## Offcase

### 1NC – DA – Realignment

#### Trump’s built a temporary coalition through token support for workers---it’ll crumble now because Trump won’t follow through on genuine pro-labor policy.

Philip Wegmann 25, White House Correspondent at Real Clear Politics, Former Writer at The Washington Examiner, Investigative Reporter, "'The Realignment': GOP Sen. Hawley to introduce pro-union legislation," Magnolia Tribune, 02/17/2025, https://magnoliatribune.com/2025/02/17/the-realignment-gop-sen-hawley-to-introduce-pro-union-legislation/

He was the first president to walk a picket line. And he crowed regularly about being the “most pro-union” president ever. But after four years as president, Joe Biden could not stop a growing working-class coalition, one that increasingly includes rank-and-file union members, from flocking to Donald Trump.

Reflecting on election night about the coalition that returned him to the White House, Trump called it “a historic realignment.” John McLaughlin wondered if it would endure.

While Republicans celebrated in the weeks after the election, Trump’s longtime pollster looked to the future.

“Right now, these Trump voters – the GOP is just renting them,” McLaughlin told RealClearPolitics. Speaking of the coalition Trump cobbled together consisting of disaffected Democrats and traditionally liberal constituencies, he added that Republicans “need to make a decision if they’re going to make them permanent.”

Enter Sen. Josh Hawley, the Missouri Republican emerging as the right-of-center pro-labor leader.

“Look at what Donald Trump achieved. He achieved victory based on this coalition, and he deserves tremendous credit for making it possible, and he knows it,” Hawley said in an interview before picking up where Trump’s pollster left off. Hawley is asking his Republican colleagues whether they want their new-found working-class support “to begin and end with Donald Trump.”

His framework for pro-union legislation amounts to something of a downpayment. It is a set of proposals to reform the way businesses interact with organized labor, from requiring worker rights to be displayed on a job site to prohibiting “unsafe work speed quotas.” And soon Hawley will introduce legislation mandating accelerated negotiations between unions and employers.

A 2022 Bloomberg Law analysis found that the average time between workers voting to unionize and reaching their first contract with employers was 465 days. The Hawley bill would mandate that once workers vote to form a union, the employer and employees must begin the negotiations process within 10 days. It is a significant reform, which unions have wanted for years. Two Democrats have already promised to co-sponsor: Sens. Cory Booker of New Jersey and Gary Peters of Michigan. But its author is unusual in that Hawley comes from a party traditionally more favorable to corporations than workers.

Hawley has embraced the heterodoxy. Last year he abandoned his support for right-to-work laws, policies which bar unions from requiring workers to pay dues as a condition of employment. Before that, Hawley introduced legislation that could have easily come from the desk of socialist firebrand Bernie Sanders. One was a bill to cap credit card interest rates; another sought to overturn the Supreme Court’s campaign finance decision, Citizens United.

Neither was well-received in traditional conservative precincts. The latter earned Hawley a rebuke from the business-friendly Wall Street Journal editorial page. But Hawley represents a vanguard of a New Right, and while his bill mandating accelerated negotiations between labor and business faces an uphill battle in the Senate, skepticism of corporate power is increasingly in vogue among the GOP because of Trump’s ascendancy.

“As conservatives, who are now benefiting from the support of working people, it’s time we deliver for them and bring into actuality this Trump realignment, this working-class realignment of the Republican Party,” Hawley said of his efforts. “This is my project.”

In this, the president is sympathetic. Trump delights in bragging about how he peeled union votes away from Democrats. He invited Teamsters president Sean O’Brien to address the Republican Convention in Milwaukee without any preconditions about what the union boss could or couldn’t say on stage. Later when the Teamsters declined to endorse him or former Vice President Kamala Harris, Trump portrayed the non-endorsement as a tacit repudiation of Democrats.

Trump and Hawley have spoken in the days since the inauguration. A source familiar with those calls reports that the president is generally supportive of Hawley’s pro-labor legislation. A senior White House official did not dispute that characterization, telling RCP that “the president will never turn his back on union voters.”

The administration made their commitment explicit on the campaign trail where Vice President J.D. Vance often bemoaned the “tragedy” of declining union membership in the private sector.

“I think what we see as our job in national policy is to protect as many workers’ jobs as possible, to promote tax and spending and tariff policies that promote large scale economic growth and actually give workers more their take on pay and more jobs to begin with,” Vance told RCP last September before adding that the incoming administration would work to make the job of unions “easier, not harder.”

This was a winning political argument. Now those voters are likely to expect results. Hawley says Republicans must embrace working class voters or, he warns, “we will never be a majority party.”

“The Republican Party right now is defined largely by one very specific personality who’s been quite successful,” said Abigail Ball, executive director of the conservative think tank American Compass. “If we’re going to see this be a long-lasting realignment,” she continued, “where working class voters take seriously that conservatives want to deliver, we have to do real long-term policy work.”

If Trump exits the Oval Office in four years without overseeing any such “policy work,” Hawley fears that the GOP is at risk of “reverting to the days where we are a wholly owned subsidiary of these mega corporations.” That comes with its own familiar result: a return to what Hawley calls “the political wilderness.” There is no majority coalition there, he said, warning his party, “We know this because we’ve lived it for 30 years.”

An early test comes in the person of Trump’s nominee for labor secretary, Lori Chavez-DeRemer. She is a former member of Congress, a Democrat from Oregon with well-defined, pro-union views. Her support of the PRO Act, which would pre-empt state right-to-work laws, makes her anathema to pro-business Republicans. Kentucky Sen. Rand Paul promised to oppose her and predicted she could lose as many as 15 GOP votes. Democrats like Massachusetts Sen. Elizabeth Warren, meanwhile, seemed pleasantly surprised and signaled a willingness to back her. “I think she’d be terrific,” Hawley said.

If there is indeed a realignment, it is incomplete. Republicans are not as comfortable as Hawley on a picket line. They are more inclined to side with industry. And while Trump seems eager to keep union voters in the GOP fold, during his first time in office he sided with business. His judicial nominees, as well as his nominees to sit on the National Labor Relations Board, were undoubtedly labor skeptics. Trump even praised Elon Musk’s perceived penchant for firing Tesla workers interested in starting a union.

“You’re the greatest cutter,” Trump told Musk during a live conversation on X. “I look at what you do. You walk in and say, ‘You want to quit?’ I won’t mention the name of the company, but they go on strike, and you say, ‘that’s OK. You’re all gone.’”

The richest man in the world, Musk is now not just a supporter but a key member of the Trump administration. The second and third richest men in the world, Mark Zuckerberg of Facebook/Meta and Jeff Bezos of Amazon, attended Trump’s second inaugural. All three have, at one time or another, been caught up in lawsuits over their treatment of employees looking to unionize.

The proximity of that much capital to the president does not worry Hawley. “There’s only one person who runs the Trump administration, and as many who think otherwise, sadly, learn, that one person is Donald J. Trump,” he replied when asked about the new coziness between Silicon Valley elite and the populist president. “So I have no doubt that Jeff Bezos would love to be in the president’s inner circle,” he added. “Do I think that the president is going to ultimately listen to him? No.”

The Missouri senator would prefer if the president listened to him and helped get his latest pro-labor legislation into law. So would the Teamsters who support the new bill.

“Legislation gets put forward, oftentimes, as a political chess piece and part of the game, but the ultimate result is that it doesn’t see the light of day,” said Teamsters spokeswoman Kara Deniz. Unions have watched that dynamic play out over and over again across administrations, she said. Led by O’Brien, though, the Teamsters are increasingly open to working across the partisan divide. “The priority is to wherever we can, whether it’s Democrat, Republican, or independent, to work together with any political leader that is going to support workers,” Deniz told RCP.

#### Dems will take advantage of the opportunity now by pivoting to post-neoliberalism---but the plan means Republicans beat them to the punch, which locks in a generation of GOP dominance.

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Is This How Democrats Win Back the Working Class?

Embracing populism could help the party build a lasting political coalition—if the Republicans don’t do it first.

A week after Donald Trump won the presidency again, I sat across from Chris Murphy in his minimalist but well-appointed D.C. office. The Connecticut senator sounded like a man who had done a speedrun through all five stages of grief and was ready to talk about what comes next: how his party could learn from its loss and win over—or win back—voters in 2026 and 2028. “I have thought for a long time that there’s a race between the Republican Party and the Democratic Party,” Murphy told me. “And the question is: Does the Republican Party become more economically populist in a genuine way before the Democratic Party opens itself up to people who don’t agree with us on 100 percent of our social and cultural issues?”

Murphy is onto something. The politics of the average American are not well represented by either party right now. On economic issues, large majorities of the electorate support progressive positions: They say that making sure everyone has health-care coverage is the government’s responsibility (62 percent), support raising the minimum wage to $15 an hour (62 percent), strongly or somewhat support free public college (63 percent), and are in favor of federal investment in paid family and medical leave (73 percent). They also support more government regulation of a variety of industries including banking (53 percent), social media (60 percent), pharmaceuticals (68 percent), and artificial intelligence (72 percent). Yet large majorities of this same American public also take conservative positions on social issues: They think the Supreme Court was right to overturn affirmative action (68 percent), agree that trans athletes should compete only on teams that match their gender assigned at birth (69 percent), believe that third-trimester abortions should be illegal in most circumstances (70 percent), and are at least somewhat concerned about the number of undocumented immigrants entering the country (79 percent).

These facts are not especially convenient for either Democrats or Republicans, which is no doubt why both sides have failed to put forward platforms that represent these views. But lately, more political insiders from both parties have been willing to acknowledge the problem and admit that it’s time to move on from neoliberalism, the political ideology that champions market solutions, deregulation, the privatization of public services, and a general laissez-faire approach to the economy.

Substantial obstacles confront populists on both the left and right. Democrats must contend with a college-educated base and party establishment that embraces maximalist positions on social issues, while Republicans must contend with substantial libertarian cliques. But whichever party figures out how to advance a meaningful post-neoliberal platform could unlock a winning and durable political coalition.

Murphy is doing his best to make sure that his side of the aisle beats the Republicans, but he seems far from certain that it will. In an MSNBC interview after the election, the senator sketched out something of a road map for Democrats: “We should return to the party we were in the ’70s and ’80s, when we had economics as the tent pole and then we let in people who thought differently than us on other social and cultural issues.” Murphy was quick to add that this reinvention—or rather, reversion—will be challenging to pull off. “That’s a difficult thing for the Democratic Party to do, because we’ve applied a lot of litmus tests over the years,” he observed. “Those litmus tests have added up to a party that is pretty exclusionary and is shrinking, not growing.”

In the days and weeks after the election, I spoke with post-neoliberal economists, academics, and leaders of major political nonprofits on the left and the right. Almost all of those I interviewed shared Murphy’s view that America’s political parties are in an arms race to capture what the senator called, in a 2022 essay for The New Republic, the “silent majority of Americans who want more economic control, more social connection, and more moral markets.”

It is a race that some worry the Republicans are winning. Although few on the populist right view Trump as the genuine article—they tend to politely describe the president-elect as a “transitional figure”—he has nominated post-neoliberal and populist sympathizers to major positions in his second administration: Senator Marco Rubio, an industrial-policy aficionado, for secretary of state; the pro-union Representative Lori Chavez-DeRemer for labor secretary; the Big Tech skeptic Gail Slater to lead the Justice Department’s antitrust division; and, of course, J. D. Vance, whose rise to vice president–elect was greeted with trepidation by Wall Street despite his tech-venture-capital background. Still, most of those I interviewed shared the view that Trump will likely squander his populist goodwill with tax cuts for billionaires and other anti-populist agenda items during his term.

This should produce an opening for the populist left, but there remains a deeper and perhaps more intractable problem: The GOP appears to be locking into place a multiracial coalition of the non-college-educated. These are voters who may prove easier for liberals to lose than to win back. If the Democrats have any hope of once again being the party of the working class, Murphy and others believe, they need to recognize that Americans are desperate for meaning and community.

The language Murphy used in his New Republic essay—invoking morality, self-worth, and social connection—is omnipresent in post-neoliberal discourse. The movement’s chief exponents believe that neoliberalism has not only created an economic disaster, but its emphasis on ruthless individualism has also created a crisis of political and social meaning. In the view of Murphy and others, any post-neoliberal politics must cultivate a new social ethic rooted in dignified and fairly remunerated labor. Many of these prominent post-neoliberals, some of them affiliated with the same think tanks and nonprofits that once helped establish the neoliberal consensus, seem convinced that there’s a massive voting bloc waiting to be activated: Americans who are moderate or even small-c conservative on social issues, but who also favor a more aggressive, rabble-rousing attack on the country’s existing economic system.

“We have not convinced voters in this country that we are serious about redistributing power from people who have it to people who don’t have it,” Murphy lamented to me. “The solutions we’ve proposed are largely small-ball, largely adjustments to the existing market. We don’t talk about power in the way that Republicans talk about power.” Others agreed.

Although many observed that Joe Biden has been arguably the most pro-labor president in decades and has often broken with neoliberal orthodoxy in areas such as industrial policy, they also felt that he never quite captured the narrative or claimed credit for his substantial accomplishments. In other words: There was a widespread sense among the people I spoke with that Biden had working-class policies without working-class politics. “The Democratic Party didn’t show that it was really backing the concerns of ordinary people strongly enough, and wasn’t identifying well enough with how they saw the world,” Joseph Stiglitz, a Nobel Prize–winning economist and longtime critic of neoliberalism, told me.

For many (though not all) post-neoliberals, the heart of their economic vision is “pre-distribution,” a concept popularized by the political scientist Jacob Hacker. Whereas center-left neoliberals tend to favor redistributive tax-and-transfer policies—allowing an unchained market to generate robust growth, and then blunting resulting economic disparities by taking some of the gains from the system’s winners and redistributing them to the system’s working-class “losers,” reducing inequality after the fact—post-neoliberals generally believe that it is better to avoid generating such inequalities in the first place. “The moral of this story,” Hacker explains in a 2011 paper, “is that progressive reformers need to focus on market reforms that encourage a more equal distribution of economic power and rewards even before government collects taxes or pays out benefits.”

As Hacker (perhaps accidentally) implies with his invocation of the story’s “moral,” pre-distribution advocates often justify this strategy in ethical or even spiritual terms: Empowering workers to secure better pay and working conditions—say, through unions and sectoral bargaining—is about restoring dignity and revitalizing labor-based forms of community.

“Most people don’t want a handout,” Chris Murphy recently posted on social media. “They want the rules unrigged so they can succeed on their own.” Although some on the left (not unreasonably) disliked the way the senator described certain redistributionist policies as “handouts,” these vocabulary complaints distract from Murphy’s deeper point. Honest labor is a source of pride, and populists should want an economy where most Americans are paid fairly for work they feel good about rather than suffering poverty wages and waiting for cash floats that keep them above water.

“Most people need opportunities for meaningful work and social recognition in order to feel that their goals in life are worthwhile,” the philosopher Daniel Chandler observed in his recent book Free and Equal, which received coverage in both mainstream liberal and left-wing media. “By focusing on increasing market incomes, especially from employment, predistribution helps to maintain the healthy connection between contribution and reward that might be lost if we relied too heavily on redistribution. At the same time, it takes seriously the importance of work for people’s sense of self-respect.” As Chandler and others see it, many Democrats’ inability to grasp the fact that it matters to people not only that they have financial resources but how they acquire them has left the party unable to understand why voters don’t reward them for their largesse. Larry Kramer, a former president of the Hewlett Foundation and the current president of the London School of Economics, echoed this view. He insisted to me that reaching the working class is about more than just material conditions: “It’s not economic. It’s political economy.” In his telling, liberals get so wrapped up debating how the economy should be organized that we forget to ask what moral and political ends—that is, what vision of the good life and what kinds of values—markets are supposed to secure in the first place.

Many Democratic insiders believe that post-neoliberal economic policies alone are not sufficient to win back American workers. Social issues will also need to be reconsidered. Stiglitz pointed to immigration as one place where Democrats may need to compromise, a view he shares with others in his post-neoliberal cohort. Murphy helped write a defeated bipartisan border-security bill that would have added Border Patrol officers and made asylum standards more stringent; some critics characterized it as “hard-right.” Last year, a hotly discussed book by the socialist journalist John B. Judis and the liberal political scientist Ruy Teixeira likewise packaged a withering critique of neoliberalism with a call to embrace more conservative positions on immigration. Chandler’s Free and Equal also quietly endorsed claims that increased immigration depresses wages for low earners and strains public resources. As Chandler argues, “High levels of immigration can make it more difficult to create a stable sense of political community and national identity.”

Gun control is another area where flexibility may be prudent in order to be competitive in certain parts of the country. Democrats will have to accommodate people like Dan Osborn, the independent who, though he lost his bid to represent Nebraska in the Senate, outperformed Kamala Harris while combining a vocal defense of the Second Amendment with proudly pro-union politics.

Teixeira and Judis flagged a third topic, gender identity, where Democrats ought to respond to the public’s concerns. That begins by making room for conversations that don’t involve accusations of bigotry, or insisting that the very act of asking questions about terms such as people with the capacity for pregnancy is tantamount to challenging the right of trans Americans to exist or exposing them to harm. For Judis and Teixeira, that requires making more granular distinctions between culture-war battles such as fairness in sports—where good-faith disagreement is possible—and important efforts to provide trans Americans the kind of universalist safeguards won in earlier civil-rights movements. LGBTQ groups’ effort to “protect transgender people from discrimination in housing, employment, and school admission falls well within America’s democratic tradition,” they write. But they also warn that activist demands outside this scope are “attempt[s] to impose a new social conformity based on a dubious notion of gender.”

More than anything, liberals need to understand that many Americans—especially those in the working class—feel unheard. Their trust will be won back not through quick fixes, but by treating those without a college education or with more conservative social views as equal participants in our national dialogue.

“The debate is still alive inside our party. But the post-neoliberals are clearly ascendant,” Murphy told me. He argued that his fellow Democrats need to be more open to dissenting viewpoints, and that expanding the tent will involve a fight: “I am not making an argument that the core Democratic Party do a left turn and reorient our position on choice, climate, or guns. I am arguing that we allow people into the tent … so that we have a little bit more robust conversation, and potentially a little bit more diversity on those issues inside the coalition.”

The soul-searching that is before the Democrats will require liberals to engage with views they find discomfiting, and to reckon with the fact that their social values are out of keeping with the working-class majorities they profess to represent. Democrats must figure out where there is room to compromise. And where compromise is not possible—or truly unjust—they must begin the slow-grinding work of persuasion.

“We cannot successfully engage with people whose inner lives we do not even try to understand,” a recent report from the stalwartly liberal think tank the Roosevelt Institute concludes. Whether left-wing liberals are open to doing this remains to be seen.

“It’s not clear that if we blow it in two or four years time that there’s another shot at this apple for Dems,” Jennifer Harris, a Hewlett Foundation director and former Biden-administration official, suggested, speaking in a personal capacity, when describing the Democratic Party’s need for a post-neoliberal makeover. In her view, the prize for such a transformation may prove to be not just a near-term political victory, but a Franklin D. Roosevelt–style stranglehold on the electorate: “There is potentially a lot of political spoils.”

Spoils indeed. Many on the left and right agree that the stakes are high, the reward prodigious, and the path forward obvious: Whichever party can credibly combine economic populism with moderate social positions will win elections. There is no mystery here. The problem is not the absence of a political solution but a deficit in political willpower. And the next election, and the elections to come, may well hinge on which party can muster the resolve to finally deliver real populism to the people.

#### GOP realignment causes extinction.

Miles Taylor 24, National Security Expert, Chief of Staff at U.S. Department of Homeland Security, Marshall Scholar, Truman Scholar, M.Phil. in International Relations from Oxford University, B.A. from Indiana University, "Blowback: A Warning to Save Democracy from Trump's Revenge," Atria Books, 04/09/2024, 368 pages, ISBN13: 9781668015995, pp 13–266

In the realm of national security, we have a term to describe unintended consequences, the failure to anticipate the repercussions when we make a choice: blowback.

This is a cautionary tale about how neglecting our guardrails —individually and as a democracy—can lead to self-destruction.

More specically, it is a political forecast about how a deeply divided nation is setting the stage for the resurgence of Trumpism. In this book, you will glimpse the not-too-distant future of the blowback we will experience if we choose the wrong path. It’s also a story about personal mistakes and why a failure of introspection can be fatal.

In the pages to follow, I will paint a vivid portrait of another term under a vindictive, twice-impeached, unconstrained commander in chief, or more likely under the rule of a savvier successor who will take his place—collectively referred to as “the Next Trump.” Each section will assess a particular guardrail of democracy, toggling between how it was tested in the rst Trump administration and how it could be dismantled next time. From remorselessly gutting the American judicial system to deploying U.S. combat troops in neighboring countries, you will see what “mega MAGA” really looks like and how it could endanger our lives, our livelihoods, and our way of life.

If we want to save democracy from the Next Trump, we need to fully understand the threat he or she will pose. Predictions must not be founded in fear but instead rooted in truth. In forming these projections, I have relied on rst-person interviews with the people who know the MAGA movement’s plans, never-beforetold stories from the inside, and penetrating insights from the country’s leading democracy doctors, who understand how dire the situation has become. Together, they provide a matter-of-fact prognosis for what to expect if we install another corrupt leader in the White House.

This isn’t just about the next presidential election or a shortterm hazard. Autocratic personalities will come and go, but the antidemocratic trend lines in our system pose lasting, generational peril. Trumpism is a political philosophy that seeks to achieve far-right, populist goals by defying democratic institutions and misusing government power for partisan purposes. It has spread like a disease, infecting a rising generation of copycats.

I know how ugly it can get. I sat in the Oval Oce as Donald Trump fantasized about replicating North Korea’s demilitarized zone on the U.S. southern border, replete with land mines, barbed wire, electric fences, and armed guards. Trump described in graphic detail the sharp, esh-piercing spikes he wanted installed on the border wall, designed to maim climbers so bloodily that other migrants would be scared to follow suit. He mused about U.S. soldiers ring on civilians, knowing that if they blew the legs out from underneath pregnant mothers, it would keep them from reaching the border.

I listened aboard Air Force One as Trump lavished praise on America’s adversaries and foreign dictators, waxing poetic about Vladimir Putin and Xi Jinping. Those men could do whatever they wanted, unconstrained by congresses and judges. He wanted the same power, ordering subordinates to send draft laws to Congress to eliminate appellate courts that overruled him and to write executive orders to invoke the Insurrection Act, allowing him to impose a version of martial law.

I heard gag-inducing comments about women, as Trump nitpicked their looks and television performances, including, most grotesquely, sexual references to his own daughter. Perversion aside, it was the ex-president’s inclination toward illegality that led me to quit. I witnessed Trump tell border patrol agents to ignore the law and to send arriving migrants right back into the hot-sun desert where they could die despite their legal right to claim asylum, oering to pardon anyone who got arrested for carrying out his directive. That was the last straw. I reported the incident to government lawyers and resigned shortly thereafter, making sure news of the episode became public.

If another like-minded MAGA gure is given a shot at the presidency, these will not be anecdotes of near misses. They will be ocial U.S. government policy. I don’t expect you to take my word for it. Many people who were close to Trump have shared with me—almost unanimously—their belief that the return of Trumpism will be more volatile than its initial rise, which is why we must act without delay. (Some Republicans I spoke with are so worried about retribution from gures inside the movement that they requested their names be withheld in these pages and/or that identifying details about them be modied, in part because of threats of physical violence from Trump’s followers.)

Regardless of whether the ex-president has a shot at returning to the White House, his torchbearers intend to carry on his legacy by bringing the ame back into government. They won’t allow political prudence to hold them back from weaponizing the very same democratic institutions that should serve as guardrails. As I write this, MAGA operatives are working in Washington to transform their hostile takeover of the Republican Party into sustained, multi-decade control over the levers of government.

These are not the national security dangers I expected to be worried about in the twenty-rst century. I entered government service in the wake of September 11, 2001. Since that dark day, I have spent my career focused on protecting the country against foreign threats, from terrorists and transnational criminal organizations, to nation-states such as Russia and China. After witnessing Donald Trump’s rise, presidency, and fall up close, I now believe that the greatest threat to American democracy in this century will come from within.

A widening cabal of antidemocratic leaders here at home have exploited our polarized political climate and are already mimicking Donald Trump. I have met them on the campaign trail as they run for local, state, and federal oce. They are winning more elections than you think. The inuence of Trump’s example has created an opening for his apprentices to engage in abuses of power by using America’s public oces to promote their own self-interest and to silence objectors.

We can halt the spread of political extremism, but it will be a once-in-a-generation challenge.

We didn’t snu out Trumpism. Rather, we looked the other way as its cinders lit the dry underbrush of our fraying society and spread like wildfire. Right now, the winds favor the fanatics, from a historically divided electorate to grim public attitudes about political violence. Recent surveys have found one in ten Americans —more than 30 million people—now support violence against the government. Such a combustible political climate is what MAGAaligned gures need in order to burn down the system.

Democrats, reform-minded Republicans, and Independents can come together to create a symbolic “rebreak” to prevent the blaze’s spread by taking three actions.

First, we must open our eyes. A victim mentality has overcome voters since the Trump presidency, with Americans lamenting the brokenness of our politics, as if the unwelcome situation were a faultless mishap. We must be candid with ourselves. This isn’t happening to us; this is happening because of us. Our city streets are now the front lines in the war for the soul of our political system, and it won’t end without a great civic awakening.

Second, we must proactively protect our institutions. The United States needs an insurance policy against political disaster, which means identifying the risks posed by antidemocracy gures and crafting mitigation strategies to safeguard the laws and traditions that made America the exceptional nation it is. I have identied some of the most crucial areas where we would expect the Next Trump to do damage, and I oer suggestions for how we can fortify our institutions against a would-be despot.

Third, we must not hide from a deeper menace. The stories you will read here—of illegal acts, long-lasting lies, misused presidential powers, conspiracies, assassination plots, and suicide attempts—are the consequences of a poorly understood bystander phenomenon, which I believe is the “hidden threat” to democracy.

For now, I will say I have arrived at an unexpected conclusion, given my background: anonymity is a gift to authoritarians. They thrive on fear and the suppression of dissent. My journey to the truth was painful—mentally, emotionally, and physically—and forced me to unlearn what I’d been taught in Washington.

In the end, I discovered that in politics, the real struggle is not us-versus-them.

It is us-versus-us.

[PARAGRAPH INTEGRITY PAUSES]

