societies are increasingly shaped by “manufactured risks” and the global threats arising from industrial and scientific progress. Although these advancements have the potential to greatly improve global well-being, they also carry the risk of catastrophic consequences for humanity.

3.1 Nuclear Technology

Nuclear energy has long illustrated the dual-edged nature of high-risk technology—offering clean energy solutions while at the same time presenting severe environmental and public health challenges. Historical nuclear disasters highlight the systemic vulnerabilities of nuclear power. The 1986 Chernobyl disaster remains one of the most catastrophic nuclear accidents in history, releasing widespread radioactive contamination, and leading to long-term health crises, environmental devastation, and mass displacement (Medvedev 1990; Plokhy 2018). Similarly, the 2011 Fukushima Daiichi nuclear disaster demonstrated how technological failures, compounded by natural disasters, can have far-reaching transnational consequences (Funabashi & Kitazawa 2012). The radiation contamination from Fukushima impacted not only Japan, but also neighboring countries, disrupting global food supplies and trade networks (Madigan et al. 2012).

Beyond reactor failures, nuclear proliferation remains a critical global security concern. The dual-use nature of nuclear technology—where civilian nuclear energy programs can be diverted for military applications—exacerbates international tensions. The North Korean nuclear crisis and Iran’s uranium enrichment program exemplify the geopolitical instability linked to nuclear governance, as both state and non-state actors pursue nuclear capabilities despite international sanctions (Cirincione 2008). The difficulties in enforcing global nuclear security are further demonstrated by the limitations of non-proliferation frameworks such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which faces ongoing compliance challenges and enforcement difficulties.

3.2 Biotechnology and Genetic Engineering

Advancements in gene-editing technologies, particularly CRISPR-Cas9, have sparked significant ethical, ecological, and security concerns. One of the most controversial incidents occurred in 2018, when Chinese scientist He Jiankui genetically modified twin embryos to confer resistance to HIV (Regalado 2018). This experiment sparked widespread global concern, underscoring the unpredictable long-term consequences and ethical dilemmas associated with human genetic modification (Krimsky 2019).

Beyond human genome editing, gene drives—a groundbreaking biotechnology designed to facilitate the spread of genetic modifications through entire wild populations—introduce serious ecological risks. While gene drives hold promise for controlling disease-carrying insects, they also present unintended environmental consequences. For instance, modifying mosquito populations to reduce malaria transmission could inadvertently disrupt ecosystems and threaten biodiversity (Esvelt & Gemmell 2017). Another pressing issue is genetic pollution, where genetically modified organisms (GMOs) interbreed with wild populations, posing risks to biodiversity and food sovereignty. A notable case is the contamination of native maize varieties in Mexico by genetically modified corn, raising concerns over its impact on traditional agriculture and indigenous food systems (Quist & Chapela 2001; Altieri & Rosset 1999).

Furthermore, the emergence of synthetic biology has introduced new bioterrorism threats. In 2017, Canadian researchers successfully synthesized a smallpox-like virus, demonstrating how engineered pathogens can be recreated using publicly available genetic data (DiEuliis & Giordano 2018). This breakthrough has intensified fears regarding the weaponization of synthetic viruses, as both accidental releases and intentional misuse could lead to global pandemics, reinforcing the urgent need for stronger biosafety regulations (Koblentz 2021; Koblentz & Popescu 2024).

3.3 Quantum Computing

Quantum computing holds transformative potential across sectors such as pharmaceuticals, logistics, climate modeling, and AI, yet it also introduces significant, often overlooked risks. These stem not only from the technology itself, but also from its geopolitical, economic, and ethical ramifications. As with other high-risk technologies, governance is hindered by international fragmentation, regulatory inertia, and strategic competition. A major concern is its capacity to break existing cryptographic systems. Algorithms like Shor’s could render RSA and elliptic curve cryptography obsolete, threatening global digital security and enabling “quantum decryption” of previously secure data (Bernstein & Lange 2017; Mosca 2018). The risk is heightened by “harvest now, decrypt later” tactics and slow adoption of post-quantum cryptography (Kshetri 2021).

Quantum computing could also disrupt financial markets and infrastructure. Algorithms such as Grover’s might be used to manipulate trading systems, speed up AI decision-making, or compromise control systems (National Academies of Sciences, Engineering, and Medicine, 2019). Its dual-use nature raises concerns over arms control and strategic stability, especially as states race for “quantum advantage” in secure communications and nuclear simulation (Zwitter & Hazenberg 2020). Moreover, its environmental and resource demands—cryogenic cooling, rare-earth materials, and complex fabrication—present ecological and supply chain risks. Concentration of development in a few nations and firms may deepen technological divides and undermine global equity.

Most concerning is the unpredictable interaction of quantum systems with other emerging technologies like AI, synthetic biology, or autonomous weapons. These combinations may produce emergent risks, feedback loops, or systemic failures that elude regulation (Zwitter & Hazenberg 2020). These challenges are magnified by the absence of robust international oversight. Ultimately, quantum computing exemplifies the high-risk technology paradox: immense promise matched by peril.

3.4 AI-Driven Risks

Artificial intelligence (AI) has rapidly emerged as one of the most transformative and high-risk technologies, sparking concerns over autonomous warfare, economic instability, and the proliferation of large-scale disinformation. Among the most pressing risks is the development of lethal autonomous weapon systems (LAWS), commonly referred to as “killer robots.” These AI-driven combat drones and robotic warfare systems operate with minimal human oversight, increasing the chances of unintended conflicts and civilian casualties (Russell 2019). The absence of comprehensive international regulations on AI weapons has intensified a global military arms race, further escalating concerns over autonomous warfare (Crootof 2016). Beyond military applications, AI also presents significant economic risks. The 2010 US stock market flash crash exemplifies how high-frequency trading algorithms can trigger severe financial disruptions within milliseconds, wiping out billions of dollars in market value (MacKenzie 2018).

Additionally, AI-generated disinformation, particularly through deepfake technology, presents a significant threat to democratic institutions and public trust. AI-powered deepfakes have been weaponized to manipulate elections, incite social unrest, and undermine political processes by fabricating convincing but false narratives (Chesney & Citron 2019). These highly sophisticated digital forgeries blur the line between reality and misinformation, making it increasingly difficult for the public, policymakers, and media to distinguish fact from fiction. Furthermore, as AI-driven disinformation tactics evolve, they contribute to the emerging risk of virtual societal warfare, where state and non-state actors exploit digital ecosystems to manipulate perceptions, sow division, and erode institutional credibility in a rapidly shifting information landscape (Mazarr et al. 2019). Without effective countermeasures, including advanced detection technologies, legal frameworks, and public awareness initiatives, AI-powered disinformation could further destabilize democratic governance and global security. With increasing concerns over AI-driven cyber threats, international cooperation on data governance will be essential in mitigating the risks associated with large-scale digital surveillance and cyber warfare.

These challenges reflect Giddens’ “runaway world” thesis, which argues that technological advancements evolve faster than regulatory frameworks can adapt, resulting in systemic vulnerabilities (Giddens 2003). Perhaps the most extreme AI-related risk, as highlighted by Bostrom (2014), is the potential for an AI “takeover,” where highly advanced AI systems surpass human control, misalign with human values, and make autonomous decisions that could pose existential threats to humanity and jeopardize human survival.

### 1NC

#### The United States federal government:

#### ---not exercise its authority to cancel previously appropriated funding;

#### ---release the Epstein files;

#### ---pass a continuing resolution.

#### Seven Democratic Senators should vote in favor of any continuing resolution that enjoys unanimous support from Republican Senators.

#### Stopgap resolution passes now because of historically unprecedented political incentives BUT it’s fragile, hinging on party coordination.

Hill ’9-22 [Meredith; September 22; Senior Congressional Reporter, B.A. in Journalism from the University of Wisconsin; POLITICO, “Tables turn for Democrats as they use shutdown for leverage,” https://www.politico.com/news/2025/09/22/democrats-shutdown-leverage-00574029]

It’s Republicans who are pushing a “clean” seven-week continuing resolution, which they say will buy time for more negotiations on full-year spending bills and possibly an extension of expiring health insurance subsidies. Democrats, meanwhile, wrote an alternative four-week punt that tacks on a laundry list of other demands, including a permanent extension of the insurance subsidies.

Conservative Republicans who have balked at past stopgaps have signed on to their party’s strategy, as have Democrats who have traditionally been most loath to flirt with shutdowns — such as the Washington-area members who represent federal workers who stand to be furloughed.

“My brain’s falling out of my head,” Rep. Rich McCormick (R-Ga.) said in an interview. ”When you talk about the Freedom Caucus talking about passing a CR and the Democrats saying, ‘I’m going to shut down the government.’ I’ve never seen anything so weird in my life.”

There are myriad reasons for the current moment’s Bizarro World politics, but the biggest is a transformation of incentives. Where Republicans have spent most of the past 15 years heeding the wishes of a party base spoiling for a fight, damn the consequences, it’s now Democrats in that position. The GOP, meanwhile, is in lockstep behind President Donald Trump, who is determined to corner his opposition.

The current situation, in fact, is a nearly precise inversion of the standoff seen in the fall of 2013, when conservative Republicans led by Sen. Ted Cruz of Texas sparked a shutdown over a demand to reverse Democrats’ signature health care law, the Affordable Care Act. They backed down after 17 days.

“It did not work for them,” House Appropriations Chair Tom Cole (R-Okla.) recalled last week as he reflected on how Democrats are now seeking a reversal of parts of the GOP’s own signature legislation — health care provisions in the domestic policy bill the party passed in July. Democrats also want to extend the enhanced ACA subsidies that expire at the end of this year.

“They tied something unrelated to spending, Obamacare, and shut down the government,” Cole added. “That was the wrong thing to do then. … You are doing the same thing now. It’s nothing else.”

Democrats at the time insisted that any funding bill stay free of policy provisions. Then-Majority Leader Harry Reid at the time cast the choice for the GOP as “whether to pass the Senate’s clean CR or force a Republican government shutdown.”

They said much the same when they had majorities under President Joe Biden. According to statistics that have been circulated by Senate Republicans this month, Congress complied by passing 13 clean funding stopgaps in that four-year stretch.

Pressed on the turning of the tables, Senate Minority Leader Chuck Schumer on Friday insisted there was an articulable distinction.

“What’s different? They were taking something away,” he told reporters. “We’re trying to restore something that they took away. It’s a world of difference when you’re trying to do some good for people rather than doing negative stuff for people.”

It’s not just Democrats who have had to confront a tactical 180 in the current fight. Facing grumbling from the right flank of his conference, Speaker Mike Johnson vowed last year to never pass another continuing resolution to fund the government. On Friday, he muscled through the second GOP-backed stopgap of 2025.

One House Republican described a closed-door conference meeting last week like being in “The Twilight Zone,” as several hard-liners who once opposed continuing resolutions as preludes to bloated, opaque omnibus spending bills voiced support for a short-term punt.

Among those who spoke up was Rep. Scott Perry (R-Pa.), a former House Freedom Caucus chair, and Rep. Jim Jordan (R-Ohio), a co-founder of the hard-right group who used to push for shutdowns but now urged his colleagues to “send Chuck Schumer a clean CR.”

The key difference this time is Trump, who publicly backed both GOP-led stopgaps this year. It’s also helped that his budget director, Russ Vought, has delighted conservatives by seeking to formally rescind or simply not spend money Congress has previously appropriated. Democrats are now seeking a prohibition on those moves in the current standoff.

“There’s nothing clean about the administration undermining Congress,” Rep. Mike Levin (D-Calif.) said.

Last week, Democrats were mainly fuming about Trump’s comments that GOP leaders shouldn’t “even bother dealing with” them. On Friday, he predicted “it could very well end up with a closed country for a period of time.” A day later, after top Democratic leaders demanded a meeting, he said he would “love to meet with them, but I don’t think it’s going to have any impact.”

“Donald Trump told them, ‘Don’t talk to the Democrats,’ and so they didn’t,” Rep. Bennie Thompson (D-Miss.) said. “He wanted a clean CR, and he got it on the House side. I’m not sure what he’ll get in the Senate.”

Trump’s comments fueled partisan tensions that spilled into plain sight Friday with Schumer and Sen. John Barrasso of Wyoming, the No. 2 Republican leader, bickering on the Senate floor.

Barrasso accused Schumer of trying to take funding “hostage,” blocking Schumer’s attempt to claim speaking time to ask a question.

“The reason we are having a shutdown now is you and your leadership refused to talk to Democrats or have any input,” Schumer said in response. “Never a shutdown when we were in the leadership.”

Top Republican leaders are supremely confident that Democrats are holding a losing hand — based in part on the outcomes of past shutdown fights their own party instigated.

“You learn from past experience,” Thune said, responding to a question about the 2013 shutdown. “When you’re the ones who are trying to have a bunch of new stuff, generally, I think you’re the ones who end up getting blamed when there’s a shutdown.”

But Democrats so far have continued to dig in — including those members who have tended to serve as an internal bulwark against brinkmanship. Typically members with constituencies heavy on federal workers have been wary of shutdowns, but even they are dead set on opposing Republicans’ recent Medicaid cuts and securing the insurance subsidy extension.

“Everything they’re doing is designed to protect their dismantling of Medicaid and the health care system, and we made a very emphatic statement that we are going to stand strong,” Rep. Jamie Raskin (D-Md.) said.

GOP leaders believe if Senate Democrats don’t fold right away, they’ll get an earful from constituents when they’re back home this week for the Rosh Hashanah break.

They’re eyeing members such as Virginia Sen. Mark Warner, who has been adamant in public that Republicans will bear the cost of a shutdown. Republicans think Warner, who is seeking reelection next year, is likely to change his tune. “I don’t know if they’ll want to stick it out then,” said one House Republican granted anonymity to speak frankly about party strategy.

But Warner said Friday he was ready to fight, citing “17 million Americans going without health insurance, cancer rates going up dramatically, [the] country visibly sicker with cuts to research.”

“I know the president may not want to acknowledge checks and balances,” Warner said. But “he can’t do this with Republican-only votes.”

#### Labor reform blows up Congress---opposition, filibuster, AND empirics.

Levin ’22 [Andy and Colton Puckett; March; American attorney and politician, representative from Michigan's 9th congressional district; Field Attorney, National Labor Relations Board; Harvard Law Journal, “Labor Law Reform at a Critical Juncture: The Case for Protecting the Right to Organize Act,” vol. 59, no. 1]

D. Past Efforts for Reform

The dire need for pro-worker labor law reform is not new. A 1984 report published by the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor begins simply, “labor law has failed.”88 Yet over the past eighty-six years and counting since the Wagner Act passed, pro-worker reform has remained elusive.

That is not to say there have not been efforts. In 1977, the House of Representatives passed the Labor Reform Act, which, among other things, would have shortened the timeline for union elections (thereby reducing employers’ opportunities to interfere), provided union organizers access to the workplace, and enhanced remedies in cases of anti-union discrimination.89 The bill passed the House of Representatives but died in the Senate after six attempts to overcome a filibuster.90

President Clinton threw his support behind a bill that would have protected striking workers from being replaced permanently, but that bill, too, died in the face of a Senate filibuster.91 President Clinton also created the Commission for the Future of Worker-Management Relations to examine potential reforms.92 Known alternatively as the Dunlop Commission after its chair, John Dunlop, the body deliberated for over a year before releasing a final report.93 The report investigated and recommended new ways for institutions to enhance workplace productivity, changes in collective bargaining to enhance cooperation and reduce conflict and delay, and methods to increase the extent to which workplace problems are resolved by the parties.94 Indeed, a version of many of these recommendations are included in the PRO Act, such as requiring the NLRB to seek injunctions in cases of discrimination during election campaigns, a dispute resolution system to ensure a first contract, and strong standards for defining “employee” and “joint employer” under the NLRA.95 Republicans swept into power in the House after the 1994 elections, and the recommendations in the report were never taken up by Congress.

The most recent attempt at labor law reform before the PRO Act was also the closest to success. While the Employee Free Choice Act (“EFCA”) contained a few provisions similar to those in the PRO Act,96 the centerpiece of the legislation took a decidedly different form by codifying the “card check” procedure for union certification.97 That is, if a union were to present signed authorization cards from the majority of workers in a proposed bargaining unit, the NLRB would be required to certify that union without forcing workers to go through the onerous election process. Although this bill passed the House in 2007, it died in the Senate after a failed vote to overcome the filibuster.98

When President Obama took office with a House majority and, soon after, sixty Democratic votes in the Senate,99 many hoped that the EFCA might become a reality. However, even amongst Democrats, getting sixty votes to support the bill proved difficult and ultimately led to the card check provisions being stripped from the bill.100 Even then, the Senate remained tied up in the debate over the Patient Protection and Affordable Care Act. With Senator Ted Kennedy’s death in August of 2009, and a Republican winning the special election to fill his seat, a host of policy priorities, including the EFCA, were never realized.101

These prior attempts at labor law reform prove two interrelated points: (1) that any pro-worker labor law reform will face significant opposition and be incredibly difficult to pass; and (2) that the filibuster has been, and will continue to be, one of the biggest barriers to achieving reform. What was true in 1977, 1994, and 2007–2010 remain true today. The PRO Act has twice passed the House of Representatives but has not even come up for a vote in the Senate. While it may not guarantee passage,102 eliminating the filibuster would be a monumental step toward progress for workers.

#### Shutdown hamstrings the military---global nuclear war.

Walker ’24 [Gerald; September 16; Ph.D., writer; International Policy Digest, “Congress is Getting Ready to Kneecap the U.S. Military,” https://intpolicydigest.org/congress-is-getting-ready-to-kneecap-the-u-s-military/]

Such a temporary fix would significantly impact various federal agencies, particularly the Department of Defense. The military depends on consistent annual budgets to carry out long-term planning and launch new initiatives. While a six-month CR wouldn’t immediately cripple the U.S. military, it could steadily erode military readiness, delay crucial modernization efforts, and limit America’s ability to respond swiftly to emerging global threats.

Defense Secretary Lloyd Austin has made clear his stance: Congress must avoid relying on a CR and instead pass a full defense budget. In his stark warning, Austin emphasized that the CR would have long-lasting detrimental effects on national security. He called for swift action, stating that approving regular funding for the Pentagon is “the single most important thing that Congress can do to ensure U.S. national security.”

Austin’s warning goes further—he describes the consequences of the stopgap as “devastating” for U.S. military readiness and modernization. In a letter to Congress, Austin outlined his concerns: the CR would hinder essential military training and maintenance, both vital to keeping American forces prepared to respond to global threats at any moment. Worse yet, this delay would severely impact high-priority projects like the Replicator drone program. As China and Russia continue to expand their capabilities, the U.S. military must be equipped with cutting-edge technology in cybersecurity and artificial intelligence. A stopgap measure slows this progress at a perilous moment.

In essence, Austin equated the CR to an effective $6 billion cut from the defense budget, limiting the military’s ability to recruit and retain personnel. It would also disrupt procurement programs, delay shipbuilding and nuclear modernization, and defer maintenance of crucial defense assets like ships and aircraft.

Should Congress proceed with the stopgap, it would temporarily extend government funding at current levels, narrowly averting a shutdown while lawmakers continue to negotiate a full budget. But the repercussions of such a scenario are serious. While essential services would continue functioning, federal agencies, including the DoD, would be forced into a state of limbo, operating on restricted budgets that delay new initiatives, contracts, and even hiring. A CR would grant Congress more time to hammer out a long-term spending bill, but it could also heighten political tensions and risks—especially if the same gridlocks persist. If negotiations falter after six months, the threat of another government shutdown looms.

Under the CR, funding levels are frozen at the previous fiscal year’s allocation. This means new military programs, initiatives, or changes to existing strategies can’t move forward. This stagnation is dangerous. Delays in procuring or modernizing vital defense systems could hamper the military’s ability to stay ahead of global adversaries. Time-sensitive projects, such as nuclear modernization or missile defense, could be indefinitely postponed. While ongoing operations would generally continue, the inability to fund new initiatives or adapt to emergent threats could undermine the flexibility and adaptability that the U.S. military relies on.

Defense projects, particularly large-scale undertakings like constructing aircraft carriers or fighter jets, are multi-year efforts. The stopgap complicates these endeavors, delaying funding and increasing costs as reauthorizations are required down the line. Furthermore, a CR would almost certainly slow down research and development for cutting-edge technologies like artificial intelligence, hypersonic weapons, or cybersecurity innovations—technologies that give the U.S. a strategic edge. Falling behind in these areas risks eroding the military’s advantage, reducing the speed at which the U.S. can deploy new capabilities.

Another consequence: the U.S. military might be restricted in its ability to respond to unexpected global crises. If a new conflict or international threat arises, limited funding could slow or even restrict U.S. military action. This could force the U.S. to scale back its presence in key regions like the Indo-Pacific or Eastern Europe, where a strong military posture is crucial to maintaining deterrence. A diminished or less capable presence could embolden adversaries to take aggressive actions, believing that the U.S. is less prepared to respond.

Global adversaries, including Russia, China, Iran, and North Korea, closely monitor U.S. domestic politics, especially its budgetary struggles. A prolonged CR would signal instability and might encourage these adversaries to test U.S. resolve or exploit perceived weaknesses. For instance, China could ramp up its activities in the South China Sea, or Russia might take more aggressive actions in Eastern Europe, believing the U.S. military’s readiness or political stability has been compromised.

Moreover, U.S. commitments to global alliances, particularly NATO, could be affected if funding uncertainty limits troop deployments, joint exercises, or cooperative defense programs. Allies may begin to question the U.S.’s resolve if they perceive diminished military leadership due to budgetary issues. A weaker U.S. military presence risks undermining the country’s credibility, especially in regions like the Indo-Pacific, where the U.S. presence acts as a counterbalance to China’s rising influence.

### 1NC

#### The United States federal government should strengthen employment protections for firing, expertise, and whistleblowers.

#### It competes. “CBRs” entitle workers to bargain via union.

Su ’15 [Thomas E., James P. Hoffa, C. Sturdivant, Elizabeth Roma, and Richard Edelman; August 13; Acting Administrator, Office of Labor-Management Standards, U.S. Department of Labor; General President, International Brotherhood of Teamsters; Representative, Sheet Metal, Air, Rail and Transportation Workers–United Transportation Union; Attorney, Guerrieri, Clayman, Bartos & Parcelli; Attorney, Mooney, Green, Saindon, Murphy & Welch; U.S. Department of Labor, "Remand Certification Decision for the Sacramento Regional Transit District," in State of California v. United States Department of Labor et al., No. 2:13-cv-02069-KJM-DAD]

The key terms in section 13(c)(2) are "continuation" and "collective bargaining rights." The term "continuation" means "a keeping up or going on without interruption; prolonged and unbroken existence or maintenance." Webster's New World Dictionary of the American Language 319 (college ed. 1962). Thus, "when the transit employees had collective bargaining rights that could be affected by the federal assistance \* \* \* these rights must be 'continued' before assistance will be awarded to the public transit authority." United Transportation Union v. Brock, 815 F.2d 1562, 1564-65 (D.C. Cir. 1987). The phrase "collective bargaining rights" refers to employees' right to designate a representative and to bargain collectively through that representative with the employer with respect to wages, hours, and other conditions of employment. See 29 U.S.C. § 158(d); Allied Chemical and Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 164 (1971); cf. State of California v. Taylor, 353 U.S. 553, 560 (1957) (under Railway Labor Act, "Effective collective bargaining has been generally conceded to include the right of the representatives of the unit to be consulted and to bargain about the exceptional as well as the routine rates, rules, and working conditions") . "Collective bargaining rights" are therefore not substantive terms of collective bargaining agreements. Instead, the phrase refers to a process that was universally understood in 1964, and now, "to require, at a minimum, good faith negotiations, to a point of impasse, if necessary, over wages, hours and other terms and conditions of employment." Donovan, 767 F.2d at 159.

#### The counterplan restores employment protections, but it doesn’t give federal workers the right to unionize.

Stone ’92 [Katherine Van Wezel; 1992; Professor at Cornell Law School and the Cornell School of Industrial and Labor Relations; The University of Chicago Law Review; “The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and the New Deal Collective Bargaining System,” vol. 59]

With the old system of collective bargaining fading away, something new is emerging to take its place. In the past decade, state legislatures and courts have created a plethora of new employment rights for individual workers—rights not to be fired abusively, rights for privacy on the job, rights to be free of drug testing, rights to be free of sexual harassment, rights for whistleblowers, and so forth. Paradoxically, these new individual employee rights are emerging just as labor's collective rights are waning. Do these new individual rights signify a fundamental change in the system of legal regulation of employment in this country? Or are they merely an accretion to, or embellishment of, the New Deal system of collective bargaining? This question is important if we want to understand what is happening to the law governing labor relations and influence its future course. If the New Deal system of collective bargaining is collapsing, and if a new system is emerging, it is important to recognize that fact, and initiate a public debate about the strengths and weaknesses of the new system, the old system, and others that might be imagined.

There is a plausible argument that the newly emerging individual employment rights are an evolution of the pre-existing system of collective bargaining. After all, the new individual employment rights seem perfectly compatible with the system of collective bargaining. Indeed, they might enhance labor's strength in the workplace by setting a floor above which unions negotiate. They might also strengthen unions by removing the more general issues from the bargaining table, thus permitting unions to focus on those issues of particular concern to each workplace. This more finely-tuned form of bargaining could strengthen loyalty at the local level and thereby create stronger labor organizations. Greater individual employment rights might also remove sources of conflict within unions. Externally imposed employment terms represent tradeoffs made by a legislature or court, rather than by unions-tradeoffs between the young and the old, the black and the white, and so forth. Thus they spare unions the potentially divisive effects of making such decisions themselves.

However, despite the variety of ways in which external employment rights could be benign or even beneficial to organized labor, the rise of individual employment rights has not had that effect. Rather, there is a tension between the new individual employment rights and the New Deal system of collective bargaining, a tension that means, concretely, that organized workers do not share in the benefits of the new employment rights. Examining why this is so will enable us to see that the newly emerging system is a distinct and separate form of legal regulation. And recognizing that reality will enable us to confront the normative issue: What system of legal rules is best suited for regulating employment relations?

#### Collective bargaining makes the government rigid and inflexible, annihilating crisis response. Preserving employment protections prevents arbitrary firings without allowing union obstruction to ossify the executive.

Withe ’25 [Aaron; April 9; CEO of the Freedom Foundation; The Hill, "Trump’s stance on unions is what Roosevelt wanted all along," https://thehill.com/opinion/congress-blog/labor/5237960-trump-executive-order-union-obstruction/]

Franklin Delano Roosevelt — the architect of modern labor law and workers’ rights — wrote in 1937 that collective bargaining does not belong in the public sector.

President Trump’s executive order ending collective bargaining across national security agencies represents a return to Roosevelt’s sensible approach. The order leverages authority granted by Congress through the Civil Service Reform Act of 1978 to ensure critical government functions aren’t hamstrung by union obstruction.

The urgency of this action becomes clear when examining recent history. According to the White House, since January, the Department of Veterans Affairs alone has faced 70 national and local grievances from unions, more than one per day. What’s more, when the Veterans Administration attempted to implement congressionally mandated accountability reforms, unions tried to force the reinstatement of 4,000 employees, many of whom were removed for poor performance or misconduct.

In what alternate universe can private organizations invalidate legislation passed by elected representatives?

Similar stories play out across the federal landscape. According to the Federal Labor Relations Authority, Immigration and Customs Enforcement officials cannot modify cybersecurity policies without first completing time-consuming midterm bargaining with unions.

When vital agencies can’t adapt to emerging threats without union permission, national security is at risk.

Critics will argue the executive order’s definition of national security is too expansive. Unfortunately, modern threats don’t fit neatly into Cold War categories.

Energy security, cybersecurity, pandemic preparedness and economic defense all represent critical vulnerabilities adversaries can exploit. The integrated nature of these threats requires a holistic understanding of national security extending well beyond traditional military concerns.

To be sure, union supporters raise legitimate concerns that deserve serious consideration. Federal workers deserve protection from partisan purges, workplace discrimination and retaliation for whistleblowing. They’re also entitled to reasonable compensation and safe working conditions.

These are values most Americans share, regardless of political affiliation.

But collective bargaining isn’t necessary to secure these protections. Civil service safeguards predate unionization and will remain intact under Trump’s order. Merit principles, anti-discrimination laws and whistleblower statutes continue to shield workers from abuse.

All that changes is the union’s power to dictate operational decisions that elected leadership should control.

America needs a new framework that protects workers without undermining accountability. Some state reforms offer promising models, requiring annual recertification elections for unions, ensuring they maintain worker support. Other states have ended automatic dues deduction while strengthening civil service protections, effectively uncoupling worker rights from union power.

In the months before President Joe Biden left office, his administration renegotiated the collective bargaining agreements of federal agencies such as the Environmental Protection Agency. This move highlights the core problem: When unelected organizations can systematically obstruct policies established by elected leadership, the government becomes less responsive to voters’ needs.

Trump’s executive order, even with its limitations, addresses a longstanding problem in federal governance. The question isn’t whether you support unions or management, but whether you believe the government should prioritize serving citizens over protecting entrenched union interests, regardless of which party controls the White House.

Our government’s effectiveness depends on resolving this tension. We need a federal workforce that combines strong protections for individual employees with the flexibility agencies need to fulfill their missions.

Only then can we achieve what both parties claim to want — a government that works for all Americans.

#### Bureaucratic inflexibility stonewalls environmental deregulation.

Bernhardt ’23 [David; 2023; JD, former Secretary of the Interior, avid hunter and angler; You Report to Me: Accountability for the Failing Administrative State, “Unaccountable Bureaucracy,” Ch. 2]

Insulation of the Civil Service

The civil service reformers envisioned a merit-based, accountable civil service, but the protections against discriminatory firing give managers the impression (and at times the reality) that dismissing a poor-performing federal employee is very difficult, if not impossible. The Merit Systems Protection Board itself has long acknowledged that “many supervisors believe it is simply not worth the effort to attempt to remove federal employees who cannot or will not perform adequately.”8 An Office of Personnel Management study from 1999 concluded that only 8 percent of civil service managers with poor-performing employees even attempted to discipline or fire them. Of those who did, 78 percent reported that their efforts had no effect.9 A recent MSPB survey revealed that few supervisory staff (career or political) were confident they could remove a problem employee if they tried.10

In short, agencies rarely try to fire problematic employees. OPM data for 2020 show that agencies dismissed fewer than four thousand out of 1.6 million tenured civil service employees that year. The federal government now employs an insulated civil service lacking accountability. Federal employees know that dismissing them for all but the worst offenses is prohibitively difficult. One result is that career employees can often pursue their own policy goals without repercussions. The ability of career civil servants to advance their own agendas and frustrate policy initiatives they dislike has been well documented.11

The problem of employees choosing to follow their own policy objectives is exacerbated by the political leanings of the federal bureaucracy. Despite nonpartisan merit hiring, federal employees lean to the left overall, as numerous studies have shown. In 2021, for example, researchers at Northwestern University and the University of California at Berkeley found twice as many registered Democrats as registered Republicans in the civil service. In the Senior Executive Service—the most senior federal managers— registered Democrats outnumbered Republicans by nearly three to one.12 A more recent study by researchers at the University of Pennsylvania and the University of Southern California showed that career federal employees gave political donations predominantly to left-leaning candidates.13

The upshot is that the federal bureaucracy is dominated by ideological liberals who their supervisors believe are almost impossible to fire. I personally believe that the vast majority of these liberal civil servants set aside their policy views to serve their country honorably. I know many career employees who did not agree with President Trump’s policies yet faithfully implemented them. But employees with less integrity could and did work to stymie policies they disagreed with. Simply put, intransigent career employees are a significant impediment to a Republican president’s ability to implement the agenda that he (or she) campaigned on.

James Sherk served with me in the Trump administration, working as a White House advisor. Since he left the White House, he has been the director of the America First Policy Institute’s Center for American Freedom, where I serve as the chair. One of the Center’s projects was interviewing former administration officials to document how career staff interacted with President Trump’s appointees. James reported some of the project’s findings in “Tales from the Swamp,” from which he has permitted me to quote extensively (with minor adjustments in phrasing).14

In 2016, an Asian-American advocacy group asked the Department of Justice (DOJ) to investigate Yale’s and other Ivy League universities’ admissions practices. The advocates suspected racial discrimination against Asian- Americans in violation of the Civil Rights Act. The Educational Opportunities Section (EOS) within the DOJ Civil Rights Division exists to investigate such complaints. However, the complaint languished because EOS career staff did not support the case. Winning would effectively prohibit racial preferences in higher education—racial preferences that they supported.

In 2018, political appointees directed the career deputy who ran the EOS to oversee the Yale investigation and move it along. The career deputy did so, despite philosophically disagreeing with the case. The investigation still took much longer than usual, despite being straightforward. Finally, after two years of investigating, the DOJ uncovered strong evidence of racial discrimination against Caucasians and even stronger evidence of discrimination against Asian-Americans. Political appointees personally drafted a racial discrimination complaint against Yale—a task that junior career lawyers would typically handle.

DOJ then needed to assemble a team to pursue the Yale racial discrimination case. Political appointees asked EOS to provide eight lawyers to work on the case. The career staff refused outright, telling political appointees that none of them would work on it. Political appointees subsequently learned that senior career lawyers warned junior employees not to help the Trump Administration with the case or their careers would suffer. DOJ ultimately had to assemble a team from outside EOS, primarily made up of employees borrowed from the DOJ Civil Division, the U.S. Attorney’s Office in Connecticut (where Yale is located), and the Civil Rights Division’s front office. DOJ had clear evidence of racial discrimination at Yale and a clear legal theory, but no EOS career lawyers would work on the case because it did not support their worldview.

DOJ Civil Rights Division career staff were similarly unwilling to protect conscience rights. The bipartisan Church Amendments broadly prohibit hospitals from forcing nurses to participate in abortions. However, only the Department of Justice can enforce these rights—nurses cannot sue on their own behalf. DOJ Civil Rights Division career staff opposed the Church Amendments and would not work on cases enforcing them. To bring cases enforcing conscience protections, the Trump Administration needed to rely almost entirely on political appointees. Civil Rights Division career staff would not enforce this law that they opposed.

Career NLRB lawyers would only present precedents supporting their preferred case resolution. While they would accurately summarize prior cases, the staff appeared to be—or at least pretended to be—almost incapable of presenting cases that undercut their preferred position. Several NLRB subdivisions never presented arguments supporting the employer’s position— only reasons why the union should prevail. This made evaluating cases very difficult. NLRB political appointees had to do their own research to understand both sides of the legal arguments. Career staff would then fiercely object if political appointees rejected their recommendations. One senior career employee frequently cried when her recommendations were overruled. Unfortunately, this behavior was not atypical. Many other agencies reported that career staff selectively presented only legal precedents that supported their preferred position. A subsequent FOIA request documented NLRB career staff celebrating (over agency emails no less) how their self-described “resistance” had stymied the Trump appointees’ policies.

Department of Education (ED) career staff concealed documents that political appointees wanted to review. Under the Obama Administration, ED alleged that several for-profit colleges were effectively defrauding students. The Department subsequently denied these colleges access to federal student aid. This bankrupted them almost immediately, as they lost significant numbers of students and associated revenues. The schools had no opportunity to defend against these charges before going under. After President Trump took office, political appointees asked to review the evidence that justified this administrative death penalty. Career employees refused to turn over the internal documents. They provided various excuses, such as claiming that they did not have the data anymore or that the people involved had left. However, ED subsequently had to turn over this evidence during a lawsuit. Career employees then promptly produced memos summarizing the Department’s evidence against the for-profit schools. Those memos showed that the Department had a weak case. This intransigence was very frustrating to ED political appointees. ED career staff had precisely the information they were looking for all along, but concealed it until legally required to disclose it.

Career employees in the EPA Office of General Counsel (OGC) routinely failed to keep political appointees informed about significant cases. OGC would have weekly staff meetings about agency litigation. EPA political appointees would subsequently double-check with Department of Justice (DOJ) lawyers and find out the career staff were not providing updates for critical cases. The career employees were not telling political appointees about significant cases EPA was involved in or the legal arguments EPA was making. Staff omissions were so frequent and significant that political appointees resorted to regularly checking PACER to see what was happening.

Career employees at the Department of Labor consistently told political appointees they could not take actions that were in fact within their legal discretion. One career employee repeatedly told political appointees that they could not issue Direct Final Rules (DFR)—a method of issuing rules without going through notice-and-comment proceedings. On the first day of the Biden Administration, DOL used a DFR to rescind internal regulations governing DOL’s rulemaking process. That DFR was signed by a career staffer who repeatedly told Trump political appointees, “you can never do a DFR.”

NLRB career employees “misstated” the dates the agency’s union contract could be reopened for renegotiation. Had political appointees taken their word for it, the deadline would have passed, and they would have been stuck with the contract negotiated under the Obama Administration. Fortunately, they double-checked the contract themselves, found career staff gave them the wrong dates, and reopened the contract.

DOJ sought to protect the rights of girls and young women to compete on a level playing field in high school and college sports. The Civil Rights Division supported parents in Connecticut suing to prevent biological males who identified as women from unfairly competing against girls in track meets and an Idaho law barring biological males from competing against women. The Division’s career staff opposed these efforts, and political appointees performed all related legal work. So while the Civil Rights Division has over 400 lawyers and professional employees, it had only about a dozen lawyers—primarily political appointees—willing to work on certain issues. Political appointees believed these limitations significantly impaired the Division’s effectiveness.

Some career lawyers at the National Labor Relations Board flat-out refused to draft decisions whose conclusions they disagreed with. Political appointees got the impression these career lawyers were almost daring the political appointees to dismiss them. The lawyers made it clear they would then claim the political appointees were not following the law and assert whistleblower protections. The political appointees were indeed seeking to change existing NLRB precedents—but this is well within the NLRB’s authority. Under President Obama, the NLRB overruled a cumulative 4,500 years of existing precedents. Nonetheless, these career lawyers would not write decisions overturning administrative precedents they supported.

A DOL enforcement agency has a subcomponent whose only job is to write regulatory and policy documents. The unit has approximately 10 to 15 career employees at any given time. In the fall of 2017, political appointees requested a status update on a draft proposed rule. The unit had been working on this rule since the start of the Trump Administration. It was a department priority and this unit’s primary responsibility during this period. Career staff reported the draft would not be complete until March 2018. Political appointees asked for the draft before the end of the year. Career staff said that pace was impossibly burdensome and would drive staff to quit. Political appointees subsequently calculated that the staff ’s proposed pace amounted to each career employee writing one line of text per day. Appointees estimated that a competent private-sector lawyer could complete the draft in two to three weeks. Political appointees subsequently gave up on these career staff and wrote many policy documents themselves.

All politically sensitive regulations at the Education Department (ED) had to be written by political appointees. Career employees assigned to produce drafts of these regulations would come back with “completely unusable” drafts that either diverged significantly from Department priorities or would never withstand judicial review. So political appointees had to do it themselves. For example, the Education Department’s Title IX rule (providing due process when students are accused of sexual misconduct) was drafted almost entirely by political appointees. Career involvement served only to preview the arguments that opponents of the rule would eventually make in the courts and the public sphere once the rule was published.

The U.S. Department of Agriculture (USDA) participated in the administration-wide effort to reduce the National Environmental Policy Act (NEPA) regulatory burden. The administration wanted to clarify that the federal government simply guaranteeing a loan is not a “major federal action” subject to a burdensome NEPA review. The Council on Environmental Quality (CEQ) was working on the rule and turned to USDA to write that section. USDA career staff included attorneys and experts who were highly competent and well versed in these issues. But when it came time to draft the rule, these career staff somehow could not produce anything that political appointees thought passed legal muster. Career staff spent 30 days creating unusable work product for an administration priority. Ultimately political appointees had to write the analysis themselves. It took political appointees 10 days to do the work and then turn it over to CEQ. USDA political appointees found it “unbelievable” that capable career employees did such shoddy work.

Senior leaders at the Department of Justice wanted to issue guidance clarifying that the law allowed states that modified voting policies during the COVID-19 pandemic to return to their pre-pandemic practices afterward. Career lawyers in the Civil Rights Division instead argued that federal law makes voting policies a one-way ratchet: once states expand them, they cannot revert to previous practices. Political appointees directed a career attorney to write a memo providing legal justification for the guidance. That career lawyer accepted the assignment. But his memo argued against the policy and said it lacked any legal justification. The project had to be assigned to political appointees, who found solid legal arguments justifying the memo. In a 6-to-3 decision, the Supreme Court subsequently held that federal law does not make voting policies a one-way ratchet—precisely the position the career lawyer said lacked any legal support.

President Trump issued a federal hiring freeze shortly after taking office. A few months later, political appointees at the HHS reviewed several HHS advisory committees’ HR records. They noticed that many committee members initially had starting dates after the hiring freeze. HHS career staff had crossed out the initial hiring dates with a sharpie pen, writing in January 19, 2017, instead—the day before President Trump’s inauguration.

An Interior Department coal plant inspector planned to shut down a mine that employed approximately 30 workers for three months. The mine violated technical Interior protocols, but this paperwork violation did not create any health or safety risks. The mine had the right to appeal and remedy the violation without penalty—keeping the mine open and letting workers keep their incomes through the Thanksgiving and Christmas holidays. Political appointees directed the inspector to allow the mine to stay open while remedying the violation. However, the inspector refused to obey these directives and persisted in driving to the mine to order it to shut down. The inspector only stood down after the Deputy Secretary was patched into a call with the inspector and ordered him to turn his Prius around and let the mine stay open and the workers keep their jobs!

In 2020 the USDA wanted to reinstate regulations reforming the school lunch program. USDA had published regulations in 2018 giving states more flexibility to meet the school lunch program’s nutritional standards. This rule allowed states to serve meals that students would actually want to eat. Opponents sued, and in April 2020 a federal district court judge ruled against USDA on procedural grounds. The court held that the agency had the authority to make those changes but had made mistakes in complying with notice-and-comment requirements.

If a court invalidates a rule for procedural reasons, the agency can bring it back in effect by redoing the rulemaking process and fixing the procedural defect. The first step is to republish the proposal in the Federal Register— this time providing adequate notice of the intended final policy. Putting this notice together is a ministerial task; the agency has previously done almost all the work of creating the rule. It must simply republish that proposal with only a slight modification. The task generally takes only a few days. After the district court ruled against USDA, political appointees directed the Food and Nutrition Service (FNS) to publish a revised notice in the Federal Register. Career FNS staff pretended they did not know how to put the notice together. The task should have been done by the summer. Instead, hostile staff dragged the process out for months. Political appointees were preoccupied with the coronavirus pandemic and did not have the bandwidth to drive the career FNS team. As a result, the notice was not submitted to the Federal Register in time for USDA to redo the regulatory process, and the rule was never issued. FNS career staff ran out the clock on the rulemaking process and killed a policy they opposed.

The same FNS career staff who dragged their feet on this ministerial task rapidly implemented significant policy changes for the Biden Administration. In the first year of the Biden Administration, FNS expanded food stamp benefits by 30 percent while weakening work requirements for able-bodied adults.

A striking example of bureaucratic “resistance” was recently provided by Dr. Deborah Birx, the career bureaucrat who was selected to coordinate the Trump administration’s coronavirus response. In 2022, Dr. Birx published Silent Invasion: The Untold Story of the Trump Administration, Covid-19, and Preventing the Next Pandemic Before It’s Too Late.15 She explains in the book that one duty of the response task force was to draft weekly reports with recommendations for state Covid-mitigation measures. Senior White House staff edited those recommendations before they were released. Dr. Birx writes that she disagreed with the edits, so she applied what she calls a “work- around” to White House review: she deleted every recommendation the White House rejected, but then reinserted the exact same recommendations in less prominent locations in the report.

Dr. Birx actually uses the terms “sleight of hand” and “subterfuge” to describe her method. In brief, the process was “write, submit, revise, hide, resubmit.” She notes that her superiors “never seemed to catch this subterfuge.” Despite her clear understanding that she was asked not to include certain provisions in these documents, she felt free to send out whatever she chose, as long as her superiors did not “catch” it. Dr. Birx’s underhanded actions to advance her own policy views against those of democratically accountable officials—and without elevating her disagreement to a more senior official for resolution—are shameful and epitomize the failure of our current system. Even worse, her public boasting demonstrates just how divorced from our representative system of government the leaders of the civil service have become.

These examples should ring alarm bells for Americans, and a 2018 survey from Monmouth University shows that they have.16 The study found that 60 percent of Americans believe that career federal employees have too much influence over policy. One key reason for career staff ’s outsized influence in policymaking—and for the difficulties faced by the political leadership in dealing with outright hostility—is the protections against removal gained by the civil service over time. These protections have resulted in an entrenched bureaucracy that frequently works for its own purposes and benefit.

#### Energetic deregulation key to energy dominance. Solves energy security, authoritarianism, development, industry, and alliances.

Furchtgott-Roth ’7-18 [Diana; 2025; MPhil economics, Director of the Center for Energy, Climate and Environment; Heritage Foundation, "Why American Energy Dominance Is a Strategic Imperative," https://www.heritage.org/energy/commentary/why-american-energy-dominance-strategic-imperative]

The Trump administration’s energy dominance agenda is not merely an economic policy but a strategic doctrine. Its objectives are clear: 1) to ensure energy independence through the use of domestic fossil fuels and nuclear power; 2) to influence global energy prices; 3) to provide affordable, reliable energy to Americans and our allies; and 4) to reduce dependence on China’s green energy supply chains. These goals reflect a realist approach to energy policy, grounded in national interest and global leverage.

This marks a sharp departure from the Biden administration’s climate-centric energy strategy. In the name of decarbonization, President Biden restricted oil and gas development on federal lands and imposed sweeping regulations across federal agencies to discourage fossil fuel production and infrastructure. The result was higher energy costs for American households and businesses, with negligible effects on global temperatures either now or projected for the end of the 21st century.

These costs have not been evenly distributed. Lower-income Americans, who spend a larger share of their income on energy and food, have borne the brunt. Small businesses and farmers, heavily reliant on transportation and electricity, have also suffered. Meanwhile, the National Electricity Reliability Corporation warned in its December 2024 report of a fragile grid and elevated blackout risks beginning in 2025, particularly in the central and eastern United States.

The value of energy dominance was underscored during the Israeli-Iranian conflict, when oil prices briefly spiked bdevelopy $10 per barrel before stabilizing at $65 a barrel. Markets responded not to the conflict itself, but to expectations of future supply—expectations now anchored by North America’s role as the world’s leading oil and gas producer.

President Trump is advancing this agenda through legislative, executive, and regulatory means. The new One Big Beautiful Bill Act terminates tax credits for electric vehicles and residential clean energy in 2025 and phases out wind and solar subsidies by 2028. This legislation strengthens domestic industry and national security by ensuring that the United States relies on its own energy resources rather than those controlled by Beijing.

Executive orders have opened new areas to oil and gas development, prevented premature power plant closures, and revoked California’s authority to set de facto national vehicle emissions standards. States retain the right to impose their own restrictions, but those choosing to develop their energy resources will benefit from lower costs and enhanced competitiveness in energy-intensive manufacturing.

With 273 billion barrels of technically recoverable crude oil and nearly 3,000 trillion cubic feet of natural gas, the United States possesses resources that enable it to both meet domestic demand and support allies abroad. President Trump’s reversal of the natural gas export ban positions the United States to dominate global energy markets and provides a counterweight to authoritarian energy exporters.

Energy dominance also enhances the United States’ geopolitical leverage. In regions plagued by energy poverty, such as sub-Saharan Africa, Latin America, and South Asia, American energy exports can serve as a tool of diplomacy and development. Lower domestic energy prices will also incentivize companies to expand operations in the United States, facilitating our decoupling from China and revitalizing American manufacturing.

The international implications extend beyond trade. By rejecting the net zero orthodoxy that has gripped Western elites, the United States is setting a new standard. As American growth accelerates under a pro-energy regime, other nations will be forced to reconsider their own policies or risk economic decline. The precedent is clear: when President Reagan slashed the top marginal tax rate in 1986, other developed nations followed suit. In 1988 alone, Britain, Canada, Japan, and New Zealand all enacted significant tax cuts to remain competitive.

Europe’s manufacturing base is already eroding under the weight of net zero mandates. Germany, once an industrial powerhouse, is shedding jobs as climate regulations and cheap Chinese EV imports undermine its auto sector. The lesson is stark: environmental policies that raise costs and empower the Chinese Communist Party are not just economically unsound but strategically dangerous.

The question now is whether the European Union and the U.K. can pivot. If they remain shackled to rigid net zero laws, they risk stagnation, rising unemployment, and growing disparities in living standards compared to a resurgent United States.

Energy dominance is not a slogan—it is a cornerstone of national power. It underpins economic resilience, strengthens alliances, and deters adversaries. In a world where energy is both a commodity and a weapon, the United States cannot afford to cede control to regimes that do not share its values.

By embracing a strategy rooted in abundance, sovereignty, and strategic foresight, the United States is not just powering its economy—it is securing its future and the future of its allies.

#### Energy dominance solves the next world war.

Chang ’25 [Gordon G.; February 12; JD at Cornell; The Hill, "Tariffs or no tariffs, the world wants and needs America’s natural gas," https://thehill.com/opinion/energy-environment/5138106-china-tariff-american-lng/)]

Trump not only understood that increased production made America energy independent, but he also realized that he had a tool to drive energy prices down and deprive bad actors of funds.