Chapter 1 THE FACTION The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. —ALEXANDER HAMILTON, FEDERALIST NO. 68, 1788 PART I There is a front row to American democracy, and it can only seat four. In the U.S. House of Representatives, two nondescript desks positioned at the back wall oer the most revealing view of the magisterial chamber. Most Americans will never see these hidden perches. One is tucked away on the right corner, the Republican side of the chamber; the other on the left, the Democratic side. Young staers assigned to these wooden tables mark opposite ends of a chaotic thoroughfare away from the cameras, where members of Congress mingle, laugh, argue, and cut deals to keep the country running. At fteen years old, I was plucked from farmland obscurity in La Porte, Indiana, and dropped into one of these four seats. That is where I rst learned about politics. “Welcome to your new office.” I was lured to public service both as an escape and as a calling. As a boy, my obsession with superheroes imbued me with a simple good-against-evil worldview. I wanted to be one of the good guys. With a distant gaze at adulthood, government seemed thrilling compared to the drudgery of small-town life, especially after my parents divorced and home became a place of low-level turbulence. Washington was where actual superheroes lived, men and women elected with the noble purpose of rectifying the world’s wrongs and confronting the real bad guys—criminals, polluters, dictators. Sitting in the nurse’s oce one day at school, I listened through the curtain as a fellow student recounted his parents’ struggle to aord food, while he and his siblings survived on trick-or-treat candy they had collected on Halloween. Trick-or-treat candy. That seemingly little moment changed my perspective. Suddenly, my own situation at home didn’t look so bad, and I felt the faintest inklings of a calling. I devoured books about extreme poverty. An idealistic middle-schooler, I checked out tomes on history, economics, and the Millennium Development Goals. Then terrorists struck. I was in the Twin Towers weeks before September 11, 2001, on a trip to New York City with my mom and aunt. At fourteen years old, I gaped down from the highest oor of the North Tower with a wide-eyed view of Lower Manhattan. The short passage of time between that moment and the implosion of the buildings made me feel a cosmic connection to the tragedy. Alone in my room, I sobbed looking at still photos of Americans leaping from the buildings’ upper oors to escape ames ignited by men who had turned airplanes into missiles. “Never again,” Americans vowed. I meant it, desperate to lend a hand in protecting the country against foreign enemies, while I compartmented clinical anxiety, which I couldn’t name or understand until much later. But what does a kid from a two-star town have to oer fourstar military generals who are hunting down the bad guys? That was my dilemma. My family didn’t have a lot of money or major political connections. Without those, I couldn’t see a fast path into government for a high-school student and part-time restaurant dishwasher with scalded hands and a restless mind. When I heard about a minimum-wage job as a cub reporter at the local radio station, I submitted an application. I got the gig. Luckily, listeners couldn’t tell I was a teenager unless my voice cracked on air, something I carefully avoided by practicing a deep octave. “And a pleasant good morning,” I bellowed into the foamcovered microphone hanging from the studio ceiling. “This is Miles Taylor here at the broadcast center, with a look at your neewwwws at this hour.” I elbowed past colleagues to land assignments covering visits from political leaders. “A word to the wise,” the salty news director warned. “Don’t meet your heroes. They’ll let you down.” As I brushed shoulders with Bush administration ocials who were visiting the Midwest and national media gures like MSNBC’s Chris Matthews, I was pretty sure my boss was wrong. These were the giants of public policy, and I wanted to join their ranks. My interview subjects weren’t fooled, though. No matter how grown-up I tried to act, I was still a kid wearing big-people clothes. Literally. Dad’s oversize Navy blue blazer gave me away with sleeves that were only centimeters away from my ngers, and without a driver’s license, I was forced to rely on my mom to drop me o and pick me up from news events. But what felt like intolerable indignities ended up leading to an opening. “Son, how old are you?” U.S. senator Evan Bayh asked skeptically one night on the sidelines of a town hall he was hosting in our community. “Fifteen,” I admitted reluctantly. He abruptly ended the interview and asked me to kill my handheld tape recorder. I was discouraged. But then he whispered to an aide and told me about something called the Congressional Page Program. “You want to see politics in action?” Bayh asked. His aide handed me a fancy business card. I rubbed my thumb reverently over the gold-embossed eagle and probably emailed the staer that same night. Several months later, I found myself on the ten-hour drive from Northwest Indiana to Washington, D.C., to join several dozen students for a job in the United States Capitol. For two hundred years, young people have assisted with administrative proceedings in the nation’s legislative body as congressional pages, or as we were sometimes called, “democracy’s messengers.” The errands ranged from mundane to momentous. We spent early mornings running packages around the Capitol complex and late nights putting bills and resolutions in the hands of hundreds of representatives, each of whom had a urry of comments, edits, amendments, and rewrites to make to the people’s paperwork. You rarely see congressional pages. We were trained to operate in the background, quietly supporting the country’s leaders, except for every four years when pages are photographed delivering the Electoral College ballot boxes to the House to certify the results of the presidential election. On my rst day, I met a personal hero. U.S. senator John McCain greeted us in passing as he made his way to the other side of the Capitol. His handshake felt like a professional christening, and I watched the vaunted combat veteran and “maverick” presidential candidate disappear down a stately hallway. We were ushered onto the oor of the House of Representatives. The cavernous chamber was ornamented with Americana—busts, quotes, and frescoes of the country’s Founders—and it struck me with the veneration that you’d reserve for a holy site. “Welcome to your new oce,” Peggy Sampson, the businesslike page boss, told us as she pointed out the two desks in the back corners that would become our rotating perches. The class was split between Republican and Democratic pages, a reminder of Washington’s built-in divide. I was fortunate to be a Republican page. The GOP was in the majority, and soon I was selected to serve as the Speaker’s page—the personal messenger for the most powerful gure in Congress: Speaker of the House Dennis Hastert. Washington was enveloped in a sober urgency in those post9/11 years, which became clear by the weighty atmosphere. Access to the Speaker’s oce was strictly controlled, and distractions weren’t tolerated in his quiet sanctum. One day an aide found me using the oce phone for a personal call to a girlfriend back in Indiana, and as punishment, I was sent back to the page desk on the House oor to run errands for junior members of Congress. (To me, getting sent back into the middle of the action wasn’t exactly punishment.) We trained as apprentices to wartime legislators who were grappling with an existential threat. You can’t overstate the palpable fear vibrating through Washington at the time, from worries about biological weapons to whispers of nuclear dirty bombs. A gas mask was hidden under every seat in the U.S. House. But fear gave way to cooperation, as members of Congress crossed the aisle to compromise on sweeping legislation. The master class in bipartisanship culminated, for me, in President George W. Bush’s 2005 State of the Union Address. Despite having just come o of a contentious presidential campaign, he entered the chamber’s arched doorway to applause and handshakes from Republicans and Democrats. “We have known times of sorrow and hours of uncertainty and days of victory,” he declared, as I stood by the page desk in the back. “In all this history, even when we have disagreed, we have seen threads of purpose that unite us.” The room applauded in agreement. I had found my tribe. Roaming the musty marble passageways of Congress, I grew surer of my views as a Republican. I was a “compassionate conservative,” the kind George W. Bush spoke about when he called for a government that used the free market to eliminate poverty, that openly welcomed immigrants who sought to join our country, and that championed freedom and human dignity around the globe. Joining the GOP tribe also seemed like the best way to defend the country; Republicans, after all, portrayed themselves as the party that was ready to stand up against enemies to our democracy. What was meant to be a year turned into a whirlwind decade. I could hardly stay in school, although I was obsessed with good grades. From elementary to graduate school, I was a straightA psychopath (except for a lonely B+ on my seventh-grade report card). Valedictorian. Indiana State Debate Champion. Full ride at Indiana University as an undergrad. Full ride at Oxford University as a grad student. But I was bored. I dropped out of school multiple times to take jobs in Washington because I was more interested in sitting in secure brieng rooms, digging into intelligence gathered overseas by U.S. spies, than sitting in classrooms. I trained my strengths—and anxieties—toward supporting national leaders, from preparing research memos at the White House and Pentagon to brieng CIA directors and Homeland Security secretaries. The stainless boy from a Midwest yover state was awestruck at having a top-secret security clearance. I grew up fast and learned to stay in the background safeguarding information, knowing that lives were in the balance and that I was responsible for protecting the “sources and methods” of our spy agencies. Just as the kid inside me had yearned, I was working alongside the good guys to ght the bad ones, or so I thought. Washington changed in the years after 9/11. After spending time in the executive branch, the private sector, and grad school, I returned to Capitol Hill in my late twenties and found a very dierent place. Some of the people I looked up to had turned out to be not-so-good guys (including House Speaker Dennis Hastert, who’d been arrested, charged, and later convicted in a hush-money scheme related to sexual misconduct with minors). The spirit of unity had also worn o, giving way to fermenting animosity. The Republican Party was focused on undermining Democratic President Barack Obama, while a confrontational Tea Party movement sought to take over the GOP by launching an insurgency. I tried to ignore the partisan rancor that followed me up the career ladder. As the national security advisor on the House Homeland Security Committee, I told people I was focused on policy, not politics. Then Donald Trump emerged. “I want a Trump inoculation plan.” In early 2016, a small group of Republican congressmen and aides, myself included, huddled around a conference table inside the U.S. Capitol. Afternoon sunshine illuminated untouched cookies and sodas in front of us. The faces around the table hung low. “I want a Trump inoculation plan,” House Speaker Paul Ryan demanded, making eye contact with each of us. Paul Ryan had been elected Speaker only months earlier and was eager to move the GOP toward a big tent, hopeful, ideasdriven party. I was a fan for this reason. We millennials prided ourselves on being scally conservative and socially liberal, and Ryan was going to be our gurehead. Trump was putting it all at risk in his unexpected quest for the GOP presidential nomination. “We can’t let him trash the GOP,” Ryan fumed, noting that Donald Trump was not representative of the policies or the people in the Republican Party. House majority leader Kevin McCarthy nodded in agreement. When it was his turn, McCarthy joked that Trump had switched parties so many times he couldn’t tell a donkey from an elephant. Party leaders had failed to knock out Trump early, so now they were trying to coalesce around someone who could stop him. In the meantime, Paul Ryan wanted House Republicans to distance themselves from the New York businessman, who they all expected would lose anyway. It wasn’t just that Trump was hostile to GOP orthodoxy; he was breathtakingly ignorant about the rule of law, the Constitution, and the democratic system. The select group of lawmakers and sta were tasked with developing a platform that was the antidote to Trumpism. Rarely does anyone other than the Republican nominee release a party strategy during an election year. Speaker Ryan’s “Better Way Agenda” was billed as a right-leaning response to eight years of a Democratic administration. In practice, though, we were drafting an alternative to the ideas Trump was spewing on the campaign trail, where he was badly hurting the GOP brand. We talked about what the document should say. It should repudiate the TV personality’s vitriolic rhetoric, isolationist tendencies, protectionist economic ideas, disparaging comments about our allies, anity for America’s adversaries, and divisive anti-Muslim views, among other appalling comments. More broadly, it should reect a party that was focused on the future and not relitigating the culture wars around guns, abortion, sexual orientation, and gender identity. I went to work, charged with co-drafting the national security portion of Ryan’s plan. For me, Donald Trump was number seventeen out of seventeen of the major candidates in the GOP primary race, a foulmouthed imbecile who was doomed to fail. I was happy to do anything to separate us from him. He wasn’t a part of our tribe; he was just trying to create a small faction to inltrate the Republican Party for personal gain. I’d already seen the Tea Party movement do the same, and so far, we’d kept them at bay. In fact, I didn’t know any legislator on the GOP side who seriously supported Trump. Senator Ted Cruz called the man an “utterly amoral… narcissist.” Texas governor Rick Perry said the businessman was a “cancer on conservatism,” dening Trumpism as “a toxic mix of demagoguery, mean-spiritedness, and nonsense.” Senator Lindsey Graham equated the man to an “evil force,” and openly referred to him as a “jackass” and a “kook.” Representative Mick Mulvaney had an even simpler summation: Trump was “a terrible human being.” Then the unthinkable happened. Donald Trump surged forward in the primaries and eectively clinched the nomination. A schism erupted within the party. While most establishment conservatives begrudgingly decided to coalesce behind the nominee (who still seemed destined to lose in the general election), a “Never Trump” wing formed to sink him using any means necessary. Former mentors and colleagues from the Bush administration signed letters disavowing Trump, but because I was a GOP ocial, I rationalized that it would be inappropriate to add my name to a public list. Paul Ryan’s policy project took on greater urgency. He advised us not to openly attack Trump—and risk pushing him away from the GOP mainstream—but to quietly point him in the right direction by giving him a plan that sounded Republican, not reckless. We foolishly thought we could guide Trump. We weren’t writing the “Better Way Agenda” anymore; it was the “Make Trump Better Plan.” In May 2016, I traveled with a group of GOP senators and congressmen to the Middle East. One evening in Bahrain, I went to dinner with Kansas representative Mike Pompeo. Over lamb shank and hummus, we talked about the dilemma, and I reiterated what was quickly becoming conventional wisdom: in the months ahead during the presidential race, Trump would set the GOP back years with his sensationalistic comments. “What if—in a uke—he actually wins?” I wondered aloud. Maybe we should do more than we were doing. “Miles, he’s a coward and a bully,” Pompeo responded bluntly. “The American people will see through it, and when this is all over, he’ll be a fucking afterthought.” He was so sure Trump couldn’t win that we spent most of our dinner talking about what we could do from Capitol Hill to x U.S. foreign policy during a Hillary Clinton presidency. Obama had backed away from America’s allies, we lamented, and was bowing down to its adversaries. Pompeo was considering a run for chair of the House Intelligence Committee, where he could have more inuence on U.S. foreign policy. I oered to help him angle for the job once the election was over. Still, in every country we visited, foreign leaders expressed grave concerns about what a hypothetical Trump presidency might mean for the world, especially given the man’s anti-Muslim commentary. “There’s no reason to fret,” Texas senator John Cornyn told a group of diplomats in the region. “Trump was loud and unpredictable to win the primaries, but his tone will start changing for the general election. He’ll calm down. You’ll see.” The cowboy boots poking out from under the senator’s khakis spoke louder than his words, as if to say, Trust me, I’m from the land of rodeos. This is all part of the show. But was he reassuring them, or himself? None of us actually knew whether Trump would moderate his tone. In late May, former New York City mayor Rudy Giuliani reached out for help with exactly that topic. He was having conversations with Trump and wanted the presumptive nominee to adopt more traditional GOP policy positions before the general election race, starting with reversing his crude comments about Islam. Giuliani asked my boss—House Homeland Security Committee chairman Michael McCaul—and me to assist. Early in the campaign, Trump had shocked the world by calling for a “Muslim ban” on travel into the United States, falsely equating billions of everyday Muslims with the small population of terrorists who perverted the religion to justify violence. As a counterterrorism professional, I feared Trump’s words would be exploited by militants to convince others that we were at war with Islam. As an American, I found his words disgusting. Most worshippers of Islam were just like Christians, Jews, or Hindus— people of faith who practiced their religion peacefully. Giuliani convened an ad hoc group (including former U.S. attorney general Michael Mukasey, Chairman McCaul, and former prosecutor Andy McCarthy) to draft a memo to get Trump to stop saying “Muslim ban” and to talk about reasonable counterterrorism policies. While I didn’t agree with everything in the document, the nal draft condemned Trump’s comments and rightfully made clear that a Muslim ban would “run afoul of our constitutional principle against religion-based discrimination,” emphasizing to the candidate that most Muslims who came here were “patriotic and productive Americans… precisely the kind of immigrants our policy should encourage to come to the United States.” In place of a ridiculous “ban,” the memo proposed “intensied vetting” of U.S.-bound travelers to weed out the real terrorism suspects. Giuliani briefed Trump. To our surprise, it worked. Donald Trump never said the words “Muslim ban” again on the campaign trail, although apparently the word “intensied” wasn’t enough for him. He began to talk about “extreme vetting” and how he would implement harsh measures to keep terrorists out of the United States. While I wasn’t sure he really understood what we wrote, I was buoyed to see he was shifting back toward the mainstream. Maybe Trump could be guided after all. The relief was eeting. When Paul Ryan released his forwardlooking GOP agenda in June, Donald Trump accepted it like a buzzsaw accepts timber. He had no interest in policy nuance, crafting an optimistic Republican Party, or restraining his antagonistic tendencies. Within days, Trump attacked a federal judge who ruled against him in a fraud case as “biased” because of his “Mexican heritage.” Ryan rebuked the GOP nominee’s words as the “textbook denition of a racist comment,” and after that, any hope that Trump would listen to Speaker Ryan faded. Our Make Trump Better plan was dead. “Maybe there is no hacking!” My consolation that year was the feeling of certainty that Donald Trump would never, ever be president of the United States. It was October 9, 2016, the night of the second presidential debate, and I watched it with my girlfriend Anabel in our row house on Capitol Hill. Anabel wasn’t in politics—she was a Southwestern transplant to D.C. who worked in banking—and her tolerance for sleazy politicians was even lower than mine. With a re roaring in our exposed-brick replace, we mocked the GOP candidate’s meandering performance. There was good reason to think Trump’s campaign was nished. As he roamed the town hall stage that night like a caged animal, he gave us another. During the debate, Donald Trump angrily denied Moscow was behind ongoing interference in the 2016 election, and that the interference was even happening in the rst place. Trump was lying to the American people. I knew it because I’d helped brief him on the threat days earlier. Russia’s plot consumed me throughout the election. In mid2016, an urgent bulletin sent to Capitol Hill from a U.S. security agency agged a disturbing development: foreign actors might be launching digital attacks on the 2016 election, including cyber intrusions targeting U.S. political gures and institutions. The alert didn’t identify the culprit, but within days, I arranged briengs for members of Congress to get the details. The DNC announced weeks later that it had been hacked by Russia. My worry grew, in part because Moscow was breaking into a U.S. political party but also because one of the two major candidates in the election was seemingly ambivalent about it. Trump accused the DNC of making it up and then publicly goaded the Russians to hack the emails of his opponent, Hillary Clinton. A fellow GOP aide on Capitol Hill, Evan McMullin, found Trump’s behavior so oensive that it inspired him to quit his job and actually challenge Trump. The forty-something foreign policy advisor announced he was running for president as an independent, a quixotic last-ditch attempt to block the Republican nominee. Evan and I had come up in the GOP around the same time. We entered government service after 9/11 and both were convinced someone in our party would emerge to counter Trump. When no one did, Evan told me he had no choice but to do it himself, even if the odds were impossible. The “Never Trump” movement had gone from the majority of the party to a small, faltering faction led by a no-name congressional staer. Evan asked if I wanted to join his campaign. I gave him the reexive excuse that I could be more eective from inside the party than outside of it. In truth, by then I’d concluded that Hillary Clinton was the only way to end Trump’s candidacy for good. Then in the summer and fall, Russia leaked emails and released disinformation to undermine Clinton. Both Trump and Clinton were briefed on the very sensitive intelligence about Moscow’s ongoing operation. Yet Trump continued to dismiss it. A handful of congressmen asserted themselves in Trump’s orbit to get him to wake up, including my boss, House Homeland Security chairman McCaul. He agreed to prepare the nominee for the presidential debates in September and October 2016. Beforehand, I pulled together in-depth brieng materials for McCaul to take with him—background, charts, maps, talking points, the works. Our singular goal was to get Trump to admit that America was under attack and to warn Russia that they would face our wrath. At the debate prep, McCaul walked through the details. He assured Trump that the information about Russia was valid, that we’d been briefed on it for months, and that it was critical for Trump to publicly acknowledge the situation and vow that— regardless of who the Russians were trying to support—the United States would punish them. My dial-in connection was unsteady, so I phoned McCaul afterward to see how it went. “Not good.” The chairman recounted Trump’s visceral reaction. “He didn’t want to hear it.” The candidate interrupted McCaul repeatedly. “It’s all bullshit,” Trump allegedly retorted, waving his hands dismissively. “Totally politicized bullshit, right Mike?” Trump turned to another Michael in the room, Lieutenant General Michael Flynn, the former head of the Defense Intelligence Agency, who’d been forced out of his job for alleged misconduct and was now a Trump campaign advisor. “You’re right, sir,” Flynn armed. “It’s politicized, intelligence community BS.” McCaul tried again, but Trump ended the conversation. Days later, the candidate lied in the presidential debate about what he knew. “I don’t think anybody knows it was Russia that broke into the DNC,” he said. “[Clinton is] saying Russia, Russia, Russia… but it could also be China. It could also be lots of other people. It also could be somebody sitting on their bed that weighs four hundred pounds, okay?” He went further in the second debate, suggesting that the cyber breach might not have happened at all. “Maybe there is no hacking!” The falsehood was sickening. Trump knew the truth, so why was he covering for one of America’s adversaries, Vladimir Putin? Another controversy erupted at the same time. An old video recording surfaced of him making denigrating comments about women, sending his campaign into free fall. It was time to stop “managing” Trump within the party and start maligning him. This was the opening I’d been waiting for. While on a road trip through the New Mexico desert a few days after the debate, I called and texted GOP members of Congress to encourage them to turn against the nominee. Now was the time to distance themselves from Trump’s campaign or, better, to unendorse the candidate altogether. Of course he wouldn’t win the presidency, and if we didn’t isolate him, we’d be associated with his lies and toxic politics for years to come. “There’s an awful lot of reasons to rescind your support,” I texted one legislator, trying to convince him to ditch Trump. “Politically the scandals are destroying his chances and folks are going to use this as a litmus test in the future, i.e. ‘what did Representative XX do when he had the opportunity to rescind his endorsement?’ But the most compelling one is that it’s probably the right thing to do.” The congressman said nothing. The next day, he sent a meme of three faces and three quotes: former president Franklin Delano Roosevelt (“The only thing we have to fear is fear itself”), John F. Kennedy (“Ask not what your country can do for you but what you can do for your country”), and Trump (“Grab them by the pussy”). To him, it was funny. While some Republicans denounced the nominee’s comments, most quietly stood behind Donald Trump in the end. I couldn’t understand why. Until he won. “Sure, he’s a dick, but now he’s our dick.” Everyone remembers election night 2016 and the shock of Trump’s comeback victory. But what I remember is the gloating, specically from one GOP representative. A Southern legislator leaned against a gold railing on the House oor several days later, trying to convince me Trump wouldn’t be so bad. The party would benet from his brash antics, the congressman reasoned. Trump would keep the pressure on “the libs.” “Sure, he’s a dick, but now he’s our dick,” he quipped, ebulliently. The vodka-soaked frat culture of Capitol Hill was already making me feel disillusioned, but the state of denial in the party was worse. The same people who had equated Trump to an “evil force” were now giddy about the prospect of a drain-the-swamp disruptor in the White House. After sneaking away to celebratory happy hours, congressmen would return to the House oor smelling like booze. During votes, they passed out their ID cards so someone else could register the “yeas” and “nays” for them. They were too busy to vote, placing bets on which of them would end up in the new president’s cabinet. Then came the pilgrimages to Trump Tower. To be fair, some sober-minded Republicans hoped to convince the incoming president to recruit serious leaders and statesmen and -women to replace the island of mist advisors he’d assembled. But far too many alighted from the tower’s golden escalator to pitch themselves for top spots. One of them, Congressman Mike Pompeo, had just been picked to be CIA director and reported back condently that Trump wasn’t looking for “yes men.” I hoped he was right. More so, I hoped people like Pompeo—who’d been blunt about his disdain for Trump—would serve as a check on the man. I ew up to New York with a delegation of GOP gures a week later, in late November 2016. Kellyanne Conway greeted us like a carnival barker welcoming circus-goers into a tent, as a gaggle of current and former ocials came and went; Steve Bannon glad-handed donors in a corner, grinning ear to ear; General Flynn quietly escorted foreign visitors out, oering hushed farewells and promising to be in touch; and Ivanka and Jared made a brief appearance with an air that said, The family is in charge. I squeezed onto a couch next to former vice president Dan Quayle, who brought ideas to help the untested president-elect think about governing. The atmosphere was too surreal to ignore. “Did your transition look like this?” I asked. He scoed and whispered from the side of his mouth: “No. This place is a fucking circus.” Exactly what I was thinking. If it were a circus, Vice-President-Elect Mike Pence was the ticket boy, dutifully shuttling back and forth to the waiting area to tell another newcomer it was his or her turn to enter the lion’s den. We were next. Clutching policy papers on national security, Chairman McCaul and I were ushered into a meeting room. Donald J. Trump—Secret Service codename “MOGUL”—was in full form. The braggart chief executive had just closed the biggest real estate deal of all time: the acquisition of the White House. An oversized suit jacket and wrinkled pants hung over his large frame, accented by a red necktie that dangled too far below his belt line. “Look at that! Isn’t it beautiful? Just. Beautiful.” He waved his hand at a map of all the counties he had won across America, as if the congressman and I hadn’t seen the results. A sea of red with occasional pockets of blue. The conversation never got to counterterrorism or cybersecurity; Trump wanted to talk about how much of a winner he was and how he was going to bring other winners into the new administration. An aide escorted me out to meet with a staer on the transition team. I introduced myself and started to talk about the national security issues the incoming president would need to start thinking about. He cut me o. We weren’t there to talk about policy. He wanted names. Which prominent gures from Capitol Hill would be loyal lieutenants to the incoming president? “Loyal,” he repeated. I had brought a list with me, but it wasn’t a list of congresspeople. The legislators I knew weren’t showing backbone, so I handed over a spreadsheet of leaders who I thought actually had character. The staer crossed out most of the names. “Bushie,” he said. Another. “Never Trumper.” “John Kelly?” he asked, stopping at a name on the list. “You think he’s experienced enough to be defense secretary?” “He’s a four-star Marine general,” I replied. Kelly had met with Trump recently, and I had been oored that serious people were being considered at all. “We’ll see,” the aide responded. We were interrupted. McCaul’s meeting was over, and Pence was ready to walk us out. On the elevator ride down, the vicepresident-elect gave us a knowing look. He’d seen others leave with the same worried faces, the type that commuters make when passing a ery roadside crash. “It’s going to be all right,” he oered. “Here’s my personal information if you need anything.” Pence handed me a scrap of paper with a mobile number and an obscure Gmail address scrawled on it. “It’s not as bad as it looks. It’s a hell of a lot worse.” These aren’t the words you want to hear from your soon-to-be boss. Yet John Kelly stated them matter-of-factly. It was March 2017. He’d been serving for two months as Trump’s Homeland Security secretary. The job I’d hoped he’d take—running the Pentagon—had gone to another man I regarded as a rare living legend, General Jim Mattis. Kelly dealt with a urry of crises after taking oce, including Trump’s surprise executive order blocking millions of people from Muslim-majority countries from coming into the United States. The shock order certainly looked like the “Muslim ban” we thought we’d talked Trump out of. Worse still, Trump didn’t consult John Kelly or other agency heads before releasing it. The results were disastrous. At the time, I was still on Capitol Hill and asked Chairman McCaul to condemn the policy. It was highly unusual for a top Republican to criticize a new president from his own party, only days into the administration, no less. But McCaul agreed. He called on the Trump White House to roll back the executive order, using my words to admonish them: “Don’t undermine our nation’s credibility while trying to restore it.” I was wary of any job in the administration and turned down a White House post during the transition period. However, I admired Kelly. The plainspoken, no-nonsense operator wasn’t interested in partisan politics. He was one of the leading military gures of his generation and the highest-ranking ocer to lose a child in the wars in Iraq or Afghanistan. He continued to serve despite the family’s loss. If anyone could be a check on Trump, I hoped, it was hardened soldiers who tended to be immune to politics and wary of unlawful orders. Word got out that Kelly needed more people to bring order to the chaos at DHS. I was open to working for one of the “adults in the room,” though a breakaway part of my conscience argued otherwise. Anyone could see this wasn’t going to end well. I buried the internal dissent under layers of careful reasoning about how “good people” were going inside to do what was right. By March, I’d come around. I accepted a position as Kelly’s counterthreats and intelligence advisor. I was just entering my thirties and would be the youngest counselor on his team. Days before I was slated to take the post, another crisis hit. A man jumped the fence at the White House and evaded Secret Service agents for seventeen minutes before he was caught. Trump was furious at the breach, and so were members of Congress from both parties. Kelly was called up to brief the House Homeland Security Committee, and I waited to catch him in the hallway before he went in to see the representatives. “Leatherneck inbound,” an agent whispered into his sleeve. The Secret Service codename—an old slang term for U.S. Marines —captured Kelly’s aesthetic perfectly. As he rounded the corner, he had the imposing presence of a general, and his face was carved with weathered battle lines that spoke as loudly as his record. We were in a secure facility several stories underneath Congress. No cameras, no reporters. While I was still technically working for the room of angry congresspeople, I would soon be one of Kelly’s deputies, and I felt an obligation to brief the man who would be my boss about what he was walking into. “Mr. Secretary, they’re frustrated—not just about the White House intruder,” I warned him. “Democrats are probably going to grill you about the president’s missteps on everything else.” “That’s okay. It’s not as bad as it looks,” Kelly responded. “It’s a hell of a lot worse.” I laughed. “I’m not sure I’d frame it that way in the room, sir.” Kelly wasn’t joking. He patted me on the shoulder. “I’ve got this, Miles. Hang back for a minute afterwards, okay?” The brieng went as expected. The secretary played security camera footage of the intruder scaling multiple fences, dodging sensors, and taking advantage of a comedy of errors as Secret Service agents tried to locate him before he nearly made it inside the president’s residence. Kelly announced that he was boosting protection at the White House complex until long-term corrective action was taken, starting with a request for Congress to give him more money for a bigger fence. The representatives were unied in their concern over how easily the guy had entered one of the most high-security facilities in the world. If he’d detonated a bomb, God forbid, he could have destabilized the entire federal government. Representative Bennie Thompson pressed Kelly: “How could this happen?” (Incidentally, Thompson would be asking the same question years later while investigating a far bigger breach of the U.S. Capitol.) Before long, attendees were o-topic and the meeting devolved into partisan bickering. Kelly was the rst Trump lieutenant to brief the group, and Democrats in particular were still coming to terms with a whiplash White House. Trump’s preposterous travel ban; his denial of Russian election interference; an obsession with a hulking concrete “border wall”; already frosty relations with Congress; and his apparent disregard for his own cabinet. Republicans jumped in to defend the president, though most barely knew the man. Kelly calmly told the representatives that everything was copacetic. There was an adjustment period in every new administration, and President Trump was taking the advice of his team. The general understood the importance of this assurance. Skeptics of Trump were only comforted by the hope that the businessman would somehow assemble a credible cabinet, a group of grown-ups who would provide stability in the executive branch. Then another topic came up. Days earlier the administration had made a cryptic announcement that carry-on laptops would be banned on certain ights to the United States from several Middle Eastern countries. What was happening? Members of Congress demanded to know, reminding John Kelly that we were sitting in a secure environment and could discuss sensitive issues. For the rst time, Kelly looked uncomfortable. He demurred, oering up only the fact that the decision was based on “evaluated intelligence” that he hoped to share at the appropriate time. A buzzer screeched from behind the members of Congress and lights ashed on a wall clock. It was time for votes on the House oor. The meeting was over. As the room cleared, I waited for Kelly. I told him that he had handled the back-and-forth well. “You still on board?” he asked with a grin. “Yes, sir. But you spooked me on the way in,” I joked. “About that…” The secretary’s smile faded. He lowered his voice. “I want you to know something. I swore an oath to protect this country against enemies foreign and domestic. Foreign and domestic, Miles. You’ll be doing the same by joining my team. Take it as seriously as a heart attack, okay?” “Yes, sir, of course,” I armed. Kelly waited a beat before his face lit up again. He reminded me that I had one day of freedom left. “Don’t fuck it up.” The secretary disappeared down the hall followed by sta, agents with earpieces, and a military aide carrying a black briefcase, leaving only silence in his wake. I closed up the brieng room by punching in a code, sealing the vault-like door, and spinning the lock. The hallways were empty. The House was a vacuum that hoovered up bodies from around the Capitol when it was time to vote. I headed that direction, returning aboveground through a maze of passageways, staircases, and elevators, thinking about what the general had said. Foreign and domestic. PART II The American system was designed to prevent a tyrant (or, more specically, a would-be king) from becoming president. With the heavy-handed British monarchy fresh in their minds, the Founders wrapped a protective layer around the U.S. executive branch. They placed strict legislative and judicial checks on the presidency, curtailed the president’s powers, and put a four-year term limit on the oce. Most importantly, they designed a presidential selection process that was meant to block bad leaders from winning. The emergence of fringe politicians was inevitable. “The latent causes of faction are thus sown in the nature of man,” James Madison wrote, and have “divided mankind into parties, inamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.” Rather than try to x this ugly side of human nature, Madison proposed using it to help protect democracy. Put another way, warring factions could be pitted against each other as a check. In small societies, political movements tended to merge and trample the rights of the minority, Madison wrote. However, in a country as vast as the United States, various parties and factions would have trouble combining forces, and instead they’d compete with one another, preventing any one group from becoming too powerful. America’s most famous anonymous author sought to reassure the people. The Founding Fathers wrote a series of unsigned essays to sell the public on supporting a new constitution, using the alias “Publius.” Under the pen name, Alexander Hamilton declared that “talents for low intrigue and the little arts of popularity” were not enough to get someone elected president. To capture the top job, a person would need to appeal to the country’s broad swath of political groups. As a result, “it will not be too strong to say, that there will be a constant probability of seeing the [presidency] lled by characters pre-eminent for ability and virtue,” he wrote. In 2016, Hamilton was proven wrong. THE LONG-TERM CONDITIONS ARE HIGHLY FAVORABLE FOR A VOLATILE POPULIST FIGURE—THE NEXT TRUMP—TO RECAPTURE THE WHITE HOUSE. Our system of government allowed an observably unqualied man to win the U.S. presidency. Democracy’s electoral guardrails were tested, and they failed. I witnessed the futile eorts of Donald Trump’s early opponents as they tried to stop him and his breakaway MAGA faction, the naivete of a Republican Party apparatus that attempted to guide him, and the GOP advisors— like me—who hoped we could manage Trump on his way to inevitable defeat. That is not what happened. Trump won and held the White House for four chaotic years. Afterward, many continued to think Trumpism was an aberration. When Joe Biden defeated the one-term president in 2020, it was supposed to mark the death of MAGA. Since that time, however, Trump-inspired candidates have popped up across the country, assumed party leadership positions, and taken control of an entire ecosystem of groups that shape the GOP’s direction. What began as a small faction within the party now commands the entirety of it. The MAGA movement—or Trumpism, which I use interchangeably—remains the fastest-growing political coalition in America, regardless of how damaged its namesake is. The coalition has been able to unify disparate groups of Republicans—Tea Party, libertarian, small business, establishment, Evangelical, and beyond. Various factions within the GOP no longer compete and balance each other out. They’ve been subordinated to Trumpism. The prospect of a MAGA comeback in the White House goes far beyond the next presidential election. The electoral guardrails that were supposed to stop someone like Donald Trump from getting elected have not been hardened to prevent a repeat. They have been corroded. Far-right gures like Representatives Marjorie Taylor Greene and Lauren Boebert are now in the mainstream of the Republican Party, and they are using intimidation to silence remaining opposition, while persuading the masses to believe conspiracy theories that are tilling the fertile soil for a new crop of antidemocratic populists. We have seen this story before in history, and it doesn’t end well. First, MAGA forces are purging internal opposition with striking eciency. One of the best checks against the emergence of a dangerous gure in a free society is the ambition of his or her opponents. Almost every senator, congressperson, or cabinet secretary I know in Washington has fantasized about becoming something more, namely the president of the United States. Most coyly deny it, but the glint in their eyes when they cross the threshold into the Oval Oce betrays their true desires. The fact that scores of politicians are always considering presidential bids is good for our political system; their ambition makes the presidential contest more competitive and weeds out defective candidates. This is how Trump should have been stopped. He faced a wide array of competitors more qualied to hold the nation’s highest oce, most of whom repudiated the New York tycoon. Nearly all observers expected the combined ambition of Trump’s opponents to smother his candidacy. As we know, that didn’t happen. Today, we should have little condence that the ambitions of moderate politicians will prevent MAGA acolytes from seeking and eventually winning the presidency again. Few dissenters remain in the party. Pro-Trump forces are silencing dissent and eliminating internal opposition using a three-pronged approach: threaten, defeat, and destroy. For hundreds of moderate Republican ocials around the country who have been driven out of oce or even into hiding, this has become a grim reality. It starts with a warning. Former GOP congressman Denver Riggleman, who was elected from Virginia in 2018, recalled that it felt like a hostage situation on the House oor. He was expected to support the MAGA movement, or else. “As soon as I won, I realized what I’d gotten myself into,” he shared with me. “I found that votes had nothing to do with policy but with complete loyalty to the president. I just found it amazing that [other representatives] were so subservient,” while they privately mocked Trump as “probably high on meth,” he said. At rst, Riggleman toed the party line. He campaigned as a Trump supporter and was a good soldier, following the guidance of party leaders. But one day, he decided to vote against a Trump bill that would throw the government into chaos by shutting it down. Riggleman was admonished by Republican leaders. “I was told I would have a primary opponent,” he said. The congressman shrugged o the threat and voted his conscience anyway. Representative Mark Meadows, who eventually became Donald Trump’s fourth White House chief of sta, aggressively confronted Riggleman on the House oor afterward with a foreboding message: “You’re done.” Meadows was right. The next year, Riggleman lost the support of GOP leaders in his primary race—the same race he had won overwhelmingly two years earlier—and was defeated by a vocal Trump supporter who derided COVID-19 as a “phony” pandemic. Why did he lose? I asked Riggleman. “I refused to kneel at the altar of Trump,” he responded plainly. “That is really what it comes down to.” The threat of political alienation is not enough for MAGA forces to keep the coalition in line. They are trying other tactics to intimidate opponents of Trumpism and discourage other dissenters from joining the rebel ranks. The ten House Republicans who did vote to impeach Donald Trump experienced this viscerally. Several months before she was defeated in the Wyoming Republican primary, Liz Cheney told me that the fear of physical harm was working. Flanked by armed guards at a fundraiser, she said that Republican colleagues rejected Trumpism but were afraid to come forward after witnessing her experience. She was no stranger to Secret Service protection, given that her father had been vice president of the United States, but this was dierent. A security detail was not a mark of status for the Cheneys anymore; it was reective of the fact that people were making violent threats against her family back in Wyoming, where she couldn’t go out in public the way she used to. Her fellow dissenters felt the same. “You know, it puts you at risk,” said Michigan congressman Fred Upton, who decided to walk away from a thirty-year career in Congress after his impeachment vote, “particularly when they threaten not only you—and I like to think I’m pretty fast—but when they threaten your spouse or your kids or whatever, that’s what really makes it frightening.” Ohio congressman Anthony Gonzalez decided to quit, too, confessing to receiving threats and fearing for the safety of his wife and children. In February 2022, I reached out to hundreds of former GOP ocials to join a public statement condemning party eorts to silence dissent. More than 140 Republican leaders signed on. Many more than that declined. A former U.S. congressman apologized that he couldn’t add his name to the list, citing the fervor of MAGA supporters in his area. “I can’t do that,” he lamented. “These people are fucking crazy.” Second, the takeover of the GOP apparatus is largely complete. The people who opposed Donald Trump in 2016 are either gone or converted. The Paul Ryans of the Republican Party have been sidelined or have made their way to the exits, along with their illusions about breaking a populist wave with oceanic words about a big-tent party. The Trump inoculation plan failed. Today, the GOP that tried unsuccessfully to stop the man has been overtaken by his staunchest allies, all the way down to the precinct level. “Trumpism has taken over the party machine almost entirely,” one retired Republican congressman told me. “You have party chairs who cannot advance in their positions unless they pledge themselves to Trumpism.” The former elected ocial had helped lead a libertarian insurgency in the GOP in the 2010s and regretted that the movement had been commandeered by the expresident. The evidence of a MAGA takeover of the Republican Party could ll several volumes. For example, GOP state legislatures are fervently advancing Trump-like agendas, passing extremist laws on everything from elections to abortion that were inconceivable only a few years ago. Previously mild-mannered policy wonks such as Representative Elise Stefanik now speak in a combative Trumpian tone. Even the adjacent Libertarian Party has been seized by MAGA-friendly operatives who scorn moderation and compromise. Arizona is an illustrative case. Donald Trump won the state by a few percentage points in 2016, but that didn’t make it a MAGA safe haven. Home to longtime Trump critic and Republican U.S. senator John McCain, the Southwestern state is known for its political nonconformity. Arizona boasts as many independent voters as Democrats or Republicans. Trump lost the state in 2020, and when pro-Trump forces tried to overturn the election results, they were thwarted by election ocials within their own party. Bill Gates was one of them. The Republican (not to be confused with the Microsoft billionaire of the same name) was serving as supervisor for Maricopa County, the fourth most populous county in America. At fty years, Gates still had the eyes of a kid who sported a “Reagan-Bush ’88” shirt before he had car keys and who joined the college Republicans rather than thinking about pledging a fraternity. His folksy demeanor struck me as the mark of a man who took his local position seriously. No kid dreams of becoming county supervisor. Gates was surprised to nd himself at the center of a restorm in November 2020. “The system held after the election,” he explained. In his position, he was charged with overseeing Maricopa County’s election procedures. Despite several days of uncertainty, public outcry, and a changing vote tally that kept the nation on edge, “the results got certied,” Gates said. “And Joe Biden won.” Gates respected the results. Others didn’t. “Trump’s allies started trying to get their hands on the ballots and the voting machines [after the certication],” he recalled, “and it took a very ugly turn.” Three phone calls changed his career forever. The night of November 12, Gates was picking up food when a colleague rang to warn that his personal information—and that of the other county supervisors—had been released online, doxxed by Trump voters angered by the election results. Gates tried to lie low, but the hate mail arrived anyway. It got worse in the weeks that followed, as Trump claimed the election was stolen. Gates knew the allegation was false, at least in Arizona, where he’d personally overseen the voting procedures. He hoped the anger would dissipate, but Arizona’s GOP lawmakers were riled up by the outgoing president, including Congressional representatives Paul Gosar and Andy Biggs. They demanded an audit of the vote. State legislators agreed and wanted to get their hands on the raw materials themselves. The GOPdominated assembly requested Maricopa County give up its voting machines, administrative passwords, and all ballots that had been cast in the November election as part of a “forensic investigation.” Gates didn’t believe he was allowed to hand over 2.1 million private ballots. If he did, surely there was a serious risk of tampering or manipulation. The issue came to a head when Arizona Senate Republicans subpoenaed the Maricopa County Board of Supervisors, demanding that the request be fullled. The supervisors went to court to challenge the subpoena. Gates was cautiously optimistic that a judge would settle the issue denitively in the county’s favor, leaving the votes alone while the political winds died down. He got another call on January 6, 2021. This time, a friend in the business community phoned to report that armed protesters had constructed a full guillotine—a wooden structure for beheading criminals—on the grounds of the Arizona state capitol. The device was meant to send a menacing signal to those who were upholding Biden’s victory. “You gotta get out of your house,” the friend told him. Gates rented an Airbnb in Scottsdale. “I moved my whole family. We took the dogs,” he recalled. “They wanted us killed.” That night Gates, his wife, and his daughters watched the television coverage of what happened in Washington, D.C. as rioters stormed the United States Congress. The violence was real. Republican ocials were being targeted by their own base for defying Trump’s eort to remain in oce. The Gates family remained cautious until Joe Biden was sworn in as president. On Super Bowl Sunday 2021, they were back at their home. The beleaguered county supervisor planned to take a muchneeded break from the smoldering controversy, which had put him at odds with longtime friends in the party. Then one of his daughters called him. “Dad, are you going to jail?” she asked after seeing a post on Twitter. In a bid to pressure the Maricopa County Board of Supervisors, state Republicans had drafted a resolution that would give the legislature power to arrest anyone who deed their subpoenas. What’s more, the measure had the sixteen cosponsors it needed to pass. If Gates and his colleagues didn’t hand over the 2020 ballots, they now faced the prospect of jail time. Gates sprang into action to stop the bill before it was too late. After a urry of behind-the-scenes calls and the release of an emergency public message to condemn the measures (“We shot a video here in my oce,” Gates noted, “and it was like a prison video”), they caught a break. One lawmaker decided to pull his name o the bill, eectively killing it. “The State Senate came within one vote of jailing us,” Gates mused. “We were thrilled we were not being detained, but we had real concerns that MAGA people would come to the house.… We were worried they’d come take us into custody on their own.” So that night two sheri’s deputies were dispatched to guard his home. Arizona Republicans were eectively at war with one another. A judge ultimately ordered the Board of Supervisors to turn over the voting machines and the ballots. A person familiar with the case believes the judge privately agreed with Maricopa County —and didn’t think there were legal grounds for an audit—but approved it anyway under pressure and fear that his family might also be targeted by the MAGA crowd if he didn’t order the county to hand over the ballots. Gates became a vocal critic of the review, earning him national attention—and scorn. He appeared before a U.S. congressional committee to speak out against the partisan audit: “This is without a doubt the biggest threat to our democracy in my lifetime.” The contractors hired to comb through the election results, known as the “Cyber Ninjas,” were inexperienced. Yet right-wing social media viciously trolled Gates and others who tried to point out the review’s failings. The nal report released in fall 2021 was lled with unsubstantiated claims but no real evidence of widespread fraud. The election was free, fair, and accurate. Joe Biden had clearly won the state, and it was time to move on. A year later, Bill Gates still didn’t feel vindicated. Sitting behind his desk in Phoenix—the same place he recorded the “prison video” to protest the legislature’s power grab—Gates reected anxiously on the future of the Republican Party. In recent primaries, MAGA types had defeated GOP moderates up and down the Arizona ballot. Normally the state GOP apparatus stayed out of hotly contested primaries, letting voters decide the party’s direction. That wasn’t the case anymore, Gates said. “Now the party is putting its thumb on the scales,” he explained at the time, noting that the Arizona Republican Party was openly favoring pro-Trump gures over centrist alternatives. “Even the people who aren’t endorsed by Trump… are still falling all over themselves to be MAGA. The movement is permeating the entire party.” Is the intimidation working? I asked. He thought for a beat and looked out the window, as if expecting someone to show up when I said it. “Anyone who would dare speak the truth to these people is in danger.” Third, much of the GOP base is now radicalized. The state-by-state MAGA takeover of the Republican Party machinery will make it easier for the Next Trump to emerge. But the transformation of the GOP base is what will actually propel such a volatile gure into the White House. The increasingly reactionary views of grassroots Republicans virtually guarantee that the movement will maintain its dominant inuence on the party for the foreseeable future. A yard sign I saw in rural Pennsylvania tells the story. Driving through the Midwest during the 2020 presidential campaign, I saw planted in front of a house a homemade poster with the words RONALD REAGAN IS A LOSER written on it in bold. Former President Reagan’s face was crossed out with an X, with Donald Trump’s smiling face next to it. Presumably this was a Trump supporter, but why attack Reagan? The fortieth president was beloved by Republicans, not on the ballot, long dead, and certainly not a threat to Trump. The last assumption is where I was wrong. Trump xated on his predecessors and so did his supporters. “You go around Pennsylvania and you see Trump signs everywhere,” he once tweeted, proceeding to quote a supporter. “The Donald Trump situation is bigger than the Reagan Revolution. Donald Trump has inspired us.” The same year: “94% Approval Rating in the Republican Party, an all time high. Ronald Reagan was 87%. Thank you!” And again: “Wow, highest Poll Numbers in the history of the Republican Party. That includes Honest Abe Lincoln and Ronald Reagan. There must be something wrong, please recheck that poll!” To be seen as powerful enough to restore the country to what it was—to Make America Great Again—his identity requires that others see him as equal to, or greater than, those who came before him. I used to think such comparisons were a farcical insecurity Now I believe Donald Trump was understating the comparison. In truth, there is no comparison. He created a cult unlike any of his predecessors, inspiring throngs of supporters to create deeply personal—sometimes spiritual—connections with his movement. Tribalism is as strong as it’s ever been within the Republican Party. Whether or not Trump remains the tribal leader, the power of group loyalty has radicalized the base. Tens of millions of people now believe conspiracy theories that are provably false, a reality that will shape the American political system in unknowable ways for many years to come. In summer 2022, former Republican congressman Reid Ribble did a test. He was a founder of the Tea Party movement, though he was disillusioned by Trump. Speaking to a group of several hundred churchgoers in Wisconsin, he decided to poll the congregation. “How many of you believe the 2020 election was stolen from Donald Trump?” Ribble asked. A sea of hands went up. It was almost the entire room. Ribble disguised his shock by shifting to a second question, which he hoped would cause most of the hands to go down. “And how many of you believe Donald Trump is still the rightful president of the United States?” Some hands dropped, but roughly half the room kept their arms in the air. It was worse than he had realized.