“Lower prices meant Iran couldn’t pay for proxy wars against Israel and Russia couldn’t pay for war against Ukraine,” McFarland pointed out, referring to the absence of these conflicts during Trump’s first term. “Arab countries realized they couldn’t count on high oil revenues to fund their budgets, so they sought peace with Israel and signed the Abraham Accords.”

Trump is dusting off this strategy in his new term with his emphasis on opening areas for drilling. He also ended by executive order President Biden’s “pause” on the issuance of permits for new LNG export facilities.

In fact, Trump’s strategy is that of President Ronald Reagan, who worked with Saudi Arabia in particular to reduce commodity prices and starve the Soviet Union of revenue.

“We can save the world again,” said Bass, “but this time by flooding the planet with good ole American LNG: Imagine what would happen if Vladimir Putin and the ayatollahs in Tehran ran out of cash.”

### 1NC

NASA DA

#### Trump’s assault on collective bargaining rights hollows out NASA---that shuts down space exploration.

Foust ’8-29 [Jeff; August 29; Senior Staff Writer, Ph.D. in Planetary Sciences from Massachusetts Institute of Technology; Space News, “White House Moves to Eliminate NASA Unions,” https://spacenews.com/white-house-moves-to-eliminate-nasa-labor-unions/]

WASHINGTON — The White House has moved to eliminate employee unions at NASA, among other agencies, on national security grounds.

In an Aug. 28 executive order, the White House said it was adding several agencies to a list that are exempted from federal collective bargaining rights under the Civil Service Reform Act of 1978. NASA was among the agencies included, along with the National Environmental Satellite, Data, and Information Service within the National Oceanic and Atmospheric Administration.

The order cited a provision of that 1978 act that gives the president the authority to exempt agencies from the protections included in the act if they have “as a primary function intelligence, counterintelligence, investigative, or national security work” and if the act cannot be applied “in a manner consistent with national security requirements and considerations.”

In a fact sheet accompanying the order, the White House argued that NASA’s activities fell under the national security exemption of the act. “NASA develops and operates advanced air and space technologies, like satellite, communications, and propulsion systems, that are critical for U.S. national security,” the fact sheet stated.

Little of what NASA does is generally considered to fall under national security, and the fact sheet did not give any specific examples of technologies developed or operated by NASA that are deemed critical for national security. Moreover, the 1978 act allows the president to exempt just a subdivision of an agency, rather than just the entire agency, if there are cases where part of an agency’s activities would fall under the national security exemption.

According to a NASA document last updated in February, about 53% of NASA’s civil servant workforce was represented by two unions, the International Federation of Professional and Technical Engineers (IFPTE) and the American Federation of Government Employees (AFGE). That percentage predates voluntary buyout and retirements that concluded in July and reduced the agency’s workforce by about 20%.

Most NASA employees who are part of collective bargaining units are affiliated with IFPTE, although AFGE is the larger union overall, representing broad swathes of the federal workforce. IFPTE has locals at NASA Headquarters and the Ames, Glenn, Goddard and Marshall field centers, while AFGE has locals at Goddard, Johnson, Kennedy, Langley and Marshall.

In an Aug. 28 statement, the leadership of IFPTE sharply criticized the executive order, arguing it was part of broader efforts by the Trump administration to strip worker protections.

“Today’s executive order seeks to deny bargaining rights at NASA on a bogus national security rationale, despite long-established unions and bargaining rights for NASA civil servants that extend back to the 1960s,” stated Matt Biggs, president of IFPTE.

“Given that IFPTE is NASA’s largest federal employee union, this is particularly damaging to IFPTE’s NASA locals and members, as well as our members’ work on groundbreaking NASA missions that provide immense scientific value and advance aeronautics and space exploration,” added Gay Henson, secretary-treasurer of the union.

#### Exploration locks in astronomical suffering that outweighs extinction. Externally, secession, civilizational splintering, and alien contact fuel existential intergalactic war.

Kovic ’21 [Marko; February 21; Lecturer at the Kalaidos University of Applied Sciences, Ph.D. in Communication and Media Studies from the University of Zurich; Futures, “Risks of Space Colonization,” vol. 126]

Space colonization is, as I argue in the introduction, a generalized strategy for the mitigation of existential risks: If we manage to establish permanent and sustainable habitats beyond Earth, there is a chance that existential risks would either become less probable or cease to be existential at all because not all proverbial eggs are in the same basket. Given this premise, it is tempting to extrapolate it into real-life policy: If space colonization is a hedge against existential risks, then achieving space colonization capabilities must be our top priority.

The problem with this prioritization strategy is that while it might, on its own, increase the probability of space colonization, it ignores the probabilities of existing existential risks. If we want to create as positive a future for humankind (in the sense of increasing humankind's future moral expected value), then we need to weigh the benefits of achieving space colonization capabilities sooner rather than later against the benefits of reducing existential risks. When we compare the benefits of these two approaches, as Bostrom, 2003, Bostrom, 2013a argues, it quickly becomes obvious that that the benefits of even marginally reducing existential risks over a given time period are probably much greater than the damage of delaying space colonization by that same time period.

A delay of, say, 100 years in colonizing space has a relatively minor negative impact compared to the immense positive impact of even marginally reducing existential risks in the same time frame. If we, for example, adopt the conservative estimate of 1015 total future human lives if humankind goes on to enjoy a colonized long-term future (Greaves & MacAskill, 2019), then reducing overall existential risks by merely 0.0001 (one percent of one percent) has an expected value of 1011, or 100 billion, lives. Even the tiniest reduction in existential risks has therefore an immense positive benefit that easily offsets the positive benefit of achieving space colonization capabilities sooner rather than later. This is almost certainly true even if we take into account the potential contribution of space colonization to mitigating existential risks. Early colonization efforts are unlikely to mitigate existential risks as much as targeted existential risk mitigation strategies because the early stages of colonization are bound to be small in scale and fragile. Early habitats would in effect do next to nothing to mitigate existential risks, so creating those early habitats as quickly as possible would do very little in terms of existential risk mitigation.

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The practical question that arises with this prioritization risk is how inherently limited resources should be spent. Existential risk mitigation is currently somewhat of an academic niche topic that receives limited public and policy attention, except maybe for the issues climate change mitigation and nuclear safety. Space exploration, on the other hand, is an established policy branch. In 2018 alone, governments spent over 70 billion US dollars on their respective space exploration agencies (Government Space Programs, 2019). Of course, not all of that money is directly used for space colonization efforts,6 but space exploration-related public spending is orders of magnitude greater than spending on some important existential risk mitigation areas. For example, the area of AI safety which is concerned with the existential risk posed by artificial intelligence and the prospect of uncontrollable superintelligence is funded only to the tune of around ten million dollars a year, even though it is currently one of the greatest existential risks (Halstead, 2019). 3.2. Speeding up the rate of existential risk creation Achieving space colonization capabilities means obtaining sufficiently advanced technology for venturing beyond Earth and permanently sustaining human life there. In order to achieve that goal, maximizing the pace of technological development seems like an instrumentally desirable goal: The faster we technologically innovate and develop, the higher the probability of obtaining space colonization capabilities. However, the problem with such a technological push is that the increased pace of technological development might also result in an increased pace of existential risk creation. As I argue above in Section 2.1, anthropogenic existential risks correlate with human technological development. All non-natural existential risks are the result of our technological progress, and more technological progress is likely to beget more existential risks. Of course, this should not be misunderstood as a quasi-Luddite argument against all technological progress in general. Scientific and technological progress has made life enormously better and removed tremendous amounts of suffering from the world, to the benefit of current as well as all future generations. However, existential risks are an unprecedented challenge, and the more numerous and probable they are, the more difficult it is to mitigate them in time. In the context of space colonization, this issue is of elevated importance because, as I argue above in Section 3.1, delaying space colonization has an almost imperceptible impact on the long-term future of humankind, whereas existential risks and our attempts at mitigating them (or failing to do so) has an enormous impact. 3.3. Neglecting acute catastrophic risks Humankind is today not only faced with existential, but also with catastrophic risks. The potential damage of catastrophic risks is smaller than that of existential risks, but still not morally negligible. Issues such as (extreme) poverty, the global burden of disease, global animal welfare in farming, and so forth are pressing issues, and they are, in a sense, more acute than existential risks because they are causing enormous moral disvalue right now. The shadow that acute catastrophic risks are casting into the future is not as long as that of existential risks in terms of overall expected disvalue, but in principle, a similar neglect argument as with existential applies in the context of space colonization. Delaying space colonization in favor of mitigating catastrophic risks could in some scenarios yield greater overall moral benefits than achieving space colonization sooner without having mitigated those catastrophic risks. Imagine, for example, a timeline A in which humankind delays space colonization in favor of pursuing a cure against all forms of cancer, and a timeline B in which humankind stresses colonizing space and does not focus on cancer cures. In timeline A, a universal cure is found, and billions of people immediately benefit (they are spared terrible suffering). In addition, all future generations benefit as well. In timeline B, there is no cure, and humankind has started expanding beyond Earth. During the colonization delay in timeline A, billions of people lead much better lives and once humans in timeline A start colonizing space, there is no cancer and the disvalue it creates. In timeline B, however, there would potentially be a colonization-induced population explosion before a cancer cure is eventually developed, which would mean that in timeline B, there is enormous disvalue (the colonizing human population was suffering cancer for a while) that is not offset by the relatively small gain in moral value of achieving space colonization sooner. The case in favor of prioritizing catastrophic risk mitigation and thus accepting delays space colonization is not as strong as in the context of existential risks. The case for catastrophic risk prioritization is contingent on the size of the catastrophic risk in question. It is possible that not all catastrophic risks are grave enough that they warrant delaying space colonization. In general, the argument against neglecting catastrophic risks should not be misunderstood as the cliché argument of “there are more important problems today than space”. The point is explicitly not that mitigating all existing risks should be prioritized over colonizing space, but that some catastrophic risks could create enough future disvalue that delaying space colonization and mitigating them yields the better overall moral outcome. 3.4. Speeding up the rate of catastrophic risk creation Similarly to the risk of speeding up the rate of existential risk creation described in Section 3.2, an increased pace of technological development might result in an increased pace of catastrophic risk creation. This is unsurprising insofar as existential risks can correlate with existential ones. For example, the artificial intelligence family of technologies has created the existential risk of uncontrollable superintelligence, but it has also created catastrophic risks such as unprecedented cybersecurity risks (Brundage et al., 2018) or the prospect of autonomous weapons systems (Gubrud, 2014). An increased pace of catastrophic risk creation is a concern for the same reason as an increased pace in existential risk creation is: The more such risks exist, the more difficult it might be for humankind to adequately mitigate them in time. 4. Aberration risks Aberration risks are risks inadvertently created by space colonization. They are entirely new risks without precedents in human history, and they expand the moral circle of concern (far) beyond humankind. The disvalue that they can create is potentially orders of magnitude greater than the positive value of humankind's future. Fig. 4 is a summary of the specific aberration risks that I focus on. I discuss four specific aberration risks in the subsections that follow; all four of them are existential in nature. 4.1. Unhappy future generations The moral impetus of colonizing space is to increase the probability that all the potential future humans that could live do come into existence. But we do not only want future generations to exist but to live lives that are actually worth living. However, the moral landscape of the far future might turn out to be much blurrier. Imagine, for example, a scenario in which 10 billion people live on Earth, and another 2 billion people live on a terraformed Venus. The people on Earth are living roughly as good lives as we are today, but the Venusians are all categorically suffering: Because the terraforming was not entirely successful, some of the original toxic Venusian atmosphere remained, leading to mild respiratory issues in most of the population. Is this state of affairs preferable to there not being any Venusians at all? On the face of it, yes. After all, the total wellbeing of humankind is much greater with the 2 billion Venusians than without them. Mild respiratory issues in 2 billion people are a nontrivial amount of disvalue, but their existence still seems preferable to their non-existence. Let us imagine a second scenario. There are 10 billion people on Earth living lives that are roughly as good as the lives we are currently living, there are 2 billion people on Venus with chronic respiratory issues, and there are 500 million people on Mars. Unfortunately, given Mars’ inexistent atmosphere and magnetosphere, cosmic radiation is battering the surface, including human habitats. This has led to permanent damage in the Martians’ DNA, resulting in chronic muscular and skeletal disease. As a result, the whole Martian population is collectively suffering from a hereditary and incurable congenital disease. Is this scenario preferable to there being no Mars colony or to there being no colonization at all? On the face of it, the answer is again yes: Even though the lives of the Martians are much less pleasant than the lives of the Earthlings and the Venusians, the Martians are still living lives that are worth living to them. The total amount of wellbeing and happiness of humankind is greater than if there were no Martians at all. In these hypothetical scenarios, we are confronted with two classic problems from population ethics: The so-called repugnant conclusion (Parfit, 2004) and the non-identity problem (Parfit, 2017). The repugnant conclusion is the observation that our intuitive judgement of moral desirability, the increase of total happiness or welfare, is flawed. In our second scenario, the Martians are living fairly terrible lives that might barely be worth living because they are full of suffering. Just because the total amount of happiness or welfare is greater with the Martians than without them does not mean that a world with the chronically suffering Martians is morally desirable. The repugnant conclusion is relevant in the context of space colonization both because of its existential scope as well as its empirical plausibility. Creating habitats that are able to permanently sustain human life is an immense technological challenge, and it is not unrealistic to expect that life beyond Earth will be miserable for quite some time. The non-identity problem is the observation that something is wrong with another common moral intuition. Our Martians live miserable lives, but from their own subjective point of view, that reality is preferable to the alternative of not existing at all. In a sense, no matter how terrible life for the Martians is, no moral harm seems to be done because no person was actively harmed by there being Martians — the Martians are not suffering because someone actively and malevolently hurt them or made them sick; they simply come into existence in their frail, sickly state. This means that if a Martian could choose between existing the way she does and not existing at all, she would almost certainly pick the former. But something is wrong with this conclusion. The Martians are living lives full of suffering, and clearly, this state of affairs is morally undesirable. The concrete problems within scenarios in which the repugnant conclusion and the non-identity problem apply can be described in several ways. For example, if we put moral emphasis on average wellbeing rather than just total wellbeing, we see that the growth of total wellbeing can go hand in hand with a decrease of average wellbeing. This would indicate that something has gone wrong. However, average wellbeing alone might not be a good enough indicator. For example, in an Omelas-like configuration (Le Guin, 1991), it is conceivable that average wellbeing would increase while a small subset of people endures hellish suffering. That is why another approach to understand these problems of population ethics is to not only focus on happiness and wellbeing, but also on the negative side of the utilitarian coin, suffering: If some situation or decision produces a disproportionate amount of suffering compared to wellbeing, that situation is undesirable.7 The repugnant conclusion and the non-identity problem are examples of how many billions of future humans could live considerably worse lives than we do today. That would constitute a moral failure on an existential or near-existential level — humankind would still exist, but the primary result of our expansion beyond Earth would be a gradual erosion of happiness and a gradual accumulation of suffering. 4.2. Eliminating future extraterrestrial value The discussion so far has mostly centered around the moral value of humankind. But in the context of space colonization, the moral reference group is not just humankind. Given the vastness of our galaxy alone, let alone the entire observable universe, the risks of space colonization for beings other than humankind need to be also taken into consideration. This starts with microbial life: Endangering primitive extraterrestrial life through space colonization could destroy immense future moral value. We do not currently know whether life exists (or has ever existed) beyond Earth. But there is some plausibility to the assumption that the development of life is not a once-in-a-universe event. The conditions that presumably gave rise to life on Earth are almost certainly abundant throughout our galaxy, which means that, statistically speaking, primitive microbial life could come into existence relatively often (Chyba & Hand, 2005). If humans engage in space colonization, and if humans come into contact with extraterrestrial life, the extraterrestrial life in question will most likely be microbial in nature. What moral obligations do future human colonizers have towards microbial extraterrestrial life? To make this question more concrete, imagine a colonization scenario in the near future: Humans decide to terraform Mars in order to make it habitable for humans, but doing so would kill all existing species of Martian microbes that were discovered not long before the decision to terraform Mars. Would terraforming Mars be morally acceptable? Microbial life on Earth is non-sentient, and the microbial life on Mars would also, in all likelihood, be non-sentient. If the Martian microbes neither feel anything like happiness nor experience anything like suffering, there are no utilitarian considerations of wellbeing or happiness to be made — humans could neither affect their level of wellbeing nor could they rob them of their capacity for happiness since microbial life forms lack both. However, there is a counterargument to this position: The Martian microbes have the potential to evolve into more complex, sentient and possibly even intelligent life forms. Eradicating them would therefore represent an existential damage, because all the potential future moral value would be lost. If this argument seems abstract, consider the scenario if the microbial life in question was Earth-based: If some extraterrestrial intelligence had eradicated our primitive microbial ancestors, humankind (as well as all other sentient Earth-based life) would never have come to be. A second moral argument in favor of preserving the Martian microbes in our scenario is the argument of intrinsic value (Cockrell & Center for Environmental Philosophy, 2005). According to this position, the moral obligation towards extraterrestrial microbial life is not contingent on its sentience, but on its mere existence: Life in and of itself has a moral value, and by virtue of existing, our Martian microbes have a kind of right to their existence. In addition, and perhaps crucially, we have an obligation to respect that right. This deontological, Kantian view is not concerned with wellbeing and suffering, but instead with rights of and duties towards life. I find the utilitarian view of potential future moral value more useful than the intrinsic value argument, but it is worth mentioning the latter for the sake of completeness. In any case, both moral arguments, the utilitarian view of potential future moral value as well as the deontological intrinsic value argument, suggest that endangering microbial life could be devastatingly wrong. A logical consequence of such considerations would be to adopt a strongly conservationist stance whereby humans refrain from colonizing a potentially large number of viable celestial bodies lest they threaten the microbes that have evolved there (Smith, 2016). Such an approach could limit human expansion to entirely artificial habitats and to biologically completely barren moons and planets. 4.3. Astronomical suffering

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Space colonization means that humans and human actions will spread beyond Earth and possibly cover, relatively speaking, vast areas of the reachable universe. This will potentially create immense positive value, but it also makes possible a form of existential risks that are astronomical in scope and hellish in severity — that are, in other words, orders of magnitude worse than anything humankind has caused or encountered so far. This subset of extreme existential risks is referred to as suffering risks (Tomasik, 2015a).

Suffering risks are risks that are far worse than humankind going extinct or entering permanent moral stagnation because they mean that the suffering that is created through these risks is far greater than all suffering that has existed on Earth so far. There are different vectors of potential astronomical suffering. For example, it is conceivable that future human generations will spread wildlife throughout the colonized space, either inadvertently or actively. Wild animals on Earth generally lead short, miserable lives full of sometimes the most brutal suffering (Tomasik, 2015b). In in the history of Earth, wildlife suffering has not really improved at all, so astronomical wildlife suffering would likely represent a constant source of disvalue.

Another vector for suffering risks are sentient simulations. Given growing computational power, it is conceivable that we will eventually be able to simulate sentience, and as soon as simulated sentience is possible, simulated suffering will be as well. This technological path is not necessarily dependent on space colonization, but a colonizing humankind might have greater capabilities for running such simulations, for example by tapping into the power of stars in different Solar systems. Instances of simulated suffering could create more suffering than has ever occurred in the biological universe, within fractions of a second.

The risk of astronomical suffering is more uncertain than other existential risks, but it is at the same time more severe. At stake is not just humankind's total potential positive future moral value, but disvalue that is decoupled from humankind and is potentially many orders of magnitude greater than all the happiness and wellbeing that could be created by human colonization of space.

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4.4. Creating disvalue by omission The aberration risks I have outline in the previous subsections are all related to active decisions and actions of humankind. But not doing something can also represent an existential risk in some space colonization scenarios. I call this type of risk creating disvalue by omission. One way in which disvalue is created by omission and inaction is related to extraterrestrial sentience and suffering. Given our knowledge of how sentient beings suffer on Earth, it seems plausible to assume that sentient beings beyond Earth also experience suffering. Given this knowledge and given our expected technological future capabilities, we could opt to reduce suffering of sentient beings throughout the parts of the universe we can reach. Not doing so would mean allowing potentially astronomical amounts of suffering to continue existing. This seems morally wrong, since our general moral intuition is that suffering is undesirable and our individual preference for being suffering-free ourselves. Another case in which inaction creates disvalue involves extraterrestrial intelligence. For example, if there are other technologically advanced intelligent civilizations in our galaxy,8 then they are almost certainly faced with similar existential risks as we are today; this is dictated by the causal relationship of technological progress and the emergence of existential risks from that progress. Given this knowledge, humankind seems to have a moral obligation to seek out and help such civilizations, because reducing their existential risks is prima facie at least as morally valuable as reducing our own. A third case of creating disvalue by omission involves extraterrestrial intelligence with misaligned morality. It is possible that advanced extraterrestrial civilizations or extraterrestrial artificial intelligences act according to objectively bad moral principles such as sadistic tendencies. Such a civilization or AI could wreak moral havoc on an astronomical scale. Given this possibility, it can be argued that humankind would need to actively seek out extraterrestrial intelligence and “correct” their morality in order to stop the suffering the intelligence in question is causing or could cause. Even if this is only a remote possibility, the potential positive expected value of stopping such activity would be enormous. The risk of creating disvalue by omission is ultimately a variation of the drowning child problem (Singer, 1972): If we are cognizant about a moral problem and we have the means for solving that problem (with some degree of confidence), there is no real excuse not to do so. 5. Conflict risks Conflict risks are risks that are created by the prospect of hostile actors or powers in the context of space colonization. Conflict risks are in principle not unlike conflicts that humankind has experienced throughout its Earth-based history, but they are much greater in scope and severity. The four conflict risks I focus on are depicted in Fig. 5. I identify two catastrophic and two existential conflict risks. 5.1. Secession and independence conflicts Human habitats beyond Earth are likely to remain modest in the near-term future. The International Space Station, humankind's most advanced habitat-like project so far, can accommodate six people and is dependent on supplies from Earth. More ambitious colonization projects such as SpaceX's plan for Mars colonies typically envision what amounts to very small and simple camps (Musk, 2017). Managing such simple colonization projects should be doable legally and politically. With more mature colonies, however, the picture changes.

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Imagine, for example, the large, self-sustaining habitat on Venus that consists of 2 billion people that I mentioned in a thought experiment before. That hypothetical habitat is truly self-sustainable, in the sense that survival on Venus is not contingent in any way on resources or other kinds of support from Earth. If prior human history is an indication, it is conceivable that the Venusians could at some point seek to change their political status. They might want to no longer be governed by Earth or Earth-based governments and instead have sovereignty to autonomously and freely shape Venus’ future. They might, in other words, seek to secede and become an independent political entity.

Given prior human history of secession and independence movements, such a claim to independence in the context of space colonization could easily result in violent conflict, and given the scale of the conflict parties in this scenario, the bloodshed could be much greater than all the wars that happened in Earth's history so far. Of course, we do not know what the dominant political philosophy of the future will be. Perhaps popular sovereignty and the wish for autonomy will be fully respected and met with unconditional, enlightened understanding. But that prospect is, at best, uncertain, and the prospect of catastrophic violent conflicts seems at least possible.

5.2. Reactionary colonies

Let us assume for the sake of argument that the risks surrounding secessionist claims of extraterrestrial colonies will eventually have been overcome and that there are colonies which have attained a country-like or world-like status. What should the political systems in and the moral foundations of those independent colonies look like? Ideally, they would be at least as democratic, liberal, and generally morally progressive as the most democratic, liberal, and morally progressive countries today. More specifically, independent future colonies should have socio-political systems that do not lower average wellbeing or create (disproportionately) more suffering compared to their pre-existing peers such as Earth-based countries (Or whatever the dominant polity on Earth in that future might be.). However, there is no guarantee that independent colonies will meet that socio-political and moral bar. It is possible that there will be colonies whose socio-political systems are regressive in one way or another, marked by a relative moral decay compared to the baseline of political systems and moral frameworks. I call such potential undesirable entities reactionary colonies.

The emergence of reactionary colonies might seem implausible given that humankind has, very roughly speaking, so far morally improved over the course of its history.9 But reactionary colonies might actually be a fairly common future development. If humankind at some point achieves the technological means for creating colonies with relative ease, creating new colonies might be an attractive option for extremist groups and beliefs. Imagine, for example, a religious group that believes in the fundamental superiority of men over women. Such a religious group might find it difficult adhering to their flawed moral principles in a pluralistic society. Opting for colonial exodus might represent an attractive opportunity for that religious group to build a society from scratch which is based on their notions of female inferiority and subjugation.