[PARAGRAPH INTEGRITY RESUMES]

“Populism—in almost all of its historical iterations—tends toward authoritarianism,” he told me. The test he did with the congregation reminded him of another dark period in history: preNazi Germany

In the 1920s, Adolf Hitler rose to power on a Big Lie. He alleged that Germany had been on the path to victory in World War I, but its leaders surrendered prematurely. Victory was seized from Germans by corrupt politicians, Hitler said. The people had been “stabbed in the back.” In reality, the German military had been defeated and the country had no hope of winning the war; nevertheless, millions believed Hitler’s lie amid the harsh conditions of postwar life, from political gridlock to ination. Anxious Germans welcomed the rise of a disruptor who could upend the institutions they believed had failed them, which paved the way for Nazism.

“He created a whole class of victims,” Congressman Ribble explained, “and then he told them he would vanquish the villain.” Similarly, Ribble worries Trump’s lies have created an opening for another dangerous leader. The untruths have created an angry and restless electorate.

In poll after poll, a majority of U.S. Republican voters say that Joe Biden was not the winner of the 2020 election—that it was stolen from Donald Trump. As one of the ocials appointed by the Trump White House to oversee election security during his administration, I can conrm (once again) that this is entirely false. The 2020 election was the most secure in modern history. Yet such attestations have failed. In the aftermath of the Trump presidency, GOP-dominated legislatures in more than thirty states have put forward or passed measures to make it easier to interfere in the vote in the GOP’s favor—teeing up the possibility of legal civil war in future elections.

This isn’t the only falsehood reshaping the system.

The MAGA movement has promoted the QAnon conspiracy theory of an evil deep state running the government. An Economist/YouGov survey found that half of American Republicans now believe in core QAnon concepts, such as the assertion that a single group of people “secretly… rule the world” and that “top Democrats are involved in elite child sex-tracking rings.” In 2016 a man shot up a Washington, D.C., pizza parlor that he believed was used as a Democratic sex-abuse lair. GOP leaders have fanned the ames of these theories. The number three House Republican referred to Democrats as “pedo grifters” in 2022, and the party backed candidates who were open QAnon believers.

Likewise, millions of Republicans subscribe to the Trumpfueled “Great Replacement Theory.” The conspiracy alleges that the Democratic Party is attempting to “replace the current electorate” of white Americans with “Third World” voters, as Fox News host Tucker Carlson claimed. A gunman cited this racebaiting theory in a manifesto before murdering nearly a dozen black Americans in a New York supermarket in 2022, not to mention the mass shooter who killed two dozen people in an El Paso Walmart in 2019, echoing Trump’s words about an “invasion” at the U.S. southern border. An AP poll found nearly half of Republicans believed in the theory, while a University of Chicago poll found that tens of millions of MAGA supporters agreed with the statement that “African American people or Hispanic people in our country will eventually have more rights than whites.”

It would be willful delusion to think these conspiracy theories won’t have lasting repercussions. These highly motivated voters are hungry for MAGA candidates who share their views. And such views will not change overnight. The Next Trump will be a product of this beast because he or she will have to feed it to win, which means keeping the base radicalized on a steady diet of conspiracy theories about existential threats to their way of life.

“There’s a soft totalitarianism coming into play,” Michael Steele professed. He spent two years leading the GOP as chairman of the Republican National Committee. “Modern-day conservatism meant lower taxes, less government, free markets. What we are witnessing now is a deconstruction of that.… I think the rational side is losing, if not having already lost.

“For a party that’s all sensitive about the Left canceling them, they do a pretty good job of canceling their own,” he added. “That’s why the hammer came down so hard on Liz Cheney—to send a message of fear. No one wants to be targeted the way she’s been targeted, which makes this period we are in perhaps the most dangerous.”

Observing what has happened to the party of Lincoln, we can make one conclusion with condence: we’ve only seen the beginning of Trumpism. The rational faction of the GOP has been put down by the radical one and is no longer a check on the system. The conditions are right for the Next Trump to emerge. Worse still for our democracy, when he or she enters the White House, the rest of the guardrails will be weaker than ever.

[PARAGRAPH INTEGRITY PAUSES]