The specific risk posed by reactionary colonies is twofold. Reactionary colonies would by definition lower the average happiness and wellbeing of humankind and create unnecessary, preventable suffering. Reactionary colonies would also represent potential rogue actors that could greatly amplify the aberration risks described in Section 4. For example, a dictatorial regime that causes great suffering to its population might be tempted to expand its dictatorial ideology to other colonies. Or that dictatorial colony could be led by a psychopathic elite that enjoys letting sentient simulations suffer as much as possible. The potential catastrophic and even existential multiplicator effects of reactionary colonies are, unfortunately, numerous.

5.3. Inter-colonial conflict

Let us, again for the sake of the argument, assume that the previous problem of reactionary colonies has somehow been solved or avoided. Humankind has continued its path of technological development, and it has established several large clusters of colonies beyond the Solar system. Assuming that the fundamental problem of faster-than-light communication has not been solved yet, communication between the clusters lags months or even years, and physical contact between the clusters is rare since travel takes even longer than communication.

The inevitable consequence of such a splintering of human civilization is that the different clusters of colonies would over time develop distinct cultures, and with only scarce and delayed contact with other clusters, a form of intergroup bias (Hewstone, Rubin, & Willis, 2002), the moral preference of one's own in-group over the out-group, would likely start to manifest. Over time, that us-versus-them heuristic could help create distinct and solidified social identities within the colony clusters (Hewstone & Greenland, 2000), and the beliefs and preferences about the outgroup colonies could become more overtly negative. Given enough time and great enough idiosyncratic development within each colony cluster, the cultural and moral connections between the colony clusters could further erode, and in their place, a sense of dread and looming danger about the others’ goals and preferences could take hold. Over a long enough period of time and great enough separation, the perception that other colonies are a threat could grow; so much so that taking preventative action and attacking and suppressing them might seem like the most rational course of action (Torres, 2018). Given the scale and the likely technological sophistication of future weapons systems, a violent conflict between advanced colonies and colony clusters would create suffering on an astronomical scale.

Of course, the prospect of inter-colonial conflict is somewhat speculative (Cirkovic, 2019). But given humankind's past experiences, violent conflict clearly seems within the realm of the possible. That does not mean that such an almost immeasurably terrible conflict is unavoidable. Even the slightest probability of such conflict, however, means immense potential expected disvalue.

5.4. Hostile extraterrestrial intelligence

We do not currently know whether intelligence, biological or artificial, exists beyond Earth, but it is not implausible to assume so. Coming into contact with as well as refraining from seeking contact with extraterrestrial intelligence poses risks, as I discuss in Section 4. In addition to these risks, extraterrestrial intelligence also poses a conflict risk: If an extraterrestrial intelligence has moral values that are sufficiently different from humankind's, the intelligence could de facto react to humankind and other forms of intelligence with hostility.

At first glance, the prospect of a hostile extraterrestrial intelligence, be it biological or artificial, might seem farfetched. Isn’t some baseline of altruistic moral behavior to be expected of any kind of intelligence? We might intuitively associate intelligence with prosocial behavior of one kind or the other, but from an evolutionary perspective, greater intelligence is not necessarily correlated with prosocial and altruistic behavior towards other species (Raybeck, 2014). Intelligence is the generalized capability for achieving goals, regardless of moral underpinnings and considerations. After all, that is why artificial intelligence as superintelligence is an existential risk today: Superintelligence is a threat precisely because it is much more intelligent than humans but lacks any inherent sense of human preferences and moral values.

Hostile extraterrestrial intelligence is a serious risk even if such intelligence is exceedingly rare in the universe. The mere possibility of hostile intelligence could result in something like a “Dark Forest” (Yu, 2015) game theoretic configuration. If benevolent biological or artificial intelligence is aware of the possibility of hostile alien intelligence, the best course of action is silence (If there might be hostile alien intelligence, best not to be noticed.). In addition, preventative action could also be a rational choice: If an alien intelligence — such as our human civilization — is being observed gradually expanding beyond our home planet, a risk averse intelligence, even one that is benevolent in principle, might find it prudent to eliminate that civilization; be it because the civilization in question might become hostile or because it might, through folly or ineptitude, draw unwanted attention to oneself. The mere possibility of fundamentally hostile intelligence could, in that sense, be enough to fuel a silent astronomical war.

### 1NC

#### Judicial application of the MQD is robust---novel protections of labor rights require killing the doctrine.

Andrias ’24 [Kate; January 2024; Patricia D. and R. Paul Yetter Professor of Law at Columbia Law School, directs the Columbia Law School Center for Constitutional Governance and the Columbia Labor Lab; Northwestern University Law Review, “Constitutional Clash: Labor, Capital, and Democracy,” vol. 118]

Finally, business has mounted a far-reaching challenge to labor's effort to reshape administrative governance to increase democratic control over the economy. Over the last decades, pro-business forces have mounted a concerted campaign to undermine the legitimacy of the administrative state, calling into question the constitutionality of many of its aspects, both old and new.360 The business assault on administrative governance challenges not only the regulation of labor, but also a wide array of administrative actions that exert public control over the economy, including those that protect the environment and consumers. But because labor's project squarely raises the question of democratic control over the economy and public participation in government, labor has been at the center of many of the debates and faces some of the greatest risks.

Once considered off-the-wall, arguments that long-standing administrative structures violate the separation of powers or due process began appearing in lower-court opinions and Court concurrences several [\*1058] years ago.361 By 2022, the assault on the administrative state had captured a majority on the Court.362 In West Virginia v. EPA, the Court announced that in cases involving "major questions," it will not apply the ordinary legal principles governing administrative agencies' interpretation of statutes. Instead, for agency action that is, in the Justices' view, "highly consequential," posing questions of "economic and political significance," the Court will demand clear congressional authorization.363 "[A] merely plausible textual basis for the agency action" is insufficient.364 The Court seemed particularly skeptical of broad readings of "cryptic" authorizing statutes, but the decision could sweep so broadly as to disallow regulation whenever the Court does not consider the authorization "clear."365

Justice Neil Gorsuch went further in his concurring opinion, reasoning that the major questions doctrine is required to avoid the constitutional problem of excessive delegation from Congress to the Executive.366 His opinion suggests the possibility of a dramatic expansion of a separation of powers doctrine that had fallen into disuse in the post-New Deal era.367 According to Justice Gorsuch, the major questions doctrine, and the nondelegation doctrine on which it rests, is required to vindicate the Founders' conceptions of the separation of powers and federalism.368 But recent scholarship has demonstrated that the originalist basis for the [\*1059] nondelegation doctrine is weak at best.369 Rather, the effort to use the "major questions" doctrine to avoid nondelegation questions has grown out of business's effort to limit government's ability to subordinate the market to democratic decision-making. Indeed, numerous conservative scholars and even some Justices have been open about this agenda. On their view, the current administrative state burdens due process and economic liberty or it impinges on expression protected by the First Amendment.370

Last term, the Court's conservative majority signaled again that it would make it harder for agencies to regulate in the public interest, limiting governmental authority to exercise power over business. In Biden v. Nebraska, the Court again read a congressional delegation of power to the Executive narrowly, striking down the Biden administration's student loan forgiveness program, which would have "cancel[ed] about $430 billion in debt," despite broad statutory language seemingly empowering the Secretary of Education to do so.371 And in Glacier Northwest, discussed previously, the Court evinced a similar hostility to the NLRB's authority. There, the Court arrogated the Board's authority to determine what strike activity was "arguably protected" by the NLRA, concluding in the first instance that the workers' activity was unprotected.372 Even more concerning, the Court is considering whether to overrule Chevron v. Natural Resources Defense Council, a nearly forty-year-old precedent, which requires that courts defer to a federal agency's interpretation of an ambiguous statute as long as that [\*1060] interpretation is reasonable.373 If the Court does overrule Chevron, the NLRB's power to effectuate the goals of the statute could be further eroded. And business has mobilized en masse to effectuate that outcome, filing numerous amicus briefs in the case that make wide-ranging constitutional arguments against deference to agencies.374

Depending on where the Supreme Court takes the doctrine next, and how lower courts apply the Court's reasoning, the result could be to disable many of the NLRB's efforts to protect workers' rights efforts which necessarily cover nearly the entire economy and arguably involve "major" political and economic questions and consequential trade-offs. Even when the Board exercises power under the Act's "capacious terms" and even when it is clear that Congress intended to provide "agency discretion," under the new precedent, conservative courts could refuse to allow the Board to exercise delegated authority. The most aggressive reading of the Supreme Court's recent decisions would thus relegate the labor agencies to robotically implementing clear textual directives in congressional mandates rather than using their expertise to fill in gaps in statutes and elucidate labor relations policy over time. Nearly all of the Board's recent actions to protect workers' collective speech and association rights could come under challenge. Similar arguments could be used to disable the range of regulatory actions designed to provide working people socioeconomic rights, also critical to labor's constitutional vision. In short, in the hands of conservative judges, the new major questions doctrine could eviscerate existing labor law and hamstring the NLRB, the Department of Labor, and other social welfare agencies in the future.375

#### The MQD’s robustly applied now, blocking pore space CCS.

Craig ’25 [Robin; March 2025; Professor at the University of Utah Law School, J.D. Summa Cum Laude from the Lewis and Clark School of Law; Boston University Law Review, “Do We Need a New Law to Govern Carbon Capture Storage in Federal Pore Space?” vol. 105]

CCS is technically complicated. As the U.S. Department of Energy emphasizes, not every site that has an injection well and an underground reservoir can be used for CCS.5Link to the text of the note Instead, first, "[a] storage site needs to have sufficient storage resource (space) to contain large amounts (millions of metric tons) of compressed CO2."6Link to the text of the note Second, the site must have sufficient injectivity to make storage possible, referring to "the rate at which CO2 can be injected into the subsurface," which in turn depends on the subsurface formation's permeability.7Link to the text of the note Third, and most importantly for long-term safety and climate mitigation effectiveness, the storage formation must have integrity that is, "the ability to confine CO2 safely within a predetermined volume without a breach from the storage complex. A storage complex must have one or more confining zones that seal above the injected formation that are intact and do not have leakage pathways."8Link to the text of the note Finally, "[t]he CO2 storage zone needs to be located at a sufficient depth and pressure so that CO2 can be injected as a supercritical fluid. Supercritical CO2 is dense and behaves more like a liquid than a gas, allowing for storage of higher concentrations of CO2 by volume."9Link to the text of the note Supercritical CO2 [\*629] exists at "a temperature in excess of 31.1°C (88°F) and a pressure in excess of 72.9 [atmospheres] (about 1,057 [pounds per square inch])."10Link to the text of the note

As the Department of Energy also acknowledges, CCS is not risk-free.11Link to the text of the note Indeed, CCS poses risks both to human health and safety and to the environment at every stage of the process. "For example, in the CO2 capture process, the widely used alcohol amine solution may cause alcohol amines to be emitted in gaseous or liquid form, exposing nearby workers and ecosystems to such [contaminants] through air and drinking water."12Link to the text of the note "After some of the substances enter the human body, they damage target organs such as the liver and kidneys and cause irreversible damage to the human immune system."13Link to the text of the note CO2 leaking from pipelines or storage facilities can asphyxiate any animal that breathes air.14Link to the text of the note As a result, pipes and storage sites must be continuously monitored after injection to ensure that the CO2 remains in place.15Link to the text of the note Injected CO2 can also contaminate groundwater and increase seismicity,16Link to the text of the note while the capture of CO2 at power plants can increase those plants' demand for (potentially scarce) water17Link to the text of the note and decrease their efficiency in producing electric power.18Link to the text of the note

Of course, climate change itself also creates risks for human health and the environment, at all scales, up to and including planet-wide processes.19Link to the text of the note From [\*630] one perspective, therefore, CCS localizes the risks that CO2 emissions create. It transforms those emissions' contributions to increasing global risk from the greenhouse effect as a result of accumulating CO2 in the atmosphere into new and different community-level risks resulting from the local concentration of supercritical CO2 through carbon capture, transportation, and storage.

This fact is relevant to the project Righetti and Lewis pursue, which is to figure out how to operationalize CCS in underground formations ("pore space") owned by the federal government.20Link to the text of the note As this Response will eventually argue, the choice of how to price federal pore space for CCS is unavoidably a policy choice. And as Righetti and Lewis acknowledge, current public lands law and its insistence on fair market value are extremely poor mechanisms for making and expressing national-level policy decisions regarding this inherent risk-risk analysis in the development of CCS.21Link to the text of the note

As Righetti and Lewis also amply demonstrate, CCS in federal pore space is not only technically, but also legally complicated.22Link to the text of the note It is so legally complicated, in fact, that this Response suggests that an entirely new legal regime might be necessary both to allow CCS storage in federal pore space and to rationalize and clearly state federal policies regarding climate change mitigation, the promotion (or not) of CCS, and the legacy of the nation's public lands in the Anthropocene.

I. CAN TERRESTRIAL PUBLIC LANDS AGENCIES DEMONSTRATE SUFFICIENT LEGAL AUTHORITY TO ALLOW CCS IN FEDERAL PORE SPACE?

The first issue is whether any federal public lands agency actually has the necessary legal authority to allow CCS in federal pore space. With some caveats regarding dominant use lands like national parks and national wildlife refuges, Righetti and Lewis accept that at least some federal agencies notably, the Bureau of Land Management ("BLM") could allow CCS on many of the lands it manages.23Link to the text of the note However, the U.S. Supreme Court has spent its last three terms meticulously patrolling federal agency attempts to exercise discretion, particularly when they are trying to deal with new problems like climate change and the COVID-19 pandemic. The Court's decisions suggest that the existing public land regulatory regimes may not be adequate to allow CCS projects under most of the terrestrial federal public lands.

A. The Major Questions Doctrine

In 2022, the Environmental Protection Agency's ("EPA") attempt to deal with power plants' greenhouse gas emissions under the Clean Air Act, an elaborate rule known as the Clean Power Plan, became the occasion for the Supreme Court [\*631] to fully articulate a new check on federal agency authority: the Major Questions Doctrine ("MQD").24Link to the text of the note According to the Court, "Where the statute at issue is one that confers authority upon an administrative agency, [statutory construction] must be 'shaped, at least in some measure, by the nature of the question presented' whether Congress in fact meant to confer the power the agency has asserted."25Link to the text of the note In particular, "there are 'extraordinary cases' . . . in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority."26Link to the text of the note For example:

Extraordinary grants of regulatory authority are rarely accomplished through "modest words," "vague terms," or "subtle device[s]." Nor does Congress typically use oblique or elliptical language to empower an agency to make a "radical or fundamental change" to a statutory scheme. Agencies have only those powers given to them by Congress, and "enabling legislation" is generally not an "open book to which the agency [may] add pages and change the plot line."27Link to the text of the note

As a result, under the MQD, when a federal agency relies on textual ambiguity to claim authority to do something that it has never done before that is not immediately analogous to prior actions, "something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to 'clear congressional authorization' for the power it claims,"28Link to the text of the note particularly when the social and economic consequences are significant. The MQD thus polices "agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted."29Link to the text of the note

As Righetti and Lewis acknowledge, none of the federal public land statutes on which they focus explicitly mentions CCS or carbon sequestration.30Link to the text of the note Nor is CCS just a new form of mining (i.e., removal of minerals from the ground) that can be easily analogized to the more traditional forms of mineral extraction (i.e., gold mining, oil and gas leasing) that have occurred on many federal public lands since at least the Mining Law of 1872.31Link to the text of the note CCS involves the (effectively) permanent storage of CO2 below the land's surface. As such, for MQD purposes, CCS differs considerably from hydraulic fracturing or helium extraction on the federal public lands, both of which are easily categorized as mining activities. [\*632] Finally, almost all contemporary assessments of CCS stress its expense and the economic risks of investing in it,32Link to the text of the note again suggesting that CCS raises MQD red flags.

Predicting which agency innovations the Supreme Court will deem to be major questions that require clear congressional delegations of authority remains the province of art and lucky guesses rather than strict legal logic. Nevertheless, the extension of existing terrestrial public land management authority to CCS appears to be a strong candidate for MQD policing by the federal courts, especially in light of recent congressional action.

Dominant use lands, such as national parks and national wildlife refuges, will likely prove the easiest MQD targets for challengers seeking to prevent CCS beneath the federal public lands. Righetti and Lewis note that dominant use lands pose particular problems for CCS authorization,33Link to the text of the note but the MQD may put these lands completely out of reach absent congressional amendment. For example, the mission of the U.S. Fish & Wildlife Service for lands in the National Wildlife Refuge System "is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."34Link to the text of the note While Congress explicitly designated wildlife-dependent recreation as compatible with this conservation mission,35Link to the text of the note the Service's duty is to "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans."36Link to the text of the note Similarly, the National Park Service, in administering the National Park System, acts "to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."37Link to the text of the note Under the MQD, it is difficult to infer "clear congressional authorization" for CCS within either of these multigenerational preservation mandates.

[\*633] However, the MQD could also undermine the abilities of federal agencies who administer multiple use federal lands, like the BLM (Department of the Interior) and the U.S. Forest Service (Department of Agriculture), to allow CCS below those lands. First, Congress does know how to include CCS and carbon sequestration in statutes when it wants to. For example, the Department of Energy has broad and explicit authority to pursue CCS projects,38Link to the text of the note including on tribal lands.39Link to the text of the note Against this explicit authorization, any MQD-minded federal court will likely find the continuing congressional silence regarding CCS in the Federal Land Policy and Management Act40Link to the text of the note ("FLPMA," for the BLM) and the National Forest Management Act41Link to the text of the note to be deafening proof of those agencies' lack of CCS authority.

Moreover, the BLM and Forest Service also have a congressional failure-to-act problem, again strongly suggesting that Congress did not intend CCS leasing on the lands they control. First, in 2021, through the Infrastructure Investment and Jobs Act, Congress amended the Outer Continental Shelf Lands Act (which the Department of the Interior's Bureau of Ocean Energy Management ("BOEM") administers) explicitly to allow leasing of the federal government's offshore submerged lands (the outer continental shelf) for carbon sequestration.42Link to the text of the note Second, in 2022, Congress explicitly authorized carbon sequestration demonstration projects on Department of Defense lands.43Link to the text of the note The fact that Congress explicitly amended statutes to allow for CCS beneath two specific kinds of federal lands creates an unusually strong implication again, particularly in light of the MQD that no other federal public lands agencies have that authority.

That implication grows even stronger in light of the explicit carbon sequestration authorities that the relevant public lands Secretaries do have. On dry ground, the Secretary of the Interior has explicit authority only to assess the potential carbon sequestration formations in the United States (acting through the U.S. Geological Survey)44Link to the text of the note and the carbon sequestration potential of ecosystems.45Link to the text of the note As for the Department of Agriculture, Congress is far more [\*634] interested in biological sequestration of CO2 than injection of CO2 underground on agricultural and forest lands. In 2022, the Department of Agriculture's Natural Resources Conservation Service received an appropriation explicitly to assess the carbon sequestration potential of agriculture.46Link to the text of the note The Secretary of Agriculture also has explicit authority to establish forest reserves to enhance carbon sequestration by trees47Link to the text of the note and to improve carbon sequestration through grazing practices.48Link to the text of the note

In short, Congress has been clear recently when it wants federal agencies to have authority over subsurface CCS by injection and equally clear when it wants agencies to focus on biological sequestration. Therefore, all federal lands agencies except the Department of Defense and BOEM are vulnerable to MQD invalidations if they attempt to allow CCS in federal pore space. Given that the BLM is already pursuing CCS rights of way, it is likely to become the subject of the first MQD challenge to CCS on federal public lands. If so, two other recent Supreme Court developments will aid the challengers.

#### Extinction.

Teng ’25 [Ying et al; June 2025; Research Director at the Institute of Soil Science at the Chinese Academy of Sciences; Energy Reviews, “Overview of the Full-Chain Key Technical Features in Offshore Geological Carbon Sequestration,” vol. 4]

To ensure the safety, reliability, and social acceptability of offshore GCS, a profound understanding of CO2 migration behavior, timely leak detection, and comprehensive environmental risk assessment are essential [171,172]. Fig. 12 outlines CO2 leakage detection and sampling methods at different seabed depths. Numerous programs have developed advanced technologies to detect and assess CO2 leakage's impact on marine ecosystems [173].

In Europe, projects like ECO2 (Sub-seabed CO2 Storage: Impact on Marine Ecosystems), QICS (Quantifying and Monitoring Potential Ecosystem of Geological Carbon Storage), ETI MMV (Energy Technologies Institute Measurement, Monitoring, and Verification of CO2 Storage), and STEMM-CCS (Strategies for Environmental Monitoring of Marine Carbon Capture and Storage) focus on offshore GCS leakage. ECO2 investigated GCS sites in Sleipner and Snøhvit, employing 3D seismic, backscattering, hydro-acoustic, video, and chemical surveys for leakage detection and monitoring strategy development [174]. The QICS project simulated CO2 leakage into sediment and monitored it using various sensors, demonstrating effective leakage monitoring methods [[175], [176], [177], [178]]., ETI MMV evaluated existing subsea CO2 leakage detection monitoring technologies between 2014 and 2018 [173]. STEMM-CCS, ongoing since 2020, conducts simulated sub-seabed CO2 leakage experiments in Scotland, integrating various sensors to monitor and assess CO2 leakage's impact on marine ecology [171].

The U.S. Department of Energy chose the Gulf of Mexico for long-term offshore GCS [179] and collected high-resolution 3D seismic data to assess potential leak pathways and seal continuity [180]. Anderson, Romanak [181] examined vertical gas migration by measuring hydrocarbon concentrations and stable carbon isotopes near the ocean floor. Deep thermal hydrocarbon generation indicated transportability, posing unacceptable risks for the GCS site. In addition, distributed temperature sensing, applied in the Gulf Coast, provided continuous inter-well scale monitoring from November 2009 to November 2010 and from September 2011 to January 2012 [182]. Pressure sensors and imaging technologies complement this method.

Japan, and Malaysia also have implemented subsea GCS projects and developed monitoring technologies. The Tomakomai CCS Demonstration Project in Hokkaido, Japan, from 2012 to 2020 considered earthquake impacts on CO2 leakage, with no reported incidents [183]. Kanao and Sato [184,185] simulated leakage locations, timing, and fluxes based on seafloor sensor-collected CO2 concentration data, assuming multiple seafloor leakage points. M4 carbonate gas field in offshore Sarawak, Malaysia repurposed for GCS. Geomechanical studies assessed caprock integrity and CO2-water-rock interactions, verifying sequestration feasibility and leakage risks [186,187].

6.2. Fault reactivation evaluation

Faults pose significant risks to GCS as they can act as both barriers and conduits for fluid movement [189]. While fault stability is assessed before CO2 injection, elevated pore pressure during injection can induce mechanical stresses and deformations near the injection site [190]. Excessive pore pressure can lead to irreversible changes like fault reactivation and new fractures, causing CO2 escape and compromising GCS effectiveness (Fig. 13) [191,192]. Fault stability is typically evaluated using the Coulomb criterion, where τ and σ represent shear and normal tractions on the fault, μ is the static friction coefficient, and p is pore fluid pressure [193]. This criterion ensures fault stability when shear traction is less than current shear strength. Numerical and analytical methods have been developed to assess fault reactivation in GCS sites [191,194], and attempt to mitigate reactivation risk by monitoring pore pressure for control.

Close monitoring of pore pressure near faults is crucial to assess fault reactivation risk, necessitating an appropriate injection strategy to minimize pressure increments [192]. Lee, Shinn [195] used a semi-analytical solution to analyze fault reactivation potential in the Pohang sedimentary basin, considering poroelastic stress from subsurface fluid injection. Analysis of 3D seismic data of the East Irish Sea basin indicates the fault reactivation risks during CO2 injection, and that faults can withstand pressures of 3–10 ​MPa [196]. A 3D structural model analyzed single well CO2 injection in Southern Perth Basin using 2D seismic and well data. With an injection rate of 1–5 million tons/yr for 20 years, caprock uplift was simulated and fault reactivation was observed [197]. GCS risk assessment results for Sarawak indicate a maximum injection pressure of 27.6 ​MPa with a 4 ​MPa safety margin, according to 4D-coupled geomechanics modeling results (Fig. 14) [198]. Monte Carlo simulation and first-order reliability methods also have been used to assess the failure probability of the Vette fault in Smeaheia, offshore Norway, and the results show that the fault is a potential obstacle to CO2 injection [107].

6.3. Induced seismicity evaluation

CO2 injection generates a CO2-rich plume driven by pressure and buoyancy, leading to a wider pressure disturbance that can interact with faults, potentially causing seismicity [188,199]. Seismicity due to GCS is underreported due to its limited commercialization [200]. Sleipner experienced minimal geomechanical deformation due to its large aquifer and small pressure increase [190]. The Smeaheia monitoring system in the North Sea indicates that the potential seismic hazards are in the 5–6 magnitude range [201,202]. Another geomechanical model predicted limited seismic risk (less than 2.4 magnitude) for an offshore GCS project in the Southern North Sea's Dutch region [203].

Although few simulation studies predict GCS-induced seismicity, researches center on onshore GCS can still give us some inspiration. The maximum possible earthquake magnitude induced by CO2 injection at high stress ratios was estimated to be 4.5 by hydromechanical models [204]. 75 sites' data showed that induced earthquakes increase with reservoir pressure, fluid volume, and injection/extraction rate [205]. Geological monitoring and modeling analysis also confirmed that GCS in Weyburn and Salah caused geomechanics deformation and micro-seismic [190]. In addition, after studying earthquakes caused by waste liquid injection, it has been found that most seismic activity happens beneath the injection zone, usually within 20 ​km of it. However, some studies insist that GCS does not trigger earthquakes due to several factors, including the softness of sedimentary formations, controlled injection risks, CO2 dissolution benefits, and the impermeability of caprocks [206].

To date, no seismic hazards have been reported in the GCS projects, but the possibility of earthquakes induced by changes in injection pressure, rate, and depth cannot be dismissed. Even minor seismicity could harm reservoir sealing integrity. Hence, upcoming commercial GCS projects should quantify and mitigate earthquake effects to address public concerns.

6.4. Effects of CO2 leakage on marine ecosystems

CO2 leakage imperils marine ecosystems by inducing ocean acidification. The leaked CO2 dissolves, forming carbonic acid, which lowers seawater pH, affecting marine life [199]. Despite ongoing research, understanding long-term impacts remains limited [207,208]. Studies reveal that high CO2 concentrations harm marine organisms, causing reduced growth and increased mortality, including coral reefs, shellfish, and planktonic species [[209], [210], [211]]. Coral reefs serve as vital breeding, nursery, and foraging areas for diverse marine species. CO2 leakage can degrade these habitats [212,213], potentially causing species extinction and biodiversity loss if they can't adapt [214,215]. Furthermore, CO2 leakage disrupts phytoplankton, primary marine food chain producers, due to pH and chemical changes, impacting the entire ecosystem [216,217]. Phytoplankton's vital role within the food web underscores the far-reaching consequences of this disruption. In sum, CO2 leakage poses significant threats to marine ecosystems, affecting species from corals to plankton, potentially leading to habitat degradation, species loss, and ecological disruption.

## Case

### Contention 1---1NC

### Contention 2---1NC

#### States are filling in regulatory gaps now.

Taylor ’8-5 [Ashley, Clayton Friedman and Michael Yaghi; August 5; JD, Co-leader of Troutman Pepper Locke LLP’s state attorneys general practice; JD, partner in Troutman Pepper Locke LLP’s state attorneys general and regulatory investigations, strategy and enforcement (RISE) practice groups, nationwide teams that advise clients on consumer protection enforcement matters and other regulatory issues; Reuters, “State attorneys general step up enforcement with regulatory shift of Trump administration,” https://www.reuters.com/legal/litigation/state-attorneys-general-step-up-enforcement-with-regulatory-shift-trump-2025-08-05/]

August 05, 2025 - In the wake of the November 2024 elections, the United States has experienced a significant shift in regulatory focus, largely due to the fallout from the Trump administration's broad deregulatory agenda. This shift has prompted state attorneys general to step up their enforcement efforts, effectively filling what they perceive to be the regulatory void seemingly created by the federal agencies' shifting priorities.

The Trump administration's deregulatory stance was clear from the beginning. As set forth in Executive Order 14192, dated Jan. 31, 2025, President Trump stated "It is the policy of my Administration to significantly reduce the private expenditures required to comply with Federal regulations[.]"

This was followed by the Federal Communications Commission's ("FCC") initiative titled "In Re: Delete, Delete, Delete," which solicited public comments on the potential modification or elimination of regulations deemed unnecessary or overly burdensome. FCC March 12, 2025, Public Notice, GN Docket No. 25-133.

Federal agencies also appear to have shifted their litigation priorities. For example, in April the Consumer Financial Protection Bureau ("CFPB"), formed in 2008 and tasked with policing financial firms and consumer financial laws, requested it be removed as a plaintiff in CFPB v. Credit Acceptance Corporation. The case alleged the defendant, a subprime auto lender, incentivized dealerships to inflate vehicle prices and add expensive add-on products, effectively concealing the true cost of the loan from consumers in violation of the Consumer Financial Protection Act. It is predicted that the case could have widespread impact on the secondary auto finance market; thus, the CFPB's request may signal a retreat from active enforcement.

In another instance, the administration announced that it would be suspending federal enforcement of the Foreign Corrupt Practices Act ("FCPA"). Executive Order 14209 of Feb. 10, 2025.

Increased use of state consumer protection statutes

As federal agency priorities shift, state action has indicated that any perceived void in federal regulation will be filled by enforcement of state consumer protection statutes. For example, after the presidential administration announced it would be suspending FCPA enforcement, California's Attorney General Rob Bonta affirmed in a press release that FCPA violations remain actionable under the state's unfair competition law.

In response to the shifts at the CFPB, New York City Comptroller Brad Lander issued a report urging city and state leaders to strengthen local consumer financial protections. His report called for the passage of the FAIR Business Practices Act, proposed by Attorney General Letitia James and enacted by the New York Legislature on June 20, 2025.

The FAIR Business Practices Act, if signed into law by Gov. Kathy Hochul, would address alleged weaknesses in New York's consumer protection statute that currently only safeguards consumers against business acts or practices that are deemed "deceptive." The FAIR Act seeks to bring "unfair" and "abusive" acts by businesses, banks and other financial services companies — e.g., auto lenders, mortgage and student loan servicers — within its purview. Additionally, Lander advocates for full funding of relevant state and city departments to investigate harmful practices and protect consumers, as well as the creation of a Consumer Protection Restitution Fund.

States are also using novel ways to regulate areas traditionally left to the Food and Drug Administration ("FDA") by bringing enforcement actions using consumer protection statutes. For instance, Texas issued a Civil Investigative Demand to General Mills concerning General Mills' labeling of ingredients. Texas investigated General Mills for potential consumer protection violations regarding allegedly misrepresenting its food products were "healthy" and "nutritious" despite containing artificial dyes.

In another example of a consumer protection statute being used to regulate health claims, Connecticut's Attorney General filed a lawsuit against companies selling GLP-1 drugs, a class of drugs used to manage type 2 diabetes and, more recently, for weight management. Connecticut Attorney General William Tong claims the defendant violated the Connecticut Unfair Trade Practices Act by selling these drugs without proper approval.

States enforce federal law

In addition to using state laws to increase enforcement, state attorneys general have brought regulatory action for alleged violations of federal laws. In one instance, Maryland's Attorney General Anthony G. Brown settled with three property management companies the state accused of violating the Fair Housing Act. The Fair Housing Act has traditionally been enforced by the Department of Housing and Urban Development ("HUD").

The Federal Trade Commission ("FTC") is also undergoing leadership shifts and a refocusing of enforcement priorities. However, state attorneys general are stepping in to address perceived gaps in federal enforcement. Michigan's Attorney General sued Roku for alleged violations of the Children's Online Privacy Protection Act ("COPPA") and the Video Privacy Protection Act ("VPPA"). These federal privacy laws have traditionally fallen within the FTC's enforcement powers.

Looking ahead

The trend of increased state enforcement in the consumer protection space is likely to continue. The recent passage of H.R.1, commonly referred to as "The Big Beautiful Bill," shifted funding away from several federal agencies. This transfer of funding will likely result in additional shifts to federal enforcement priorities.

As federal agencies scale back their involvement, state Attorneys General are poised to play a more significant role in the consumer protection space. This shift has potential to lead to a patchwork of state regulations, creating challenges for businesses operating across multiple jurisdictions. However, it also presents an opportunity for states to innovate and tailor consumer protection measures to address local needs effectively.

The current landscape of consumer protection is marked by a dynamic interplay between federal deregulation and state enforcement. As states amplify their role, they may also be setting new standards for consumer protection. The coming years will likely see further developments in this area, requiring businesses to adapt to the evolving regulatory environment.

#### No solvency. Trump won’t listen to experts, even if he can’t fire them.

Shapiro ’20 [Stuart; October 29; professor and director of the Public Policy Program at the Bloustein School of Planning and Public Policy at Rutgers; The Hill, "Listening to experts isn’t perfect, but ignoring them is far worse," https://thehill.com/opinion/white-house/523279-listening-to-experts-isnt-perfect-but-ignoring-them-is-far-worse/]

Last week, President Trump said of his opponent, Vice President Biden, “he’ll listen to the scientists.” In case you’re confused, this was meant to be an insult.

Indeed, the president seems to take pride in the extent to which he has ignored the advice of experts of all different stripes. From economists on trade, to scientists on handling the pandemic and climate change, to intelligence officials on foreign threats, Trump has preferred to “go with his gut.”

#### No ‘polycrisis.’

Smith ’22 [Noah; November 13; Writer and economist, Ph.D. in Economics; Noahpinion, “Against ‘polycrisis’,” https://www.noahpinion.blog/p/against-polycrisis]

I generally enjoy big-think like this. (If I didn’t, I would be somewhat of a hypocrite, given that my recent post about decoupling was entitled “The end of the system of the world”!) But I’m just not sure if the challenges and risks the world faces today are as mutually reinforcing as Tooze and the other “polycrisis” enthusiasts believe.

The polycrisis illusion

For one thing, it’s always very easy to think that we live in an era uniquely chock-full of risks, disasters, and problems. This is because of something called the availability heuristic — we tend to think the things we read about are typical of the world at large. And both the news media and the social media shouters who crave our eyeballs have long ago realized that “no news is good news” — i.e., negative news is uniquely good at grabbing our attention. So the more we’re engaged with current events, the more we’re likely to see the world as defined by things that alarm us — this is the subject of the song “We Didn’t Start the Fire”, quoted at the top of this post.

This is not to say the world is free of crises and risks; there are plenty out there. Nor is it to say that our current era has less than others; this is very hard to judge. But the idea that these crises are all related may be a case of apophenia — our natural human tendency to perceive connections that don’t actually exist, or are far weaker than we think.

Just because we can draw arrows between news items does not mean that the items are strongly coupled. For example, Tooze’s diagram draws an arrow from China to the Russian gas boycott, but China didn’t join the boycott. He draws an arrow between “Biden administration & GOP risk” and the Lend-Lease bill, but there’s no reason to think Lend-Lease was motivated by U.S. domestic politics, and the support for Ukraine has so far remained bipartisan. He draws an arrow from oil prices to the climate crisis, but — as I’ll talk about in a bit — the former actually helps address the latter.

When crises aren’t really strongly coupled, they can act as low-correlation assets in a diversified financial portfolio — when one problem is getting worse, another problem somewhere else is likely to be getting better.

In fact, though, I think there’s an even more important reason to be skeptical of “polycrisis”: buffer mechanisms. The global economy and political system are full of mechanisms that push back against shocks. Supply-and-demand is a great example — when supply falls, elastic demand cushions the short-term impact on prices (this is a little like Lenz’s Law in physics). Political backlashes are another mechanism — people don’t like it when you try to deny elections or invade your neighbors, and they get mad and push back. Policy responses are a third buffer — when central banks see inflation, they restrain it with higher interest rates. And so on.

The reason this makes a polycrisis less likely is that the buffer mechanisms often push back against problems in addition to the ones they were designed to push back against. There are plenty of historical examples of this. The New Deal didn’t just fight the Depression; it finally implemented a long-needed social insurance system that has served us well to this day. The victory over the Axis in WW2 also prompted decolonization and the creation of a global economic system that has allowed most of the world to flourish in the century since. More recently, the 2008 financial crisis led to needed infrastructure spending, Obamacare, and the intellectual revival of industrial policy.

In other words, sometimes instead of a polycrisis we get a polysolution.

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Today, I can see a number of examples where the various crises that newsreaders worry about are leading to responses that will help address the others. Buffer mechanisms in the global political economy of the 2020s As I mentioned before, one very simple example of a buffer mechanism is supply and demand. In the past year, China’s economy has slowed dramatically due to a combination of a real estate bust, the Zero Covid policy, and various regulatory crackdowns. Normally, a recession in the world’s biggest trading nation would be a cause for global alarm, but in this one it’s more likely a source of relief. A collapse in Chinese demand is helping to restrain oil prices, keeping them at around the same level as the early 2010s: <<CHART OMITTED>> That in turn is blunting the impact of the Ukraine war and Russia sanctions on Europe’s economy (and America’s, and Japan’s, etc.). A combination of China’s economic slowdown and Russia’s military fiasco in Ukraine also seem to have reduced the chance of U.S.-China conflict, at least in the short term. Seeing Russia fail to conquer a smaller country must have given even Xi Jinping pause about launching a similar military adventure to conquer Taiwan, while economic struggles distract policymakers’ attention. Though it’s too early to tell, the results of last week’s midterm elections in the U.S. — which were a victory for stability and bipartisanship and a loss for election-denialists — might also have been prompted in some minor way by the Ukraine war and the threat of geopolitical competition with China, which should remind Americans that there are enemies in the world more dangerous than other Americans. Meanwhile, the war in Ukraine will spur the fight against climate change. Disruptions to Russian energy supplies, especially in Europe, create incentives for the rapid deployment of renewable energy. This is from May: The Commission proposed that 45% of the EU’s energy mix should come from renewables by 2030, an advance on the current 40% target suggested less than a year ago. Officials also want to cut energy consumption by 13% by 2030… “It is clear we need to put an end to this dependence and a lot faster before we had foreseen before this war,” said Frans Timmermans, the EU official in charge of the green deal. Just a few days ago, the European Commission followed through with a temporary emergency regulation to speed the adoption of renewables. (The war is leading to minor outbreak of sanity on energy in general; Germany is keeping its nuclear plants open, at least for a while.) The rapid adoption of renewables will, in turn, drive down their price, through a mechanism known as learning curves — the more you build, the more cost goes down, creating an incentive to build even more. So the increased adoption of renewables in Europe and other Russia-sanctioning countries in response to the Ukraine war will also make renewables more attractive in China, India, and other countries that aren’t joining in the sanctions. All this will help the fight against climate change. But it will also help address another longstanding economic problem in the rich world: slow growth. Due to massive continuing cost drops, renewable energy increasingly isn’t just green energy — it’s cheap energy. The forecasters who study learning curves believe that technologies like solar, batteries, and hydrogen are much more susceptible to learning effects than fossil fuel technologies or even nuclear. That means that renewables are going to give us cheaper energy than we’ve ever had in our history as a species. And that in turn will help the developed world shake off the creeping stagnation in productivity and wages that it has endured for most of the time since the oil shocks of the 70s. Cheap energy is highly complementary to human labor — armed with cheap energy, we can rebuild much of our world. This is not to say that there are no cases in the world where one problem is exacerbating another. Higher interest rates, for example, are sure to cause capital flight and currency depreciation in some developing countries, making it harder for them to buy food and energy. But the global free-market system built in the last three decades is looking more resilient than many expected; most developing countries are doing OK. Dark Brandon vs. polycrisis

<<PARAGRAPH BREAKS RESUME>>

In other words, I look out in the world and I don’t see a polycrisis; I see an emerging polysolution. The looming threats of climate change and authoritarian revanchism, combined with the shocks of Covid and inflation, have stirred both policymakers and businesses to action. And many of those actions will end up addressing multiple crises rather than just one. Nor am I alone in my feeling that the narrative of the world suddenly seems to be improving:

#### No civil war.

Reich ’23 [Robert, June 12; Professor of Public Policy at the University of California, Berkeley, former United States Secretary of Labor; The Guardian, “There will be no civil war over Trump. Here’s why,” https://www.theguardian.com/commentisfree/2023/jun/12/trump-civil-war-chances-documents-indictment]

Violence is possible, but there will be no civil war.

Nations don’t go to war over whether they like or hate specific leaders. They go to war over the ideologies, religions, racism, social classes or economic policies these leaders represent.

But Trump represents nothing other than his own grievance with a system that refused him a second term and is now beginning to hold him accountable for violating the law.

In addition, the guardrails that protected American democracy after the 2020 election – the courts, state election officials, the military, and the justice department – are stronger than before Trump tested them the first time.

Many of those who stormed the Capitol have been tried and convicted. Election-denying candidates were largely defeated in the 2022 midterms. The courts have adamantly backed federal prosecutors.

Third, Trump’s advocates are having difficulty defending the charges in the unsealed indictment – that Trump threatened America’s security by illegally holding (and in some cases sharing) documents concerning “United States nuclear programs; potential vulnerabilities of the United States and its allies to military attack; and plans for possible retaliation in response to a foreign attack”, and then shared a “plan of attack” against Iran.

Republicans consider national security the highest and most sacred goal of the republic. A large number have served in the armed forces.

Trump’s own attorney general, Bill Barr, said on Fox News Sunday that he was “shocked by the degree of sensitivity of these documents and how many there were, frankly … If even half of it is true, then he’s toast. I mean, it’s a very detailed indictment, and it’s very, very damning. And this idea of presenting Trump as a victim here, a victim of a witch-hunt, is ridiculous.”

None of this is cause for complacency. Trump is as loony and dangerous as ever. He has inspired violence before, and he could do it again.

But I believe that many who supported him in 2020 are catching on to his lunacy.

#### No nuclear populism impact.

Rajagopalan ’22 [Rajeswari Pillai; September 20; PhD, Resident Senior Fellow at the Australian Strategic Policy Institute; The Nonproliferation Review, "Rajeswari Pillai Rajagopalan, Director, Centre for Security, Strategy and Technology, Observer Research Foundation, New Delhi," vol. 28]

In their essay “Upsetting the Nuclear Order: How the Rise of Nationalist Populism Increases Nuclear Dangers,” Oliver Meier and Maren Vieluf highlight some important aspects of nationalist-populists’ decision-making styles and argue that they could lead to greater nuclear danger and undermine the global nuclear order. The authors also challenge the traditional notion of responsible and irresponsible nuclear-weapon states. These aspects of nationalist-populist leaders’ influence on nuclear decision making have not been studied in any detail before; the article thus represents an important contribution to the academic literature on nuclear decision making and nuclear danger. Despite its importance as a first cut, there are a number of drawbacks in the argument.

It is undoubtedly true that nationalist-populist leaders have shown a distinct attitude toward foreign and defense policies and choices. But whether this also impacts nuclear-weapons decision making is a bit more uncertain because that decision-making remains a significantly distinct arena for policy makers. More significantly, the choice of nationalist-populist leaders—former US President Donald Trump, UK Prime Minister Boris Johnson, Indian Prime Minister Narendra Modi, and Russian President Vladimir Putin—is questionable. That Chinese President Xi Jinping is not categorized as a nationalist-populist leader is surprising. While there may not be an electoral process that keeps Xi and the Chinese Communist Party (CCP) in power, Xi and the CCP appear conscious that the legitimacy of the party is maintained by the policies of Xi and his party. They have carefully used populism in pushing their policies, even if the manner in which Chinese public perceptions are managed may be different. Xi’s anti-corruption drive, for instance, was propelled primarily by careful use and nurturing of public anger. In foreign policy, the CCP has again carefully nurtured and managed public opinion to gain support for policy. The manner in which China responded to South Korea after the latter’s decision to deploy the American THAAD (Terminal High Altitude Area Defense) missile-defense system is a case in point: China aroused popular anger against South Korean supermarkets such as Lotte. Therefore, the authors’ suggestion that China does not “rely on an internal in-group versus out-group dichotomy to justify their leadership” may need to be reconsidered. The absence of Pakistan from the authors’ categorization of nationalist-populist leadership because the civilian leadership does not hold much influence in nuclear decision making is also puzzling because the military leadership in Pakistan has also been careful to nurture its role and use public opinion for both domestic and foreign-policy purposes. Meier and Vieluf's analysis essentially implies that a country with a democratic leader who has a populist style is far more dangerous than a country that has an authoritarian leader or has a military that controls nuclear weapons for narrow institutional reasons. As we see from the Russian invasion of Ukraine, as well as many other cases, such narrowly based leadership can potentially make far greater mistakes in foreign and security policies than democratic leaders whose popular base is much wider. In the Russian case, the issue may not as much be about populism as authoritarianism.

There has definitely been some loose talk about the use of nuclear weapons by nationalist-populist leaders, but the consequence of such loose talk should also not be exaggerated. For instance, Modi’s 2019 campaign was primarily focused on demonstrating that he was tough on national security by invoking India’s conventional military retaliation to Pakistan’s terrorist attacks without focusing on nuclear threats. In other words, threats of nuclear escalation were not characteristic of his “tough on national security” persona. There was only one offhand, oblique remark regarding nuclear weapons. Nevertheless, Indian analysts also have raised concerns about the statement from Prime Minister Modi in which he said that India was not keeping nuclear weapons “for Diwali” (an Indian festival that features firecrackers). Indian analysts such as the respected former foreign secretary Shyam Saran have criticized the reference, writing that any reference to nuclear weapons must be carefully made because it could otherwise lead to misinterpretation and misunderstanding among external observers.

But more significantly, there is little indication that such rare statements have led to any change in India’s nuclear strategy or nuclear posture, or led to a higher alert status. Moreover, potential adversaries did not respond to these as might be expected in a case of heightened nuclear danger. While loose talk about nuclear weapons is certainly not advisable, conflating that with rising nuclear dangers is exaggerated. In the cases of both Modi and Trump, we did not see any subsequent heightening of nuclear danger or any revelation of change in their respective nuclear postures. This suggests that the role and use of such rhetoric is to impress domestic audiences and that external actors understand it as such.

This is not to suggest that the threat of nuclear proliferation and heightening of nuclear dangers should be minimized. But there is no reason to exaggerate the threat either. This brings me to the point of evidence. Have we seen any new state pursuing nuclear weapons in response to such populist rhetoric? The answer is categorically negative. On the other hand, we have seen that other factors are pushing states to develop or acquire nuclear weapons—in particular, the increasingly aggressive behavior of some nuclear powers. For example, there is increasing discussion about and consideration of the nuclear-weapons option in countries such as Japan, South Korea, and even Saudi Arabia and Australia,Footnote1 all of which are being driven by actual security concerns as a consequence of aggressive behavior by countries such as China, North Korea, and Iran. The Ukraine crisis vividly illustrates why small states might be tempted to develop or acquire nuclear weapons. Similarly, China’s continued aggressiveness toward Taiwan could lead other currently non-nuclear-weapon states to consider nuclear weapons if China conducts a successful invasion of the island state. These would appear to be much more important and consequential drivers of nuclear decision making than the rhetoric of a few populist leaders who do not appear to be taken seriously.

Assertions by Meier and Vieluf about nationalist populist leaders’ greater reliance on nuclear weapons by linking populism to the 2018 US Nuclear Posture Review (NPR) are also potentially problematic. The reality is that NPRs have always been ideologically and politically controversial in the context of US domestic politics. There have been associated controversies about what goes in and what does not, but that happens irrespective of who the leader is and what kind of leadership the United States has at a particular point in time. So, for example, nuclear experts associated with Democrats have wanted a shift in US nuclear policy toward a no-first-use (NFU) policy, while those associated with the Republican party have wanted greater emphasis on nuclear weapons in US strategy. It is quite likely that even if a non-nationalist, non-populist Republican president had come to power in 2017, there would have been efforts to shift US nuclear policy toward greater emphasis on nuclear weapons. The unfortunate part is that nuclear policy has become somewhat politically partisan, but it may have nothing to do with Trump as a nationalist-populist leader.

Similarly, Meier and Vieluf argue that the Russian emphasis on nuclear weapons is the result of the influence of the Russian Orthodox Church, with the 2019 US Missile Defense Review as an additional factor. While both of these may play some role and could be used by Russia to legitimize the importance of nuclear weapons in its military strategy, a more important factor is Russia’s conventional military weakness, which has accentuated the importance of nuclear weapons. At best, these additional factors may bolster decisions that appear to have fairly easily understandable material roots in this weakness.

Questions about the credibility of America’s commitment to its alliance partners because of Trump’s repeated questioning of the relevance of the NATO or asking its East Asian partners to pay more for American protection reveal nothing more than Trump’s ignorance and crassness, and they have had relatively little real-world effect on US alliances. There have always been concerns among US allies about American commitments, but that is well known as a feature of alliance politics. It predates Trump and will remain a concern in the future. But the consequence is also easily judgeable, even if not measurable: US alliances have remained strong and are flourishing because their fundamental purpose is security, and security concerns are rising as a consequence of aggressive actors such as China and Russia. It is honestly difficult to look at the growing tightness of US alliances and partnerships in Europe and the Indo-Pacific today and correlate it with the concerns expressed in this essay.