Chapter 2 THE DEPUTY Once an efficient national government is established, the best men in the country will not only consent to serve, but also will generally be appointed to manage it. —JOHN JAY, FEDERALIST NO. 3, 1787 56 PART I Today the Department of Homeland Security sits on a hill just outside of the nation’s capital, a behemoth visible from the Potomac River. But the original Homeland Security headquarters was nestled in the sleepy D.C. neighborhood of Tenleytown, largely unnoticed by pedestrians. The network of interconnected brick o􀐓ce buildings had previously been a secret National Security Agency hub and, later, a naval research facility. After 9/11, it became the home of DHS and almost blended in with nearby American University, were it not for two layers of barbedwire fence and a 􀐜eet of armored SUVs that regularly transited the premises, 􀐜ashing red and blue lights. I was awed to work there during the Bush administration, proudly swiping my badge each day to enter the compound. HQ was responsible for overseeing the department’s nearly 250,000 employees—helping them do their jobs and protecting the American people by responding to everything from natural disasters to cyberattacks. When I returned years later during the Trump administration, little had changed at the compound, except that now the government’s third-largest department was more worried about one person than the many thousands in its ranks. DHS was in a constant battle with the president of the United States. I soon found out why. “The ‘adults’ are winning.” The DHS Visitor Center was backed up when a group of anxious bureaucrats arrived on March 22, 2017. They cut to the front of the line at the magnetometers—shu􀐖ing past framed photos on the wall of President Donald Trump and the newly con􀐙rmed DHS secretary, John Kelly—and discreetly 􀐜ashed blue badges at 57 the guards. In my mind, the matching tote bags gave these spy community employees away. CIA, maybe NSA. They were clutching otherwise unremarkable nylon pouches with thick zippers and pick-proof locks, the kind used to deliver classi􀐙ed material to decision-makers. Was it good news or bad news in the bags? The visitors’ impatience suggested the latter. They vanished into the facility almost as suddenly as they’d arrived. Before long, I’d be on the receiving end of such deliveries every day. Hours earlier, I had been sworn in to be John Kelly’s top intelligence and counter-threats advisor, overseeing the vast e􀐐orts under way at DHS to catch violent extremists, root out foreign spies, and detect weapons of mass destruction (WMD). For now though, I was trapped in a mundane waiting area, watching a silent parade of public servants remove their belts and empty their pockets at the metal detectors. My own paperwork had gotten lost. “We don’t have a Miles Taylor in the system,” the security guard had explained. “Please call your supervisor for guidance.” My boss’s photo was hanging on the wall behind the guards. I imagined how they’d react if the secretary of Homeland Security himself came to get me. Instead I rang the personnel o􀐓ce to 􀐙gure out what happened, and an hour went by before I got a call back. I was told it would be a while longer. If I wanted to bail on the job, this was probably my last chance. An old mentor had reached out earlier in the week to ask me if I was sure I was making the right choice. Jim Kolbe had served as a congressman for more than twenty years in the House (until 2007) and was one of the rare Republican leaders to oppose Trump in the general election. To him, it looked as if only bootlickers were going into the administration, and I should keep my guard up. At a minimum, Jim told me I should carry a draft resignation letter at all times. 58 “Don’t stay too long,” the ex-lawmaker advised. I assured him I was joining a team that understood the situation. Secretary Kelly was the right leader for DHS and would shield the department from Trump’s never-ending political controversies. No draft resignation letter was needed. I scrolled through Twitter while I waited in the Visitor Center, catching breaking news in my feed. A driver on the Westminster Bridge in London had just mowed down dozens of pedestrians before crashing into the gates outside the UK Parliament. Twitter users reported a nearby knife attack on police. Details were murky, but it looked like a terrorist attack in progress. I got a call. “Where are you?” Kirstjen Nielsen, the DHS chief of sta􀐐, was looking for me to brief the secretary on the attack. She was 􀐜ustered when I told her I was stuck at security, and promptly hung up. Minutes later an assistant from the secretary’s o􀐓ce arrived on a golf cart and told the guards to let me through. They obliged. I was whisked into the complex, toward one of the many red-brick buildings, through several checkpoints, past a skeptical Secret Service agent, and beyond frosted-glass double doors. I was in. The secretary’s suite hummed with activity. A group of sta􀐐ers huddled on phones and military aides moved purposefully between o􀐓ces. Kirstjen emerged from their midst. Shoulderlength blond hair and not an inch taller than 􀐙ve-four, she wasn’t exactly intimidating, unless you knew how seriously she took her job. I did. We had worked together brie􀐜y during the Bush years, and she had no tolerance for wasted time. She waved me impatiently into John Kelly’s o􀐓ce, without a “How are you?” or “Welcome to DHS!” “Hey Miles.” Kelly greeted me from behind a large brown desk. “Whatta we got?” He and Kirstjen wanted the latest on the London attack. 59 I explained that I’d just arrived and only knew what I’d seen on Twitter—not from any intelligence reports, calls with law enforcement, or any o􀐓cial sources whatsoever. Anything was better than nothing, Kelly said. He was expecting Trump’s call any moment since this was the 􀐙rst terrorist attack in the West during his presidency. Kelly was worried Trump might pin the blame on Syrian immigrants, post about his Muslim ban, or criticize UK police for failing to stop the attack—none of which would be helpful and would probably cause a diplomatic rift in the middle of a crisis. So I gave Kelly the latest information and my best advice: the suspects were most likely ISIS-inspired locals. Not operatives deployed from the Middle East (but we should talk to our UK counterparts before saying so). The president should call Prime Minister Theresa May and o􀐐er condolences and assistance. Not immigration critiques. And DHS should take the lead away from the White House so this looked operational, not political. We’d review the intel and reassure the public that we didn’t see any imminent threat to America—if, indeed, that was true. “Mr. Secretary,” a military aide interrupted through the doorway, “the president is on the line.” I stood up to leave, but Kelly motioned for me to stay. “Yes, Mr. President,” the secretary answered. I could hear the irritation in Trump’s voice on the other end. He was clearly itching to comment on the news. Trump didn’t like waiting or being managed by sta􀐐 when something was making headlines. But he responded di􀐐erently to John Kelly. The president was awed by military generals and listened quietly as Kelly briefed him on the situation, urged Trump to o􀐐er assistance to the British, and said the White House should let DHS take it from here. The president agreed. After some back-and-forth, the call ended. 60 “Now go make it happen,” the secretary told me. This is what I was hired for. As the door closed behind me, I thought I should have asked where my desk was. I was greeted by a smile that seemed to anticipate the question. Elizabeth Neumann, the deputy chief of sta􀐐, gave me a warm hug. “Heeeyyyy! Welcome. We’re so excited you’re here!” She o􀐐ered an impromptu orientation around the o􀐓ce. The blond Texan was the type you see in the movies who proudly says, “I serve at the pleasure of the president.” Only in Elizabeth’s case, she had known what she was walking into, understood that the president was unsteady at best, and had spent weeks since the inauguration expertly putting out 􀐙res. Nonetheless, she remained optimistic that these were just the growing pains of a new administration and that Trump could be tamed, eventually. Six of us were appointed to help the secretary lead DHS: the chief of sta􀐐 (Kirstjen Nielsen), two deputy chiefs of sta􀐐 (Elizabeth Neumann and, soon, Chad Wolf), and three senior counselors—one for border and immigration (Gene Hamilton), one for cybersecurity (Chris Krebs), and one for threats and intelligence (me). We shared important similarities. All of us were former Bush o􀐓cials (a rarity in Trump’s world, since the president hated “Bushies”), and we all acknowledged that our biggest challenge wouldn’t be tornados or terrorist attacks, but Trump himself. He was more 􀐙xated on DHS than any other department in the federal government, because of his immigration priorities. Dealing with his impulsiveness in the coming months would forge us into a close-knit family, for a time anyway. Elizabeth took me to the “bullpen” to meet my fellow counselors. Gene Hamilton, the border advisor, greeted me while on mute during a conference call. 61 “Howdy, my friend,” he o􀐐ered in a genial Georgia drawl. The tall, mid-thirties lawyer had previously worked for Senator Je􀐐 Sessions on Capitol Hill, and his reputation as a bureaucracybusting immigration hardliner stood in contrast to his upbeat attitude and Southern charm. Chris Krebs, the cyber advisor, had a di􀐐erent energy. Fresh out of Microsoft, his surfer-swoop hair was closer to Silicon Valley than Washington, D.C., while his zero-to-sixty attitude about everything had earned him the nickname “Catastrophe Krebs.” Until our o􀐓ces were ready, he and I shared a tiny workspace. He could tell by my face that I didn’t think we could both 􀐙t inside the matchbox of a cubicle. “How’s your 􀐙rst day?” Chris asked. I told him what had just happened with Trump and the frenetic terrorism brie􀐙ng based solely on what I’d read on Twitter. He looked at me knowingly, like he’d seen it a thousand times. “Ride the wave, man,” Chris advised. “Ride the wave.” Back in Elizabeth’s o􀐓ce, she 􀐙lled me in on the dynamics between DHS and the White House. Yes, it was more erratic on the inside than it looked. But General Kelly was taking charge. For instance, Trump’s right-wing strategist, Steve Bannon, had recently been appointed to the National Security Council (NSC) —the body that advises U.S. presidents on matters of war and peace. The NSC was no place for political hacks. Kelly had teamed up with General Mattis at the Pentagon to reverse the decision, Elizabeth explained, and it would soon be announced that Bannon was being kicked o􀐐 the NSC. Even on immigration, the secretary was having a positive impact. Kelly told the president that it was impractical to build his wall “from sea to shining sea,” and a few weeks ago, the General had traveled to Mexico with Secretary of State Rex Tillerson to make sure Trump’s bluster didn’t blow up relations with our neighbor. The president had been teasing “mass deportations” and 62 unspeci􀐙ed “military operations” at the border. Much to the relief of Mexican o􀐓cials, Kelly and Tillerson denied that any such actions were planned. Of course there was the ongoing Russia investigation. Trump’s behavior toward Vladimir Putin vexed everyone, including Kelly, who worried we didn’t fully know whether the Trump campaign had colluded with Moscow or not. A lot of us were acquainted with FBI director James Comey and trusted him to run an impartial investigation. A briefer with a courier tote knocked on Elizabeth’s door. I noted his impatient expression (bad news in the bag). “What is it?” she asked. The man seemed unsure if he should say. He mumbled two words reticently in my presence. Her face fell. “I have to kick you out for this. Codeword clearance only.” She could tell I was put o􀐐. I was supposed to be the intelligence advisor, after all. “Don’t worry. You’ll be ‘read in’ soon, and you’ll wish you hadn’t been.” I spent the rest of the afternoon handling the response to the UK terrorist attack. There were no o􀐐-the-wall presidential tweets about the crisis, and to my surprise, the White House followed our cues, just as Kelly had requested. After I spoke to my British counterpart on the phone and reviewed a threat assessment, we put out a statement that DHS didn’t see any reason to change America’s security posture. We would help with the investigation and remain vigilant. That evening we gathered in the secretary’s o􀐓ce. Me, Gene, Chris, Elizabeth, Kirstjen, and Secretary Kelly. In honor of my arrival, they opened a bottle of mescal, given to Kelly by Mexican o􀐓cials weeks earlier. 63 He raised a glass of the smokey spirit and toasted—to me and “to another day of dodging bullets.” Not long after starting, I caught up with a reporter friend. We sat outside drinking cocktails not far from the White House, enjoying unseasonably warm April weather. I con􀐙dently told her there was an “Axis of Adults” emerging inside the Trump administration— comprised of Kelly, Mattis, Tillerson, and others—who were keeping it on track. She pushed back gently. “They know what they’re up against?” she asked. “They realize this is a tumultuous White House,” I explained, “and they are serving as a leveling in􀐜uence over fractious personalities… protecting the country from enemies both foreign and domestic.” The reporter ran a story in the Daily Beast—“New Power Center in Trumpland: The Axis of Adults”—and asked to use the quote. I agreed, hoping others would take comfort in knowing it wasn’t all chaos in Trumpland. In hindsight, I was probably sending the message to a few particular people—like the mentor who’d reached out to warn me against going into the administration. And maybe, I was still trying to convince myself. Steve Bannon’s recent removal from the NSC, the reporter wrote, should be “seen as a sign the ‘adults’ are winning.” The job was all-consuming. I returned home most nights after my girlfriend Anabel was already asleep, and left before she awoke, so I took to staying in the guest bedroom. DHS personnel transformed it into a miniature secure facility, complete with a special phone to reach me during emergencies. I fell asleep easily in those early days knowing I’d made the right decision. The Trump administration was starting to function, thanks to capable deputies who knew how to run the government. Like most bedtime stories, this turned out to be 􀐙ction. 64 “Watch your backs.” The helicopter banked left—hard—pushing me against the window. I gripped the armrests. We were low, so low that the downdraft spun up an arti􀐙cial sandstorm in the Jordanian desert while we buzzed the ground. Another sharp turn, right. The seat belt revolted against my chest and waist, as inertia tried to yank my body out of the seat. Distress 􀐜ares erupted from the side of the aircraft. I could see the dazzling red 􀐙reballs out the window as they raced away from the helo, leaving behind thin smoke trails. What had begun as a sightseeing trip was now one of the most turbulent 􀐜ights of my life, and I’d volunteered for it. “Wooohooo!” one of the copilots cheered in my headset after setting o􀐐 another 􀐜are. We were on a joyride, courtesy of King Abdullah II. Secretary Kelly and I were in Jordan for sensitive discussions with the Middle Eastern monarch. At lunch I’d made a joke about taking a spin in the leader’s rotorcraft. He was a pilot, and I knew he had state-of-the-art helos. The king 􀐜ashed a mischievous grin. Thirty minutes later, two limousines pulled up outside the palace to take us to a helipad. Kirstjen shot me a sternly disapproving look, Kelly gave me a thumbs-up, and o􀐐 we went. A lot had happened in the two months since I swore my oath. But the most pressing issue on my plate had brought us halfway around the world to the desert. After I started, I got “read in” on some of the issues Elizabeth had warned me about, especially the panoply of terrorist threats. It was worse than I had imagined. A few hours away from Jordan, in neighboring Syria, ISIS militants were plotting sophisticated global attacks. For instance, terror masterminds were designing bombs that could pass through security undetected and had already shipped packages with hidden explosives around the world to test the system, as a West Point 65 counterterrorism report and law enforcement authorities revealed after several plotters were arrested. Before our trip, I traveled to a secret facility outside of Washington to get up to speed. A veteran spook—we’ll call him Rob—boasted a lengthy career of putting bad guys in the ground, or “warheads on foreheads,” as he put it. We sat in a room with a dozen television screens. Each carried a feed from somewhere abroad. Behind some of those cameras, I guessed, were warheads. “Guys like you and I get asked, ‘What keeps you up at night?’ ” Rob remarked. “For me, it’s this,” he motioned to the screens. Rob shared details of plots that intelligence agencies were tracking. The schemes under way could rival 9/11, and that’s just what we knew about. The reach of ISIS was far greater than al Qaeda, and we were in a real-life race against time to stop attacks that could hypothetically involve anything from chemical weapons and homemade drones to carry-on luggage bombs and vehicleramming attacks. The full magnitude of the danger covered me like an oversized gravity blanket. The military was playing o􀐐ense. DHS was expected to play defense. I remember calling the acting TSA administrator afterward to say, I get it now. In the months that followed, I convened DHS leaders to wrestle with one particular plot that spanned multiple cells, multiple countries, and multiple attack vectors. We had only pieces of the puzzle, and I understood why John Kelly was hesitant to tell Congress or European allies too much. If the details got out, terrorists might speed up their plans before we uncovered the full conspiracy. We were also cautious about telling the president too much. The Oval O􀐓ce wasn’t the highly controlled environment I remembered from the Bush years. It was a crowded New York 66 bagel shop. Donald Trump stood behind the counter chattering with disheveled patrons who ducked in and out, rushing between meetings and showing little reverence for the president’s schedule or the regal decor lining the rounded walls. The president’s notorious reputation as a gossip made us nervous to talk about classi􀐙ed information. Still, he was the commander in chief. Stopping a complex international terrorist plot would require presidential powers, so we shared information and impressed upon Trump the sensitivity of it. Thankfully the president avoided the topic in the press, but we chafed at the White House’s private micromanagement. We logged hours and hours inside the Situation Room with Trump aides, debating what to do. DHS wanted to take swift action to elevate global aviation security across the board to prevent an attack, while White House sta􀐐ers were worried about upsetting the airline industry. In Kelly’s words, it was “time to stop admiring the problem” and do something—fast. The secretary and I 􀐜ew to the Middle East to meet with allies who understood the seriousness of the danger, including the Jordanians and the Saudis. They’d implemented their own heightened counterterrorism protocols in recent years. We sought their help with the spiderweb of lethal threats. Inside the helicopter over the Jordanian desert, the copilot came back on the radio. “Are you ready to head back?” he asked. For the past twenty minutes, my answer had been yes, but the Jordanians were obviously proud to show o􀐐 the aircraft. Back on the ground, the king gave me a high 􀐙ve, smiling behind aviator sunglasses. “Thank you, Your Majesty,” I o􀐐ered. 67 “No, thank you!” He laughed. These weren’t Jordanian helicopters. They were American ones, funded by U.S. support to the kingdom. The relationship was hardly one-sided. As I learned in future meetings with King Abdullah, the Jords were willing to take enormous risks for us and had lost lives gathering the kind of information used to protect Americans from groups like ISIS. They had our backs. Former soldiers known for their integrity, Kelly and the king wordlessly understood the somber bond. We left the royal compound as the sun melted into blood-orange sand dunes, and I saw a handshake between the two men that was more valuable than any press conference or economic deal or helicopter. You couldn’t put a price on trust. After a stopover in Saudi Arabia to meet with the country’s leaders, we returned home with a skeleton of a strategy to deal with the danger we were facing. Tom Bossert, the president’s lanky homeland security advisor, met us in Riyadh. He rode back with us on our modi􀐙ed air force 757, normally reserved for the vice president. Tom was known for lengthy philosophical conversations, and we got hours-deep into one, workshopping a counterterrorism plan for the White House. Aside from the pilots, he and I were the only people awake for the overnight 􀐜ight. I walked Tom through a proposal for how to deal with the threat, based in part on conversations with Middle Eastern allies. I referred to it as the Global Aviation Security Plan, or “GASP.” The melodramatic acronym was 􀐙tting because it would be the biggest increase in airport security in years. Airlines and passengers wouldn’t love it, but it would make it far more di􀐓cult for terrorists to advance their attack plots. Would the president stand behind it? 68 Tom was typically circumspect in his commentary about Trump. He rarely criticized the president. But at thirty thousand feet, with everyone around us passed out, Tom was candid. “Miles, the details don’t matter to him,” he admitted. “He is the most distracted person in the world. He has no fucking clue what we’re talking about.” The president wouldn’t read anything, Tom said, which is why we needed to take our jobs extra seriously. The next steps were up to us. The homeland security advisor admitted that he almost hadn’t joined us overseas; Tom was worried about leaving Trump unsupervised. Something was going down back home, but he wasn’t sure what. We landed at Andrews Air Force Base, and the secretary’s motorcade pulled up next to the plane. Kelly could tell I hadn’t slept and told me to take the day o􀐐. I accepted the order. Rather than nap, I spent the afternoon of May 9 with Anabel, taking advantage of a rare chance to decompress. We went to a lunch spot on Capitol Hill. On top of my slow-burn exhaustion, a glass of wine felt like three. My work phone vibrated on the table. It was the secretary. “Yes, sir,” I answered. Kelly had bad news. The president had just 􀐙red FBI Director Comey in an apparent attempt to obstruct the Russia investigation. The secretary had called Comey to express his disgust and, so far, was the only person in the cabinet to reach out to the director. Conditions inside the executive branch were worsening. The wood-paneled room was tense while we waited for the secretary the next morning. A half dozen of us huddled with him 69 at the start of each new day. When he 􀐙nally entered the room, his face bore quiet anger and resolve. John Kelly made his views clear. He thought the president’s 􀐙ring of Comey was undigni􀐙ed; he was deeply disturbed by how the White House was operating, and he warned us: “watch your backs.” He didn’t know where this administration was headed, but he wouldn’t allow political meddling inside his department. Going forward, we should be cautious about any White House intrusions into DHS business, he said. “I’m the only person here who was con􀐙rmed by the U.S. Senate to run this department,” he instructed, “and if someone at the White House tells you to do something, you tell them to have the president of the United States call me. He’s the only person I report to. I’m the only person you report to. Is that understood?” We all agreed. Comey’s 􀐙ring loomed large over the month of May. The only person who seemed undisturbed was Trump, who tweeted gleefully. “Comey lost the con􀐙dence of almost everyone in Washington, Republican and Democrat alike,” he wrote. “When things calm down, they will be thanking me!” Perhaps not coincidentally, Trump was slated to meet the morning after the FBI director’s removal with Russia’s foreign minister, Sergey Lavrov, and the country’s ambassador to the United States, Sergey Kislyak. Firing Comey and embracing the Kremlin in the same week felt eerie, if not sinister. A few days later, I went to an event with a mix of national security o􀐓cials. The outdoor bar near the White House was the same one where I’d persuaded a reporter the month before that there was an “Axis of Adults” inside the Trump administration. Incidentally, one of those Adults—Tom Bossert—rang my phone while I was sipping a cocktail. The homeland security advisor wanted to give me a heads-up. When President Trump met with the Russians in the Oval O􀐓ce 70 days earlier, he apparently had chatted them up about the “great intelligence” he was getting and shared sensitive details with them about an ISIS terror plot. The news was about to be in the headlines everywhere, Tom warned. Before I could tell the secretary, The Washington Post broke the story. The president had given “code-word information” to the Russians, a top o􀐓cial familiar with the episode told the paper. Trump “revealed more information to the Russian ambassador than we have shared with our own allies.” In one meeting, the president had broken the trust of our international partners, possibly tipped o􀐐 our adversaries, and put U.S. lives in danger. I needed to get back to the o􀐓ce. “I may last a day…” With the arrival of summer, whatever cautious optimism there had been inside the Trump administration burned o􀐐 like water on hot asphalt. Every few days, John Kelly and I descended into a secure room in the basement of DHS headquarters for virtual meetings. We spent a lot of time in these “SCIFs” (secure compartmented information facilities), on the phone with Secretary of Defense Jim Mattis, CIA Director Mike Pompeo, Secretary of State Rex Tillerson, and others, notionally to talk about threats to the country. By midyear, I had begun to dread the meetings. We spent less time talking about international developments and more time 􀐙guring out how to 􀐙x crises of President Trump’s own making. One day, he might insist that America pull out of the North Atlantic Treaty Organization (NATO), the defense alliance that is the backbone of U.S. security. Another day, it might be an errant demand to cancel a free trade agreement with a top ally Trump was mad at for a perceived slight, regardless of whether it might hurt the economy or create diplomatic upheaval. 71 After his 􀐙rst meeting with Russian president Vladimir Putin, for instance, Trump tweeted that he had made a deal with the Kremlin leader to jointly form an “impenetrable cyber unit” to protect elections. Let me clarify: Trump wanted to cooperate on anti-hacking with the very same man who’d just hacked the 2016 vote in the United States. It was like agreeing to host an anger management class with a serial murderer. I showed Kelly the tweet. The Secretary fumed. “I don’t know what the hell he’s talking about,” he said. Our cybersecurity chief, Chris Krebs, was beside himself. Secretary Kelly’s mood began to change. I watched him at Trump’s 􀐙rst cabinet meeting in June. One by one, the president went around the room to his deputies for an update, basking in their words of praise. Vice President Pence said it was the “greatest privilege” of his life to serve Donald Trump. White House Chief of Sta􀐐 Reince Priebus waxed poetic about how the president’s agenda was “a blessing.” UN Ambassador Nikki Haley gushed about the New York tycoon’s “strong voice” on the international stage. The two generals at the table, John Kelly and Jim Mattis, kept straight faces, declining to fawn over the president before, during, or after the meeting. When Trump turned to them expecting tribute, they said little about the man. Mattis praised “the men and women of the Department of Defense,” while Kelly noted the honor of representing a “quarter of a million men and women that serve the country in DHS.” Afterward, I told Kelly that two spectators would notice his choice of words: a grateful DHS workforce and a seething Donald Trump. He smiled. Privately, deputies to the president were questioning more than just Trump’s thirst for adulation. They worried about the 72 commander in chief’s mental state. Trump was becoming more irascible in meetings, lashing out at sta􀐐, frequently repeating himself, and displaying a maddening inability to focus. On June 23, Kirstjen and I went with General Kelly to the White House for a series of meetings. Kelly, Mattis, and Tillerson planned to confront Trump about the creeping state of chaos inside the West Wing, and the scene that morning appeared to prove the point. Unable to get the conversation on track as aides darted in and out of the Oval O􀐓ce, Secretary Kelly raised his voice, demanding that anyone who wasn’t con􀐙rmed by the U.S. Senate needed to leave to room. Sta􀐐ers shu􀐖ed out into the hallway where I was waiting, until the only people left in the Oval were the cabinet members. The president bristled at criticisms of how the West Wing was run, Kelly later recounted. “If it’s so screwed up,” Trump shot back at the general, “come 􀐙x it yourself.” It was at least the second time Trump had suggested that John Kelly become his chief of sta􀐐 at the White House. The secretary declined, in addition to turning down Trump’s request that Kelly take Comey’s place as FBI director. Kelly reassured us he was closer to resigning than accepting a role at Trump’s side, but someone needed to take command soon, or the ship would sink. Trump’s shortcomings stood out particularly during emergencies. I remember brie􀐙ng the president in the Oval O􀐓ce on the projected storm track of an Atlantic hurricane. At 􀐙rst, he seemed to grasp the devastating magnitude of the Category 4 superstorm, until he opened his mouth. “Is that the direction they always spin?” the president asked me. “I’m sorry sir,” I responded, “I don’t understand.” 73 “Hurricanes. Do they always spin like that?” He made a swirl in the air with his 􀐙nger. “Counterclockwise?” I asked. He nodded. “Yes, Mr. President. It’s called the Coriolis e􀐐ect. It’s the same reason toilet water spins the other direction in the Southern Hemisphere.” “Incredible,” Trump replied, squinting his eyes to look at the foam board presentation. We needed him to urge residents to evacuate from the Carolinas, where it looked like the storm would make landfall, but the president mused about another potential response. “You know, I was watching TV, and they interviewed a guy in a parking lot,” Trump leaned back and recounted. “He was wearing a red hat, a MAGA hat, and he said he was going to ‘ride it out.’ Isn’t that something? That’s what Trump supporters do. They’re tough. They ride it out. I think that’s what I’ll tell them to do.” Sometimes his irreverence could be funny, even charming. That day it wasn’t. Worried looks 􀐙lled the room. A clever communications aide piped up. “Mr. President, I wouldn’t take that chance. This is going to be a pretty bad storm, and you don’t want to lose supporters in the Carolinas before the 2020 election.” The president thought about it for a moment. “That’s such a good point. We should urge the evacuations.” You couldn’t write such a stupid scene in a movie, but it always got a little worse. The president told John Kelly that he wanted to take the Marine One helicopters down to the Carolinas to view the expected wreckage. The visual of him 􀐜ying over leveled houses in a helicopter would be much cooler than him viewing the damage from a motorcade, he said. “Mr. President,” Kelly interjected. “We can’t travel down that far on Marine One for this.” 74 “No, no, no,” Trump protested. “When I was in New York, I would take helicopters much, much further. I would take them everywhere. That’s what we should do—we’re taking the Marine One helicopters.” Kelly stated the obvious. “Sir, the helicopter can’t carry your whole team. We don’t travel that light.” Marine One held a handful of people. In contrast, when the president’s motorcade was assembled in a new location, it included forty to 􀐙fty vehicles packed with sta􀐐, armed agents, and medical personnel in the event of an emergency. The image of squeezing all of that into a couple of helicopters was beyond cartoonish. As Trump looked at the faces in front of him, he seemed to know the idea wasn’t going anywhere. He couldn’t pilot the choppers himself. Suddenly, he changed his tune. “Actually, you know what, it’s probably not a good idea to take them. Helicopters always break down. Do you know why?” The president paused and looked around the room for guesses. I shook my head. “Because there are too many parts!” he exclaimed. “That’s right. It’s true. Helicopters have too many parts, so they’re always breaking down—it’s this part, then it’s that part, then it’s another little tiny part. So we won’t do it.” I felt secondhand embarrassment for the briefer in circumstances like this. He or she would stand there awkwardly waiting to get back on topic, while witnessing in person—often for the 􀐙rst time—how genuinely incompetent our president was. It was one of many reasons General Kelly was circumspect about who had access to Trump. Word came down from the White House in mid-2017 to stop providing the president with lengthy documents. If there was a staple in it, the brie􀐙ng paper was probably too long and needed to be cut. Fifteen-page updates on complex issues were chopped down to one. Bold fonts. Simple words. BIG pictures. Know your 75 audience, they say, and the “audience of one” (as we called the president) had the temperament of a child, albeit a child with a 􀐙nger lingering over the nuclear button. We were forced to dumb down life-and-death decisions. Nowhere was this more relevant than on Afghanistan and Syria, two places Trump knew nothing about. The president was dismissive of his national security team’s advice. He wanted out of foreign countries altogether, was eager to please the people who had applauded him on the campaign trail for saying so, and balked at the idea that he needed to give the concept of a massive U.S. military withdrawal any thoughtful deliberation. Military leaders reminded Trump that he liked boasting about how hard we were 􀐙ghting terrorists. Well, Afghanistan and Syria just so happened to be the places where we were 􀐙ghting terrorists, they told him. If we pulled out too fast, extremist operatives would be able to carry out their plots with impunity, and Trump would get blamed for it by the public. The national security rami􀐙cations didn’t matter to the president, but the political implications mattered to him a great deal. I could tell that Trump’s careless handling of military decisions weighed on General Kelly. Amid the internal debates, he made a speech in New York City about honoring U.S. service members. As Kelly spoke, I was sitting close to the stage, reviewing his written remarks, when I realized he was going o􀐐 script. He brought up the death of his son Robert, who had been killed several years earlier by a land mine in Afghanistan. The room went quiet. When a parent loses a son or daughter in combat, Kelly explained, they are visited in person by a U.S. military casualty o􀐓cer who delivers the news. In November 2010, there was a knock on John Kelly’s door from his close friend, Joseph Dunford, who was then the number two of the Marine Corps. That morning General Dunford had volunteered to personally 76 break the terrible news to Kelly and his wife Karen. As soon as they saw their friend’s face at the door, they knew that it meant their lives would be forever changed. “It’s a kind of grief that is unbearable to the mind and antagonizing to the heart,” Kelly recounted. He had been on the other side of the doorway many times in the past, comforting families. In those moments, grieving mothers and fathers asked him whether the sacri􀐙ce was worth it—“worth the life of someone they brought into the world, raised and nurtured, and looked forward to seeing grow up… meeting husbands and wives… having kids of their own,” he said. Kelly had felt ill-equipped to answer such a heartbreaking question without having experienced it himself. “I learned I was right,” he said. Until he received the knock on the door himself, he had no idea how deep the grief could go. The day Kelly buried his own son at Arlington National Cemetery, he described the feeling of emptiness in his heart. He arrived at an answer to the question other parents asked themselves in mourning. Was it worth it? “Robert volunteered to risk everything—including himself—to serve our country,” Kelly explained. “So was it worth his life? That wasn’t up to me. My son answered the question for me.” When it came time to deliver options on Afghanistan, Kelly was worried that Trump was unprepared. The thick brie􀐙ng memo that had landed on the president’s desk was beyond the man’s comprehension or reading ability, truly. I was asked to boil the 􀐙fty- or sixty-page document down to a page or two—in the president’s voice. So overnight in my o􀐓ce, I stayed awake writing a Wikipedia-style 101 about why America was in Afghanistan and what was at stake, all in the Trumpian vernacular. The title of the unclassi􀐙ed version felt like a parody: “Afghanistan: How to Put America First—And Win!” If we pulled out of the country too fast, I wrote, we would be mocked as 77 “losers” by terrorists. If we wanted to be “winners,” we needed to 􀐙ght smarter and harder, then cut a “great deal” to hand over security to the Afghans. A career DHS expert helped me workshop the absurd document so that it sounded like Trump but also made sense from a national security standpoint, strident rhetoric notwithstanding. The memo went to Camp David with the president for decision day. After hours of waiting, we got word. Trump reluctantly agreed with our recommendation to keep U.S. forces in place. He wanted to be “a winner.” Left unsaid in the memo was the solemn promise the U.S. government had made to the families of the fallen, like the Kellys. America had pledged to memorialize their service and sacri􀐙ce by ending the con􀐜ict, in due course, in the same spirit that their loved ones had fought and died: honorably. I couldn’t 􀐙gure out how to put that in Trump’s words. In July, Kelly told the president we were moving forward with the aviation security plan in response to the spiderweb of terrorist plots we were tracking. The White House was worried about the massive scope of the “GASP” proposal, spanning nearly three hundred airports in more than one hundred countries; I was more worried about going too slow, fearing that Trump’s alleged comments to the Russians in the Oval O􀐓ce might cause terrorists to accelerate their attack plotting. Kelly didn’t exactly ask for permission and announced the far-reaching measures in a speech from a hotel in downtown D.C., televised live on the major networks. Weeks later, the secretary’s decision was validated. Authorities in Australia disrupted an ISIS plot to bomb an international 􀐜ight with explosives hidden inside a meat grinder and to develop chemical weapons to kill civilians. Police revealed that the Sydneybased plotters were in touch with operatives in Syria. Our enemies 78 were on the move, and we had to take decisive action to protect Americans. With the GASP announcement out of the way, I felt like it was almost time to depart the administration. I told Anabel the job might kill me. After nearly six months of late nights and fullworkday weekends, I was more exhausted than I’d ever been. The only way I could sleep was with a glass of whiskey (or two) before bed, and I was immediately saddled with an unshakable anxiety every morning when I woke up. What would each day bring? I had push-alerts on my phone for all of the president’s tweets. At any moment the posts could throw the day into turmoil, let alone the threats we read about in our daily intelligence brie􀐙ngs. John Kelly seemed to have adapted to managing Trump while also managing DHS. As long as I could 􀐙nd a suitable replacement, I decided I’d leave in the fall. Yes, it would be an early departure, but this place wasn’t for me. “This administration is a fucking nightmare,” then deputy chief of sta􀐐 Chad Wolf lamented late one evening. Neither of us had taken a proper day o􀐐 since we started. In normal times, Chad appeared more like a TV actor than a DHS bureaucrat—highand- tight haircut, 􀐙ve-o’clock shadow, and designer clothes. But we spent far more time in the o􀐓ce than at home, and it was starting to show. He looked gaunt. At the end of July, Secretary Kelly told everyone to take a week o􀐐. I gladly complied, 􀐜ying to a friend’s wedding in Texas. That’s where I got the phone call that changed everything. I was standing in my swimsuit at a water park outside of San Antonio embracing the warm sunlight when Kirstjen rang. She said Kelly had just gotten o􀐐 the phone with the president. Once again, Trump had appealed to him to come run the White House as chief of sta􀐐, an o􀐐er the secretary had rebu􀐐ed twice already. The secretary had decided to 􀐜y back early from the West Coast, where he’d been spending time with his family. 79 In the past, Kelly had told me there was “zero chance” he’d take the White House job. But, given how unstable the White House had become, Kelly wasn’t dismissing the possibility this time. I had a bad feeling in the pit of my stomach. For thirty minutes, our core front-o􀐓ce team was on a conference call to talk about it. Kelly tried to calm everyone down. He hadn’t committed to the job, was 􀐙fty-􀐙fty about the idea, and had convinced the president to discuss it 􀐙rst, man to man, in the coming days. Kelly would see if Trump was willing to do what was needed to restore order in the White House. I couldn’t imagine Trump showing the discipline a four-star general would demand. Then the president tweeted while we were on the call. We paused to read it. “I am pleased to inform you that I have just named General/Secretary John F Kelly as White House Chief of Sta􀐐. He is a Great American… and a Great Leader. John has also done a spectacular job at Homeland Security. He has been a true star of my Administration.” In a subsequent tweet, Trump 􀐙red his existing chief of sta􀐐, Reince Priebus. A moment of stunned silence was broken by the realization that someone—Kelly, Nielsen, anyone—needed to call the White House immediately to 􀐙gure out where the breakdown had occurred. Kelly hadn’t formally accepted the job. If we acted fast enough, we might be able to put the announcement back in the box, which turned out to be another foolish miscalculation. The president had appointed (ordered, really) his homeland security secretary to become his chief of sta􀐐, and the manner in which he’d done it was a forewarning of how John Kelly’s tenure would play out. The next day I was on a plane back to Washington. 80 I was crestfallen that the secretary was leaving DHS, but there was no time to complain or use in protesting it. I sent along ideas for what needed to happen in Week One at the White House, from personnel changes to suggestions for resetting bipartisan cooperation on Capitol Hill. I also wrote the secretary a parting note about the “turbulent moment” in which he was taking the job and how much we were counting on him. I shared a Thomas Paine quote: “An army of principles can penetrate where an army of soldiers cannot.” The president didn’t need a general. He needed a conscience, and I told the secretary I hoped he’d be one for Trump. “I may last a day or 􀐙ve years in this job,” he wrote back, “but no matter [what], every day I will work hard to live up to your words.” Back in Washington, Kelly literally had only a handful of belongings to pack up to take to the White House. His sparse o􀐓ce symbolized the impermanence with which he viewed his role. I sat on the black leather couch in front of his desk watching him place a few items in a single cardboard box. He threw me a parting “gift”—a pair of wacky socks that had been given to him by some visitor. John Kelly didn’t wear wacky socks. The black stockings were emblazoned with white pineapples, a symbol of friendship. “When it’s time to do the right thing, don’t get cold feet,” he joked. Three days after the tweet, our team drove to General Kelly’s swearing-in ceremony, entering the White House gates in a somber procession of government vehicles. The atmosphere inside was subdued as we made our way to the Oval O􀐓ce. White House sta􀐐 who joined us—Steve Bannon, Sean Spicer, Kellyanne Conway, Anthony Scaramucci, and others—weren’t enthusiastic either, worried how a new regime would a􀐐ect their stature. Jared Kushner glared at the Kelly team from across the room. 81 Trump was the only buoyant person in the Oval. Proud of his latest acquisition and eager to show him o􀐐, the grinning president motioned for the general to say a few words. In a few moments, Kelly would no longer challenge him from outside the White House walls. He would loyally serve him right here, in Trump’s mind, as a compliant deputy. I saw it di􀐐erently. A good man was jumping on a grenade thrown by a bad one. Kelly chose his words carefully. He reminded everyone in the room about the importance of swearing an oath to the Constitution instead of to a person. If we swore allegiance to a particular man or woman, he said, we’d be living in a despotism. Not a democracy. With that, a black-robed judge in front of the Resolute desk asked the general to raise his right hand and led him through a civic ritual that felt like last rites. Everyone who came with Kelly to the ceremony shared his view of the oath of o􀐓ce. He’d hired us for that reason. Kirstjen Nielsen, Elizabeth Neumann, Chad Wolf, Gene Hamilton, Chris Krebs, and me. We stood together feet from Donald Trump, united against the turbulence he was creating in the executive branch. The unity wouldn’t last. In the years to come, our group would fracture, as the commander in chief tested whether we were loyal to the Constitution—or to him. 82 PART II The Founders intended for executive branch employees to be an internal guardrail for democracy. Although the chief executive was empowered to personally nominate the “assistants or deputies” to run agencies, the Senate would con􀐙rm them to ensure responsible leaders were picked. In addition, the Founders envisioned “the steady administration of the laws” by a workforce of duty-minded public servants who would faithfully operate the daily functions of government, regardless of who was president. “The true test of a good government,” Hamilton wrote under the pen name Publius, “is its aptitude and tendency to produce a good administration.” Donald Trump thoroughly dismantled this guardrail. He systematically sidelined or eliminated anyone who objected to his agenda or sought to restrain his impulses. By the end of four years, only the sycophants remained. It will be worse the next time around. In my interviews and conversations with former Trump o􀐓cials, the most oft-repeated view was that a future MAGA administration would not be led by “the best men in the country,” as Publius hoped, but by the worst. THE NEXT TRUMP WILL INSTALL ONLY DEVOUT LOYALISTS IN TOP POSITIONS, WHILE PURGING DISSENTERS FROM THE EXECUTIVE BRANCH. The MAGA movement learned a hard lesson in Donald Trump’s 􀐙rst term: people are policy. The president appointed a vast array of public 􀐙gures to key government posts, most of whom didn’t know the mercurial businessman. And they certainly weren’t willing to carry out policies that were plainly irresponsible, immoral, or illegal. In some cases, the internal resistance set Trump back years in carrying out his true intentions. 83 John Bolton saw himself as one of those people. The former ambassador agreed to serve as White House national security advisor partway through Trump’s term. For a time, Bolton thought he was shielding agencies from Trump’s disruptive mood swings and sudden changes in policy direction. But the more the ambassador objected to the president’s bad ideas, the more he got left out of the conversation. “There would be secret meetings at Mar-a-Lago on national security issues,” a former aide to Bolton told me, “and [John] would call me and say, ‘What the fuck is going on? Why am I not in this meeting?’ ” Afghanistan was the tipping point. Trump was angry about the modest Afghan War plan we’d persuaded him to adopt in 2017 and returned to demanding a sudden pullout. He wanted to host Taliban leaders—the same people who’d harbored the al Qaeda terrorists responsible for 9/11—on U.S. soil at Camp David for talks just days before the anniversary of the tragedy. Bolton objected strenuously. Trump cut him out of the decision-making process, tweeted the summit into existence, and 􀐙red his national security advisor soon after. Then Trump put in motion a hasty framework for exiting Afghanistan. What was the point, I wondered, of the months, the meetings, and the misery we had endured trying to get Trump to do the right thing, only to have him reverse the decision? I put the question to Tom Warrick, the DHS civil servant who had helped me put together the infamous memo, “Afghanistan: How to Put America First—And Win!” Tom was less defeatist. “We bought an extra two years of the United States staying [in Afghanistan] and killing terrorists and protecting the country,” he said. John Bolton agreed that moments like this—when sta􀐐 persuaded President Trump to take the prudent course, even if 84 only temporarily—bought just enough time to protect the country from the worst possible outcomes. “The damage Trump did in the 􀐙rst term is reparable,” Bolton told me. But a second MAGA administration “would do damage that is not reparable, especially in a White House surrounded by 􀐙fth-raters,” he predicted. Nearly every Trump appointee I spoke with made a similar prediction. Another MAGA president won’t hire a stable of experienced public servants. From the start, he or she will populate the administration with a “D Team” of political operatives who pledge allegiance to a cult of personality, not the Constitution. “[Trumpism] is like a progressive disease,” Bolton explained. “It might remit for a while, but it never gets better.” Or as a Pentagon leader under Trump told me: “In Round Two, you won’t see Jim Mattis and John Kelly. It will be the fucking enablers.” A future MAGA cabinet will be led by unapologetically uncon

[PARAGRAPH INTEGRITY RESUMES]

When he was still White House chief of sta, John Kelly rebuked the president one day in the Oval Oce when Trump was having another t about how the drug cartels in Latin America were making him look bad. The president rattled o a list of impossible demands.

“Mr. President, you don’t have dictatorial powers to secure the border,” Kelly retorted. “Or, if you want, you can just declare war on Mexico, invade, and slaughter everyone.”

Kelly was making a graphic but powerful point. Short of exercising his war powers, Trump had to work with Congress to bring the situation under control, through legal changes, funding, and more. That wasn’t Trump’s takeaway. After Kelly was booted from the White House, the president irted with the concept of using military force across the border.

Former defense secretary Mark Esper revealed that the president suggested ring missiles into Mexico to annihilate the criminal groups. The proposal sent the military chain of command into a tizzy. A missile strike on the territory of America’s neighbor—although it was against cartel operatives— could provoke an armed conict with the government of Mexico.

In his nal year, the president’s team asked for plans to deploy 250,000 U.S. troops to the border. The massive mobilization would have rivaled the U.S. operations in Iraq and Afghanistan. Trump was prepared to send soldiers into Mexico to “wage war” against the cartels. Conveniently, the move would have also enabled him to create the buer zone he fantasized so much about —a militarized, Korea-like DMZ.

If missile launches didn’t start a war, invading U.S. troops certainly would have. The Pentagon talked Trump out of military action. But given the rhetoric of the far-right GOP, the next MAGA president might not accept an appeal to reason. He or she might instead raise the sword and take up arms against an ally, indierent to the consequences.

THE NEXT TRUMP WILL DISRUPT DIPLOMATIC RELATIONS WITH THE WORLD AND WIELD MILITARY FORCE CLOSE TO HOME.

The architects of the American system sought to split the foreign policy powers of the government between two branches. In the Federalist essays, they detailed the necessity of dividing it between the president and Congress: “The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most t agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the oce of making them.”

Yet when it came to military power, they defaulted to the executive branch. The draft Constitution named the president the sole commander in chief. “The propriety of this provision is so evident in itself,” they wrote, “… that little need be said to explain or enforce it.” A blade cannot be swung by multiple people at once. “Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand.”

Practically speaking, both sets of powers have ended up largely in the president’s hands. The White House drives the vast majority of all diplomatic and military activities, while the legislative branch occasionally intervenes—usually when it comes to funding. Withholding or supplying money is the main means of control. But presidents of both parties have found ways to shirk Congress’s attempts to limit White House control.

The defense community was nervous about Donald Trump well before he was elected. I spoke with one of the ocials responsible for planning intelligence briengs for the 2016 presidential candidates. He reported that the briefers conducted drills to prepare for the possibility that the GOP candidate might do something foolish with the defense information he was given.

“We war-gamed potential scenarios about what could happen,” the ocial shared. They considered nixing the briengs, which are traditionally given to both presidential nominees. “What if he started tweeting what he heard? We ran a whole series of machinations up to [the oce of the director of national intelligence], including whether to do it or not.”

Rather than scrapping the intelligence updates, they ended up scrubbing them.

“The briengs to him and Clinton were fundamentally dierent,” the ocial explained. “With him, it was like elementary school.” More specically, the briefers presented the information to Trump in such a way that—if he leaked it—the damage to U.S. operations around the world would be minimized.

The fears later proved to be justied. Over the course of four years, Trump recklessly compromised U.S. secrets. He gave sensitive defense information to journalists, shared it with foreign adversaries, and absconded with it to his private residence in Florida after leaving the White House.

On the surface, Trump’s mishandling of classied information doesn’t seem like something you can ascribe to his movement. That was a personal defect, after all. Every Trump shortcoming isn’t imprinted on the wider MAGA coalition, and not all of his characteristics will be shared by the Next Trump.

He has, however, made the GOP downright wrathful toward national security agencies. The distrust runs deep. And Republican leaders have shown newfound scorn toward once venerated American institutions.

“It’s time to end the U.S. intelligence operations against America,” MAGA congresswoman Marjorie Taylor Greene tweeted one day in 2022. Far-right outlets cheered.

“Her instincts are very much in line with the liberty conservatives in Middle America who have grown hostile towards the managerial state and DC altogether,” a popular right-wing website declared, adding that conservatives should gut untrustworthy defense agencies.

In his nal weeks in oce, Trump sought radical change. He considered placing political gures in charge of the CIA and sent loyalists into the Pentagon and the intelligence community. A former NSC staer told me his colleagues were worried that MAGA aides were being dispatched to rummage around in classied programs, to expose “Deep State” conspiracies that didn’t exist, and to betray the agency’s most closely guarded secrets. He also knew they were setting in motion plans to pull American personnel back from overseas. Indeed, Trump drew up orders to withdraw U.S. troops from various places in Central Asia and Africa.

Anthony Scaramucci summed up why MAGA leaders resent the defense and foreign policy establishment: “They want to take America back to 1890, a walled-o society.” As he explained it, the America First approach to international aairs views the past hundred years of U.S. policy—from free trade to democracy promotion—as having harmed Americans, not helped them. The movement’s leading gures would “shut down world trade” if they could, Scaramucci explained, and ensure “everything is made in America.”

“If the cup costs a penny to make in China, let’s make it for twenty-four dollars in America,” he quipped. “That’s what America First is aiming at, total isolationism, guratively and literally.”

Long-standing U.S. alliances will be diminished or destroyed.

While the White House managed to achieve a number of positive foreign policy victories during the Trump administration with other countries, most successes were owed to the Axis of Adults who pointed the president in the right direction. A savvier successor to Trump will try to dissolve the postwar international system and the Western democratic alliance. Put another way, the next MAGA president will pull the plug on American leadership. This isn’t errant speculation. In his rst term, Trump’s foreign policy goal was retrenchment. He badly wanted to reduce America’s overseas footprint, a desire that inuenced his conversations with world leaders.

On a regular basis, Trump demanded an end to U.S. commitments abroad. He called for scrapping defense pacts with Japan and South Korea. He called for pulling out of NATO. He called for canceling free trade agreements with an array of friendly governments. He called for yanking U.S. troops out of places they were stationed—Afghanistan, Syria, Somalia, Germany, and beyond. Arguments with his cabinet over these demands slowed Trump down, but his successor won’t be cowed.

Whoever assumes the mantle of the MAGA movement will pursue an isolationist foreign policy. The result could be calamitous. Like it or not, U.S. inuence and military strength have been the backbone of global stability since the two world wars. Withdrawing from international aairs would make the world less safe for Americans.

Worryingly, isolationist views have infected the wider Republican Party. In the lead-up to Russia’s 2022 invasion of Ukraine, for instance, the vast majority of Republicans supported the statement that “we should pay less attention to problems overseas and concentrate on problems here at home,” according to an Echelon Insights poll. A mere 30 percent of GOP voters agreed with the statement that “it is best for the future of our country to be active in world aairs.”

“My biggest concern would be withdrawing troops from key places abroad, withdrawing from NATO, and abandoning alliances,” Donald Trump’s former defense secretary Mark Esper told me. “I see growing isolationism because of the MAGA movement.” Esper expects another Trump would pull U.S. troops out of strategic positions in Europe, Asia, and Africa entirely.