Looking specifically at India’s nuclear doctrine, it is worth noting that there has been opposition to the NFU policy since the time India formally presented it in 2003. Nevertheless, Indian nuclear doctrine has not changed, and Indian officials have repeatedly reconfirmed the doctrine formally in multiple statements in a variety of international settings. The 2014 manifesto of Modi’s Bharatiya Janata Party promised a relook at India’s nuclear doctrine, but Modi himself backtracked on it fairly quickly after being elected. Though some analysts have suggested that India is developing capabilities that could lead to a counterforce doctrine, India's actual force development has been fairly sedate. India still maintains a slow-growing nuclear force that is slightly smaller than even Pakistan’s, which does not suggest that India is considering any such dramatic changes. While Modi may be a nationalist populist, this does not appear to be influencing Indian nuclear doctrine in any visible manner. Considering that he has been in power for almost a decade, this stability and consistency in Indian nuclear policy calls into question arguments about how nationalist populism could impact nuclear policy.

The consequences of nuclear-policy changes are grave, and we must be careful in assessing possible dangers. This might suggest that even minor indications of future changes be treated seriously, and the authors are correct to flag potential dangers from nationalist-populist leaders. Nevertheless, there is also a risk in exaggerating the danger. Most importantly, we must not ignore more important sources of nuclear danger and proliferation. In the contemporary world, this danger is rooted in aggressive authoritarian states that are increasing the insecurity of their smaller, weaker neighbors, thus leading to greater consideration of nuclear weapons for self-defense in East Asia and the Middle East. Focusing on the wrong danger may prove to be more problematic for nuclear stability.

#### No populist wars.

Destradi ’21 [Sandra; 2021; professor in political science at the University of Freiburg; Comparative European Politics, “Populism and Foreign Policy: A Research Agenda,” vol. 19]

Amenability to compromise

Among foreign policy observers and in the media, one common assumption about populist actors is that they will adopt a less compromising posture in foreign policy as compared to that of non-populist governments and, overall, anecdotal evidence tends to confirm this impression. In theoretical terms, different approaches to populism would also lead us to expect populists in power to pursue a more confrontational foreign policy as compared to their predecessors. Populists’ Manichean worldview, highlighted by the ideational approach (Hawkins 2009: 1043) will lead them to depict the world in highly moralistic terms, as a battle of good vs. evil, black vs. white. This, together with populists’ claim to be the only possible representatives and defenders of the ‘true people’ (Müller 2016: 3) might make them less amenable to compromise in international disputes. The literature on populism as a political style also highlights that populists will tend to conjure up crises (Moffitt 2017) and employ an antagonistic, rather than consensual discourse (Ostiguy 2017). Similarly, the discursive approach suggests that the populist logic of articulation rests on the permanent discursive construction of an ‘other’ or ‘enemy’, whether internal or external. This is likely to translate into a confrontational rhetoric towards (certain) other international actors and to shape antagonistic representations of identities. Finally, the politico-strategic approach highlights that populists, after forming governments, need to keep mobilizing their followers. International crises may be particularly suitable to generate domestic support, as is highlighted by the literature on the diversionary theory of war and the ‘rally around the flag effect’ (for an overview and a criticism of existing scholarship, see Tir 2010). Indeed, after they have themselves become part of the governing elite, populists need to keep constructing enemies. Yet, previous research suggests that shifts to populist governments do not automatically lead to foreign policies that are indiscriminately more conflictive or less amenable to compromise. Relying on operational code analysis, Özdamar and Ceydilek (2019) find that while European Populist Radical Right leaders tend to be more conflictual in their worldviews, they tend to be as cooperative as average world leaders when it comes to their ‘instrumental approaches’. Insights from the Global South suggest that populist governments will pursue a more conflict-prone foreign policy only vis-à-vis countries that are directly associated with a particular section of the population that populists exclude from their definition of the ‘true people’ (Destradi and Plagemann 2019). Finally, the picture is mixed as regard populist parties’ attitudes towards the use of force and intervening in other states’ internal affairs. In the realm of defence, their degree of support for military capabilities and solutions appear largely mediated by their thick ideologies and by national strategic cultures: for instance, most populist radical right party support higher defence spending while left-wing populist parties generally adopt pacifist postures, and while most populist parties tend to favour territorial defence, some support external force projection and military interventions against terrorist groups (Falkner and Plattner 2020; Coticchia and Vignoli 2020; Henke and Maher 2021; see also Wagner et al. 2018).

#### Democratic peace is empirically bankrupt and spurious, BUT democracies are more war prone.

Bakker ’24 [Femke; March 22; Assistant Professor at the Institute of Political Science at Universiteit Leiden, Ph.D. in Political Science from Leiden University; Hawks and Doves: The Flawed Microfoundations of Democratic Peace Theory, “What About Democratic Peace?” Ch. 8]

Contribution to democratic peace theory

The findings of this study contribute in several ways to our understanding of normative and institutional democratic peace theory. These explanations for the democratic peace assume that specific political structures, the formal and informal structures of liberal democracy, influence decision-makers significantly and subsequently alter their behaviour. However, these assumptions are normative and grounded on specific political-philosophical ideas rather than being empirical facts. Yet democratic peace theory uses these assumptions as if they were empirical facts. As an explanation, democratic peace theory thus rests on normative foundations. I tested these assumptions, the actual micro-foundations of democratic peace theory, and showed that these are empirically unsupported.

First of all, liberal norms exist not only in liberal democracies but also within other regime-types. The liberal-democratic samples showed to have the highest level of liberal norms on average, as is expected by democratic peace theory, but the other regime-types also show to have, on average, positive levels of liberal norms. Liberal norms are thus not absent within other regime-types. The distribution of liberal norms within all three samples varies in similar patterns, which indicates that, within different regime-types, liberal norms fluctuate similarly. Furthermore, liberal norms neither influence the willingness to attack of decision-makers of liberal democracies nor decision-makers of other regime-types. The only, rather small but significant, influence of higher levels of liberal norms (in all three countries alike) was on the willingness to negotiate.

These results indicate that the philosophical idea that liberal democracy morally teaches its citizens to become better people does not find support in the empirical world. Liberal norms are internalised in people irrespective of the regime-type and its socialization processes. Liberal norms seem to be human norms that are capable of developing in all people, regardless of the regime-type they are born in. The results indicate that the internalisation of liberal norms happens as part of the process of self-development and not as a result of socialisation within the structure of a political regime. Therefore, liberal norms could better be called liberal values.

Earlier experimental studies of the democratic peace (Geva et al. 1993; Geva and Hanson 1999; Johns and Davies 2012; Z. Maoz and Russett 1993; Mintz and Geva 1993; Rousseau 2005; Tomz and Weeks 2013) have instrumentally assumed liberal norms to be present and influential within liberal democracies. They did not measure whether norms were actually present, and they did not test whether they indeed exerted influence as hypothesized. Neither did they compare the levels and influence of liberal norms in liberal democracies with evidence from autocracies. If the results of the current study suggest anything, it is that the theoretical underpinnings of these earlier studies need to be revisited.

Secondly, regime-type showed to have no influence on the willingness to attack, or the willingness to choose other relevant policy options, of decision-makers in all three samples alike. Regime-type thus did not influence decision-makers from liberal democracies significantly, as would be expected by democratic peace theory. This non-finding is not in line with earlier micro-level studies. These studies showed that regime-type did influence the willingness to attack: individuals from liberal democracies were more willing to attack autocracies over democracies (Bakker 2017; Geva et al. 1993; Geva and Hanson 1999; Johns and Davies 2012; Mintz and Geva 1993; Rousseau 2005; Tomz and Weeks 2013).

The question is how the findings of this study relate to previous scholarship. An investigation of the results showed that the non-influence of regime-type was not an artifact of the research design. Participants received the treatment of regime-type as intended, which indicates that they incorporated the information about the regime-type of the opponent in their decisionmaking process.

Four aspects might explain the differences in outcomes. Firstly, this study disconnected regime-type from the perception of threat by providing the information about the regime-type separately from other factors surrounding the conflict that might, in themselves, trigger a threat. As the studies of Johns and Davies (2012) and Geva and Hanson (1999) showed, it is hard to pinpoint the exact effect of regime-type when socio-cultural factors are part of the mix and might interact implicitly with regime-type. By separating the behaviour of the opponent (in this case, invasion and the use of hard power) from regime-type, the findings of this study might indicate that it was not regime-type that triggered participants in earlier studies, but another threat from the conflict scenario itself.

Second, and related to the former point, is the measurement of regime-type. This study used a hypothetical scenario about hypothetical countries, to make sure that participants would not be influenced by their specific preconceptions about real-world conflicts and countries. Most of the earlier studies (Bakker 2017; Geva et al. 1993; Johns and Davies 2012; Mintz and Geva 1993; Rousseau 2005; Tomz and Weeks 2013) used non-hypothetical countries and, moreover, relied (to a greater or lesser degree) on plausible real-world conflicts in their scenarios. Their scenarios might have triggered responses based on real-world perceptions, not only about the regime-type of the countries but possibly also about other features of these countries.

Thirdly, another point related to measurement. In this study, the regime-types were indicated by a neutral description of the practices of a liberal democracy and an autocracy, rather than by explicitly naming such regimes. No negative words were used to describe their practices, to make sure that no possible bias was triggered that might increase the perception of threat. The participants responses to subsequent questions showed that they perceived the regime-types as intended, which means that they understood what type of regime was meant, even although no specific or negative wording or con- notation was used. Most studies (Bakker 2017; Geva et al. 1993; Geva and Hanson 1999; Johns and Davies 2012; Mintz and Geva 1993; Rousseau 2005; Tomz and Weeks 2013) measured the regime-type of the opponent by explicitly naming the regime-type: democratic and autocratic/dictatorship, respectively. These words have strong and possibly negative connotations that might have triggered threat responses that are less connected with what a specific regime-type entails.

Lastly, the relevance of including other explanatory factors within the design should be explained. This study built on a previous study (Bakker 2017), in which the willingness to attack an autocracy over a democracy was tested and compared between the results of individuals from a liberal democracy with the results of individuals from an autocracy. This comparison proved to be fruitful:

The democratic experimental group showed to be more peaceful towards other democracies, just like previous studies showed. However, the comparative perspective brought a new insight: because the autocratic citizens were overall more peaceful towards all regime-types the comparison showed that actually the democratic participants were not more peaceful towards other democracies, but rather more war-prone towards autocracies. These findings are important in the light of theoretical refinement, and show that we cannot simply assume autocratic individuals to be war-prone, as democratic peace theory does. (Bakker 2017, 538).

However, multivariate analysis showed that the significant influence of regime-type on liberal-democratic individuals disappeared and did not have any explanatory value when the analysis controlled for other factors. In other words: the influence of regime-type lost its salience and showed to be marginal and not significant, because the multivariate analysis showed that the perception of threat of the conflict mattered, as well as actor-centric factors such as hawkishness (2017, 539).

Earlier micro-level studies did not compare the results for liberal democracies with the results for autocracies. They measured regime-type in several explicit ways that might have triggered different threat responses, for which no control was implemented. Moreover, they did not disentangle regime-type from other potential threatening factors. Although these studies are valuable for our understanding of democratic peace theory, all in all, this study shows that the factor regime-type as a reason for choosing to go to war should be considered more carefully.

#### Democracy ignites maritime flashpoints---liberal values drive nationalism and insecurity.

Mitchell ’23 [Sara McLaughlin; 2023; Professor of Political Science at the University of Iowa; Security Studies in a New Era of Maritime Competition, “Clashes at Sea: Explaining the Onset, Militarization, and Resolution of Diplomatic Maritime Claims,” Ch. 3]

Developed/Democratic Dyads

Maritime claims often stem from states’ economic goals as more developed countries seek to extract hydrocarbon and fishing resources of the sea to meet increasing local demands for food and energy. Economically advanced states also tend to be more democratic, with institutions that provide for free and fair elections and protect property rights. Democracy and development go hand in hand with maritime conflicts because most of the largest fishing fleets in the world come from wealthy democratic states, such as Japan, Spain, India, the UK, and the US. 51 Many of the maritime claims discussed in the paper thus far (e.g. Cod Wars, Turbot Wars, Northwest Passage, Tuna Wars) occur between fully democratic countries.

Few territorial disputes occur between fully democratic states, although a high percentage democratic militarized disputes involve oil and fishing resources. Of the 97 dyadic MIDs that occurred (1946-1992) between two democracies, 43% involved fishing, oil, or mineral resources (Mitchell and Prins 1999). Fully democratic countries do not often contest each other’s land borders, but they engage frequently in maritime claims. My replication of the Daniels and Mitchell (2017) model (Table 5) evaluates whether democratic dyads face higher risks for maritime claims than other regime pairings among all dyads (N=125,891) that could experience diplomatic disagreements over such issues. The authors’ bivariate analyses show that democratic dyads have a significantly higher risk for maritime claims (7.09%) than non-democratic dyads (4.68%; χ2= 203.1308, p < .001), a finding confirmed in my replication model (Table 5, Model 1). The risks of maritime claim onset are 46% higher for democratic dyads than non-democratic dyads. Consistent with democracies’ global economic interests driving these conflicts, maritime claims are 300% more likely if a dyad involves economically advanced states. These patterns suggest that maritime conflicts between democracies are quite frequent, which is surprising given that many of them (29%) involve militarized disputes. Maritime issues thus create a bone of democratic contention and could threaten the democratic peace in the future as marine resources become more contested in an increasingly scarce global environment. The negative and significant effect of the UNCLOS treaty being in force, however, shows that the risks for new jointly democratic maritime claims decreased in more recent decades given that the treaty has been ratified by 85% of all countries in the world.

Militarization of Maritime Claims (Stage 3)

Close to a third of all ICOW dyadic maritime claims experience at least one militarized dispute over the contested issues at stake. This is a conservative estimate of the effects of maritime issues on conflict, however, because ICOW excludes MIDs that are not fought directly over the issues in a claim. Variation in issue salience provides great leverage for predicting militarized disputes, with more salient issues involving oil, migratory fish stocks, and land disputes becoming more violent on average. A history of conflict and rivalry also raise the risks that a dyadic maritime claim will become militarized.

#### Maritime competition escalates---nuclear war.

Kaushal ’24 [Sidharth; April 22; Senior Research Fellow in Sea Power at Royal United Services Institute, Ph.D. in International Relations from the London School of Economics; European Security and Defence, “Nuclear Weapons at Sea – is their Use Viable?” https://euro-sd.com/2024/04/articles/37574/nuclear-weapons-at-sea-is-their-use-viable/]

Throughout much of the 20th century, a presumption that warfare at sea could involve the employment of nuclear weapons underpinned force design. The staying power of vessels against missile attacks, for example, was deprioritised partially because of an assumption that on a nuclear maritime battlefield, should vessels fail to intercept incoming targets, they would largely become non-survivable.[1] Nuclear-armed mines and depth charges were also an important part of the arsenals of both sides during the Cold War as a means of achieving area effects against elusive targets such as submarines.[2]

For much of the Cold War, official US policy was that nuclear use against American assets at sea would be treated as being no different from a nuclear attack anywhere else. However, at the time some scholars questioned whether this was indeed a credible deterrent – after all, unlike tactical nuclear use at scale on land, the use of nuclear weapons at sea would inflict only military casualties.[3] Against a continental power such as the USSR the challenge was that most forms of nuclear retaliation which would be damaging enough to be credible would necessarily have to target the Soviet homeland and would represent strategic nuclear use rather than the tactical employment of nuclear weapons.

<<TEXT CONDENSED, NONE OMITTED>>

The theory that battlefield nuclear employment at sea could be deterred by the threat of strategic escalation was never tested but there are reasons to believe that this threat was not regarded as credible. This has ramifications for both the conduct of nuclear deterrence under contemporary conditions and the employment of naval forces in the emerging operating environment. Thinking about nuclear conflict at sea, at least in public discourse, has largely receded with the assumption often being that in the event of a nuclear escalation the character of a conflict has altered to the point where previously held assumptions about warfighting no longer hold. In effect, all nuclear use is to be treated as strategic, with the ramifications that this entails being part of what is expected to deter an opponent. While there is something to be said for strategic ambiguity as a deterrent strategy (insofar as this leaves an opponent without clear consequences to plan against and mitigate) there is some evidence that, at least in the European theatre, this may not be sufficient. Russian Naval Planning It is of note that Russia’s planning document ‘Fundamentals of the state policy of the Russian Federation in the field of naval activities for the period until 2030’ explicitly identifies “the capability of the Navy to damage an enemy’s fleet at a level not lower than critical with the use of non-strategic nuclear weapons” as a core naval function.[4] It is in many respects unsurprising that this should be the case. On the one hand, Russia has demonstrated that its capacity for conventional targeting at sea is limited at best, particularly in what the Russians identify as the areas beyond their coastal defensive zones (out to slightly over several hundred kilometres from Russia’s coasts). Russia has largely failed to replace the Soviet era Tselina and Legenda electronic intelligence (ELINT) and radar-equipped satellite constellations. The Pion and Lotos satellites which collectively form Russia’s Liana constellation have only been launched in limited numbers, meaning that Russia can expect only intermittent situational awareness at long distances beyond its coastlines.[5] Other methods of surveillance such as the use of commercial satellite imagery or data from over the horizon (OTH) radar such as the Polsodnyukh and Kontainer are limited either by latency or a lack of granularity. The margin of error on the average OTH radar against maritime targets, for example, is up to 40 km.[6] Many of these limitations have been visible during the ongoing conflict in Ukraine. Over the course of this conflict, Russia failed to sink Ukraine’s last remaining surface combatant, the Yuri Olefirenko, as the latter was conducting coastal bombardments off the Kinburn Spit and Kherson, eventually sinking the vessel in port. A failure to sink a dynamic target in a highly congested battlespace does not bode well for Russian efforts to target vessels such as aircraft carriers at what will likely be engaged at considerably greater distances. Furthermore, the Russian capabilities most relevant to maritime strike such as the Tu-22M3 Backfire bomber are available in relatively limited numbers compared to the Cold War. Russia fields 63 Backfires at the time of writing and would likely have fewer remaining in service during a major conflict. As such, the likely heavy losses taken by the Backfire force in any attack on an allied maritime component would mean that, if unsuccessful, Russia would have squandered an important strategic capability, which also forms a component of its nuclear triad, for limited effect. Other capabilities such as nuclear-powered attack submarines (SSNs) are also available in far more limited numbers than was the case in the Soviet era – meaning the Russians have a more slender margin for error as the loss of these capabilities cannot be countenanced unless targets of commensurate value are destroyed.[7] It is thus vital for the Russians that if strategic capabilities are committed to the attack under conditions where western forces enjoy greater situational awareness, the odds of success are maximised. Nuclear weapons could play an important role for the Russians as an offset. However, as will be discussed in subsequent sections, their utility at sea should be contextualized. Nonstrategic nuclear weapons and even strategic capabilities cannot easily be used as an area effect tool to destroy stronger fleets. They can, however, influence important aspects of maritime competition. Nuclear weapons and anti-surface warfare – its importance and the need for caveats It should thus not be entirely surprising in the context of the above discussion that Russia retains an emphasis on nuclear use at sea within its naval doctrine. It is, at least in theory, conceivable that the use of nuclear weapons at sea could mitigate the impact of an imperfect kill chain. This being said, there are certain limitations to nuclear use at sea which should also be borne in mind.

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There are, broadly speaking, three ways in which a nuclear weapon might be used against a vessel. The first is the destruction of either a vessel’s hull or its superstructure through the overpressure generated by an airburst of a nuclear armed missile. Secondly, the thermal energy generated by a nuclear detonation can harm crew members – though this will primarily affect individuals above decks, and since the Cold War vessels have been designed to minimise crew exposure in this area. Third, the shockwave from an underwater detonation can, in principle, physically destroy a hull.

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To mission kill a vessel such as an Arleigh Burke class destroyer, a nuclear detonation would need to achieve an overpressure of around 48 kPa (7 psi).[8] While comparable data does not exist regarding aircraft carriers, it is worth noting that when landing vertically an aircraft such as the F-35B generates around 18,144 kg (40,000 lb) of pressure which would imply that carrier flight decks can sustain considerably more pressure. However, there is no reason to believe other superstructure elements such as the castle should be less resistant to pressure than those on an Arleigh Burke.[9] Based on data gathered from Operation Crossroads, which saw the US Navy Test a 23 kt nuclear weapon against a combination of captured Japanese vessels and obsolete US assets, we can assess that a comparable nuclear weapon could achieve this level of overpressure against a DDG at a distance of around 1.2 km.[10] This would be comparable to the nuclear payload carried on a missile such as the Russian RPK-6/RPK-7 (SS-N-16 Stallion).[11] On the one hand, this introduces certain advantages – a missile can miss by a margin and still achieve effects. However if, for example, a ballistic missile is within 1.2 km of its target, a manoeuvring re-entry vehicle should be able to guide it to its intended target with a conventional payload.[12] This would also hold for an active seeker equipped cruise missile flying at a high altitude. In other words, if an opponent’s reconnaissance and targeting system is refined enough to locate a high-value target with sufficient fidelity to place a missile within roughly a kilometre of its destination, it can complete a kill chain with conventional munitions. A cruise missile such as the Russian KH-101/102 will carry a considerably larger payload of 250 kt meaning that it would generate comparable levels of overpressure at longer distances of around 2.88 km.[13] However, to get within roughly 3 km of an aircraft carrier, a high-flying missile (which would be necessary in order to cause an airburst) would have had to have evaded all of the defences of a vessel barring its CIWS – added to which, the use of a 250 kt warhead is a rather uneconomical and high-risk means of defeating terminal phase defences.[14] If the means to defeat the other layers of a ship’s IAMD can be arrived at, avoiding terminal phase defeat should be possible without the need for nuclear escalation. An alternative might be bracketing an area with a salvo of nuclear-tipped cruise or ballistic missiles. However, in order to achieve area effects over the roughly 20 km2 area within which a ship might be if tracked on the basis of a source such as shore-based OTH radar, a large number of nuclear-tipped warheads would need to be used. This number would grow larger still given that planners would necessarily need to account for the fact that a large part of an incoming salvo would likely be intercepted by shipboard air defences – something evidenced by the air and missile war around Kyiv, for example.[15] Preparing such a salvo would thus require potentially hundreds of low yield warheads to be moved from storage sites to airbases in which strategic aircraft were positioned – raising the prospect that an opponent could not distinguish preparatory activity from preparations for a wider nuclear attack. Moreover, even if an opponent did distinguish the intended targets of an attack and recognised that maritime platforms are the intended vector, this visible preparatory activity would incentivise the suppression of launch platforms with conventional deep strike capabilities. Undersea detonations – a more viable approach The detonation of a nuclear warhead underwater might represent a more fruitful method of nuclear use at sea. The shock waves generated can potentially be used as a means of anti-surface warfare (ASuW), a crude means of both countering submarines and disrupting undersea sensor networks such as the US’ Integrated Undersea Surveillance System (IUSS). Indeed, this was a use case for both nuclear mines and nuclear-armed torpedoes during the Cold War. The shock wave produced by the detonation of a 100 kt weapon underwater can generate 18,616 kPa (2,700 psi) of pressure at a distance of around 1 km.[16] During the Cold War, tests such as the U.S Navy’s 1955 Wigwam underwater nuclear test demonstrated that a 30 kt nuclear weapon could sink a contemporary submarine at a range of 1.6 km (1 mile) – although modern submarines would enjoy greater pressure resistance than their early Cold War counterparts.[17] An even larger payload such as the estimated 2 Mt payload on the Russian Poseidon would, of course, produce comparable levels of overpressure at even greater distances.[18] However, once more, ASuW is the least-fruitful use case. A large, fast-moving nuclear torpedo should in principle be detected and engaged by anti-submarine warfare (ASW) capabilities at well beyond the distances at which they would be effective at generating an effective shock wave. It should be noted, after all, that ASW capabilities are expected to hold at bay cruise missile equipped submarines using a combination of undersea sensors, maritime patrol aircraft (MPA) and the organic ASW capabilities of a surface force.[19] There is another challenge to using nuclear armed torpedoes as an ASuW capability. When shock waves are generated by an underwater detonation, particularly when close to the surface of the ocean, the upward-travelling waves will rapidly encounter the surface, and thus air, which is a much less rigid medium than water. This contact with a less rigid medium leads to rarefaction – that is, a negative pressure wave being reflected back into the water. The interaction between the initial positive pressure shock wave and the reflected negative pressure wave causes a net reduction in water shock pressure.[20] Consequentially, when objects are near the surface of the water, the effects of a shock wave dissipate more rapidly. Thus, for example, during the Swordfish nuclear tests 10 kt RUR-5A anti-submarine rockets (ASROCs) were launched to distances of about 2.5 km from the destroyer USS Agerholm without the launch vessel facing risks from overpressure.[21] Notably, 2.5 km is well within the range of most modern conventional torpedoes such as the MK 48 ADCAP. As such, it is unclear why, if a submarine has slipped to within 2.5 km of its surface target, it would not use a conventional torpedo. It is for this reason that nuclear weapons were, during the Cold War, largely viewed as a reversionary capability to be used in the event that unexpected flaws in conventional capabilities were discovered in the context of high-intensity combat.[22] There could be other reasons to use a submerged nuclear capability against a vessel, in principle. For example it might be deemed desirable to ‘slime’ a vessel – exposing it to enough radioactive fallout that it could not be easily rotated into port for functions such as vertical launch system (VLS) replenishment unless radiological contamination has been controlled for. Moreover, personnel on a vessel would need to conduct their activities in protective gear, potentially slowing the tempo of action. The Agerholm tests would suggest that ships which maintain a roughly 350 m distance from the detonation point can limit their exposure to fallout. Even so, larger-payload weapons detonating at or close to the surface could have the effect of imposing a requirement for vessel decontamination. Even if this did not remove a vessel from a naval order of battle, it would impose requirements on a fleet which would slow its operational tempo.[23] A vessel does not necessarily need to be sunk to be prevented from operating effectively. ASW represents another area where nuclear use may make more sense. Nuclear detonations at greater depths experience less water shock pressure loss from the effects of rarefaction, potentially making nuclear warheads a useful means of engaging submarines as well as other types of underwater target. Weapons comparable to the RUR-5A could be used to prosecute submarine contacts at long distances, as could even heavier payload systems such as the Poseidon. Currently, only one Russian system carries the Poseidon (the special purpose submarine Belgorod) but it could be deployed on other platforms or, indeed, on the seabed.[24] While it would, of course, also be possible to target a submarine using a conventional torpedo or depth charge within ranges of 1-2 km, the use of a nuclear payload would limit a submarine’s ability to evade a projectile by trying to outrun a munition, using decoys or diving to greater depths.[25] One of the major challenges with this model was, historically, the fact that the launch platform was itself at risk. This was true for submarines, but also of helicopters, with the Soviets estimating that the likelihood of a helicopter which launched a nuclear depth charge surviving was about 50%. Uncrewed systems could, in principle, obviate this challenge to an extent if they are capable of sufficiently heavy lift.[26] There are additional functions that nuclear weapons might play in the subsurface environment. For example, they might be used to disable the sensors which comprise networks such as IUSS. Indeed, the use of nuclear weapons in this capacity represented a major component of Soviet planning for a war with NATO.[27] Area effects against fixed arrays of hydrophones are likely to be considerably easier to achieve than the targeting of mobile surface groups and would likely form one part of a layered effort to disrupt Western situational awareness at sea. This could have crucial knock-on effects for the conduct of surface warfare. Should networks such as IUSS cease to be effective and if area effects can be delivered against at least some Western submarines at reach, then the already stretched Western ASW forces would find it even more difficult to operate at scale. This, in turn, could enable Russia’s attack submarines and guided missile attack submarines (SSGNs) to operate with greater freedom – particularly if Allied ASW capabilities are stretched thin by the allocation of US capabilities to the Indo-Pacific, and in the context of a forecast trough in SSN numbers beginning in the late 2020s. The latter is due to the US Navy’s relative decrease in SSN procurement levels during the 1990s, and Los Angeles class SSNs being slated for retirement at a faster rate than their replacement Virginia class SSNs are entering service.[28] Deterrence at sea and from the sea

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Ultimately, the nuclear threat at sea should be contextualised but not entirely downplayed. It is likely the case that an opponent such as Russia cannot entirely compensate for its targeting weaknesses by using nuclear weapons as an area effect capability. Nonetheless, the use of nuclear capabilities at sea can considerably complicate the employment of naval vessels and could be particularly consequential in the subsurface competition.

This is of considerable concern if, as is often stated, Western nations view their relative advantages in the subsurface competition as a key and enduring advantage. This perceived advantage is already stretched thin by the inherent difficulties in scaling the existing western approach to ASW which will be compounded by geopolitical shifts that will spread US capabilities thin. Adversary nuclear use at sea will exacerbate these challenges and add a new dimension to any conflict with Russia – one in which nuclear weapons have been used against strategic capabilities such as SSNs and hydrophone networks but no civilians have been killed.

While Western policy has historically favoured drawing no distinction between various forms of nuclear use, it is unclear that this is tenable. In practice a degree of flexibility is likely to be needed to deliver response options that are calibrated and proportionate to the provocation at hand. Developing additional low-yield nuclear weapons such as the US’ nuclear submarine-launched cruise missile (SLCM) could represent one avenue.[29] However, the use of these capabilities is complicated by two factors. First, they would likely have to be used against an opponent’s homeland for a provocation which occurred at sea – effectively generating a strategic level escalation from a theatre level escalation. Second, it is not obvious what a target of commensurate value would be. Targets such as individual airbases would not be so critical to a Russian war effort that a rational Russian leader might accept their loss as the price of a successful maritime campaign which could have strategic ramifications. By contrast, targets such as command centres or the large scale targeting of military facilities with nonstrategic nuclear weapons raise the prospect of strategic escalation.

#### Democracy makes disease control impossible.

Landman ’23 [Todd and Matthew Smallman-Raynor; October; Professor of Government and Director of the Institute for Democracy and Conflict Resolution at the University of Essex; Professor of Analytical Geography, Faculty of Social Sciences at the University of Nottingham; Political Geography, “The politics of COVID-19: Government response in comparative perspective,” vol. 106]

Across this great variety of regime types there are thus fundamental questions of governance during crisis involving authority, legitimacy, and capacity to respond to the COVID-19 pandemic. Many democracies lack the necessary ‘emergency’ clauses in their national constitutions and defined the threat from COVID-19 differently (Kettemann & Lachmayer, 2022), while others do not provide sufficient freedoms that allow for publics to question and critique government response. Some democracies saw the pandemic as an external and indiscriminate threat, while others, such as Germany, initially saw it as an ‘internal’ problem (Thielborger, ¨ 2022). The separation of powers and the difference between unitary and federal systems meant that there were significant coordination and command and control challenges that slowed the marshalling of state resource needed to combat the virus and minimise its community transmission (Rich, 2021). The United Kingdom faced significant challenges in its approach to ‘virus governance’ across its devolved authorities in England, Wales, Scotland, and Northern Ireland (Baldwin, 2021; Thomas, 2022). Democracies also faced the challenge of mass publics and popular opinion, which were variously influenced by scientific information, misinformation, and conspiratorial disinformation, which proliferated across social media platforms (Kellerman, 2021). Mass publics accustomed to freedom of movement, economic enterprise, and public participation in events and gatherings reacted negatively to prolonged periods of lockdown, facemask guidance, and vaccine distribution. Democracies thus faced significant trade-offs between fundamental freedoms (e.g., speech, assembly, access to information, peaceful protest and demonstrations, and privacy), concerns for public health, and maintaining their economies. Arguably, autocracies were in much a better position to respond quickly to the threat from the virus, where they have more immediate control over state resource, the ability to repress and control popular dissent, and a weaker tradition of public opposition to state authority, particularly during times of national crisis. They also have political incentives to under-report COVID data and/or manipulate data to appear more competent during the pandemic.

#### Democracy dooms climate response AND fuels food insecurity, ensuring global backsliding---it’s try-or-die for autocracy.

Nandi ’25 [Neha; May; Postgraduate Student and Researcher, Department of Political Science Presidency University, Kolkata; Loreto College Journal of Humanities and Social Sciences, “Democracy Under Heat: Transforming Political Systems in The Face of Environmental Urgency,” vol. 1, no. 1]

IS AUTOCRACY A BETTER REGIME TO TACKLE THE WICKED PROBLEM?

In addressing the issue of climate change, autocratic governments may have significant benefits over their democratic equivalents. According to prominent scientist James Lovelock, concerning climate change, “It may be necessary to put democracy on hold for a while” to allow a small number of honest officials to make judgments based on evidence that restricts individual freedom (Lovelock, 2010). When citizens' basic requirements for protection are met, such an authoritarian power exercise is accepted as acceptable in democracies during times of crisis. Two principal factors bolster this viewpoint. First, centralized policymaking restricts the power of potentially hostile actors (such as corporations), which is advantageous to authoritarian regimes. Furthermore, authoritarian leaders are not under the same pressure as democratic leaders to put the needs of the populace first, prioritizing immediate personal gain over longterm climate goals. Climate mitigation may encounter resistance from industries and communities who are unwilling to bear unequal burdens because it usually offers global advantages at the price of localized costs.

Second, authoritarian governments can quickly mobilize people and resources, using their coercive powers to limit personal liberties and unhinderedly concentrate attention, resources, and energies on their top priorities. Therefore, climate-conscious autocracies have the potential to effectively reduce carbon emissions from individuals, groups, and organizations. Known as "authoritarian environmentalism," this style of government is typified by a concentration of power in a small number of executive agencies, little public involvement in policymaking or execution outside of state-led mobilization, quick policy outputs, and restrictions on personal freedom. According to some academics, authoritarian approaches to climate governance may become increasingly prevalent and essential as modern democracies struggle to respond to climate change in a timely and efficient manner (Gilley, 2012).

Natural disasters have caused social unrest and disturbances, including violence and looting, in nations with weak state institutions and unstable political environments. Some research indicates that these events might also contribute to a growing mistrust of democracy. These circumstances can be used by an authoritarian government to increase its social legitimacy. Natural catastrophes can also reduce the likelihood of protests, which gives authoritarian governments the chance to impose more dictatorial control and restrict people's freedoms. This is particularly true in nations that already have political instability and have an intermediate regime type. Natural catastrophes may also result in a scenario where parties with opposing interests are brought together, reinforcing national unity and enabling social and political change. Natural disasters often do not threaten the political system in industrialized democracies. In democracies, if people are unhappy with how the government is responding. In autocratic nations, such circumstances could result in regime transition, while in other countries, leadership could be punished in future elections. As an illustration, consider the April 2015 earthquake that rocked Nepal, killing 9,000 people and seriously damaging infrastructure and homes. The catastrophe drew political parties together at a time when the nation was discussing a new constitution. According to some analysts, the catastrophe aided in the progress of democratization, and two years later, Nepal had its first municipal elections in almost two decades.

Feeding the world's expanding population will become extremely challenging due to global warming. Food insecurity is therefore quite likely to rise in the future, and as a result, food costs will increase. Rising food costs put democratic institutions under strain by raising the possibility of economic and social unrest, urban riots, protests, and political instability. Such occurrences are likely to be detrimental to the advancement of global freedom and could result in a collapse of governing structures. However, these occasions could also present opportunities for the transition of autocratic governments to democracy. Nondemocratic regimes are better able to silence a hungry populace, while elected leaders typically find it more difficult to maintain their hold on power if the people are unable to eat.

#### Extinction---tipping points are certain and soon.

Spratt ’24 [David; December 2; Research Director at the Breakthrough National Center for Climate Restoration, Founder of the Climate Action Center, BS in Economics from the Australian National University; Breakthrough Center, “Collision Course: 3-degrees of Warming and Humanity’s Future,” https://www.breakthroughonline.org.au/\_files/ugd/148cb0\_085aaeb2f1a1481789014b8e895ad23b.pdf]

The big picture is that important elements of the global climate system, such as polar ice-sheets, are reaching their tipping points decades to centuries faster than was previously projected. Many events in the climate system are beyond climate models’ projections; that is, current models are not capturing all the risks.30 They overlook or downplay the impacts of non-linear and difficult to predict processes such as the loss of ice sheet mass, ocean heat drawdown, rising sea levels, upticks in extreme events, carbon stores losing integrity, and more. Examples include:

— Prof. Jason Box says that for Greenland there is “a more rapid response of the ice than is currently encoded in climate models that project sea-level rise… we cannot yet rely on ice sheets models for credible sea level projections”.31

— CO2 and methane release from deep permafrost are not routinely included in climate models.32 Prof. Merritt Turetsky says that: “Permafrost is thawing much more quickly than models have predicted, with unknown consequences for greenhouse-gas release.”33

— Nor have models accounted well for the slowing of the Atlantic Meridional Overturning Circulation (AMOC).34

— Models have been unable to reproduce the frequency and intensity of persistent summer weather extremes of recent years.35

— Australia has experienced bushfires of an intensity not projected to happen until the 2090s, forcing a change in the fire intensity rating system. But in 2024 scientists warned again that Australian bushfires could still be more intense and extensive than current predictions.36

— And observed changes in temperature extremes in parts of Australia during 2011–2020 tracked much higher than the projected changes for that period, and already are tracking at the changes projected for 2030 (2021–2040) period.

— In 2023, the rapid warming of the North Atlantic was beyond model expectations (greater than four standard deviations), with conditions similar to those scientists expect to be the average at 3°C of warming.37 By August 2024, the El Niño was fading but the mean Northern mid-latitude SST kept warming. Likewise, in 2023 the rapid retreat of Antarctic sea-ice was astounding and five standard deviations beyond the mean.38

Reflecting on the extreme events of 2023, Prof. Katharine Hayhoe told The Guardian that: “We have strongly suspected for a while that our projections are underestimating extremes, a suspicion that recent extremes have proven likely to be true… We are truly in uncharted territory in terms of the history of human civilisation on this planet.”39 In a similar vein, NASA’s Gavin Schmidt points to the problem of trying to understand the future based on the recent past when the changes are now rapid and systemic: “The system is changing in a way where what happened in the past is no longer a good guide to what’s going to happen in the future.”40

03 System Tipping Points Tumble Abruptly

Climate change has arrived, with severe impacts emerging at lower temperatures than expected. The distribution has shifted; historic tail risks are now expected. Climate risks are complex, interconnected and could threaten the basis of our society and economy. A systems approach is required. Climate Scorpion, March 2024 41

There is now clear evidence that a number of crucial system-level tipping points have been reached, in some cases decades to centuries earlier than had been projected. Seven of nine sustainable planetary boundaries have already been exceeded.

Tipping Points

A tipping point is a threshold beyond which large change is initiated in a system and becomes self-perpetuating, and the change is often abrupt and irreversible on long timescales.42 Passing these thresholds may constitute an ecological point of no return, after which it may be practically impossible to return the climate to pre-industrial (Holocene) stability. Tipping points may interact to form tipping cascades that act to further accelerate the rate of warming and climate impacts (see Section 7).

Australian researchers warned in February 2024 that the effects of tipping points on the global climate “are generally not currently accounted for in projections based on climate models. This means that effects of tipping points are also not included in national climate projections and impact assessments for Australia and may represent significant risks on top of the changes that are generally included.”43

Prof. Johan Rockström says that the following Earth system elements “are likely to cross tipping points already” at 1.5°C of warming:44 The Greenland Ice Sheet; the West Antarctic Ice Sheet (WAIS); abrupt thawing of permafrost; loss of all tropical coral reef systems; and collapse of the Labrador Current, one element of the Atlantic Meridional Overturning Circulation (AMOC).

This analysis comes from the Global Tipping Points report, which in late 2023 warned that five important natural thresholds already risk being crossed, and three more may be reached if the world heats to 1.5°C above pre-industrial temperatures. Such tipping points “can trigger devastating domino effects, including the loss of whole ecosystems and capacity to grow staple crops, with societal impacts including mass displacement, political instability and financial collapse”.45

They include:

— The Greenland Ice Sheet likely reached its tipping point 20 years ago.46

— The West Antarctic glaciers have passed a tipping point;47 and the Paris Agreement temperature target of 1.5°C is sufficient to drive the runaway retreat of WAIS.48 In May 2024, scientists warned that Thwaites Glacier, nicknamed the “Doomsday Glacier”, is near collapse.49

— Parts of East Antarctica might be similarly unstable.50 Denman Glacier has been identified as susceptible to collapse of its ice shelf and inundation of the glacier itself, which sits on a retrograde base below sea level.51

— Summer Arctic sea-ice, where three-quarters by volume has already been lost,52 and is in a death spiral.53

— Arctic permafrost, which is now a net source of major greenhouse gases.54

— Canada’s boreal forests are one of Earth’s largest terrestrial carbon storehouses. Long a reliable “sink” for carbon, the forests since 2001 have become instead an increasing carbon “source”, and passed their tipping point. In the 2020s, Canada’s forests have raised the country’s total emissions by 50%.55

— Tropical forests are also nearing critical temperature thresholds.56 The forest systems are oscillating to non-forest ecosystems in eastern, southern and central Amazonia.57 The Amazon has become a net carbon source during recent climate extremes and the south-eastern Amazon was a net land carbon source over the period 2010–2020.58 And the South American monsoon is heading towards a “critical destabilisation point” or tipping point likely to cause Amazon dieback.59

— Tropical coral reef systems. Researchers warn that “warming of 1.5°C relative to pre-industrial levels will be catastrophic for coral reefs” worldwide.60 The IPCC reported that nearly all tropical reefs will become extinct even if global warming is kept to 1.5°C.

The permafrost and forest changes represent fundamental changes in the carbon cycle, in which systems that have had a major role in absorbing carbon from the atmosphere and storing it, flip to becoming a source of carbon to the atmosphere. If the land-based stores become sinks, that drives up the rate of warming. In October 2024, The Guardian reported on preliminary research findings showing the amount of carbon absorbed by the land sinks had temporarily collapsed in 2023: “The final result was that forest, plants and soil – as a net category – absorbed almost no carbon.”61

And the biggest story of 2024 is the non-trivial and unacceptable risk of Atlantic Meridional Overturning Circulation collapsing by mid-century, which would be “a going-out-of-business scenario for European agriculture”.62 A July 2023 study estimated “a collapse of the AMOC to occur around mid-century under the current scenario of future emissions”, with a 95% probability of it occurring between 2025 and 2095.63 And a paper in publication estimates the probability of an AMOC collapse before the year 2050 to be 59±17%.64 A full breakdown of AMOC could happen within a few decades, says AMOC specialist Stefan Rahmstorf.65 AMOC collapse would result in the West Africa and South Asia monsoons becoming unreliable, a one-metre sea level rise on both sides of the North Atlantic, Australia becoming warmer and more prone to flooding, a flip of the wet and dry seasons in the Amazon, and as much as half of the world’s viable area for growing corn and wheat could dry out. “In simple terms [it] would be a combined food and water security crisis on a global scale.”66

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Planetary Boundaries In 2009, a group of eminent researchers identified a framework of “planetary boundaries” that define “a safe operating space for humanity”.67 If we cross these limits, they said, abrupt or irreversible environmental changes can occur with serious consequences for humankind. The nine planetary boundaries identified are: climate change; change in biosphere integrity (biodiversity loss and species extinction); stratospheric ozone depletion; ocean acidification; biogeochemical flows (phosphorus and nitrogen cycles); land-system change (deforestation); freshwater use; atmospheric aerosol loading (microscopic particles in the atmosphere that affect climate and living organisms); and introduction of novel entities. The boundary for atmospheric CO2 was said to be no more than 350 ppm, because transgressing this boundary “will increase the risk of irreversible climate change, such as the loss of major ice sheets, accelerated sea-level rise and abrupt shifts in forest and agricultural systems”. The current CO2 level is greater than 420 ppm. An update in September 2023 described as “the first scientific health check for the entire planet” found that six out of nine planetary boundaries had been broken because of humancaused pollution and destruction of the natural world.68 And in September 2024 researchers announced that a seventh boundary — ocean acidification — is on the brink of being breached.69 In May 2023, an assessment of “Safe and just Earth System Boundaries” (ESBs) identified eight global and regional ESBs and found that “seven of eight globally quantified safe and just ESBs and at least two regional safe and just ESBs in over half of global land area are already exceeded”.70 In October 2023, twelve authors, including those who had led the planetary boundaries work, published “The 2023 state of the climate report: Entering uncharted territory”, and warned that at 2.6°C warming we face “potential collapse of natural and socioeconomic systems in such a world where we will face unbearable heat, frequent extreme weather events, food and fresh water shortages, rising seas, more emerging diseases, and increased social unrest and geopolitical conflict. Massive suffering due to climate change is already here, and we have now exceeded many safe and just Earth system boundaries, imperilling stability and life-support systems.”71 04 The World is not Decarbonizing It appears the green recovery following COVID-19 that many had hoped for has largely failed to materialize. Instead, carbon emissions have continued soaring, and fossil fuels remain dominant. The 2023 state of the climate report: Entering uncharted territory, October 202372 Annual human-caused greenhouse gas emissions continue to increase. In absolute terms, decarbonisation has not occurred because lower emissions from electricity use are being offset by growth in other areas of energy use, and there is likely to be a slow decline in total emissions up to 2050. Emissions The world’s energy-related CO2 emissions in 2023 increased to a new record high,73 despite clean energy growth. Whilst wind and solar power climbed by 13% in 2023, that did not match the world’s growing consumption of primary energy, which rose 2% for the year.74 Much of that increased demand came from AI, cloud computing and crypto industries. In summary, the world has not yet started to decarbonise in absolute terms because lower emissions from electricity use are being offset by growth in other areas of energy use. So, for the time being at least, we are not experiencing an energy transition: what humanity is doing is adding energy from renewable sources to the growing amount of energy it derives from fossil fuels.75 Australia is a good example, where reductions in the electricity sector are cancelled out by rises in other sectors (see Figure 2). [[FIGURE 2 OMITTED]] United States crude oil production officially hit a record 13.4 million barrels per day in August 2024, and since 2008 has skyrocketed 350%. The US is now the world’s largest oil producer, exceeding Russia’s output by ~35% and Saudi Arabia by ~38%.76 And the US plans to more than double gas exports. Replacing coal with gas is no help if that gas is exported as LNG, with a new study finding that exported gas is 33% worse in terms of planet-heating emissions over a 20-year period compared with coal.77 And coal use up to 2030 may be higher than previously anticipated. The STEPS scenario in the International Energy Agency’s World Energy Outlook 2024 has electricity demand rising faster than renewables output, resulting in coal demand in 2030 being 300 million tonnes of coal equivalent (Mtce) higher than in their 2023 report.78 The share of fossil fuels in global energy consumption over the last 25 years has decreased from 86% in 1997 to 82% in 2022. And the IEA calculates that the CO2 intensity of power fell 6% in the thirty years from 1990 to 2021.79 Projected Emissions At some point, perhaps soon, yearly global emissions will peak, plateau and slowly decrease, depending on the rate of increase in renewable energy construction and innovation, the rate of economic growth, the fate of fossil fuel financial dis/incentives such as subsidies and carbon taxes, and several other factors. When that will happen, and the likely rate of fall, is contentious, as are the projections of future fossil fuel demand by the industry itself, and from the International Energy Agency (IEA). The UN Environment Program (UNEP) and IEA both project emissions will drop only 10–20% by 2050, with all major oil/gas nations planning to expand production. The UNEP Production Gap report finds on current plans emissions may be as high in 2050 as today (Figure 3).80 The IEA says that stated policies will result in oil and gas production in 2050 as high as 2020, with coal halved.81 The OECD projects that a world economy more than twice the size of today will need 80% more energy in 2050 and, without new policy action, the global energy mix in 2050 will not differ significantly from today, with the share of fossil energy at about 85%, renewables including biofuels just over 10%, and the balance nuclear.82 But others say this is too pessimistic: “While the fossil fuel industry still argues there will be strong market demand for oil and gas in 2050, this ignores all the evidence of past disruptions that superior technologies don’t take market share, they take whole markets.”83 And the IEA also says that global oil demand growth is slowing sharply due to surging electric vehicle sales.84 05 Petrostates & Big Oil are on the Offensive Unexpected strong demand for oil has stiffened the industry’s opposition to government and activist demands to phase out fossil fuel development. Policymakers also have shifted their focus to energy supply security and affordability since Russia invaded Ukraine and during the latest conflict in the Middle East. Marianna Parraga and Arathy Somasekhar, 19 March 202485 Contrary to global policymakers’ stated collective intent, petrostates — including Australia — and big oil have signalled their intention to abandon mitigation commitments and continue to expand production in the coming decades. The largest fossil-fuel-producing states around the world plan to keep on expanding production, whilst major fossil fuel companies are backtracking on their climate pledges.86 A report by Global Energy Monitor has concluded that the world’s fossil-fuel producers are on track to nearly quadruple the amount of extracted oil and gas from newly approved projects by the end of this decade, with the US leading the way in a surge of activity.87 This is just one indication that petrostates and big oil have no intention of reducing production, but the opposite. This is well illustrated in the UNEP Production Gap report from 2023 (see Figure 4). As a result, current government plans worldwide will likely result in emissions in 2050 almost as high as they are today.88 Petrostates The intentions of the world’s five largest fossil fuel producers are clear — and civilisation-threatening — as reported by the UN:89 — In China, oil production is projected to be flat to 2050, but gas will increase more than 60% from 2020 to 2050, while coal use will remain high till 2030 then decline sharply. — In the United States, oil production will grow and then remain at record levels to 2050, and gas is projected to continuously and significantly increase to 2050; whilst coal will drop by half. LNG export capacity is on track to more than double between 2024 and 2028 if projects currently under construction begin operations as planned. — Projections for Russia are available only to 2035, with coal and gas production projected to increase significantly, while oil remains flat. — In Saudi Arabia, oil production is projected to grow by 26-47% by 2050, with gas up 40% between 2019 and 2050. Together they make up almost half of the Saudi economy. — And in Australia, one of the world’s top two liquified natural gas and coal exporters, gas production is projected to stay above the current level for the next 15 years, with coal remaining high over the same period, above 450 million metric tons annually. The world’s largest oil producers are (in order) the United States, Saudi Arabia, Russia, China, Canada, Iraq, Iran, United Arab Emirates, Brazil and Kuwait. And the world’s largest gas producers (in order) are the United States, Russia, Iran, China, Canada, Qatar, Australia, Norway, Saudi Arabia, and Algeria. Of those 15 states, seven are theocratic states or one-party dictatorships, where there is no democratic space to challenge state policy; and in the remainder the fossil fuel industry wields enormous political power. — Those 15 nations include three of the four top arms manufacturers, two of the top three arms exporters and the top three arms importers (India, Saudi Arabia and Qatar). Fossil fuels fund militarisation. — A petrostate chaired the 2023 UN climate policy-making conference COP28 (UAE); another COP29 (Azerbaijan). Azerbaijan appointed a state oil company veteran as COP29 president. — It is likely that a number of states would fiscally collapse without fossil fuel income. States where the fossil fuel sector is greater than 20% of GDP are shown in Table 1. [[TABLE 1 OMITTED]] Big Oil From 2016 to 2022, fifty-seven entities including nation-states, state-owned firms and investor-owned companies produced 80% of the world’s CO2 emissions from fossil fuels and cement production.90 The three biggest companies were all state-owned: oil firm Saudi Aramco, Russia’s energy giant Gazprom and state-owned producer Coal India. Big oil says it should expand or maintain oil and gas production, and has largely abandoned any net-zero-2050 commitments that may have been made: — Saudi Aramco CEO Amin Nasser said in March 2024 that the world should give up on the idea of phasing out oil and gas: “We should abandon the fantasy of phasing out oil and gas, and instead invest in them adequately.”91 — Meg O’Neill, CEO of Woodside Energy, rejected what she called simplistic views that the transition to cleaner fuels can “happen at an unrealistic pace”.92 — Exxon Mobil forecasts global oil demand in 2050 will be the same — or even slightly higher — than current levels, driven by growth in industrial uses such as plastic production and heavy-duty transportation. Exxon’s forecasts are similar to other recent projections, including by OPEC and Enbridge.93 — In March 2024, Shell — the world’s second-largest oil and gas company and largest LNG producer — announced it was watering down its climate targets, with chief executive Wael Sawan saying it was “perilous” for Shell to set 2035 emission reduction targets because “there is too much uncertainty at the moment in the energy transition trajectory”.94 Big Money Likewise, for big business CEOs, giving priority to sustainability and climate has declined sharply over the last year,95 and they are more concerned about inflation, artificial intelligence and geopolitics. Big finance is backing away from taking a “white knight” role in leading the energy transition, now saying that the first priority is delivering profits to shareholders: “Expecting banks collectively to rapidly reallocate their portfolios may not be compatible with maintaining a profitable, diversified business model.”96 Writing for Foreign Affairs, Meghan L. O’Sullivan and Jason Bordof describe how: “BlackRock CEO Larry Fink championed ‘energy pragmatism’ in his most recent annual letter, and a few weeks later, a JPMorgan Chase report called for a ‘reality check’ about the transition away from fossil fuels. In April, Haitham al-Ghais, the secretary-general of OPEC, wrote that the energy transition would require ‘realistic policies’ that acknowledge rising demand for oil and gas.”97 Australia Australia received one of the lowest scores for “climate action” – ranking fourth-last out of the 168 countries — that were scored in the 2024 Sustainable Development Report published by the Sustainable Development Solutions Network (SDSN). Australia was only ahead of Qatar, Brunei and the United Arab Emirates for climate action.98 In Australia since the 2022 election, the federal government has approved seven new coal projects, approved the drilling of 116 new coal seam gas wells, defended in court the right of the coal industry not to consider the climate impact of opening new fossil fuel projects, and passed legislation designed to expedite the expansion of the gas industry, according to the Australia Institute.99 The federal government has approved new gas exploration permits in waters off South Australia, Victoria and Tasmania, along with carbon export permits to encourage CCS, a technology not proven at scale.100 And government subsidies to fossil fuel producers jumped by 31% to $14.5 billion over the last year.101 06 Warming is Accelerating Towards 3°C or More We are potentially headed towards 3°C of global warming by 2100 if we carry on with the policies we have at the moment. Prof. Jim Skea, IPCC Chair, 6 October 2024102 The failure to reduce emissions fast and the intention of petrostates and big oil to continue expanding production puts Earth on a path to 3°C of warming or more, given the political inertia and the inertia of the energy system. Factors influencing future warming Climate-warming greenhouse gas emissions have not yet peaked, but will likely do so soon as the economic advantages of renewable power generation become even more obvious, and ageing coal-fired generators in the electricity sector reach their use-by date. However, as discussed in sections 4 and 5 above, oil and gas production are likely to remain strong — and may increase — until mid-century. On present indications, the emissions decline over the next three decades will be slow. This pattern is completely at odds with policy-makers’ stated intention of holding warming to 1.5–2°C. In 2017, a “carbon law” was articulated by a group of leading scientists who demonstrated that for a two-in-three chance of holding warming to 2°C, emissions would need to be halved every decade from 2020 to 2050; CO2 emissions from land use reduced to zero by 2050; and carbon drawdown capacity of five gigatonnes of CO2 per year be established by 2050.103 Clearly, given the current state of climate policymaking, we are not within cooee of holding warming to 2°C, with annual emissions likely rising between 2020 and 2030, rather than halving. Future emissions are a primary determinant of the warming path over the medium to longer term; but so are other factors including accelerated sea-ice loss decreasing Earth’s reflectivity, and accelerating emissions from carbon stores (boreal and tropical forest fires, reduced ocean efficiency, and permafrost feedbacks, for example), though these are not systematically incorporated into model projections of future warming. Another factor is the Earth’s Energy Imbalance (EEI), which has grown consistently over the last two decades: a positive EEI “confirms the lag of the climate system in responding to forcing and implies that additional global warming will take place even without further forcing change”.104 One of the drivers of increasing EEI has been a reduction in sulfate aerosol emissions, which are a by-product of burning fossil fuels, and have a strong cooling impact of 0.5–1°C, but are short-lived in the atmosphere. Aerosols have been “masking” some of the warming so far.105 Declining coal use and clean air policies reduce the aerosol impact. This is our “Faustian bargain”:106 as fossil fuel use declines, so will aerosol emissions which have been offsetting some warming, so that for the next two decades lower emissions will have little impact on the warming trend.107 One example: A 5% annual reduction in emissions of a single greenhouse gas, from 2020 and based on a middle-road-emissions path, has no statistically significant effect on warming for more than two decades, as compared to a no-mitigation pathway.108