Chris Harnisch, a top counterterrorism ocial in Trump’s State Department, drew a direct connection to domestic security. He predicted that a populist successor would “bring our troops back from almost everywhere,” adding, “You can’t ght terrorism this way. You can’t pull America back and keep the threat at bay with just drone strikes. So we will pay the price.”

It won’t stop there. MAGA leaders are not content with America embracing a new isolationism; they want other Western countries to do the same. If there is a pattern in international relations, it’s that countries want other nations to look like and act like them. Democracies ally with democracies. Dictators form pacts with other dictators. And all of them hope to see the world remade in their image. Accordingly, Donald Trump and his lieutenants cheered on right-wing nationalist movements in the hope that the MAGA approach to strongman populism would spread worldwide.

“I think strong countries and strong nationalist movements in countries make strong neighbors,” Steve Bannon told a European audience before Trump was elected. “That is really the building blocks that built Western Europe and the United States, and I think it’s what can see us forward.”

If you listen to the intellectual architects of the MAGA movement, openness is the enemy. The postwar focus on free trade, open travel, and political integration have created “the forgotten man.” Globalization has left working-class people behind and made Western nations soft. Manufacturing jobs have vanished, stolen away by developing nations. Immigrants have ooded democracies, undoing a white Judeo-Christian culture, and institutions like the European Union have weakened the West.

The myth conveniently ignores crucial facts. In the same period, the West saw an explosion in economic prosperity (GDP per capita soared year over year), unprecedented levels of security (armed conict among democracies declined), and a surge in political freedom (democracies went from a minority of the world to the majority of nations). Regardless, pro-Trump forces want to turn back the clock. They are urging U.S. allies to embrace antiimmigrant policies and economic protectionism, from Britain and France to Hungary and Italy.

A select group of foreign leaders are eager to see this happen. They want the United States and its allies to retreat, put up their walls, and look inward. Those observers are not our friends.

The world’s autocrats will benefit from an isolationist America.

[PARAGRAPH INTEGRITY PAUSES]

In October 2018, U.S.-based journalist Jamal Khashoggi went into the Saudi Arabian consulate in Istanbul and never came out. According to reports, he was killed and dismembered inside by Saudi operatives at the behest of the country’s leader, Mohammed bin Salman, who wanted the dissident silenced. Following the incident, Donald Trump welcomed reporters into the Oval Oce for a conversation. He was under pressure to condemn the brutal killing and sever ties with Saudi Arabia. Down the hall, I was meeting with National Security Advisor John Bolton about an unrelated issue, when there was a knock on the door. It was White House Press Secretary Sarah Sanders. “Ambassador,” she said to Bolton, “I think you should know something.” He ushered her in. Sanders recapped Trump’s forty-ve-minute interview, during which he begrudgingly acknowledged that Khashoggi had been killed. Then, she said, the president picked up classied documents on his desk and showed them to the reporters, remarking, “See? Many countries have given us intelligence on this.” There was an audible gasp from Bolton. “Oh, God,” he said under his breath. “Yeah,” Sarah replied, “but he didn’t say it was from a specic country on record, just o. You could see pictures but not read any text from where they were sitting.” “Was that part on record?” Bolton asked. “No,” she said. Bolton asked if there were cameras in the room. “No,” Sarah replied. The national security advisor breathed a sigh of relief. We were all disturbed by the lapse in protocol and poor protection of classied information. Equally as disturbing was that Trump couldn’t quite bring himself to condemn the Saudis. “It’s not a positive, not a positive,” he told the reporters about the killing, but then he proceeded to defend the regime. “They’ve been a very good ally, and they’ve bought massive amounts of various things and investments in this country, which I appreciate.” In a meeting with the president in the Oval Oce months later, Trump expressed his opinion to us in blunter terms. “I am not going to talk about this anymore,” he fumed. “Oil is at fty dollars a barrel. Do you know how stupid it would be to pick this ght? Oil would go up to one hundred fty dollars a barrel. Jesus. How fucking stupid would I be?” He thought the Saudis would retaliate and that higher gas prices would hurt him politically. Trump eectively proposed giving the regime a free pass. He later admitted as much to the press.

[PARAGRAPH INTEGRITY RESUMES]

Donald Trump’s look-the-other-way foreign policy emboldened the world’s dictators. By paying less attention to human rights and democracy, Trump broadcast a willingness to tolerate repressive behavior from China, Iran, North Korea, Russia, and other dictatorships.

The attitude will be shared by whoever takes his place.

“The populist MAGA movement has created confusion about who our allies are and who our adversaries are, and that puts America in grave danger,” explained Fiona Hill, one of Trump’s top former NSC aides. The moral equivalence has “made us weaker in the contest with Russia and with China.”

“We had to push through actions sort of by stealth to counter the Russians,” Hill explained of her time in the White House under Trump. “Putin had him wrapped around his nger the entire time.… He was always kissing Putin’s ass. He wanted Putin’s adulation.”

I asked her what motivated the aection for dictators.

“One of the reasons Trump didn’t want to clamp down on autocrats is because he wanted to do the same things as them,” she explained. In Hill’s view, this reected broader MAGA ideology. The movement itself is quasi-authoritarian. She pointed to proTrump members of Congress who have continued to call for the United States to pull back from supporting Ukraine, a move that would be a permission slip for Putin to pursue his ambitions in Eastern Europe.

Eugene Vindman (brother of Alexander Vindman), served as a top NSC lawyer under Trump. He predicted another MAGA president would allow Russia to absorb neighboring countries, including Belarus and Moldova.

“A country of 140 million becomes a country of over 200 million,” he explained, “and a resurgent Russian empire. We’d be in a position where Europe would be far more subject to Russian pressure.”

China will also feel empowered to spread its inuence. Vindman says Trump or a MAGA successor likely wouldn’t protect Taiwan against a Chinese invasion, despite a multi-decade U.S. commitment to defend the island.

Not everyone agrees on this point. A number of Trump’s foreign policy aides argue that—despite the MAGA crowd’s anity for autocrats—many of them support a tougher stance against China. However, the fact that there is stark divergence within the movement on this question suggests that Beijing might be able to divide-and-paralyze any U.S. response to Chinese aggression under the administration of the Next Trump.

And what if the sword is turned on America itself?

The U.S. military is one of democracy’s last lines of defense, meant to repel foreign aggression. If it’s turned inward, it can go from a guardrail of democracy to an existential threat. Just as a future MAGA president is likely to commandeer the domestic security apparatus for political purposes, he or she may also deploy the military to assert control inside U.S. territory.

Until the Trump administration, the proposition had sounded like the plot of a bad ction novel. But Donald Trump was a few sentences away from making it happen. I was there.

In the run-up to his February 2019 State of the Union Address, Trump saw news about another migrant caravan headed toward the southern border. White House aides informed me the president wanted to invoke the Insurrection Act so he could deploy the U.S. military to forcibly expel the migrants, as if they were a foreign army invading the United States.

Of all the emergency powers a president possesses, this one is best known to the public—and was very much on Trump’s mind. It was part of the “magical authorities” he often referenced. The Insurrection Act permits a president to deploy the military inside the United States in order to suppress a rebellion or repel a foreign invasion. If it’s invoked, the president can call forth the military to enforce U.S. laws. The statute is the closest thing to “martial law” in our system.

After I got the call on February 4, Kirstjen Nielsen and I rushed to the White House and intercepted Trump in the Map Room.

“This is fucking insane,” he protested. “We can’t let them in. You have my permission to close the ports—and you need to send them back.” He told us to use the military, which I interpreted as a nod to the Insurrection Act that aides had warned me about.

We spent hours trying to get White House sta and the counsel’s oce to weigh in against Trump’s request. If he invoked the Insurrection Act, it would set a dangerous precedent. There was no telling where Trump might use it next.

We went back to the president to assure him that we were working with Mexican authorities to contain the situation. There was no need for extraordinary measures. We bought just enough time to throw him o the idea, while the speech was nalized without any reference to the Insurrection Act.

The issue roared back to life the following year amid racial justice protests in U.S. cities. Trump was tempted to use the military to suppress the demonstrations, prompting an unusual reproach from his former defense secretary Jim Mattis in The Atlantic. I was heartened to see Mattis nally speak up.

His words captured the gravity of the situation:

I swore an oath to support and defend the Constitution. Never did I dream that troops taking that same oath would be ordered under any circumstance to violate the Constitutional rights of their fellow citizens.… We must reject any thinking of our cities as a “battlespace” that our uniformed military is called upon to “dominate.”… It erodes the moral ground that ensures a trusted bond between men and women in uniform and the society they are sworn to protect.

The Next Trump will have options for how to make the military subservient to his or her whims. One method would be to outsource it. In other words, the Next Trump might hire blackops personnel as mercenaries.

A former NSC staer recounted how Trump was transxed by the prospect of outsourcing warfare to private contractors. Former Blackwater founder Erik Prince reportedly pushed a plan to have contractors take over for U.S. troops overseas, from a vethousand-man team to help overthrow the Communist regime in Venezuela to privatizing U.S. operations in Afghanistan. Trump was intrigued, and a line of communication was opened to Prince through third parties.

Top NSC advisor Lisa Curtis was alerted to the discussions. She asked one of her deputies to write a memo to the president, explaining why it was a terrible idea to enlist outsiders to do the military’s job. The aide scrambled to put together the legal, operational, and moral case for not outsourcing core military functions. Fortunately, the proposal died.

“Next time we won’t be so lucky,” a person familiar with the discussions told me, envisioning a Trump-like future president. “We’ll have a military run by mercenaries.”

A privatized force. Weaponized for political purposes. Policing U.S. city streets. If that’s how the shield and the sword of government are recast, then Tom Warrick’s caricature of the Next Trump commanding his own forces doesn’t seem so hyperbolic. “A junior gestapo,” as he put it, is exactly what it would be.

When I reect on the nightmare scenario—of an American president hijacking the military for nefarious ends—I like to believe there are safety valves. That’s the type of moment when the Twenty-Fifth Amendment gets invoked, isn’t it? Surely the president’s cabinet would save the day by ejecting him from oce if he tried to turn the armed forces against the American people.

But I know better. The Next Trump’s cabinet will be stacked with loyalists. If they think about ipping, they’ll be watched. Top ocials are routinely tracked so they can be whisked away in the event of a crisis. A paranoid president would use those same security measures as a trip wire to determine whether his cabinet was convening—and conspiring—against him.

We can protect our institutions up to a point with obvious remedies. Congress can curtail the two-hundred-year-old law that allows a president to deploy the military on U.S. soil, and legislators should make it harder for the White House to misuse the armed forces. As far as guarding against isolationism, Congress should craft a new Marshall Plan to advance U.S. inuence abroad, to protect global trade routes, to defend the territorial integrity of democratic allies, to resist the spread of autocracy, and to prevent meddling in our republic, especially if we want this to be another American century.

Up to this point, I’ve outlined the many plausible ways the Next Trump might dismantle the guardrails of our democracy. He or she will almost certainly do much of the damage piecemeal, a form of low-level democratic vandalism. Other possibilities (such as turning the American military against the citizenry) would catalyze a more drastic civic implosion.

**1NC – K – LPE**

LPE K

**Collective bargaining rights traps labor in a private ordering regime that structurally empowers capital.**

Christopher **TOMLINS** Elizabeth Josselyn Boalt Professor of Law @ Cal Berkeley Law **’21** “A Call out of Seir: The Meaning and Future of US Labor Law” *Law & Social Inquiry* 46 (2) p. 584-588

The labor movement and the collective bargaining regime that emerged from the New Deal were thus both hybrids. The task of the NLRB, clarified well in advance of the 1947 Taft-Hartley Act’s amendments to the Wagner Act, was to manage this hybridity. The result was the institutionalization of what existed under the title of “industrial pluralism”—the regime of enterprise-level private ordering endorsed by the industrial and labor relations intelligentsia nurtured under LDDC conditions, supplemented by the administrative mechanisms of the Wagner Act and by continuous administrative and juridical policing of the detail of private ordering undertaken by the NLRB and the judiciary.

In its heyday—the second half of the twentieth century—industrial pluralism connoted a systematic approach to labor relations, informed by liberal political and social theory, whose point of departure was the belief that industrial conflict in democratic capitalist societies is best dealt with through routinized procedures of negotiation and compromise, leading to agreements formalized in contracts between a union “bargaining agent” endorsed in an election by the majority of employees in a NLRB-designated “appropriate bargaining unit” and the employer of those employees (Tomlins 1985b, 19–34). As Katherine Stone (1981), the leading analyst of industrial pluralism, has put it, taken at face value, “industrial pluralism is the view that collective bargaining is self-government by management and labor : : : who jointly determine the conditions of the sale of labor power. The collective bargaining process is said to function like a legislature in which management and labor, both sides representing their separate constituencies, engage in debate and compromise, and together legislate the rules under which the workplace will be governed” (1511).

Stone (1981) is fully aware, of course, that it is an error to take industrial pluralism at face value. Even at the height of its influence as a theory of labor relations, industrial pluralism was based on false premises—namely, that in its constructed private ordering regime management and labor confronted each other as equal parties whose collective bargaining created an agreement that functioned as a constitution for the going concern. The model was “a false description” that “obscure[d] the real issues and problems posed by the exercise of power in the workplace” (1511). That has always been true, whether in its twentieth-century heyday or now, when the pluralist model remains the animating core of contemporary labor law but, purely by default, discredited, simply staggering on like a zombie.24

In part, the pluralist regime is the victim of critique from the left, which emphasizes the falseness of its premises, and from the right, which disdains its interference with the true private ordering that can only be achieved by zealously free markets. But as Parts 4 and 5 of the Handbook valuably instance, the model is also a victim of its own management of the actual process of pluralist private ordering to which it is committed: the extraordinary license that it grants employers and others to oppose union attempts to gain employee sanction (Garden 2020b); its substitution of a formalized conception of “association” for union rights of assembly (Crain 2020); its elaborate confinement of union capacities for economic leverage behind manifold legal restraints and administrative barriers (Lofaso 2020); the range of stalling tactics that it permits employers who have no actual interest in bargaining a contract; and the range of issues that it considers beyond the mandate of bargaining at all (D. Rosenfeld 2020). All of these “issues” are products of pluralism’s conceptualization of collective bargaining as a regime of managed conflict in which formal equals inhabit a relationship that is falsely analogized to political competition: “Unions are critically constrained in their exercise of organizational power. Federal labor law carves out a relatively narrow slice of a business’s concerns and then requires only bargaining—not consensus or concessions—over that slice. Without particularized market power such as regional monopsonies or trade restrictions, most workers do not have the raw economic might to force employer concessions. When strikes become relatively toothless, good faith bargaining becomes a convivial chat” (Bodie 2020, 300).

Defenders of pluralism’s policy of free collective bargaining call for the restoration of “balance” to its framework. Never have so many playing fields been readied for leveling! But even were a reinvigorated pluralism desirable, one runs headlong into the sheer artificiality of normative argumentation: of course, federal labor relations law “should” be other than it is; and pigs may fly.25 Better, surely, to confront why the law is as it is than believe that some inherent sense of “fairness” will persuade legislators and administrators to do other than they have done.

ACTIVITY AT THE MARGINS

The law is as it is for two reasons. The United States is a capitalist economy first and a democracy second. Notwithstanding the clear preference of working people for representation through collective organization (Freeman 2007), they will not freely receive it while the interests of capital are not served thereby. That is the lesson told both by American history and, more parsimoniously, by Joel Rogers’s (1990) analysis of the interrelationship of capitalist competition and union density. The current moment—the moment that has prevailed since the 1970s—is one in which, quite simply, the interests of capital have not been served by the collective representation of working people. The results have been catastrophic, both for working people and for the polity at large, but they have been good for returns to capital. An era of declining inequality in the distribution of wealth and rising standards of living, both fueled in part by the expanding collective organization of working people and by the modest socialization of labor law, has been followed by an era of rapidly increasing inequality in the distribution of wealth and stagnation in standards of living (measured by real wages), both fueled in part by the contraction of collective organization and the dismantling of modestly socialized labor law (Gordon 2016, 535–65, 605–52; Piketty 2014, 199–3767u87; 2020, 648–716; on socialization, see Kennedy 2006). Nor are these simply US phenomena, although the United States has been at their leading edge. Declining union density, legal hostility to collective action, and rising inequality are to be found worldwide (see, for example, Nam 2019).

What, then, is to be done? Amid rehearsals of the detail of union activity in the current moment, the second half of the Handbook (Parts 4, 5, and 6) offers some suggestions. Uppermost is investigation of what may be accomplished within the margins of current law. Anne Marie Lofaso (2020), for example, addresses the long history of legal prohibitions on secondary activity (activity that seeks to pressure the primary employer by influencing the behavior of secondary actors—for example, suppliers or consumers). Undoubtedly effective, secondary activity enjoyed only a brief period of legal toleration during the 1930s and 1940s before the reimposition of restraint in the 1947 Taft- Hartley Act. Doubting the likelihood of legislative relief, Lofaso points to the existence of “lawful spaces” within the letter of restriction, notably communications and publicity, that unions may “leverage” to spread their message. Lance Compa (2020, 279) assesses the potential of international labor law—for example, the International Labour Organization’s core standards, the Organisation for Economic Co-operation and Development’s guidelines, and transnational trade agreement labor provisions—to “frame” disputes in ways that “shine a global spotlight on abuses in labor law and practice in the United States.” Leticia Saucedo (2020) reports on the resistance to attempts to use immigration law to nullify the Wagner Act’s protections in the food industry (the proposed Agricultural Guestworker Act). Warning that the act presages “broader industry efforts to curtail the rights of workers,” she calls for civil society responses that can unite immigrant workers with the established labor movement in defense of both (290).26 Catherine Fisk (2020) considers what future union security (the fiscal terms of incumbency as a bargaining agent that protect the union from free riding) has, particularly in public sector unionism, in the face of continuous legislative and juridical assaults on member dues and agency fees that threaten to “nationalize” the so-called “right to work” (the open shop). Finding little hope for respite, Fisk argues that unions can find security only through continuous organizing: “The next decade will witness either their demise or their re-dedication to member engagement and accountability” (336).

Finally, Charles J. Morris (2020) argues for a return to nonmajority (members- only) collective bargaining (the argument is made at much greater length in Morris 2005). Historically the default practice of American unions, members-only representation was overtaken by provisions in the 1935 Wagner Act that, as we have seen, awarded a union chosen by the majority of employees within a NLRB-designated appropriate bargaining unit the status (and obligations) of exclusive representative of all employees within the unit.27 But, although exclusive representation lies at the core of the collective bargaining regime instituted by the 1935 Wagner Act (Tomlins 1985a, 132–40), it does not displace the prior right of self-organization “to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection,” which is the foundational right of free association recognized and endorsed by the Wagner Act and, indeed, juridically and legislatively acknowledged long prior to that act.28 Exclusive representation won by recruiting majority support extends collectively bargained terms and conditions beyond a union’s members to the generality of an employer’s employees. It is not, however, a statutory prerequisite for representation as such, where the representation claimed is for members only. Nor is majority status a statutory condition of recognition for the purpose of non- exclusive representation.

Morris (2020, 318–19) correctly points to substantial evidence of nonmajority bargaining under the aegis of the Wagner Act during the early years of the New Deal collective bargaining policy: “The majority concept : : : concerns the ultimate scheme of the Act.” Nonmajority bargaining was an “early stepping-stone stage : : : a normal and frequently necessary part of a union’s maturation.” Only later did the collective bargaining regime come to be identified with exclusive representation elections and, thereafter, was held hostage increasingly to unions’ faltering capacity to win “hotly contested, unfair, and largely unnecessary, elections” (314, 315). Citing AFL-CIO President Richard Trumka’s 2013 statement that, given its current parlous circumstances, “the labor movement must embrace new models of representation that exist outside of traditional unionism,” Morris (2020, 312) brands members-only representation and bargaining as just such a nontraditional model. But this seems wrong. It is actually a return to what unions historically have done—organized cadres of members outside any state-mandated bargaining regime to exercise rights of association and assembly and to press demands for the improvement of wages, hours, and working conditions. It is not a departure from tradition but, rather, a return to it. As Fisk (2020) emphasizes, it is only through such organizational activities that American unions can recover their strength and purpose.

HOW MUCH LONGER IS THE NIGHT?

As Saucedo (2020, 281) states, “a premise of this book is that labor union organizing must be revived.” How? Many Handbook authors choose to lecture Congress on what it should do to facilitate union recovery, but, as should be clear by now, normative argumentation, in my view, is a waste of time. Legislative action requires pressure, pressure requires organization, organization must therefore occur prior to any possibility of legal change. Labor organizations know through long experience that opportunities for collective bargaining will not freely be granted as long as the interests of significant sectors of capital are not served thereby, but this is not the only lesson that American history offers us. American labor history is a history of blood and violence and conflict, of battles for organization and collective self-determination undertaken in the face of capital’s opposition. It is not a history of unalloyed failure. Nor is it a history of state dependence—of waiting for the state to reconfigure the operative legal regime to the labor movement’s greater advantage. An organized labor movement has been in continuous existence in the United States for the better part of 150 years. Its history is one in which organizations have been built as well as destroyed, in which those organizations innovate as well as stagnate. It is a history at times of insular self-reliance and at other times of national political action. It is a history that began long before there was such a thing as a federal collective bargaining policy and that is in no sense dependent upon that policy for its continuation because it is a history not only of waiting to receive but also of grasping opportunities to take. All of this accumulated experience makes the history of organized labor a useful history, a history worth knowing, a source of strength.

At the end of “Science as a Vocation,” the November 1917 lecture from which this essay’s title and epigraph are taken, Max Weber ([1917] 1946) contemplated the terms upon which inspiration—charisma—might reappear in a disenchanted, routinized world. They would be terms, Weber said, of engagement: not of watching and waiting, but of acting and working. This was a statement about time, and, as Weber’s reference to Isaiah indicates, it was religious time he had in mind. It was a statement about chronos, about duration, the endless night of awaiting the Messiah. But it was also a statement about kairos, the epiphanic, uncertain, instant in which the Messiah actually appears: “From this we want to draw the lesson that nothing is gained by yearning and tarrying alone, and we shall act differently” (Gerth and Mills 1946, 156).

To translate Weber’s advice into the idiom of American labor history is to arrive at the slogan “Don’t Mourn, Organize!”29 The slogan is a cliché, but a cliché is simply a truth rendered familiar by repetition. The lesson that I have learned from The Cambridge Handbook of US Labor Law for the Twenty-First Century is that this old truth must be repeated again and again because, amid the disorienting miasmas of twentieth century US labor law—the discredited collective bargaining regime that is the Handbook’s subject—it has been forgotten. What unions are for (their essence, if you like) is to organize workers. If they do not do that, no matter the odds, then they have no reason for being. For American unions to recover, their density must rise. Density can only rise through organization. Unions can only create that reality themselves. There really is no alternative.

**Collective bargaining rights coopts and atomizes class power into interest group politics. The 1AC reinforces the split between the private management control over investment management and unions as obliged to maintain industrial peace for the public good.**

Karl **KLARE** Law @ Northeastern **’81** “Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law” 4 Indus. Rel. L.J. 450 p. 450-458

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

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

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

Despite sharp differences on other matters, two common themes run throughout critical labor jurisprudence. First, we argue that collective bargaining law articulates an ideology that aims to legitimate and justify unnecessary and destructive hierarchy and domination in the workplace. The second theme is that collective bargaining law has evolved an institutional architecture, a set of managerial and legal arrangements, that reinforces this hierarchy and domination. Viewed as a component of public policy, the two central goals of the collective bargaining laws are to integrate the labor movement into the mainstream contours of pressure-group politics and to institutionalize, regulate and thereby dampen industrial conflict. Viewed as a component of managerial practice, the collective bargaining laws seek to formalize industrial dispute-resolution and thereby to reinforce management control over enterprise goals and the direction of the work process. In fulfilling its public policy and managerial functions, collective bargaining law frequently aims to restrain labor unions from serving as vigorous, uninhibited representatives of employee interests. Rather it seeks to place unions in the uncomfortable position of serving as fiduciaries of an imagined societal interest in industrial peace7 and of serving specific managerial8 and disciplinary9 functions. I believe that a primary initial achievement of the critical labor jurisprudence is its demonstration that the doctrine of collective bargaining law has been systematically fashioned, particularly at the Supreme Court level, to serve these goals.1°

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

The internally contradictory roles and setting of collective bargaining law have precipitated two great challenges to theorists guiding and fostering its development from the traditional liberal perspective.

The first is to explain how and why collective bargaining law simultaneously encourages and represses workers' self-expression through the medium of industrial conflict. While the collective bargaining laws on the one hand invite and authorize workers to voice and advance their needs through self-organization and collective action,' 3 they at the same time limit worker self-expression through industrial conflict by establishing a coopting, atomizing, struggle-dissipating framework that narrowly circumscribes the lawful boundaries of collective action. That is, the ultimate impact of collective bargaining law in many settings may well be to impede solidarity and mutual aid and to narrowly channel collective action into limited, institutionalized forms."

Traditional liberal theorists of collective bargaining law have had to explain, secondly, how this body of law simultaneously authorizes and limits employee participation in workplace governance. For, although the collective bargaining laws acknowledge the justice of worker participation in the industrial decisions affecting their lives,'5 they also carefully control and restrict this participation. Collective bargaining law limits worker participation in workplace governance by deflecting the intervention of workers' power away from such concerns as the organization of the work process, enterprise management and goals, and the internal direction of labor unions. Rather, the legitimate exercise of workers' power is generally confined to occasional conflict outside the workplace, in the market for the sale of labor power, 1e., to 6

In sum, traditional liberal labor law thinking has confronted the enormously complex challenge of inducing organized workers to consent to and participate in their own domination in the workplace.' 7 In this sense, the development of collective bargaining law is paradigmatic of all public policy in liberal capitalism. I believe liberal capitalism is a social order founded upon enormous inequality and historically unnecessary constraints upon human freedom, coexisting with political institutions and a political culture premised on democratic ideals.'8 Public regulation of class struggle through collective bargaining law replicates the role assigned to the state in the classics of liberal political theory, namely to manage and contain conflicts said to inhere in the sphere of social and economic activity ("civil society"). The philosophy of collective bargaining law, elaborated since the 1930's in doctrine, law re- view commentary and management literature, is an important effort to conceptualize, justify and legitimate the modem, regulatory state in the period of advanced industrial capitalism. As such it is a premier mode of elite ideological practice and an enduring contribution not just to law but to liberal political theory generally.' 19

[INSERT FOOTNOTE 19]

19. At its most powerful and synthetic moments, collective bargaining law addressed the central problems of liberal political theory in the United States since World War II. Among them are the following:

(a) The first is the problem of distinguishing between "public" and "private" or, in the terminology of classical political theory, between "state" and "civil society." The doctrinal formulation of this problem in American constitutionalism is the "governmental action" requirement of the fifth and fourteenth amendments.

What might be called the "public/private problem" constantly recurs in the efforts of liberal political theory to justify governmental "regulation" of private conduct. The "public/private problem" is that, on the one hand the distinction between public and private is ideologically necessary to liberal thought and, on the other hand, the rise of the regulatory state constantly erodes the meaningfulness of this distinction. The public/private distinction is necessary in order to justify the private appropriation of socially-created wealth, to sanction private control of investment and resource-allocation decisions of societal consequence, and generally to legitimize the "free" market as an institution. On the other hand, the meaningfulness of the distinction has been undermined by the spectacular expansion since the New -Deal of governmental responsibility for management of the economy and of governmental regulation of "private" economic transactions. The conceptual distinction between public and private has also been pushed to the breaking point by the phenomenon of "corporativism," that is, the emergence and primacy of vast corporate entities (e.g., corporations, unions, universities) whose internal procedures and external contractual relationships constitute a species of law-making. Such entities, though regulable, are ordinarily treated at law as "private," although their defacto power rivals or even supersedes that of public agencies and although their actions are of societal consequence.

The courts have struggled with the public/private problem in collective bargaining cases. There is, for example, no clear answer to the question of whether a labor union is a "public" or "private" entity. See text accompanying notes 73-83 infra. See also, e.g., Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944) (on the theory that a union is a private organization, it may set its own membership rules, even if they are race-discriminatory; yet on the theory that the exclusive bargaining activity of a union is cloaked with the imprimatur of public power, race- discrimination is barred in union's bargaining conduct). Similarly, a frequent refrain of collective bargaining law is that freedom of contract and private-ordering are fundamental to the scheme of the NLRA, see H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970), and that therefore the National Labor Relations Board and the courts may not intrude into the substantive aspects of collective bargaining. See generally H.K. Porter, NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477 (1960); NLRB v. American Nat'l Ins. Co., 343 U.S. 395 (1952). Yet it is perfectly clear that countless routine actions of the Board and courts directly impact on the substantive outcomes of the collective bargaining (for example, bargaining unit determinations and the development by the federal courts of law governing the enforcement of collective bargaining contracts). As I will attempt to show, the most successful effort within collective bargaining law to cope with the public/private problem is the theory of grievance arbitration. See text accompanying notes 63-64 infra.

(b) A second problem of post-World War II liberal political theory revolves around the treatment of social conflict. Almost all versions of classical liberal political theory are premised on the notion that economic and social conflict is endemic to civil society. The idea of the "social contract" is that all citizens share an overriding interest in maintaining certain fundamental ground rules after observance of which each person is free to pursue self-interest to the limit. The state is posed as the expression or guarantor of the minimal, interest-neutral ground rules for the conduct of social life and economic conflict.

Socialist thought challenged the liberal description of the state by arguing that state power is in fact "captured" by private interests and that the state ratifies and perpetuates class domination and inequality in social life. The appeal of socialism widened during the Great Depression and World War II, although more so in Western Europe than in the United States. A central task of liberal theory in the post-War period was therefore to provide a plausible explanation of why economic conflict is not symptomatic of class domination and therefore does not implicate fundamental issues of the political organization of society. A significant approach to this problem, developed under the rubric of the "end of ideology," was to argue that economic conflict is grounded in the technological imperatives of industrial society as such. It was then possible to acknowledge the reality of economic conflict but to claim that conflict is a malady treatable by the judicious intervention of neutral technocrats, see note 26 infra, operating within a neutral institutional framework. These claims were in turn used to support the idea of a general, societal consensus around process-oriented dispute-resolution mechanisms. Labor arbitration presented liberal theory with a model of universal significance.

(c) A third problem for post-War liberal thought was to explain the unabated persistence of hierarchy and meaningless work in the context of the heightened life-profile expectations and the unbounded technological possibilities of the "affluent society." At least until the civil rights revolution of the 1960's led to the "rediscovery" of poverty and the exclusion of "marginal" groups from the American Dream, the problem of liberal thought was to explain the successes of capitalism, not its failures. That is, to paraphrase Harry Braverman, what had to be justified was the dehumanizing quality of the work capitalism provides when it is successful in providing employment, and the appalling human and environmental effects of capitalism's productive might when that might is operating at full capacity. H. BRAVERMAN, LABOR AND MONOPOLY CAPITAL 14 (1974). On this problem, see generally Block & Hirschhorn, New Productive Forces and the Contradictions of Contemporary Capitalisnm A Post-Industrial Perspective, 7 THEORY AND SOCI- ETY 363 (1974). Collective bargaining law responded to this problem by using the rhetoric of industrial democracy to induce worker consent to hierarchy. See text accompanying notes 27-32 infra.

(d) Finally, post-War liberal political theory confronted the problem posed by the epochal shift over the course of the twentieth century in judicial thinking about the nature of "rights." The trend is away from a notion of rights as shields standing between the individual and the exercise of governmental power toward a conception of rights as ingredients of public policy. Compare, e.g., Lochner v. New York, 198 U.S. 45 (1905) (due process clause prevents improper intrusion of governmental power into the protected realm of free contract) with Mathews v. Eldridge, 424 U.S. 319 (1976) (scope of due process protections measured in part by governmental interest in providing due process). The collective bargaining cases have provided a major contribution to the development of contemporary rights theory. Yet a major argument of this paper is that collective bargaining law contains no coherent theory of rights. See text accompanying notes 67-113 infra.