<<PARAGRAPH BREAKS RESUME>>

Warming Projections

A clear majority of scientists expect warming of more than 3°C, and 82% expect to see catastrophic impacts of climate change in their lifetime, according to a 2021 survey by the journal Nature. 109 And a survey of 380 IPCC scientists by The Guardian in 2024 found 80% foreseeing at least 2.5°C of global heating, and half 3°C or more.110 Many of the scientists envisage a “semi-dystopian” future, with famines, conflicts and mass migration, driven by heatwaves, wildfires, floods and storms of an intensity and frequency far beyond those that have already struck.

The Climate Scoreboard shows the progress that the national plans submitted to the UN climate negotiations will make in mitigating climate change. Their analysis (at September 2024) shows that the national contributions to date, with no further progress post-pledge period, result in expected warming in 2100 of 3.2°C (with a range of uncertainty of 1.9 – 4.4°C).111 Of course, nations may make further commitments, but on the other hand many are not on the path to achieving those commitments they have already made. Similarly, the 2023 IPCC Synthesis Report said that implemented policies result in projected emissions that lead to warming of 3.2°C, with a range of 2.2°C to 3.5°C”.112

A 2021 climate risk assessment by the pre-eminent UK international affairs think-tank Chatham House focused on a RCP4.5 scenario (which may be too conservative on the future emissions path) and the impacts that are likely to be locked in for the period 2040–50 unless emissions drastically decline before 2030 (which they are not!). The scenario had a mean temperature rise of 2.7°C and a “plausible worst-case scenario” (10% chance) of 3.5°C or more. The report added that could be an underestimate if tipping points are reached sooner than the orthodox science suggests.113

Emphasizing this point, a rating system to evaluate the plausibility of climate model simulations in the IPCC’s latest report shows that models that lead to potentially catastrophic warming “are plausible and should be taken seriously”.114

There are big questions about the size of the aerosol forcing, and the related issue of how sensitive the climate is to changes in greenhouse gases, which remain an issue of scientific contention. New climate history research published in December 2023, based on a study of the last 66 million years, concluded that global temperature may be more sensitive to CO2 levels than current models estimate.115 It showed that the last time CO2 levels were as high as today was around 14 million year ago, which is longer than previous estimates, and that climate sensitivity — the amount of warming resulting from a doubling of atmospheric CO2 — may be between 5°C and 8°C, compared to the IPCC orthodoxy of 1.5–4.5°C.

07 The Physical Risks are Cascading and Systemic

The evidence from tipping points alone suggests that we are in a state of planetary emergency: both the risk and urgency of the situation are acute […] If damaging tipping cascades can occur and a global tipping point cannot be ruled out, then this is an existential threat to civilization. Prof. Tim Lenton and colleagues, “Climate tipping points — too risky to bet against”116

The physical risks are non-linear, cascading, systemic and largely irreversible on human time frames. Climate models do not adequately represent all processes and are likely to underestimate the risks.

Many elements of the climate system exhibit tipping points or thresholds at which a small change causes a larger, more critical change to be initiated, taking that system from one state to a discretely different state far less conducive to human survival and prosperity (see section 3 above). For example, a polar ice sheet may reach a temperature threshold beyond which continuing and accelerated ice mass loss occurs, even without any additional rise in temperature, and such a change may take decades to centuries to be fully realized before a new (ice-free) system stability occurs.

Such threshold changes may be abrupt and irreversible on relevant time frames. And once the threshold is passed, returning conditions to pre-threshold conditions may not restore the system. This is known as hysteresis, or bifurcation of a system, where it may be more difficult, or impossible, for a system to return to its previous state. Put more simply: the path from A to B is not the same as the path from from B to A. Ice sheets are a good example.

A chilling 2015 report on Thresholds and closing windows: Risks of irreversible cryosphere climate change warned that the Paris commitments will not prevent the Earth “crossing into the zone of irreversible thresholds” in polar and mountain glacier regions, and that crossing these boundaries may “result in processes that cannot be halted unless temperatures return to levels below pre-industrial” (emphasis added).117 For example, the tipping point for the most vulnerable West Antarctic glaciers is probably between 0.5°C and 1°C, but cooling the planet back to that range would not create the conditions for their re-establishment.

And in 2024, researchers again warned of “overconfidence in climate overshoot”, that is, exceeding a temperature target for decades, on the assumption that negative emissions technology will be able to later reduce the heating and restore conditions as if there had been no overshoot. Extinctions caused by overshoot are one example. They show that “global and regional climate change and associated risks after an overshoot are different from a world that avoids it… the possibility that global warming could be reversed many decades into the future might be of limited relevance for adaptation planning today [because] temperature reversal could be undercut by strong Earth-system feedbacks resulting in high near-term and continuous long-term warming… Only rapid near-term emission reductions are effective in reducing climate risks.”118

Changes in one element of the climate system may also trigger an unforeseen chain or cascade of events in which one event in a system has a negative effect on other related components. For example, the mutual interaction of individual climate tipping points and/or abrupt, non-linear changes, may lead to more profound changes to the system as a whole, and interactions between these climate systems could lower the critical temperature thresholds at which each tipping point is passed.119

Together, tipping point thresholds, non-linear change and cascading events represent systemic risks, that is, the risk of a breakdown of an entire system rather than simply the failure of individual parts:

More frequent and intense extreme weather and climate-related events, as well as changes in average climate conditions, are expected to continue to damage infrastructure, ecosystems, and social systems that provide essential benefits to communities… Extreme weather and climate-related impacts on one system can result in increased risks or failures in other critical systems, including water resources, food production and distribution, energy and transportation, public health, international trade, and national security. The full extent of climate change risks to interconnected systems, many of which span regional and national boundaries, is often greater than the sum of risks to individual sectors.120

Systemic change means climate elements can tip from one state to an entirely different one with a sudden shock that may permanently alter the way the planet works.121 In the physical interactions among the Greenland and West Antarctic ice sheets, the Atlantic Meridional Overturning Circulation and the Amazon rainforest, the polar sheets are often the initiators of cascade events,122 with Greenland and West Antarctica at risk of passing their tipping points within the 1.5°C–2°C Paris range (and there is evidence they have already done so).

Such changes are not adequately incorporated into climate models: “Change can come about abruptly and even catastrophically… Predictive models are the lifeblood of climate science, and the foundation upon which political responses to the climate and ecological crisis are often based. But their ability to predict such large-scale disruptive events is severely limited… The IPCC’s estimates of how much CO2 we can still emit to be on the safe side explicitly leave out many known large-scale disruptions or tipping points because of insufficient understanding or because models cannot capture them.”123

Researchers have also investigated how changes in forest degradation and monsoon circulation are interlinked: “It turns out that forest loss caused by direct deforestation, droughts, and fires might vastly contribute to a changing climate in South America and could drive the coupled Amazon rainforest/ South American monsoon circulation system past a tipping point [and] suggest an upcoming regime shift of the Amazon ecosystem.”124

If cascades coalesce, there is the possibility of “Hothouse Earth”. In 2018, a group of eminent scientists explored the potential for self-reinforcing positive feedbacks in major elements of the climate system feedbacks and their mutual interaction to drive the Earth System climate to a point of no return, whereby further warming would become self-sustaining (that is, without further human perturbations), and prevent temperature stabilization, driving the system to what they termed a “Hothouse Earth”.125 In plain terms, humans would lose control and lack the capacity to stop cascading warming and the researchers warned that “we are in a climate emergency… this is an existential threat to civilisation”.126 This planetary threshold could exist at a temperature rise as low as 2°C, possibly even in the 1.5°C–2°C range.127 In other words, we may have already arrived at this point, but conclusive evidence of this moment requires hindsight.

### Contention 3---1NC

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#### Admin state fails.

Beek ’22 [Michael Van; July 23; Director of Research for the Mackinac Center for Public Policy, The Hill, “Pandemic failures expose problems of the administrative state,” https://thehill.com/opinion/healthcare/3570569-pandemic-failures-expose-problems-of-the-administrative-state/]

State governments used an unprecedented level of executive power to respond to the COVID-19 pandemic. Governors and other state officials tried to control entire state economies and even our private interactions. The impact these measures had on overall public health is not yet known, but there were many blunders made along the way. These failures expose some inherent problems of the administrative state — the vast landscape of departments and agencies that make up the executive branch of government.

One must separate intent from reality to understand how the administrative state functions. These bureaucracies are meant to enforce the laws the legislature creates. They should be focused on carrying out the policy goals pursued by these elected representatives. In reality, bureaucrats get their marching orders from governors.

This explains why, when governors issued controversial orders in response to the pandemic, the administrative state supported them unequivocally. Although staffed by experts who claim that they are impartial and guided only by evidence, state bureaucrats generally just went along with whatever policies their governors chose. Given their radically different responses to COVID-19, it was as if each state bureaucracy followed its own unique version of “the science.”

This highlights an important shortcoming of the administrative state: It is highly susceptible to groupthink. Governors call the tune and bureaucrats fall in line. There are no mechanisms to ensure opposing viewpoints are heard, much less considered. This feature might be useful in the rare instances when emergency action is required, but it is disastrous as a standard operating procedure.

This groupthink helps make sense of the pandemic policies that made no sense. Remember when former Mayor Bill de Blasio reopened beaches in New York City but prohibited swimming in the waters lapping those shores? Barbecuing was also specifically outlawed. For a few weeks in Michigan, Gov. Gretchen Whitmer allowed the use of boats — except those powered by a motor. She permitted people to walk a golf course — but not while carrying and occasionally swinging golf clubs. The rest of this page could be filled with examples of nonsensical policies that were obviously pointless and performative.

It is difficult to imagine how governors and their bureaucratic advisers came up with these bizarre rules. The administrative state may operate in a bubble where blatantly bad ideas receive little or no substantial pushback. State officials seem disconnected from reality when they issue arbitrary orders that are unlikely to make a difference when applied in the real world.

Another problem with letting governors and the administrative state run the show is that they are susceptible to the pleading of special interest groups. One reason that schools remained closed for so long in many states and cities was the influence of teachers unions. They have a long-established, cozy relationship with government officials. Unions can more easily persuade public officials than could, say, a group of concerned but politically unsophisticated parents.

#### No extinction from disease: genetic diversity, natural selection, and isolation.

Vermeer ’25 [Michael J.D., Emily Lathrop, and Alvin Moon; May 6; PhD Chemistry, senior physical scientist at RAND; PhD Mechanical Engineering, associate engineer at RAND; PhD Mathematics, associate mathematician at RAND; RAND, “On the Extinction Risk from Artificial Intelligence,” p. 18-21, https://www.rand.org/content/dam/rand/pubs/research\_reports/RRA3000/RRA3034-1/RAND\_RRA3034-1.pdf]

Requirement 1. Multiple Pathogens Are Likely Required Because a Single Pathogen Would Be Unlikely to Kill a Sufficient Percentage of the Population to Be an Extinction Threat

To support this assertion, we look first to historical pandemics. Natural biological threats have existed for millennia. The 14th-century bubonic plague—the Black Death—wiped out 30–50 percent of Europe’s population, and the 1918 influenza pandemic resulted in 50 million deaths worldwide (Shipman, 2014). The combination of drought and pathogens introduced during the European conquest of Mexico in the 16th century led to more than a 90-percent reduction in the native population (Acuna-Soto et al., 2002). However, although these examples led to drastic human population declines, they did not fully extinguish the human population. Indeed, with one known exception—the extinction of the Christmas Island rat, preceded by the emergence of a deadly pathogen in the population—there are no well-corroborated instances of pathogens causing the complete extinction of a mammalian species (Wyatt et al., 2008).

A greater threat would likely come from novel pathogens, including both modified natural pathogens or completely de novo pathogens, designed for high transmissibility and high lethality. However, even pathogens designed to cause these effects might be limited by human heterogeneity. Human genetic diversity plays a key role in limiting the effectiveness of pathogens across populations. Within a population, pathogens affect individuals differently depending on factors related to the specific genetic characteristics of each host (Jones, 2021). Some individuals or subpopulations might possess genetic traits that confer resistance or immunity to certain pathogens. For example, differences in viral receptors between individuals can affect the ability of the hepatitis C virus to enter a host’s cells (Huang et al., 2019).

The strength of immune response can vary among individuals, influencing their ability to fight off infections. The likelihood that a pathogen will cause death is influenced by the immune response that an individual is able to put up against the pathogen (Rouse and Sehrawat, 2010), meaning that outcomes will vary between individuals, even when controlling for pathogen dose.

Relatedly, the infection dose—the amount of a pathogen that an individual is exposed to—can significantly alter the course of a disease (Rouse and Sehrawat, 2010). Individuals who only receive a small infection dose have a higher chance of successfully mounting an immune response, and infection dose is a factor that cannot easily be controlled for. This is the case not only for transmissible pathogens that spread person-to-person but also for nontransmissible pathogens, such as Bacillus anthracis, the causative agent of anthrax. As a result, it is unlikely that even a carefully engineered pathogen would be 100 percent lethal for all humans, as certain individuals or populations might possess traits that allow them to fight the disease or receive a nonlethal dose of the pathogen that causes the disease. Case studies have suggested that exposure to even highly lethal viruses, such as rabies, is not always fatal (Gold et al., 2020).

The postinfection survival of some individuals leads to several important consequences. First, some populations will emerge with immunity; survivors might develop immunological memory, thereby reducing the severity of disease on reinfection. Second, over generations, natural selection will dictate that hosts with immune systems that are better equipped to fight off a pathogen will survive and pass along those traits to offspring. Third, subpopulations with increased immunity within a larger population can alter disease dynamics, thereby lowering the pool of susceptible individuals and reducing the continued spread of a pathogen in the population (Grassly and Fraser, 2008).

Finally, even if a single pathogen could be designed to be consistently highly lethal after many replications, we assert that sufficient numbers of humans would likely survive to avoid extinction. A virus that was 99.99 percent lethal and reached the entire human population, for example, might leave at least 800,000 individuals alive. As previously noted, the minimum viable population for human beings is unknown, but it is likely well below 800,000 people.

Requirement 2. Widespread Dissemination in Multiple Places Is Likely Required Because Initial Infections of a Small Population in One Location Could Allow a Pathogen to Mutate to Become Less Lethal over Time

For transmissible pathogens, evolutionary pressures and host-pathogen interactions result in altered pathogen characteristics as the pathogen reproduces within a host and spreads host to host (Geoghegan and Holmes, 2018; Gerstein, Espinosa, and Leidy, 2024). This results in modifications to pathogen characteristics, leading to variants with modified lethality and transmissibility. In addition to host-pathogen interactions altering pathogen characteristics, viruses are prone to transcription and translation errors, resulting in random mutations over time and unpredictable changes in pathogen characteristics (Sanjuán et al., 2010).

In one well-cited evolutionary biology study, researchers traced the evolution of the myxoma virus, which was introduced to Australia in 1950 to control the invasive rabbit population (Kerr et al., 2012). The original virus was highly lethal with a 99.8 percent fatality rate. However, once released, the virus quickly mutated, and, within two years, the landscape was dominated by less lethal strains, even with the continued release of very virulent strains into the local population (Kerr et al., 2012). Although these less lethal strains still had fatality rates of between 70 percent and 95 percent, this allowed for the survival of some rabbits; this natural selection resulted in the emergence of rabbit resistance to myxomatosis (Marshall and Douglas, 1961). Ultimately, the virus failed to exterminate the invasive rabbit population, and invasive rabbits persist in Australia as of this writing. Interestingly, this experiment was independently repeated in France in 1952 with similar results: the emergence of attenuated (i.e., less virulent) strains and natural selection for resistant rabbits (Kerr et al., 2012). We note, however, that the different generational periods for humans and rabbits might indicate the need for caution in applying this example to an equivalent scenario affecting humans. Rabbits reach reproductive age on much shorter timescales than humans do and have many more offspring per pregnancy. Therefore, it might be much more challenging for a human population to recover and sustain itself in the face of a similarly lethal transmissible virus.

Both theory and historical examples of virus evolution indicate that highly lethal viruses will often evolve to decreased virulence over time, resulting in lower mortality (Geoghegan and Holmes, 2018). This makes intuitive sense because very lethal pathogens will quickly sicken and kill their hosts, thereby limiting their own transmission opportunities. Conversely, less virulent strains that allow hosts to survive longer have more chances of spreading among a population, leading to increased presence in a population. If a pathogen retains alternative nonhuman hosts—a reservoir species—it might be less self-limiting because the pathogen could conceivably maintain high lethality in human hosts concurrently with transmissibility from the reservoir species. Others have found, however, that low-virulence infections have a greater chance of establishing transmission in human hosts, which might diminish the ability of pathogens to completely wipe out a human population, even where a reservoir species exists (Geoghegan and Holmes, 2018; Geoghegan et al., 2016).

Requirement 3. Follow-Up Actions Are Likely Required After an Initial Dissemination of a Pathogen Because Natural and Artificial Isolation Might Shield Human Communities from Infection

The path of the coronavirus disease 2019 (COVID-19) pandemic illustrates that a highly transmissible pathogen can readily infect every region of the world despite efforts to contain it (e.g., lockdowns) (Onyeaka et al., 2021; Jeanne et al., 2023); it was a pandemic with truly global diffusion. Although the relatively low lethality of COVID-19—relative to the extremely high lethality assumed in our scenario—and the prevalence of asymptomatic cases likely aided in the diffusion of the virus, the pandemic showed that a pathogen could realistically have global diffusion. However, global diffusion is not sufficient for a pathogen to create an extinction risk—it must reach nearly every human community on earth, even those that are naturally or artificially isolated.

There still exist uncontacted tribes, and many regions and communities remain relatively isolated. As a highly lethal pandemic spreads, it is likely that human communities would take steps to isolate themselves to whatever extent they could to prevent infection; island nations have even been suggested as potential refuges from pandemics with extinction potential (Boyd and Wilson, 2020; Turchin and Green, 2019). Where human communities are successful in isolating themselves from contact with the pathogen, follow-up actions would be required to either intentionally disseminate the pathogen among them or to find other means to exterminate surviving humans.