The Constitution protects some substantive rights, such as the values associated with freedom of expression and the norm of forbidding certain types of state-fostered inequality. Contemporary jurisprudence of course contains other notions of substantive entitlement, e.g., minimal levels of public assistance, minimum wage and maximum hours protections, public education and so on. (Such entitlements derive from positive law; with rare exceptions they are not constitutionally mandated.) For the most part, however, rights in the regulatory state are not substantive but they are either procedural rights vis-a-vis public agencies or representational rights within the corporativist entities that govern our lives. Such rights are "balanced" against public policy considerations and "tailored" by the exercise of discretion by public agencies or corporativist entities. These themes--4.e., the primacy of procedural and representational over substantive rights and the modulation of rights according to the needs of the state and corporativist power-are central to collective bargaining law. They are, for example, powerfully illustrated by the well-known duty of fair representation case of Ford Motor Co. v. Huffman, 345 U.S. 330 (1953). At the same time that procedural and representational conceptions of rights flourish, the right to utilize self-help and self-organization so as to enhance group status suffers serious eclipse. See generally note 14 .upra.

It is this fact which opens the greatest promise to critical labor jurisprudence, affording us the opportunity to make a contribution to political theory as well as to historiography and doctrinal analysis.

**Privately ordered markets predistribute antidemocratic power and drive inequality. Instead of balancing the power of private parties in the marketplace we need to build countervailing power that decommodifies labor.**

Margaret **SOMERS** Sociology & History @ Michigan **’25** “Toward a Predistributive Democracy: Polanyi and Piketty on Capitalism, Moral Economy, and Democracy in Crisis” Forthcoming *Journal of Law and Political Economy* May 2025 p. 3-8

In this and its companion article (Somers 2022a), I put the two thinkers in dialogue to generate principles of a new democratic political economy that can help explain the political and socioeconomic crises we currently face. The dialogue has two axes of inquiry. First, how to explain and deconstruct the social exclusions and dedemocratization institutionalized in the heart of the market economy. Second, to ask how Polanyi’s and Piketty’s key insights can guide us toward a political strategy to challenge neoliberalism’s exclusionary and antidemocratic structures. The previous article began the task by exploring Karl Polanyi’s critique of capitalism through the lens of his legal institutionalism, an approach that stipulates that the market economy, rather than being a self-regulating set of economic forces, is fundamentally constituted by politics, law, and legal processes.6 Legal institutionalism, in compressed form, postulates that capitalism cannot be understood independently of the constitutive role of law (Deakin et al. 2017; Benkler 2023; Grewal 2014, 2017; Pistor 2019). But Polanyi’s work demonstrates that the powers of law must be understood in their most capacious sense to include not only constitutional foundations, legally enforced policies, and statutory instruments of legal coercion, but also cultural legal constructs as well as normative concepts of economic justice and moral economies.

The summation of the previous article can be stated succinctly: Neoliberalism has for over four decades thrived under the illusory banner of the deregulative ideal—the exigency of the market to be free of the intrusions of government and political power. Yet no more than in the era of laissez-faire has neoliberalism aspired to a market free of power. Rather, it is a project to reappropriate the powers and institutions of democratic governance and to exercise permanent predistributive control of the market economy. There is no such thing as deregulation, only reregulation, as the economy is always a creature of power and laws. The question is always the same—who will control those levers of power and law? The signature achievement of neoliberalism’s forty-year reign has been that of seizing and repurposing predistributive law and state power for inegalitarian ends, all the while convincing us that what we are watching is the free market at work and that the ensuing maldistributive outcomes are the result of freedom from power.

To come to that conclusion, Somers (2022a) developed four precepts:

1) Capitalism is a bifurcated process: Polanyi is usually associated with the argument that market society developed from the economy’s “disembedding” from state and society. But this, according to Polanyi, was in fact an ideology hardened into a legal construct, since the idea of a self-regulating market is a “stark utopia” (GT, 3).7 Instead, Polanyi alerts us to the bifurcated nature of modern market societies—divided between the utopian idea of a self-regulating market––a cultural invention of a nonpolitical economy self-organized by natural market forces––and the unacknowledged reality of an economy as an institutional order constituted at its core by structural arrangements of power, law, and social relations of coercion.8 The two dimensions—the cultural/ideational and the institutional––are equally powerful and must be given equal analytic attention. Political economy is at once a cultural economics.

2) Market justice is capitalism’s moral economy: At the ideational level, whether in its original laissez-faire version or today’s neoliberalism, the free-market economy consists of both a culturally-constructed fictitious political economy (market naturalism) and a moral economy (market justice).9 The political economy of market naturalism is a self-declared science specifying the relationship between economy and polity, as well as a prescription for how that relationship must be carried forward. Market naturalism is the foundation of the moral economy of market justice, which defines the morally just distribution of rights, privileges, and deserts. Market justice stipulates that because market processes are rooted in natural forces and putatively unbiased by arbitrary powers of politics and law, its outcomes—however unequal—are inherently fair, and post-market adjustments (redistributive taxes) in the interest of greater equality are unjust violations of people’s fair earnings. Its moral mandates thus justify inequality and social exclusion, define redistribution as theft10 sustain the legal powers of property rights and freedom of contract, and delegitimate—often criminalize—democratization beyond its most constricted market-conforming limits, and appropriate for only a narrow segment of deserving citizens.

3) The economy is an “instituted process:” Although obscured by the cultural fiction of a self-regulating market, the economy is in reality an “instituted process” (Polanyi 1957) organized through the institutional powers of policy, law, coercion, and predistribution. Predistribution is a Polanyian-inspired concept that is especially useful in addressing the flaws in naturalistic conceptions of a market economy, as it explains how the market’s distributional outcomes (wages and earnings) are not the result of “market forces” but are engineered by government policies and legal institutional powers operating inside the economy. Understanding predistribution is essential to undermining the myth of neoliberalism as a free market system, as it redefines the economy as a site that structures the balance of power among competing institutions and market participants (capital interests, property owners, employers and employees, etc.). Predistribution also serves as a guide to Polanyi’s alternative theory of political economy, which dissolves the fictive division between a “nonpolitical” “stateless market” allegedly free of power, and the state as the exclusive site of power. Legal predistribution is central to this analysis, as it explains how the law operates inside the market through contract law and property rights, as well as statutory laws and regulations, to influence not only the predistribution of initial market distributions—towards more or less equal wages and incomes––but also to determine the distribution of relative market power and the allocation of rights among market participants in the first place (Vogel 2021). For Polanyi, markets are not merely “embedded” in government, law, and social relations; they are allocative institutions of power, making them thoroughly social and political institutions legally engineered from the inside out. Polanyi argues that effacing the infrastructural place of power, law, and coercive commodification inside the economy is the foundational deceit at the core of classical political economy, modern neoclassical economics, and by implication, today’s neoliberalism.

4) Capitalism’s anti-democratic DNA: Predistributive analysis exposes the fictitiousness of the claim that the market economy is free from government power. Freedom from the power of democracy, however, has been a structural constant of capitalism from its inception. The diktats of market justice combined with the political/legal power at the heart of the market mechanism make it inevitable that struggle over control of that power turns democracy into a potentially mortal threat to wealth and property. Identifying capitalism’s moral economy brings a sobering recognition of how a powerful morality of market justice can be mobilized to dictate the silencing of democratic voices in both the public and private spheres. A principal component of that struggle against democratic intrusion into the economy is predistributive dedemocratization—the antidemocratic mechanisms that are built into the heart of the market. While there are multiple dedemocratizing devices outside the market—voter suppression, the electoral college, the unelected power of the juristocracy—it is the relatively invisible internal instruments of dedemocratization that are especially lethal as they are obscured under the guise the market’s “natural processes.” Dedemocratization and citizen exclusion are built into the institutional infrastructure of market society to ensure its freedom from a democratic citizenry. For Polanyi, dedemocratization is foundational to the structural calculus of marketization, making the silencing of the demos not merely a consequence but a causal agent in modern market dynamics and social exclusion. Markets are predistributively designed to dedemocratize, thus turning citizens into subjects (Somers 2022b).

This article moves from Polanyi to Piketty, and probes Piketty’s work as successively developed in three of his books over the last decade. The themes discussed can be previewed in four points:

1) C21 breaks through the decades-long indifference towards inequality by explaining wealth and property’s consistently faster rate of growth over that of labor income to have been inherent to capitalist societies for over two hundred years—the r>g inequality. C21 exhibits a tension between a naturalized formalizing of the dynamics driving inequality and Piketty’s sometimes explicit but secondary argument that power and institutions are the critical forces shaping this appearance of natural market forces. While C21 tilts overly toward naturalism, however, in CI historical institutionalism predominates and renders a powerful explanation of how institutionalist forces have operated over time and place to create a sequence of justificatory regimes of inequality, culminating in today’s extreme “hypercapitalism” and a paralyzing divide between a “Merchant Right” and a “Brahmin Left” in modern politics.

2) CI’s turn to institutionalism points to how moral economies designed to justify inequality are critical mechanisms in the work of sustaining property dominance and in keeping democracy at bay. Although the arguments falter somewhat at times in abstracting the ideologies too sharply from the political economic regimes, Piketty nonetheless demonstrates how patterns of inequality and social exclusion cannot be explained independently of the causal powers exercised by this historical sequence of “inequality regimes.”

3) CI and BHE, unlike C21,drill down to the power of law in political economy and discover the strength of legal predistribution in shaping inequality, even reporting that compared to redistributive policies, predistribution has greater influence in determining comparative levels of inequality (Bozio et al. 2023). Curiously, however, in both books, Piketty’s agenda for a “participatory democratic socialist” alternative to hypercapitalism leaves predistribution out of the picture and reverts almost exclusively to redistributive progressive taxation and a revived welfare state as the main mechanisms to combat inequality. At the same time, BHE in particular makes clear the porousness of the line dividing redistribution and predistribution; for example, the availability of public goods by a welfare state will by definition slow down neoliberalism’s accelerating commodification of the citizenry by loosening employers’ power over the lives of working people, just as imposing a 90% marginal tax on extremely high incomes will deter corporations from offering exorbitant compensation to CEOs since they won’t be willing for so much of that pay to go to the government in taxes, thus imposing a de facto ceiling on top incomes and reducing the pay gap between employers and employees.

4) Piketty’s position has evolved dramatically over time, and his shifts towards institutionalism and predistribution––above all, his prioritizing decommodification and redemocratization––are instructive for understanding the necessary steps toward a critical political economy. But his continuous prioritizing of redistributive solutions over predistributive ones creates political problems for a progressive agenda: It inadvertently endorses the idea that it is best to leave market forces unimpeded and to rely on government to do remedial egalitarian reshuffling of income after the fact. It bypasses the link between redistributive social policies and white supremacy. It deflects attention from the coercive powers of predistributive dedemocratization. It insufficiently recognizes how the courts work to racially exclude. And it misses the connection between the center-left’s abandonment of predistributive policies and the steady exodus of white working-class voters to right-wing parties.

These concerns notwithstanding, my goal is not to weigh the merits of these two thinkers against each other, but to use the dialogue to find their commonalities despite the differences and ask how the best of each might be combined. In discovering these commonalities—a shared commitment to the historical institutional foundations of a critical political economy, to theorizing the commodifying work of markets, and to a mutual understanding of the inherent menace to democratic fragility posed by market capitalism––we see that Piketty comes to share much with Polanyi’s analysis of market society’s unremitting undermining of the freedom of most people, as well as with his prioritizing of decommodification and democratization as the chief vectors of a countervailing movement toward democratic socialism. That mutual understanding can be captured under the rubric of what I call a predistributive democracy.

A predistributive democracy is an alternative political economy, a moral political countervision, and a strategic agenda for structural and ideational “non-reformist reforms” (Akbar 2023; Gamal 2023; Klare 2023; Wright 2010, 2019)— an agenda that diagnoses inequality not simply as a problem of income distribution but of the maldistribution of power and the acceleration of commodification, dedemocratization, and authoritarian rule. A predistributive democracy is both end and means—a vision to “build democratic power toward emancipatory horizons...beyond legal reforms” (Akbar 2023), in which decommodification, full democratization of public and private spheres, and freedom from racialized and gendered subjection are the aspirational goals. At the same time, a predistributive democracy spells out how to mobilize the countervailing power (Galbraith 2012 [1952]) of a democratic citizenry.

Market justice dictates that the economy—because it is a self-regulating mechanism free of power and politics and biased interests--must be fully insulated from the “outside” forces of the democratic populace. Introducing the concept of extractive social predistribution (Somers 2021) helps explain that the citizenry is not a political force outside the economy––whose influence in market processes is illegitimate––but a source of extracted value inside the economy that is critical to market processes and capital accumulation. This justifies the moral and political right of citizens to exercise democratic authority inside the market. The challenge is to devise strategies for turning the policies and legal mechanisms of neoliberal predistribution against their dedemocratizing, commodifying, and exclusionary logics.

The article concludes by commending Polanyi and Piketty as potential recruits for LPE’s effort to create a new political economy that places “themes of power, equality, and democracy” at the center of the project (Britton-Purdy et al. 2020). At the same time, however, their work warns against the folly of any complacency about the success of this venture. Revisiting Polanyi’s analysis (GT, 139-40, 231-56) of the conflict in the 1930s that catapulted Europe into fascism should alert us to the current precarity of democratic fragility.11 Piketty (2020, 2022) echoes this analysis in his picture of a similar fork in the road today between democratic survival and hypercapitalist barbarism. The link between increasingly monstrous expressions of neoliberal social exclusion and successful ventures towards capital’s freedom from democracy (for example, Slobodian 2023) reprise the conditions Polanyi so carefully theorized eighty years ago—above all, the impulse within today’s conservatives and moneyed elites to embrace autocratic rule over even the mildest socioeconomic reforms and rid themselves of the democratic menace. When faced with a choice between what they deem to be economic policies inimical to their financial interest and the suppression of democracy with the aid of an authoritarian state, today’s elites, like yesterday’s, opt for the latter (Bouie 2024; Pistor 2024a, b; Luce 2024; Levitsky and Ziblatt 2018, 2023). Today, as Gerstle (2024) observes, “[e]xpressing contempt for democracy and the Constitution has now become a reasonable––even fashionable––position for a US presidential nominee to hold.” Organizing a movement of countervailing democratic power—informed by the lessons of Polanyi and Piketty (and Galbraith [1952] 2012)—could not be more urgent.

**Militant working class structural power over investment is key to solve existential climate risks.**

Matt **HUBER** Geography and the Environment @ Syracuse **’22** *Climate Change as Class War* p. unpaginated copy

Why is the working class central to the climate fight? The power of the working class is rooted in three factors. First, it is the vast majority of the population—meaning any democratic or majoritarian approach to climate action must build a working-class coalition. Second, its strategic location at the point of production gives it structural power over the source of capital’s profits and social reproduction more generally. Working-class power is most effective in periods of mass strikes and disruption that force elites and capitalists to cede to mass demands.19 Third, because economic insecurity defines working-class life, they have a fundamental material interest in transformations in the relations of production. In recent years, the Green New Deal political program emerged on the premise that these material interests in economic security could help build a popular movement for both decarbonization and economic rights to housing, energy, transport, and other needs. Yet, as I show in Chapter 5, the defeats of Green New Deal candidates like Jeremy Corbyn and Bernie Sanders remind us that such “interests” are not pre-given, but must be organized through durable working- class institutions like political parties, unions, and media infrastructure.

If the planet continues to burn, future historians will no doubt find our society puzzling: we clearly understood the gravity of climate change, but did nothing. Capital, and its associated ideologies, are blocking the changes needed. A clear barrier is simply an ideology of private property. As Andreas Malm observes, “capitalist property has the status of the ultimate sacred realm.”20 This respect for property legally allows private capitalists to continue to extract fossil fuel and sell it for a profit. As of this writing, governments still approve thousands of fossil fuel extractive projects all over the world.21 It is a great achievement of neoliberal ideology that policymakers today barely imagine the expropriation of fossil fuel property as a conceivable option despite the increasing severity of the crisis.22 While Marx referred to the capitalist class that expropriated the means of production from the working class, capitalists today have expropriated our means of survival, our planetary future;23 they have expropriated our atmosphere and turned it into their private dumping ground. They are attempting to expropriate our planetary future.”24

It is equally clear that the climate crisis requires a combination of public investment and central planning to rapidly phase out fossil fuels, but most governments remain committed to private capital and anarchic market competition delivering the energy transition. Such a commitment would have to challenge the private control over investment itself. One can find in history innumerable cases in which private capital refuses to invest in such long- term public investments because of time horizons (like the federal highway system) or lack of profitability (like rural electrification). The reason climate activists have seized on the historical examples of the New Deal and World War II is because these periods elevated public investment and central planning to central planks in a massive program of social restructuring. In Chapter 6, I show how a commitment to public ownership and planning— against the concerns of private property rights and profitability—must be at the core of building a new electricity system (something I call “socialism in one sector”). For example, it is clear a buildout of clean energy would require an entirely new grid based on many more transmission lines—yet private property rights and cost considerations inhibit such a buildout at every step.25 In 2021, the year the IEA announced that oil and gas companies must make zero new investments to meet climate goals, John Kerry, the Biden administration’s climate envoy, asserted, “No government is going to solve this problem ... the solutions are going to come from the private sector.”26 Treasury Secretary Janet Yellen struck a similar note in assessing the massive scale of “green investment” required, saying, “Private capital will need to fill most of that gap.”27 Many policy experts take these assertions as unchangeable facts and design elaborate workarounds that try to nudge private capital in the right direction. Yet all the evidence suggests that volatile markets—and associated booms and busts in clean energy sectors— are not producing the carefully coordinated energy transition that human survival requires.

Finally, the almost religious faith in a market-led transition ensures that all the criteria for clean energy production boil down to the narrow concerns of capital: cost and profitability. But every clean-energy option poses significant cost concerns in comparison to dirty alternatives. So as long as we let “costs” drive the energy system, fossil fuels will continue to win out.

You might have heard that renewable energy is now much cheaper than ever before.28 However, these cost estimates do not consider that solar and wind energy are intermittent and need backup. The cheapest backup is currently fossil-fuel power plants like natural gas. Geothermal renewable power could provide baseload backup, but it currently still costs too much.29 What about batteries? They only provide a few hours of backup at most. A viable renewable-powered grid requires something called “long-duration storage,” but most of those options are also too costly.30 Another option is nuclear power, but many market analysts also claim nuclear is “uncompetitive” with cheap natural gas and subsidized renewables.31

At a certain point, climate action requires a massive buildout of energy infrastructure that does not satisfy the “profit imperative”; it would mean production for the public good of a stable climate regardless of the cost. Once again, this requires challenging the private control over energy production itself.

**The alternative is to reject collective bargaining *rights* to increased market power. We should pursue worker *freedom* to build countervailing power against the marketplace.**

Matthew **DIMICK** Law @ Buffalo **’19** “Counterfeit Liberty” *Catalyst* 3 (1) https://catalyst-journal.com/2019/07/counterfeit-liberty

Labor Law and Union Strategy

I have argued that the regulation of labor relations need not always assume the form of law, and that in fact it does not always assume the extreme form of legalism that we find in the United States. I have also demonstrated the contradictory nature of rights in the regulation of labor relations. What kind of labor legal strategy emerges from this analysis?

The introduction drew the distinction between rights and freedoms.68 Rights are those interests or actions that are protected by the coercive power of the state. Freedoms on the other hand are those interests or actions that are not prohibited by the state, but also with which others may interfere; freedoms are neither legally protected nor prohibited. My contention is that the labor movement should advance labor freedoms and be wary about labor rights.

This contention follows from the previous analysis. Since rights are distinguished by the fact that they are protected by the coercive power of the state, bureaucrats, judges, and legislators can use that fact to restrict labor’s own means and powers to enforce these interests and claims, subordinating society to the state. Indeed, as I have shown, state officials, with interests and power of their own, are likely to view labor’s competing power as legally redundant and particularly subversive. Labor freedoms restrict the coercive power of the state in a way that gives priority to labor’s autonomous sources of power, subordinating the state to society.

Advancing labor freedoms is hardly an unambitious strategy, since direct prohibitions on concerted activities are abundant. The three most restrictive prohibitions on strike activity are those directed to (1) mass picketing,69 (2) organizing and bargaining strikes,70 and (3) secondary strikes and boycotts.71 Each is an affirmative ban on worker collective action, by which an employer may have the actions enjoined and the union fined. As such, they are restraints on workers’ freedom of action. The first ban has done the most to destroy the power of the strike and, as discussed below, to open the door to the employer’s use of replacement workers. The second has done the most to squelch coordinated worker activity across firms and industries. As identified earlier, the third has done the most to derail and suppress organic worker self-organization. These restrictions could be eliminated through various means. Congress could amend the National Labor Relations Act, and remove the offending provisions. Some labor law scholars have argued that these provisions violate the First Amendment and therefore should be declared unconstitutional. The labor movement should entertain all options, but I have little doubt that massive civil disobedience though direct worker confrontation with these legal barriers will also be necessary to discredit and overcome them.

If such labor freedoms were achieved, employers would be under no state-imposed duty to refrain from interfering with workers engaged in such activities. Workers could be terminated for engaging in mass picketing, organizing strikes, or secondary picketing. Freedoms may therefore strike some readers as insufficient. Yet, it has been the burden of this essay’s comparative, historical, and legal analysis to demonstrate the self-defeating sociological effects of labor rights. Nevertheless, there is truth to the claim that certain, fundamental labor rights remain essential. Thus, insofar as it facilities worker solidarity and collective action, there seems little reason to eschew, for example, a worker’s right to join a union. Even more fundamentally, the rights of workers to be free from the employer’s physical assaults or from the state’s interference with speech and expression are also necessary. The distinction between rights and freedoms is no talisman. Rather, the ultimate objective must be kept in mind: the collective self-organization of the working class.72

To convince the reader that this proposal is not merely wishful thinking, we should recall the self-regulation models of Scandinavia. In Denmark and Sweden, the regulation of labor relations — including such fundamental matters as union recognition and minimum wages — falls within the purview of unions and organized employer associations. Strikes that are banned in the United States remain viable options in Scandinavia. Enforcement of the rules and agreements depends primarily (though not exclusively) on the economic weapons of labor and employers, rather than the physical compulsion administered by the state. Labor courts, unlike the NLRB, operate outside the hierarchy of the bureaucracy and courts of the state apparatus.

While the Scandinavian experience demonstrates the viability of a regime of labor freedoms, one may also raise the objection of Nordic exceptionalism. There are several responses to this objection. In the main, however, my proposal does not call for a wholesale replication of the Nordic model. In fact, that model ultimately demonstrates the inherent limitations of social democracy. Instead, the self-regulation model establishes the viability of governing the labor market through workers’ own organizations, autonomous from the state. This experience will be absolutely vital, whatever specific path the revitalization of labor takes — and not only for rebuilding the labor movement, but also during a period of a “lower-stage of communism,” where labor is still compensated according to differential ability, but becomes increasingly independent of the competitive labor market and market criteria. There is no reason why we cannot learn, replicate, or even build on particular features of this history.

This proposal to favor labor freedoms over labor rights also implies some skepticism toward other proposals for labor law reform. Richard D. Kahlenberg and Moshe Marvit double-down on a labor-rights strategy in their Why Labor Organizing Should Be a Civil Right.73 James Gray Pope, Ed Bruno, and Peter Kellman have also advanced a rights-centered proposal in the Boston Review.74 Alex Gourevitch has recently made a compelling case specifically for the “right to strike.”75 My concerns with each of these proposals should be clear by now.

Focusing on Gourevitch’s proposal is instructive. In order to restore the power of the strike, his proposal would prohibit an employer from hiring permanent replacement workers during a strike. Above, I raised some hesitations about this idea. But there is another solution to the problem of permanent replacements, one that depends directly on worker solidarity and of which labor once made extensive use. Although the Supreme Court announced the rule allowing permanent replacements in 1938, in NLRB v. Mackay Radio & Telegraph Co., employers initially made little use of it. The reason was that in the period of labor upsurge in the 1930s and 1940s, mass picket lines effectively deterred the hiring of temporary, let alone permanent, replacement workers. These actions contributed to an “unofficial norm” that prevented employers from hiring replacement workers, although the official law permitted them to do so.76 Therefore, from the standpoint of labor freedoms, the real problem with permanent replacements is the decline in the unofficial norm that prevented the police from interfering with picket lines and dissuaded employers from hiring strikebreakers. And on this score the prohibition and erosion of workers’ freedom to engage in mass picketing — the activities that established the unofficial norm in the first place — were paramount.77 The legal solution to labor’s problems should then be directed to rolling back the prohibition on mass picketing, rather than to the creation of a right to reinstatement immediately after a strike.

Finally, my proposal should be distinguished from a kind of myopic syndicalism that can be found on the radical labor left. On the one hand, this essay shares much in common with the syndicalist approach, particularly on the need to reengage mass worker collective action. There is, however, a key difference between self-regulated and unregulated labor relations. This essay’s proposal falls into the former category, syndicalism into the latter. Syndicalism’s view eschews any restriction on concerted activity — even in cases where unions voluntarily agree not to strike during the term of the collective agreement.

Another important difference is that syndicalism frequently overlooks the organizational dimensions of union power, both ignoring the decentralization and lack of coordinating capacity that, as I have argued, are serious problems for labor in the US, and chaffing against union and bargaining centralization found in places like Sweden.78 In terms of actually accomplishing gains for workers, however, it is hard to ignore the Nordic experience. At the same time, the glaring shortcomings of the militancy-above-all-else syndicalism in France and the workplace-centered, decentralized bargaining in the US are all too real. From my perspective the organizational question is at least as important one as the legal question, but lack of space requires me to defer this topic for later discussion.

A final point of distinction to make is that my perspective hinges on the specific historical conjuncture. Currently, in the United States, a working class barely exists — in the class-for-itself sense. We are in a war of position, which requires that we develop a long-term strategy to build the strongest, most cohesive working class possible. That is, we need to build labor unions’ capacity for autonomous, class-wide action. If a war of maneuver emerges at some future point, perhaps a primary emphasis on militancy will be required. The kind of political movement and organization that unions are allied with in these circumstances, rather than unions’ specific organizational form, will then become the most decisive issue. But until then, our project should be a counter-hegemonic one.

Conclusion

This essay has sought to demonstrate three distinct points. First, the institutional history of unions in the US is unique. In particular, the timing of unions’ development within capitalism and their lack of coordinating capacity set them apart from unions on the Continent and in Northern Europe. Second, the organizational weakness of unions is an important factor explaining why the regulation of labor relations in the US assumed such a highly statist and legal form. Third, this legalistic regime of regulation has been inimical to the labor movement. Judges, bureaucrats, and legislators have often cited statutorily conferred rights as reasons for restricting workers’ concerted activities. Just as damaging, these same, negative effects of labor rights have been obscured by critics who have focused on the content of labor law rather than the legal form itself. As a strategy to overcome this history, I offer the legal right/freedom distinction as an organizing principle that can guide the labor movement’s attitude toward the law. It should not serve as an inviolable distinction, much less one that assumes an independent life of its own. Nevertheless, it is, I submit, a compelling way to capture Marx’s idea of law and politics: the idea of converting the state from an organization superimposed on society, to one subordinate to it, an objective inseparable from building a socialist society. Echoing this sentiment are the words penned by Christopher Tomlins at the end of his book, The State and the Unions: “[A] counterfeit liberty is the most that American workers and their organizations have been able to gain through the state. Its reality they must create for themselves.”

### 1NC – T – Trumping Power

#### The strength of a right refers to withstanding competing considerations. That’s distinct from the scope of a right.

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In constitutional and human rights theory and practice, rights have two components.139 One is the scope of a right: the specific protections falling within the reach of the right.140 The other is the strength of a right: the right’s ‘power to withstand opposing considerations’, described also as the ‘core’ of the right.141 Örücü argues that positivisation of human rights is assisted greatly by identifying a right’s ‘inviolable and indefeasible content’.142 For a legislative process, Örücü says an identified core serves to check the tendencies of legislatures to confine rights, and to create extra awareness of the role and significance of a right among citizens, courts, scholars and those exercising public power.143

#### That means topical affs must make existing labor rights more absolute---expanding the scope of labor rights is not topical.

Jacob **Weinrib 23**, Associate Professor at Queen's University, "The Essence of Rights and the Limits of Proportionality," The Promise of Legality: Critical Reflections upon the Work of TRS Allan (eds, Geneviève Cartier and Mark Walters), SSRN

I. The Bifurcated Model

Constitutional rights have two structural features, scope and strength. The scope of a right consists in the particular protections that fall within its reach. The strength of a right consists in its power to withstand opposing considerations. My aim in this chapter is to formulate an account of the strength of constitutional rights.

In debates about the strength of rights, constitutional theory and practice have become disconnected. As a matter of constitutional practice, in recent decades a bifurcated model of the strength of constitutional rights has assumed increasing prominence. The model divides the scope of a right into a core (or an essence) and a periphery.2 [FOOTNOTE 2 BEGINS] 2 In a pathbreaking article on the essence of rights, Esin Örücü outlines the structure in terms of a core, circumjacence, and an outer edge, before adding that the core is “that part of a right which is essential to its definition.” See Örücü, “The Core of Rights and Freedoms: The Limits of Limits” in Tom Campbell, ed, Human Rights: From Rhetoric to Reality (New York: Blackwell, 1986) 37 at 38. I accept this structure, but to avoid cumbersome and archaic formulations, I will simply refer to the core (or essence) and the periphery that lies beyond it. [FOOTNOTE 2 ENDS] The core possesses absolute strength and is therefore not susceptible to limitations. In contrast, the periphery is subject to limitations that satisfy the doctrine of proportionality.3 [FOOTNOTE 3 BEGINS] 3 According to a prominent formulation of the doctrine, when government seeks to justify the limitation of a constitutional right, it must demonstrate that the limitation pursues an appropriate objective, that it employs means that are rationally connected to this objective and minimally impairing of the right, and, finally, that the extent to which the objective is furthered justifies the extent of the right’s restriction. [FOOTNOTE 3 ENDS] In some jurisdictions, these commitments appear explicitly in constitutional texts4 and human rights instruments. 5 In others, these commitments emerge through interpretation.6 This bifurcated model of the strength of rights is presented in Figure 1.

Each of the leading models of constitutional rights rejects the bifurcated model. What I will call the absolutist model conceives of rights as unlimited in strength but limited in scope.7 When the scope of an absolute right is appropriately specified, it binds without exception. Accordingly, any restriction to any absolute right is necessarily unjustified. In this way, absolute rights maintain a categorical distinction between permissible and impermissible state actions and omissions. What I will call the relativist model reverses this structure.8 Relative rights are unlimited in scope but limited in strength. Persons have a relative right to engage in any conceivable form of conduct. Because this right inevitably conflicts with other rights and interests, this right is subject to justified limitations, as determined by the doctrine of proportionality. Each of these models offers a non-bifurcated account of the strength of rights: the entire scope of an absolute right is immune from incursion; the entire scope of a relative right might be balanced away.

These non-bifurcated models have received extensive exploration by legal, political, and constitutional theorists. In contrast, the bifurcated model has been the preserve of constitutional lawyers and judges elaborating legal doctrine, disconnected from an explicit overarching theoretical framework. Trevor Allan’s innovative and illuminating engagements in the world of constitutional theory form an important exception to this trend.

In discussing the strength of rights, Allan distances himself from both the absolutist and relativist models. On the one hand, he rejects the absolutist tradition by claiming that the subjection of rights to proportional limits is integral to constitutional justice:

Because justice consists in the correct regulation of affairs or resolution of disputes, according to the moral principles applicable, it invokes the notion of proportionality: there must be an appropriate weighting of relevant principles to reflect their proper balance in all the circumstances. Principles of justice are always dependent on context in the sense that what they permit or require must be determined by analysis of all the relevant facts… Restrictions of individual rights must be proportionate to the aims and benefits envisaged.9

On the other, Allan rejects the relativist model by maintaining that each right has an “irreducible core” that may never be breached regardless of the benefits to be attained or the burdens to be avoided.10 Referring to the right to procedural fairness, he explains that a limitation of a right’s periphery might be justified or unjustified, but a limitation of a right’s core is unjustifiable:

[P]owerful considerations of public interest may properly qualify the procedural rights that would otherwise apply: reasons of national security, in particular, may justify restrictions on the disclosure of evidence or relevant sources. But such limitations or qualifications must not be so extensive as wholly to undermine procedural rights, making a trial or hearing unfair…Like other fundamental rights, procedural fairness has a conceptual core that cannot properly be ignored or overridden.11

For Allan, the limitations to which procedural fairness and other rights are subject must cease wherever the core of the right begins. As he puts the point: “No matter how important the countervailing interests,” the essence of rights “must be preserved.”12

Allan’s pioneering account of the strength of rights joins what the leading theories sever: a commitment to the absolute strength of rights and to the idea of justified limitations, as determined through doctrine of proportionality. Within Allan’s bifurcated account, these ideas can be combined because each takes a different object. The idea that rights possess absolute strength applies solely to the core of a right, while the idea that rights are subject to proportional limits applies solely to the periphery.

In a recent article, Koen Lenaerts, the President of the Court of Justice of the European Union (CJEU), makes the following methodological remark about the bifurcated model:

[T]he case law of the CJEU reflects the fact that that court will first examine whether the measure in question respects the essence of the fundamental rights at stake and will only carry out a proportionality assessment if the answer to that first question is in the affirmative. The application of that method of analysis is not simply empty formalism, but rather seeks to emphasize the point that the essence of a fundamental right is absolute and not subject to balancing. 13

In this passage, Lenaerts identifies two methodological pillars on which the bifurcated model rests. The first is that one can determine whether a measure has respected the essence of a right without engaging in balancing. The second is that when a measure breaches the essence of a right, proportionality justification is precluded. Each pillar has attracted extensive criticism.

The claim that the bifurcated model offers a method of identifying the essence of a right without engaging in balancing is attacked on both doctrinal and theoretical grounds. 14 As a doctrinal matter, critics of the bifurcated model observe that the case law surrounding the essence of rights is “rife with ambiguities and inconsistencies”15 and fails to disclose “a consistent methodology.”16 As a theoretical matter, critics claim that the bifurcated model is doomed from the outset: “The problem with the ‘very essence’ is that it is almost impossible to define usefully without reference to competing public interests” that might override the right in a particular setting.17 But if the essence cannot be determined without considering the reasons that oppose constitutional protection in a given context, then the “final untouchable areas of a right” will depend upon the balance of reasons that support and oppose constitutional protection.18 With this, critics conclude that the bifurcated model short-circuits by relying on balancing, the very method that the model repudiates.

The second methodological challenge concerns the status of the doctrine of proportionality within the bifurcated model. As we have seen, the bifurcated model claims that when the essence of a right is breached, justification is impossible and the doctrine of proportionality is inapplicable. Relativist critics of the bifurcated model regard these claims as baseless. Even when a right is restricted in its entirety, it remains possible that the breach will be justified because the reasons that oppose the right might outweigh the reasons that support it. Accordingly, critics claim that where a right is restricted, the restriction might be justified or unjustified depending on the interplay of the reasons apposite to that context. But there is no basis, critics conclude, for the bifurcated model’s claim that the restriction of the essence of any right is unjustifiable as such. 19

My overarching aim in this chapter is to continue Allan’s project of elaborating the bifurcated model by confronting the methodical challenges that surround it. If one proceeds on the assumption that a general balancing of interests represents the exclusive method of justifying claims about rights, then these methodological challenges will seem irresolvable. However, this assumption need not be accepted. Our constitutional practices present doctrines concerning the scope and strength of rights that both form an alternative to a general balancing of interests and illuminate the inner workings of the bifurcated model. These doctrines explain how the methodological challenges surrounding the bifurcated model can be overcome.

I proceed as follows. Part II explores the diverging structures of the non-bifurcated models of rights and shows that each converges on the idea that balancing is the method of identifying the essence of rights. Parts III shows how purposive interpretation offers resources for identifying the essence of rights without engaging in balancing. Part IV explains why justification is impossible when the essence of a right is breached, by articulating the distinctive conception of proportionality on which the bifurcated model relies. Part V concludes that the key to elucidating the bifurcated model lies in identifying and elaborating the distinctive doctrines that animate it.

II. The Non-Bifurcated Models

Debates between the absolutist and relativist models of rights are often staged as though relativists support and absolutists oppose the idea that rights hang in the balance. This is not the case. Here, I contrast the structure of each model, locate their fundamental dispute, and explain why both models are ultimately committed to the idea that every judgment about what constitutional rights demand ultimately depends on balancing.

The absolutist and relativist models mirror the other’s structure. Absolute rights are indefeasible in strength but narrow in scope, while relative rights are boundless in scope but defeasible in strength. Table 1 contrasts the structure of these models.

Table 1

Models of Constitutional Rights

Each of these models draws our attention to different justificatory projects.

From the standpoint of the relativist model, what stands in need of justification are claims about the strength of rights rather than their scope. Since the 18th century, relativists have claimed that, as a matter of the scope of rights, persons have a “right to everything indiscriminately.”20 Contemporary proponents of rights relativism embrace the radical ramifications of this idea by claiming that wherever a constitution protects liberty or autonomy, persons possess a prima facie right to engage in any conceivable form of conduct, including theft and even murder.21 This claim about the scope of rights has ramifications for their strength: “rights do not have a special importance, and precisely because of the lack of special importance they do not have special normative force.”22 Because relative rights encompass conduct that is virtuous, vacuous, and even vicious, such rights enjoy no necessary primacy over opposing claims. 23 From this standpoint, the justificatory task that rights present involves determining their strength, that is, their capacity to withstand whatever reasons oppose constitutional protection in a given context.

In contrast, the absolutist model insists that if we are to retain the simple idea that constitutional rights distinguish between permissible and prohibited conduct, then the relativist understanding of rights must be inverted. Constitutional rights must be regarded not as prima facie claims that are forfeited whenever the opposing reasons are sufficiently weighty, but as categorical claims. Once rights are conceived of as prevailing over any opposing consideration, the protections that rights afford must be confined to specific claims of overriding importance.24 Absolute rights are “specific high-priority requirements, and thus though their force is great, their scope is narrow.”25

What divides the leading models of constitutional rights is the question of what it is about rights that stands in need of moral justification. Absolutists insist that it is their scope, while relativists maintain that it is their strength. However, when it comes to the method of identifying what rights demand, each of these models endorses balancing.

Absolutists often attack their relativist counterparts for being unable to accommodate the idea that rights have a “core content that cannot be compromised under any circumstances.”26 Once constitutional rights are subject to balancing, “[a]nything which the Constitution says cannot be done can be done if…the interests thereby served outweighed those which were sacrificed.”27 Because relative rights occupy a constitutional world devoid of categorical constraints, even the right not to be tortured or enslaved may, in principle, be set aside in contexts where the benefits obtained (or the burdens avoided) are sufficiently weighty. Thus, absolutists conclude that wherever the relative model prevails, “everything, even those aspects of our life most closely associated with our status as free and equal, is, in principle, up for grabs.”28

Defenders of relative rights respond to this charge in two ways. The first seeks to accommodate the objection by stipulating that certain constitutional rights – for example, those that protect persons from torture and enslavement – are exempt from balancing.29 I will set this response aside as it stands in tension with relativism’s organizing idea: “Constitutional judgments are only correct if they correspond to the outcome of an appropriate balancing of principles.”30 The second response follows this idea to its conclusion: “There is no such thing as an absolute principle.”31 From this standpoint, even the prohibition of torture “is only an apparently categorical claim,” true in most circumstances but susceptible to being “outweighed.”32

When proponents of rights relativism encounter constitutional provisions that proclaim that the core or the essential content of a constitutional right may not be restricted, they maintain that balancing is the method of identifying the essence of a right. Consider, for example, article 19(2) of Germany’s Basic Law, which imposes a limit on the restrictions to which rights may be subject: “In no case may the essence of a basic right be affected.”33 Robert Alexy, the leading theorist of the relativist model, interprets this provision as follows:

[T]he essential core is what is left over after the balancing test has been carried out. Limitations which correspond to the principle of proportionality do not infringe the essential core, even if they leave nothing left of the constitutional right in an individual case. This reduces the guarantee of an essential core to the principle of proportionality. Since this applies anyways, this would mean that article 19(2) Basic Law simply has declaratory effect.34

When confronted by a provision that prohibits restricting the essence of any right, relativists explain that the essence of the right is what (if anything) survives balancing in a given context. Since balancing determines the extent to which rights may be restricted, rights are susceptible to being balanced away in their entirety.35 From this standpoint, a constitutional prohibition against restricting the essence of a right has no impact on the constitution’s meaning.36

When absolutists repudiate relativism for placing categorical rights in the balance, relativists respond that absolutism does not know itself. Absolutists insist that a right is “designated only after the final interaction of all of the reasons bearing upon the justifiability of a given action.”37 Once this designation occurs, whatever falls within the scope of the right is essential to it, conclusive in strength, and exempt from balancing. Relativists object that the absolutist opposition to balancing is more apparent than real: wherever the reasons bearing upon the justifiability of a given action divide into supporting and opposing reasons, there is no alternative to assessing the weight of the competing reasons, and that is what balancing is. Even if absolute rights cannot be balanced away, the scope of each right is nevertheless “the outcome of an underlying balancing approach.”38 Far from offering an alternative to balancing, absolutism merely resists applying the label rights until after the task of balancing all of the reasons bearing upon the justifiability of a given act has concluded.

Ultimately, rights relativists and absolutists conceive of claims about the essence of rights as dependent on balancing. Relative rights are the inputs of balancing, and whatever aspect of a right is not balanced away in a given context constitutes its essence. Absolute rights are the outputs of balancing, and what is essential to the right is whatever the balance assigns to its scope.39 Thus, each of these opposing models converges on the same conclusion: balancing is the method for identifying the essence of a right. If this conclusion is inescapable, then the bifurcated model finds itself in the hopeless position both of requiring the essence of a right to be identified and of repudiating the only method for identifying it.

III. Identifying the Essence

However, as I will now argue, there is a familiar constitutional doctrine that enables the essence of a right to be identified without engaging in balancing. What then is that method?

Proponents of the bifurcated model usually shy away from this question. On those rare occasions where an answer is advanced, the magnetic pull of balancing proves overwhelming. In a recent article, Takis Tridimas and Giulia Gentile embrace the bifurcated model and reject rights relativism when they write: “Respect for essence is … best understood as an autonomous condition that must be satisfied separately from the requirement of proportionality.”40 However, when turning to the question of how the essence of a right is to be identified, the authors state: “Although the concept of essence as a legal threshold must be understood as an autonomous limit, in effect, it is impossible to determine it without engaging in a balancing process which is best carried out through a proportionality analysis.”41 With this, the authors’ allegiance to the bifurcated model collapses into a hardboiled relativism.

When lawyers and judges claim that the essence of a right has been breached, they set aside the language of infringement or limitation and speak of the right being abolished,42 destroyed,43 extinguished,44 emptied of its contents,45 or having its very existence called into question.46 What unites these formulations is the idea that the essence of a right is breached by public acts and omissions that treat the purpose of the right as a nullity and public power as plenary with respect to it. In what follows, I explain how purposive interpretation determines the essence of a constitutional right without engaging in balancing.

Purposive interpretation is a method of determining the scope of a constitutional right. This doctrine integrates a series of ideas.47 First, a charter of rights is a system of standards (or what we might call purposes) that regulate the relationship between public authorities and the free persons subject to their governance. Second, purposive interpretation is interpretive insofar as its task is not to determine which provisions in a charter of rights are to be given effect, but to explain how each provision can be given effect. Accordingly, when imputing purposes to provisions, purposive interpretation eschews purposes that render particular provisions inert or duplicative of others and instead seeks to formulate an interlocking set of general and particular purposes that make sense of a charter of rights in whole and part. Because different constellations of purposes may inform different charters of rights, both the scope of rights and the boundary delineating the core and the periphery of rights may vary from one jurisdiction to the next. Third, the purpose of each right must be fulfilled by public authorities in the context of a constantly changing world. Thus, the “social reality” to which a provision applies “becomes an integral part of interpretation.”48 Fourth, a right is fulfilled when the acts and omissions of public authorities conform to what the relevant purpose demands in a given context. In contrast, a right is breached to the extent that public acts or omissions deviate from what that purpose demands. So conceived, purposive interpretation identifies the purposes that animate a charter of rights and requires the legal order to live up to them.

A right might be breached in two ways. The first limits some aspect of the right’s purpose. The second negates that purpose and thereby compromises the right’s essence. An illustration of the distinction between a limitation and a negation arises in Schrems v Data Commissioner with respect to the rights to private life and to access effective judicial protection. 49

Schrems is the first case in which the CJEU declared a measure invalid because it compromised the essence of rights held under the Charter of Fundamental Rights of the European Union (the EU Charter). The case concerned the transfer of personal data of Facebook users in Europe to the United States where the company’s servers are located. The European Union’s General Data Protection Regulation authorizes the transfer of data to third countries that ensure an adequate level of data protection.50 In its Safe Harbour Decision, the European Union determined that the United States provided adequate protection, and authorized companies to store the personal data of Europeans in the United States.51 In the aftermath of Edward Snowden’s disclosures regarding the access that public authorities in the United States had to personal data transferred from Europe, an Austrian national challenged the Safe Harbour Decision.52 In Schrems, the CJEU interpreted the General Data Protection Regulation as requiring third countries to provide “a level of protection of fundamental rights essentially equivalent to that guaranteed in the EU legal order.”53 On this basis, the CJEU declared the Safe Harbour Decision invalid because the Commission failed to ensure that the United States offered equivalent protection. More specifically, the decision breached the essence of two rights held under the EU Charter.

First, the decision breached the essence of the right to private life. Schrems was handed down a few months after Digital Rights Ireland, in which the CJEU held that the retention of metadata54 constituted a “particularly serious interference” with the right to private life,55 but did not breach that right’s essence because “the content of the electronic communications” remained private.56 In Schrems, the Safe Harbour Decision enabled public authorities in the United States, such as the National Security Agency, to access both metadata and the content of all personal data transferred from the European Union to the United States.57 As the CJEU noted, the Safe Harbour Decision “does not contain any finding regarding the existence, in the United States, of rules adopted by the State intended to limit any interference with the fundamental rights of the persons whose data is transferred from the European Union to the United States.”58 Because the subjection of the content of personal communications to unrestricted surveillance by public authorities treats the right to private life as a nullity – an empty claim imposing no constraint on the exercise of public authority – the decision breached the essence of the right.59

Second, the CJEU held that the essence of the right to effective judicial protection was breached because domestic legislation in the United States failed to provide individuals with an “administrative or judicial means” of pursuing “legal remedies in order to have access to personal data … or to obtain the rectification or erasure of such data.”60 Accordingly, the right of individuals to seek a remedy to protect their rights was treated as non-existent because persons were left without any mode of legal recourse to constrain the use of their personal data.61

As these examples show, the essence is breached in contexts where the purpose of the right is not limited but denied. This idea extends in two directions. First, where the purpose of the right requires public authorities to exercise restraint, the essence of the right is breached where a public authority acknowledges no limit on its power to interfere with that purpose. The prospect of an unrestricted invasion of privacy in Schrems illustrates this possibility. Second, where the purpose of the right demands state action, the essence of the right is breached where the public authority fails to act to create the conditions of the right’s protection. In Schrems, the absence of any mode of legal recourse negates the right to effective judicial protection. Similarly, the European Court of Human Rights has held that the essence of the right to vote is “completely denied” in contexts where a state creates no mechanism for its exercise.62

Of course, the distinction between limits and denials will not always be easy to draw. The structure of constitutional adjudication addresses this ambiguity by placing the onus on the party seeking to establish the breach of a constitutional right. In cases where the claimant fails to establish that the breach compromises the essence of a right, justification remains possible. Whether it is actual depends upon considerations of proportionality.

Purposive interpretation is not a form of balancing. Balancing seeks to resolve conflicts between competing principles by considering the intensity of the interference to one principle, the importance of satisfying a competing principle, and, finally, whether the “importance of satisfying the competing principle justifies the detriment to, or nonsatisfaction of the first.”63 Purposive interpretation is not a form of balancing because it does not apply to competing principles. As we have seen, purposive interpretation concerns the relationship between the purpose of a right and the context in which public authorities must give effect to it. Purpose and context are not principles that compete against one another. Rather, context must conform to purpose. From the standpoint of purposive interpretation, the opposite idea – that there is some context to which the purpose of rights must conform – is inadmissible because it would render rights powerless to protect persons from the various social realities to which they apply, including historical traditions, societal consensus, and policy preferences. Because determinations about whether (and the extent to which) context conforms to purpose does not involve competing principles, purposive interpretation is not a form of balancing.

One might object that the bifurcated model is incapable of accommodating nonderogable rights, such as the right not to be tortured or enslaved. Because these rights may not be restricted under any circumstances, they resist the distinction between a core that is immune from restriction and a periphery that may be restricted in accordance with the doctrine of proportionality. In the terminology of the birfurcated model, a non-derogable right has a core but no periphery. And so, it would seem, non-derogable rights cannot be reconciled with the bifurcated model. My response to this objection hinges on an earlier claim: purposive interpretation presumes that a charter of rights is an interlocking set of general and particular standards that regulate the acts and omissions of public authorities. From this standpoint, the rights not to be tortured or enslaved are not stand-alone rights, but instead form the core of a standard embodied by a more general right. For example, torture violates the core of the broader right to security of the person, while enslavement violates the core of the broader right to liberty. These rights are derogable insofar as their peripheries remain subject to justified limitations. However, the cores of these rights are non-derogable insofar as their breach cannot be justified. In this way, the bifurcated model subsumes the distinction between derogable and non-derogable rights.

The bifurcated model offers a distinctive answer to the question: What exceptionless rights do we have? Relativists answer that because the strength of every right is determined through balancing, there are no exceptionless rights. In contrast, absolutists answer that because what is susceptible to restriction is not a right, there are only “a small number of rights,” such as “the right not to be tortured, not to be subject to cruel and unusual punishment, and not to be held in slavery or servitude.”64 All other supposed rights are subject to the vicissitudes of the political process. The bifurcated model departs from each of these approaches by maintaining that the core of every right imposes an unconditional obligation, including the right to privacy, the right to effective judicial protection, the right to vote, and – as Allan reminds us – the right to procedural fairness.65

IV. Why the Essence is Absolute

The bifurcated model claims that when the essence of a right is breached, the breach is not unjustified but unjustifiable. I will now explain why the bifurcated model is entitled to the claim that derogation from the essence of the right is unjustifiable.

Relativist critics of the bifurcated model insist that “[t]he conviction that there must be rights which even in the most extreme circumstances are not outweighed … cannot be maintained as a matter of constitutional law.”66 Relativists buttress this conclusion with a series of familiar ideas: rights are reasons that support constitutional protection; limits are reasons that oppose constitutional protection; and balancing is the appropriate method of determining the relative moral weight of these reasons in a given context.67 If the strength that constitutional rights possess is determined by balancing, then it follows that every claim of right is subject to balancing, that rights may be balanced against any consideration that opposes them, and that rights are susceptible to being outweighed in part and whole.

To be sure, the relativist claim is that rights always hang in the balance, not that rights will always be balanced away. Within the relativist model, the more a right is restricted, the stronger the countervailing reason must be if that restriction is to be justified. Accordingly, as the severity of a restriction increases, the likelihood of its justification diminishes.68 What relativists resist is the further claim that certain restrictions on rights are not merely unlikely to be justified but unjustifiable as such. From the relativist standpoint, this further claim cannot be maintained because it conflates improbability with impossibility. From the relativist standpoint, the bifurcated model rests on a simple error.

This objection takes the form of a conditional: if the bifurcated model relies on the relativist account of justification, then the bifurcated model would not get off the ground. However, if the bifurcated model had something of its own to say about why it is that justification is impossible when the essence of a right is breached, then it is the objection that would not get off the ground. After all, the objection does not show that the bifurcated model cannot succeed on its own terms. The objection simply observes that the bifurcated model is committed to a conclusion that does not follow from relativist premises.

In claiming that there is no justification for breaching the essence of a right, the bifurcated model relies on its own distinctive understanding of what justification means in the realm of constitutional rights.69 This understanding proceeds from the organizing idea that constitutional rights, by virtue of their status as supreme law, enjoy categorical priority over any legal norm that lacks the same pre-eminence. This idea has ramifications for both the scope and strength of constitutional rights. With respect to the scope of rights, the bifurcated model resists the relativist idea that the function of constitutional rights is to “put every conceivable form of conduct under their special protection.”70 Instead, a charter of rights articulates a set of purposes integral to the relations of free and equal persons, elevates these purposes to the rank of supreme law, and looks to these purposes to distinguish what the constitution protects from what “is left to the rules and remedies of ordinary law.”71 With respect to the strength of rights, the bifurcated model rejects the relativist idea that rights enjoy no priority over sub-constitutional considerations of policy, preference, expediency, and tradition. 72 Instead, the bifurcated model preserves the priority of rights by maintaining that a right may be limited only to provide “equivalent protection to the rights and freedoms of others, or for the protection of other legal interests which are essential if man is to continue to enjoy his rights and freedoms.”73 In this way, the bifurcated model resists the twin tendencies of rights relativism to reduce all rights into interests and to elevate all government interests to the rank of rights.74

The bifurcated model’s commitment to the priority of rights generates a distinctive account of the final proportionality substage.75 This substage presupposes a series of prior determinations: that one member of the system of rights has been breached, that the breach furthers the fulfillment of the purpose of another member of that system (appropriate objective and rational connection), and that there is no means of fulfilling the purpose of each member of the system of rights undiminished (minimal impairment). At issue in the final proportionality substage is the question of how conflicts between members of the system of rights are to be resolved where the constitution presents each member as possessing “equal validity and rank” and offers “no specific limitations clauses” for resolving conflicts that might arise between them.76

These conflicts may not be resolved by appealing to the familiar idea that rights are trumps. This idea is decisive when a constitutional right is confronted by a sub-constitutional consideration, but the idea offers no resources for resolving conflicts in which opposing claims issue from the normative apex of law’s hierarchy. Nor may these conflicts be resolved by “postulating an abstract hierarchy” in which one member of the system of rights, say, freedom of expression, is always prioritized over another, say, the right to a fair trial.77 As an interpretive matter, this approach is precluded wherever the constitutional text presents particular rights not as standing in relations of superior and inferior, but as making an equally valid claim to “effective implementation.”78

Where conflicts arise between members of the system of rights, the task “is not to determine which one prevails but to find a solution which leaves the greatest possible effect to both of them (Pracktische Konkordanz).”79 Accordingly, where each member of the system of rights issues an equally valid claim to fulfillment, conflicts may not be resolved by negating one member of the system in order to advance another. The sacrifice of any member of the system of rights is unjustifiable because it violates the idea that animates the final proportionality substage, namely, that each member of the system of rights makes an equally valid claim to implementation. Thus, when the essence of a right is breached, it is not the case that, given the severity of the interference, an adequate justification remains possible but is unlikely to materialize. Rather, justification is impossible because the nullification of a member of the system of rights can neither be justified by appealing to a sub-constitutional consideration nor to another member of the system of rights. In the former case, justification is precluded by the priority of each member of the system of rights over any subconstitutional legal norm. In the latter, justification is precluded because if each member of the system of rights makes an equally valid claim to fulfillment, no member can justify another’s nullification. Thus, where the essence of a right is breached, the final proportionality substage necessarily remains unsatisfied because there is no kind of consideration capable of justifying the breach.

In our collective constitutional terminology and imagination, the metaphor of balancing has become enmeshed with the final proportionality substage. From the standpoint of the bifurcated model, this metaphor is misleading because it denies the priority of the system of rights by subjecting each of its members to a general balancing of interests, in which rights may be restricted by any sub-constitutional consideration, whether political or economic, social or cultural.80 Further, the metaphor suggests that rights may be balanced away in their entirety whenever the benefits to be achieved or the burdens to be avoided possess sufficient magnitude. The relativist model embraces both of these ideas. The bifurcated model rejects both, but for its own distinctive reasons. On the one hand, the priority of rights precludes restricting any right to advance any consideration that does not sound in a constitutional register. Each member of the system of rights possesses absolute strength against any sub-constitutional consideration. On the other, where the members of the system of rights possess an equal claim to fulfilment, no member may be nullified to advance another. Instead, members of the system of rights may be restricted at their periphery to ensure that no member is breached at its core.

V. Conclusion

Allan’s immense contributions to the world of constitutional theory include his articulation of the bifurcated model of constitutional rights. This model leads a double life. As a matter of constitutional practice, judges and lawyers in jurisdictions around the world appeal to the model to conceptualize the strength of rights. As a matter of constitutional theory, however, the model has come in for a rough ride. Critics claim that the model is defective both because it offers no method of identifying the essence of a right and because it provides no basis for its claim that when the essence of a right is breached, justification is impossible. This chapter argues that the key to overcoming these methodological challenges lies in appreciating the distinctive doctrines on which the model relies. On the one hand, purposive interpretation identifies the essence of a right with its purpose. Any public act or omission that treats the purpose of a right as a nullity breaches its essence. On the other, there is a conception of proportionality that explains why justification is impossible when the essence of a right is breached. Where each member of the system of rights makes an equally valid claim to implementation, no member may justify the nullification of any other. Uniting each of these doctrines is the shared idea that a constitutional right enjoys priority over any legal norm that lacks the same pre-eminence. These doctrines and the shared idea that animates them are, as Allan might say, “implicit in our existing constitutional arrangements.”81

#### Those rights are the ones historically protected by the NLRA.

Anne **Mayerson et al. 16**, Attorneys, "Amicus Curiae Brief for the Amalgamated Transit Union (ATU) in Support of Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment, and in Opposition to Plaintiffs' Motion for Summary Judgment," United States District Court Eastern District of California, Case No. 2:13-CV-02069-KJM-DAD, 04/05/2016, Lexis

When Congress enacted Section 13(c)(2) in 1964, it obviously did not draw the term “collective bargaining rights” out of thin air; rather, it had something specific in mind. And, considering the circumstances that led Congress to enact Section 13(c)(2) in 1964 to provide for the “continuation” of “collective bargaining rights”—viz., a trend towards public acquisitions of private sector transit companies whose employees and their unions would continue to be covered by and enjoy the protections of the National Labor Relations Act (“NLRA”) but for such public acquisitions—that something specific could only have been “collective bargaining rights” of the kind historically made available to private sector employees under the NLRA. See generally ATU v. Donovan, supra, 767 F.2d at 948-49. Accordingly, in its determinations on remand, the DOL was right to look to “[t]he prevailing [case] law” under the NLRA “when section 13(c) was enacted” in determining what Congress meant when it used the term “collective bargaining rights” in Section 13(c)(2). See SacRTD Determination, at 11-13.

#### Violation---the aff protects (conduct / people) not previously covered by the NLRA. That’s scope and content expansion, NOT strength.

#### Prefer it:

#### 1. PRECISION. Our ev’s grounded in a coherent philosophy of rights.

#### 2. LIMITS. Affs could cover literally any union behavior. A single ‘unions good’ card can become an unbeatable aff AND circumvent functional limits, which presume the NLRA framework.

### 1NC – CP – Waivers

#### The United States federal government should

#### cede labor law jurisdiction to subfederal territories that implement laws according to federally-administered goals of income equality, union membership, open innovation, and safe technology; establish performance thresholds for these goals based on the simulated effects of substantially strengthen collective bargaining rights for gig economy workers; provide grants to above-threshold territories and leverage financial penalties against below-threshold territories; fund and enforce federal monitoring and data collection to track subfederal progress.

#### adopt a policy foreswearing political interference with this process.

#### Preemption waivers solve better than uniform national labor law AND revive experimental federalism.

Andrew Stern & Eli Lehrer 17, Stern is President Emeritus of Service Employees International Union, Senior Fellow at Economic Security Project, author; Lehrer is President of R Street Institute, BA in Medieval Studies from Cornell University, MA in Government from Johns Hopkins University, "How to Modernize Labor Law," National Affairs, Winter 2017, https://www.nationalaffairs.com/publications/detail/how-to-modernize-labor-law

In short, regardless of which side of the labor-management divide that one sits, there's good reason to be skeptical that national reforms are feasible or that they would change much even if they were enacted. Indeed, efforts to reform and update our federal labor laws to meet new realities have failed for more than a generation. It's time for a new path, one that takes advantage of one of the most successful public-policy innovations of the past 50 years: waivers from federal law to allow state experimentation.

Such waivers are already allowed under a wide range of laws, including the Social Security Act, the Elementary and Secondary Education Act (2002's No Child Left Behind Act expanded their use greatly), and the Affordable Care Act. A system to allow state waivers from major labor laws similarly could give every interest group a chance to try bold reforms the federal framework doesn't currently allow. If properly structured, such waivers could facilitate experiments with new business and revenue models for labor organizations, provide new opportunities for entrepreneurs, create new jobs, and expand prosperity. No one will like everything waivers might make possible, but everyone could find something to like. And in the end, American workers and employers could both be better off.

THE CASE FOR WAIVERS

Nearly all recent public-policy innovations that anyone would count as a triumph have been the result of innovations in state and local laws, rather than federal ones. The left, most recently, has been successful in pushing through raises in state and local minimum-wage standards, with a $15 per-hour minimum becoming law in New York, California, and the District of Columbia, to name a few. Bills calling for higher minimum wages are likely to be introduced in nearly all states, and, regardless of federal action (which President-elect Donald Trump has signaled some support for), it's safe to predict that at least a few more will pass them this year. Paid leave has become a government-mandated benefit in a number of states and cities, while new scheduling laws have passed in Seattle and San Francisco and are under consideration elsewhere.

Indeed, in many ways, the success of these efforts belies the story of unions' shrinking public influence. Unions have retained power in many cases by expanding the ranks of public-sector employees covered by collective-bargaining contracts, and by modifying many state laws to make the public sector more union-friendly. The growth of mandatory paid family and medical leave — a concept endorsed and outlined by both the Republican and Democratic candidates in the 2016 presidential election and included in President-elect Trump's formal list of campaign promises — probably would not have happened without a concerted union effort to call for it. Unions, in many ways, have expanded their influence beyond their own membership to call for a variety of reforms that they see as benefiting society more broadly. In the absence of the decentralized, firm-based collective-bargaining process envisioned by the NLRA, the United States may be evolving toward a more European-style system of greater universal social benefits.

But the left's successes on the state level have been more than matched by successes on the right. Efforts to make right-to-work a national policy or to allow employers to place new limits on organizing have been turned back again and again at the federal level, but have thrived at the state level. Over the past five years, right-to-work has expanded from its historical stronghold in the South to such traditionally union-heavy, union-friendly states as West Virginia, Michigan, Indiana, and Wisconsin. On the other hand, Virginia, which voted for Hillary Clinton and clearly leans more toward the Democratic column, narrowly rejected a state constitutional amendment enshrining a version of "right to work" in the constitution (although it was a more straightforwardly anti-union proposal since, unlike most right-to-work laws, it didn't protect employees from being fired for union membership).State-level "paycheck protection" efforts, which restrict unions' ability to spend money on politics without members' express approval, also have gained ground, as have procedures to make de-certification easier in states like Wisconsin.

There even have been some labor-law innovations moving forward at the state level with what could be described as broad ideological support. For example, the only concrete legislative proposals to create new worker categories and benefit structures for "gig economy" workers have been made at the state level. A few of these laws, mostly limited to the on-demand transportation industry, have even come into force.

In short, partisans across the political spectrum should agree that all real labor-law "progress," however one defines the term, has come from the state level. Moreover, nearly all of this progress has been facilitated by an approach that allows states to promulgate their own laws and procedures. The Fair Labor Standards Act, which establishes the national minimum wage, is explicitly subject to state-level preemption for states that want to set a higher minimum. The Taft-Hartley Act, likewise, bans fully "closed shops" (which allow workers to be fired for joining or refusing to join a union) and allows union-only shops by default, but allows states to opt for right-to-work laws of their own.

Allowing these sorts of experiments to expand and thrive will require more of the same — specifically, a waiver process for all major labor laws of the sort already seen in right-to-work and minimum-wage laws.

WAIVERS IN ACTION

Ideally, the waiver process would be modeled on what Harvard Law School's David Barron and Todd Rakoff call "big waiver" in a 2013 article for the Columbia Law Review. In a nutshell, it would allow states, localities, firms, and unions to fundamentally rewrite many of the major laws that govern labor relations in the United States. Labor-law waivers would be broad grants of new and different authorities to achieve broad goals by means different from those currently allowed by statute.

The goal would be to encourage an environment of "experimental federalism," in which states, localities, and even individual firms could serve as true laboratories of democracy, trying new and innovative models for worker-employer relations. The laws eligible for waivers should include, at minimum, the National Labor Relations Act, the Fair Labor Standards Act, the Labor-Management Reporting and Disclosure Act, the Employee Retirement Income Security Act, and the Taft-Hartley Act. Some experiments may require waivers from more than one of these laws, while some waiver requests might be combined with existing waiver provisions, such as those allowed under the Affordable Care Act (insofar as it continues to exist in its current form) and the Social Security Act.

Labor-law waivers, like the "big waivers" currently granted under education and social-welfare laws, would have to follow a few fundamental rules. An absolute necessity is that the waivers would have to accomplish the stated purpose of the law; barring this, as Barron and Rakoff argue, waivers wouldn't pass constitutional muster anyway. Their impact on the federal budget would have to be neutral or yield cost savings, although they might require increases in state or local spending.

The waivers also typically should have a time limit, probably in line with the five-year default used for programs like Medicare and Medicaid. After that time, they could be renewed, extended, or canceled. Within that window, the waivers couldn't be canceled without a hugely compelling public-policy rationale; as is typical with existing waivers, they shouldn't be undone simply because of a change of administration. They also should be subject to a public-comment and review process, which could be expedited if local governments, major employers, and labor organizations all requested the same specific waiver.

Most of the fundamental rules and standards governing labor-law waivers wouldn't differ significantly from those already seen in American administrative and regulatory law. What would differ is who could apply for them. While existing "big waiver" requests always stem from a governmental unit (usually a state, sometimes a school district or local government), the labor-law-waiver application process could also be opened to firms and labor organizations.

For example, a manufacturer could request a waiver to begin using formal workplace committees, similar to those common in continental Europe, that include workers to discuss quality, productivity, and worker morale, but without actually initiating the process of collective bargaining. Such a structure was contemplated under the Teamwork for Employees And Managers Act introduced in the mid-1990s by Republican congressman Steve Gunderson and senator Nancy Kassebaum, which drew some bipartisan support. More recent efforts to create "works councils" that take on certain union-like responsibilities have faced resistance, with a study by the U.S. Chamber of Commerce concluding they are flatly illegal under current federal law. Permitting experimentation with such councils or committees might be one of the first and most promising waivers to be granted.

Local waivers also could permit experimentation within larger organizations. Union locals and local units of national enterprises could request waivers that wouldn't necessarily apply across the entire union or company. The retailer Target might apply for a waiver to experiment with a 44-hour default workweek in Colorado, or Las Vegas's Culinary Workers Local 226 might ask for a waiver to sell benefit-plan services to outsiders.

Given the administrative complexity of the waiver-application process (applications for Social Security Act waivers can run into the thousands of pages), caution must be exercised to ensure it does not simply become a rent-seeking opportunity for larger firms and better-established unions, who would unavoidably have built-in advantages by virtue of scale. Insisting on public hearings and open-comment periods would help ensure the process is transparent. There also should be an expedited process to grant waivers to similarly situated companies and labor organizations. For example, if the department-store chain Macy's were to receive a waiver, a smaller competitor like the regional chain Belk could expect that its application for the same waiver would be processed very quickly with a minimum of paperwork.

The waiver process itself shouldn't offer an obvious advantage either to labor or to management. It should instead promote joint agreement, collaboration, and compromise. For every way it might be used to allow unions to expand their membership and influence, it should also offer opportunities for employers to enhance their profitability and experiment with new business models. Nearly every aspect of the world of work could be the subject of some form of waiver, but three broad categories of waiver bear further examination as potentially transformative: wage and hour rules, labor-organization structure, and benefits provision.

WAGE AND HOUR RULES

A 2005 National Bureau of Economic Research paper showed that, from the 1970s to the early 2000s, the number of men working more than 50 hours per week grew among those in the highest quintile of wage earners, but actually fell among those in the lowest quintile. On one hand, first-year associates starting out with big law firms are often asked to put in workweeks of more than 90 hours, while medical-residency accreditors had to take action in 2003 to limit the average medical resident to "only" an 80-hour week. (Doctors, not coincidentally the highest earners of the categories tracked by the Bureau of Labor Statistics, work nearly 60 hours a week on average through their entire careers.)

Meanwhile, the growth of single-parent and single-earner households have made full-time work logistically difficult for many on the lower rungs of the income ladder, and overall workforce-participation rates for males are at the lowest levels on record. As firms make more expanded use of on-call scheduling, partly due to improvements in scheduling software, it has also become difficult for lower-income service-industry workers to stitch together hours, even at multiple part-time jobs.

The Obama administration's signature legislative achievement, the Affordable Care Act, mandates that large employers provide health benefits to those who work at least an average of 30 hours per week or 130 hours per month or pay penalties. This has attracted cheers from organized labor and some workers, as well as criticism from many employers that rely on mostly part-time workforces. The administration also promulgated rules, which were enjoined by court order in late November, that expand by more than 4 million the ranks of those eligible for overtime pay. Such changes could open up slightly more jobs and raise wages for some individuals. But they also could lead to pay cuts when employers decide to hire additional workers rather than paying time and a half.

As the employment landscape continues to evolve, the idea of a set number of hours in a workweek may become obsolete in some fields. For those performing "gig" work in the on-demand economy with companies like Uber, Lyft, and TaskRabbit, the very idea of "work hours" is hard to define. Does work begin when someone switches on an application? Arrives at the job site? What about "breaks"? Is there any way to pay for them? As currently defined in the law, overtime can't apply to a worker who picks his own start and end times on a daily basis.

The wage and hour system doesn't come close to reflecting current realities, but waivers might point the way toward a fix. Employers and employees both might benefit from new flexible arrangements that allow for various tradeoffs. Most simply, waivers might allow some private employers to experiment with allowing workers to bank additional paid time off as "comp time" — already widespread among public-sector workers — in lieu of the time-and-a-half overtime legally mandated for most hourly workers. Waivers might also allow averaging of overtime over several weeks or a month, perhaps in tandem with mandates that employers provide part-time flex-scheduled workers a greater degree of schedule predictability.

Within the gig economy, waivers might be used to extend the reach of laws requiring time-and-a-half pay to select workers who put in large numbers of hours, or it might limit workers' hours. Some jurisdictions might also experiment with different definitions of full time for purposes of benefits and other protections offered to workers. Localities and states might seek waivers to experiment with shorter or longer default work weeks, either for all workers or for certain select categories of workers, based on factors like experience and the physical demands of a given job. It might be reasonable, for example, to require that coal miners get time-and-a-half pay after only 35 hours on the job, while the overtime threshold might be raised to 45 hours for office administrators.

Both federal and state waivers also could be used to extend certain full-time employment benefits to people who would otherwise legally remain freelancers. Sharing-economy companies like Uber and Lyft have already expressed their openness in private and in public to make it possible for gig-economy workers to assure that employers pay them as promised through administrative procedures, rather than court hearings. Waivers also could be used to resolve some of the most controversial and fraught issues in labor law, such as the treatment of franchisors.

Many firms would probably elect to extend workers' compensation to freelance and self-scheduled employees — immunizing the employer from most lawsuits for on-the-job injuries while guaranteeing the employee scheduled benefits on a no-fault basis — but avoid doing so now for fear of being declared "full-time" employers. Labor-law waivers could make it possible for them to do so without fear. Indeed, experiments with such waivers for workers' comp deserve quick consideration.

Some of these experiments are relatively simple and would have easy-to-predict outcomes for all the stakeholders. For example, there's already extensive research on the widespread use of comp time in lieu of overtime for public-sector employees, making clear its advantages like flexibility and job satisfaction and its disadvantages such as somewhat lower pay. Other experiments might well produce controversy from the moment they are proposed. Nullifying right-to-work laws through a local waiver would be sure to raise enormous objections from the right while an exemption from benefit mandates would likely move many on the left to protest. Nonetheless, there are distinct and important possibilities to find new and innovative ways to schedule workers and regulate their hours that current law doesn't allow. Waivers could make those possible and allow for broad experimentation.

LABOR-ORGANIZATION STRUCTURES

Current labor law puts both labor unions and employers in an all-or-nothing situation: Employers that recognize a union, something they're legally required to do if employees vote to certify one in a secret-ballot election, must engage in "good faith" collective bargaining. They generally are in a lifelong relationship with their "union partner," whether or not they want to be and whether or not their competitors have the same relationships.

Likewise, employers face significant hurdles to allowing rank-and-file workers a management role in the enterprise outside of a collective-bargaining context. As a result, labor organizing becomes a high-stakes, winner-take-all game. Most non-union employers desperately want to remain union-free, for both competitive and ideological reasons, and will engage in costly campaigns to prevent unions from becoming certified.

To maximize the opportunities allowed under current law, unions sometimes expend energy on maladaptive behaviors that really don't serve anyone's long-term interests. Since 2011, organized labor groups have been able to create new "micro unions" that represent only a very small percentage of a worksite's employees. One of the earliest efforts allowed a department store's cosmetics-department workers, but not anyone else at the store, to form a union. To defeat these unions, employers may decide to abolish certain job categories altogether, an approach the anti-union Workplace Policy Institute has actually recommended in some cases.

While this may be an effective strategy to resist organized labor, it's probably not the best business practice in many industries. Basic economics suggests the division of labor and gains from specialization are among the best ways to increase productivity. For their part, private-sector unions might be pleased to reverse their declining numbers even in a minor way, but they probably aren't going to restore their glory days by organizing workers in groups of five or 10 at a time.

Given the perceived and real costs of a unionized workforce, many employers are willing to push or break the law (and even to pay fines for doing so) in order to prevent union certification. In practice, employees are fired or disciplined far too often for merely expressing interest in unions, despite a profusion of laws that theoretically protect them. The fact that employers can require employees to listen to anti-union presentations, while unions typically can't do the same, has served to tilt the playing field decisively against organized labor in many contexts. Legal waivers could help to change this.

Under the waiver approach, the biggest potential change for both employers and unions could be granting unions the ability to "unbundle" their services and benefits. Right now, union officials can face criminal charges if they sell anything to employers — even services like a health plan that employers might be willing to spend good money to buy in a free and open market. Over the long run, it might be possible to find political consensus to repeal these prohibitions from the U.S. code. But in the meantime, waivers could allow some experiments with unbundling, for instance, union representation and job-benefits services, or give them the space to create entirely new structures.

New modes of representation offer tremendous promise. Unions might look into whether to represent individuals in dealings with work providers outside the context of collective bargaining. Although some aspects of employer-employee relationships are probably best left to lawyers, the day-to-day grievance-handling and workplace-mediation processes provided by good shop stewards ought to be available to non-union workers willing to pay for such services either individually or collectively. Either existing unions or new types of labor organizations might meet and confer with management and even negotiate work conditions, but leave matters of wages or benefits or both to negotiations between managers and individual employees. Unions could offer lobbying or regulatory advice, or could allow their apprenticeship and training-center expertise to be offered in the market.

#### Reviving experimental federalism caps global ethnic conflict by institutionalizing power-sharing.

Yogendra Rawal 25, PhD Scholar, Department of Conflict, Peace and Development Studies, Tribhuvan University, Kathmandu, Nepal, "Democracy, Governance and Conflict in Modern World," Aadim Journal of Multidisciplinary Research Humanities & Social Science, vol. 1, 07/09/2025, p. 102

This paper examines the values of democracy and democratic governance, arguing that while many countries, including Nepal, have long practiced democracy, democratic systems alone are insufficient to ensure peace, development, and effective governance. It highlights how governments that do not prioritize democratic governance risk internal and external conflicts, as evidenced by ongoing conflicts in countries such as Ukraine and Russia, despite their democratic frameworks. By analyzing secondary literature on democracy, governance, and conflict, the paper contends that the quality and practice of democratic governance—beyond the mere existence of democratic institutions—shape the prospects for peace and development.

Using governance indices and secondary data, the paper evaluates the successes and challenges of local democracy globally, with a particular focus on Nepal’s post-2006 democratic transformation. It finds that institutional structures, political participation, public accountability, and service delivery mechanisms have often fallen short of meeting the needs and aspirations of the people. Political instability, corruption, and weak institutional capacity continue to undermine effective democratic governance in Nepal and elsewhere.

Additionally, the paper explores fiscal decentralization and federalism as important frameworks for improving economic efficiency, managing ethnic diversity, and addressing regional disparities. Drawing on classical theories such as Oates’ Theorem of Decentralisation and Tiebout’s model of local preferences, it emphasizes the benefits of tailoring public services to local contexts, especially in large, diverse countries. The Nigerian federal experience is discussed as a case study illustrating the persistent challenges of centralized power, ethnic tensions, and political instability despite constitutional reforms aimed at decentralization.

Introduction

Shahzad and Yasmin (2016) noted that welfare challenges such as poverty and income inequality have remained central priorities for policymakers and have regained focus since the adoption of the Millennium Development Goals (MDGs) in 2000. While considerable progress has been made in formulating development policies to address these issues, nearly a billion people worldwide still live in extreme poverty and experience significant income disparities. Consequently, understanding the nature, causes, and impacts of poverty and income inequality has become a critical concern and a key area for research aimed at improving the living conditions of the poor.

It is useful to consider federalism through the lens of Agbu (2004), who explains that federalism, in essence, is a way of balancing the desire for unity with the reality of territorial and cultural diversity. It involves building a political structure where both central and regional governments operate with clearly defined powers and responsibilities. As Forje (1981:3) highlights, this structure outlines legal and political boundaries to ensure that both levels of government function either equally or in a coordinated, subordinate way. These boundaries are usually detailed in a written constitution that clarifies what each level of government can and cannot do.

Wheare (1964) argues that for federalism to take root, several conditions are usually present—such as geographic closeness, economic motivations, a shared desire for autonomy, historical connections, common traditions, and a sense of insecurity. Unlike unitary systems, federal structures often face slower decision-making processes because they involve more actors and diverse inputs from local and regional authorities. However, this inclusiveness is seen as a strength, not a flaw. Countries typically choose to federate for reasons related to the economy, politics, or security. From an economic standpoint, shared values, access to larger markets, ports, higher living standards, and better welfare provisions often drive federalization. Politically, federalism can reinforce internal unity and amplify a country's global influence. On the security front, federalism may offer greater protection against real or perceived threats to national integrity.

Tuminez (2003) reminds us that certain concepts—like nation, nationalism, and empire— often spark intense academic debates. While there are many definitions of nationalism, this discussion adopts a view of nationalism as a political ideology based on three core ideas: 1) that a recognizable nation exists; 2) that this nation is distinct and unique; and 3) that it should have its own independent political identity. Nationalism gains momentum when large groups of people are mobilized to either uphold or dismantle a state—or to create a new one. Ethnic pressures, including conflict, population shifts, and cultural or linguistic demands, can complicate a state‘s governance. These do not always result in nationalism, but when such pressures lead to demands for independence, they transform into nationalist movements. Here, the term ―nation‖ refers to a community bound by common culture, ethnicity, language, religion, or citizenship—who believe they have the right to political self-rule. This understanding challenges the idea that nations are imaginary or unstable entities. Rather than focusing solely on what defines a nation, the more important question becomes: how is nationhood shaped and institutionalized, especially in states where national identities have been historically constructed and reconstructed—such as in the case of the Soviet Union (Tuminez, 2003).

Klosowicz (2020) explains that conflicts among clans, tribes, and ethnic groups have been present throughout history and across all civilizations. Because these disputes are tied to core identity issues, they tend to be violent, harsh, and bloody. They often persist longer than other types of conflicts, and a victory by one side frequently results in the extermination (genocide) of the opposing group. These are known as ethnic conflicts. Recently, English-language literature has increasingly distinguished between ethnic conflicts and communal conflicts. Ethnic identity remains one of the most important forms of identity. However, some scholars have started to criticize the concept of identity for being too closely linked to political ideologies, lacking clear operational definitions, and being difficult to precisely define. At the same time, there has been growing interest in what is called ethnic revival. Ethnic identity is formed through the contrast between what is considered one‘s own and what is foreign. While the idea of the ―Other‖ or foreignness is always part of identity, it holds special importance in ethnic identity. This process highlights belonging to a specific ethnic group while simultaneously separating it from others. Identifying with an ethnic group also involves identification with a particular culture (Klosowicz, 2020).

In Nepal‘s context, the country has experienced a profound political shift in the 21st century, evolving from an absolute monarchy to a federal democratic republic. Kathmandu, as the capital, has been at the heart of these transformations. Yet, the lived reality of democratic governance often falls short of constitutional ideals. While the federal constitution and local elections mark progress, the day-to-day governance experience for many residents is shaped by inefficiencies, politicization, and social exclusion. This paper therefore explores the following key questions: How are democratic principles embedded in Kathmandu‘s governance structures? What are the main challenges to ensuring democratic governance in the city? And how do ordinary citizens perceive the quality of that governance?

Research Objectives and Framework

This paper aims to investigate the state of democracy and governance in Kathmandu by addressing the following specific objectives:

 To explore the democratic principles institutionalized in the role of government and governance structures.

 To identify the challenges to democratic governance in the countries including Nepal in the modern world

 To describe the citizens perception on the quality of governance delivered by the democratic government in the world

This paper uses two key theoretical approaches— the Good Governance Framework and Participatory Democracy Theory—to examine governance in today‘s world. These frameworks offer complementary perspectives on how democratic systems function.

The Good Governance Framework, developed by institutions like the UNDP and the World Bank, focuses on essential principles that make governance effective and fair. These include the rule of law, transparency, accountability, responsiveness, equity, and efficiency in public administration. It serves as a guideline for evaluating how well governments serve their citizens.

On the other hand, Participatory Democracy Theory goes beyond traditional electoral processes. It emphasizes the active involvement of citizens in public decision-making, advocating for inclusion, deliberation, and direct engagement at various levels of governance. This approach stresses that democracy is not just about voting, but about enabling people to have a real voice in shaping the policies that affect their lives.

Methods

This study adopts a qualitative research design, focusing on textual and documentary sources related to governance and democracy in Nepal and comparable political settings. The research relies entirely on secondary data, drawing from a wide range of materials including policy documents, government reports, governance indicators, and academic literature.

For data collection, relevant literature was systematically searched, gathered, and critically reviewed. The analytical approach used is thematic content analysis, which involves identifying recurring themes and patterns within the texts. This method enabled the study to explore key aspects of democratic practices, institutional performance, and citizen experiences in the context of Nepal and broader governance frameworks.

Federalism and Governance: Democracy, Decentralization and Conflicts

According to Iqbal, Din, and Ghani (2012), the ―Theorem of Decentralisation‖ offers a key explanation for how fiscal decentralisation (FD) can enhance economic efficiency. This theory, originally proposed by Oates (1972), argues that people in different regions have different needs and preferences for public services. When a central government tries to deliver the same services uniformly across the country, it often fails to meet these diverse needs effectively. In contrast, local or regional governments are more in tune with their communities and can tailor services to better suit them, leading to higher levels of public welfare. Moreover, if citizens are free to move, they can choose to live in regions that align more closely with their preferences, as suggested by Tiebout (1956). Oates (1993) also emphasizes that spending on social services and infrastructure tends to be more impactful when done by local governments because they are more aware of regional differences.

The benefits of decentralisation become more noticeable in larger and more diverse countries. In smaller, more homogenous nations, the advantages of tailoring services to regional needs are less significant. As Rodriguez-Pose and Ezcurra (2010) argue (cited in Iqbal et al., 2012), decentralisation works best in countries with a certain size and internal diversity, where people's needs vary widely.

However, not everyone agrees with this optimistic view of decentralisation. Critics argue that many local governments lack the capacity to manage public services effectively. Tanzi (1996) notes that local governments often face challenges such as inefficient bureaucracies, poor public spending systems, and weak tax management. Prud‘homme (1995) also highlights that limited financial and technical resources can hinder investment in technology and innovation at the local level.

Agbu (2004) examines Nigeria‘s federal system and calls for a restructuring to better reflect the country‘s ethnic and political diversity. The central government in Nigeria gained excessive power during years of military rule, leaving the states weak. Agbu argues that Nigeria needs to revisit its federal structure to allow for greater power-sharing between the central government and the states.

The paper discusses the historical development of federalism in Nigeria and identifies ongoing issues such as the dominance of central power, revenue distribution, state creation, and the application of the federal character principle. Agbu proposes constitutional reforms that include dividing the country into geopolitical zones, rotating power among these zones, and shifting more authority to state and local governments.

Despite federalism being intended as a tool to manage ethnic and regional tensions, it hasn‘t fully resolved deep-rooted issues like ethnicity, religious divisions, and sectionalism in Nigeria. Decades of political instability, including a devastating civil war between 1967 and 1970, have tested the limits of the country‘s unity. Many people, including political leaders and civil society actors, have become disillusioned—some even calling for the breakup of the country. Yet, Nigeria has continued to survive its challenges (Agbu, 2004).

Agbu further reflects on federalism and democracy from a theoretical lens. He notes that after independence, many African leaders saw federalism as a threat to unity and instead preferred centralized, unitary systems of government—similar to those used by colonial powers. These unitary systems kept authority concentrated at the national level, with little power given to regional units. In countries with complex ethnic dynamics, however, federalism is meant to provide a way to spread power and reduce conflict by giving ethnic groups control over their own affairs while still maintaining a national government (Elaigwu, 1994; Long, 1991).

In a related context, Tuminez (2003) discusses the breakup of the Soviet Union, pointing out that while ethnic and nationalist pressures contributed to its collapse, they were not the root causes. One major factor was the rivalry between Russian leader Boris Yeltsin and Soviet President Mikhail Gorbachev. Yeltsin‘s efforts to outmaneuver Gorbachev unintentionally weakened the Soviet state. Although Ukrainian nationalism played a role in the final disintegration of the USSR in 1991, it was more of a triggering factor than a dominant cause throughout most of Gorbachev‘s leadership.

Klosowicz (2020) highlights ethnic identity as one of the most important forms of identity. However, some recent scholars have criticized the concept of ‗identity‘ for being overly linked to political ideologies, lacking clear practical application, and being hard to define precisely. At the same time, there has been growing interest in what is termed ‗ethnic revival.‘ Ethnic identity is constructed through distinguishing between what is considered ‗one‘s own‘ and what is ‗foreign.‘ Although the notion of ‗the Other‘ or the ‗foreign‘ is always relevant to identity, it holds particular importance in ethnic identity. This process stresses membership in a specific ethnic group while simultaneously excluding others. Throughout history and across civilizations, conflicts among clans, tribes, and ethnic groups have been common. Researchers do not agree on a single definition of ethnic conflict. Recently, scholars have increasingly differentiated between ethnic conflicts and communal conflicts. This article aims to examine issues of identity that arise in ethnic and communal conflicts in SubSaharan Africa. It draws on a critical review of existing literature and the author‘s insights gained from extensive research on state dysfunction in Sub-Saharan African countries (Klosowicz, 2020).

Aspinall (2007) offers two key points when looking at how natural resources played a role in the conflict. First, he cautions against overstating their importance. Second, when natural resource issues did matter, it was mainly because they connected with existing feelings of deprivation and identity struggles already taking shape in Aceh. The idea of ―resource wars‖ is very appealing—economists, business consultants, environmental groups, and anti-globalization activists often assume that large mining projects are at the heart of conflicts wherever they happen. Rebel groups themselves often frame their fight as resistance against harmful multinational companies to gain sympathy and support from the international community (Bob, 2005). In Aceh, a lot of attention has focused on the gas industry and accusations that ExxonMobil backed the Indonesian military, which has been a major theme in nationalist campaigns. But the evidence here suggests the conflict in Aceh mostly followed a different logic, one that wasn‘t driven by natural resource industries. In fact, other factors explain why resistance started when and where it did under the New Order regime. Early on, GAM‘s activities didn‘t line up exactly with where the gas industry operated, so their struggle wasn‘t mainly fueled by local disputes over land or environmental damage (Aspinall, 2007).

Local levels in Nepal are governed by a directly elected Mayor and Municipal Assembly under the Local Government Operation Act, 2017. Wards serve as the primary administrative units. Despite formal decentralization, governance is influenced by national politics, with party affiliation often shaping local decision-making. The 2017 local elections revived elected leadership after nearly two decades, bringing hopes of improved governance. However, institutional weaknesses, staff shortages, and politicization continue to hinder performance.

Findings and Discussion

The discussion highlights that fiscal decentralisation (FD) can significantly enhance economic efficiency by aligning the provision of public goods and services with the diverse preferences of local populations. Sub-national governments, being closer to the people, are better positioned to understand and meet local needs compared to a central authority. This is especially true in large and heterogeneous countries, where regional differences are more pronounced. Moreover, if citizens are mobile, they can choose to reside in areas that best reflect their service preferences, further improving efficiency. However, the benefits of decentralisation are not guaranteed. Critics argue that many sub-national governments lack the financial, technical, and managerial capacity to deliver services effectively. Inefficiencies in local bureaucracies, poor public spending systems, and inadequate investment in innovation are common challenges that can undermine the potential of FD.

In the context of Nigeria, federalism has faced significant challenges due to the centralisation of power during military rule, which weakened the autonomy of states. Although federalism is intended to manage diversity and promote inclusion, it has struggled to resolve persistent issues related to ethnicity, regional imbalance, and unequal access to resources and political power. Scholars like Agbu argue for restructuring the Nigerian federation to reflect the country's ethnological and political realities, including proposals for rotating power among geopolitical zones and decentralising authority to state and local governments. Despite these challenges, Nigeria has maintained its unity, even surviving a brutal civil war. However, public frustration and calls for secession reflect the limits of the current federal arrangement in managing national diversity.

The experience of the Soviet Union adds another dimension to this discussion. While ethnic nationalism played a role in its disintegration, it was not the primary cause. Instead, elite power struggles—particularly between Boris Yeltsin and Mikhail Gorbachev—undermined the cohesion of the federal state. This shows that political leadership and institutional design are critical in shaping the success or failure of federal systems. In conclusion, while fiscal decentralisation and federalism offer pathways to more responsive governance and efficient service delivery, their effectiveness depends on the institutional capacity of sub-national units, equitable power-sharing mechanisms, and a deep understanding of a country‘s unique social and political context.

Information dissemination is uneven across wards. While some digital platforms have improved access, citizens report limited accountability mechanisms. ―Corruption in procurement and political favoritism are rampant,‖ observed a civil society representative. Basic services like waste management, road maintenance, and water supply remain inconsistent. Bureaucratic inefficiency and overlapping jurisdiction between central and local agencies contribute to delays. While legal frameworks are in place, enforcement is weak. Marginalized communities, including informal settlers and the urban poor, face systemic exclusion in service access and political representation.

The findings illustrate a paradox of institutional democracy without democratic governance. Although elections and legal provisions exist, the practice of inclusive and accountable governance is limited. In the case of many countries, it reflects broader challenges in democratic transition—where centralization of power, elite domination, and weak institutional capacities obstruct genuine democratization. Furthermore, urban governance in Nepal is entangled in patronclient relationships, reducing space for participatory democracy. The slow pace of digital transformation and public sector reform also impedes transparency and responsiveness.

Conclusion

Fiscal decentralization and federalism hold significant promise for improving economic efficiency and managing ethnic and regional diversity by bringing government closer to local communities. By aligning public services with local preferences, these governance structures can enhance welfare outcomes and accommodate diverse regional needs more effectively than centralized systems. This theoretical advantage is supported by the principle that local governments, being more familiar with their communities, are better positioned to deliver services that reflect local priorities.

However, the realization of these benefits is highly contingent on the capacity of sub-national governments, the design of political institutions, and the broader socio-political environment. Experiences from countries like Nigeria, the Soviet Union, and Nepal illustrate that weak governance, limited resources, and centralized power can undermine decentralization efforts. Moreover, decentralization alone cannot resolve deep-rooted ethnic conflicts or political divisions; it must be complemented by inclusive power-sharing arrangements and sustained political commitment.

**1NC – K of Longtermism**

**The 1AC’s combination of concern inequality and longtermist claims about existential risk is an ideological trojan horse for securing the power of the billionaire techno-elite.**

Mollie **GLEIBERMAN** PhD Student @ University of Amsterdam **’23** “Effective Altruism Doing transhumanism better” WORKING PAPER / 2023.03 https://repository.uantwerpen.be/docman/irua/d8a015motoM7a p. 13-14

7. Conclusions

This article aimed to show how the transhumanists linked their project to humanitarian efforts, i.e., protecting the vulnerable, saving lives, preventing suffering and harm, and ensuring a flourishing future for all. Whereas life-saving transhumanitarianism was oriented around techno-optimism, x-risk transhumanitarianism focused on risks and dangers, issuing sober calls for the safe development of emerging technologies, and the protection of future generations from potential harms. By cultivating the EA movement and embedding x-risk transhumanitarianism within it—now under the banner of ‘longtermism’—the transhumanists used EA as a Trojan horse to elevate their vision for humanity’s future onto mainstream global policy and research agendas.15

While the alarmist discourse of human extinction may seem counterintuitive as an advocacy technique, in fact, it has proven enormously effective. First, it inoculates the transhumanists and EAs from the charge of unbridled techno-optimism, since they openly admit that emerging technologies pose great risks and warrant public concern, and even stake themselves as the vanguard identifying and mitigating such risks. As Barthes observed, portraying the drawbacks of an idea or program is ‘a paradoxical but incontrovertible means of exalting it’ (Barthes, 1972 [1957], p. 40). EAs position themselves as so utterly concerned about the potential negative effects of technology that they, themselves, are spearheading research on AI to ensure safety and prevent harm; acting simultaneously as AI’s biggest champions and doomsayers, EAs are positioned to frame global discussion and set the terms of debate, restricting critique to that which ultimately serves transhumanist (and industry) goals. It comes as little surprise that EA has been taken up enthusiastically by Silicon Valley elites heavily invested in AI, who can present themselves as deeply concerned about AI risks, while projecting that risk on to hypothetical future scenarios — a convenient distraction from the known, actually-existing problems that current machine learning technologies produce and reinforce (e.g., algorithmic bias, misinformation, automation, privacy concerns, etc.).

More importantly, the focus on threats/risks performatively inscribes the transhumanists’ desired technological research agenda and vision in the sociotechnical imaginary as both imminent and inevitable. The vivid articulation of a fear conjures the thing-to-be-feared into existence. Just as the mythical ‘missile gap’ drove the arms race during the Cold War and thereby help manifest the very technological threat it was intended to ameliorate (Amadae, 2003; Ellsberg, 2017), by outlining a comprehensive and concrete research program that ostensibly responds to the (potential) dangers of transhumanism’s desired technological developments, such technologies become real (even if they do not exist). EA’s x-risk and AI-safety programs are packaged and presented as responses to what could go wrong; but by defining what could go ‘wrong’, a specific vision of what it means for things to go ‘right’ is smuggled in through the back door as a taken-for-granted assumption. Like a film negative producing an image, the very same program that ostensibly addresses the problems with a particular vision for the future simultaneously produces that vision’s contours. To borrow a metaphor from anthropologist Annelise Riles (2001), it is like creating a drawing of a figure by sketching not the figure itself, but the air that surrounds it.

**You should reject the use of longtermist justifications for the social and political transformation required to end inequality. Probabilistic expected utility calculations rely on law-like descriptive predictions that contradict the normative commitments to re-order our society to promote union and worker power.**

Alice **CRARY** Walter A Eberstadt Professor in Philosophy and University Distinguished Professor @ New School **’23** in *The Good It Promises, the Harm It Does: Critical Essays on Effective Altruism* eds. Carol J. Adams et al. p. Oxford Academic

The philosophical critique brings into question Effective Altruists’ very notion of doing the “most good” or having the “greatest impact.” Effective Altruists invite us to regard the rightness of a social intervention as a function of its consequences, with the outcome involving the best states of affairs counting as doing the most good. This strategy appears morally confused when considered in terms of the ethical stance of the philosophical critique. To adopt this stance is to see the weave of the world as endowed with values that reveal themselves only to a developed sensibility. To see things this way is to make room for an intuitively appealing conception of actions as right insofar as they exhibit just sensitivity to the worldly circumstances in question. This is consistent with allowing that right actions can have the end of promoting others’ happiness or flourishing. Here acting rightly includes acting, when circumstances call for it, in ways that aim at the well-being of others, and, with reference to this benevolent pursuit of others’ well-being, it makes sense to talk—in a manner that may seem to echo Effective Altruists—about good states of affairs. But it is important that, as the philosopher Philippa Foot once put it, “we have found this end within morality, forming part of it, not standing outside it as a good state of affairs by which moral action in general is to be judged” (1985, 205). Here right action also includes acting, when circumstantially appropriate, in ways that aim at ends—e.g., giving people what they are owed—that can conflict with the end of benevolence. Apt responsiveness to circumstances sometimes requires acting with an eye to others’ well-being and sometimes with an eye to other ends. In cases in which it is not right to attend to others’ well-being, it is incorrect to say that, because we haven’t thus attended, we achieve a morally worse result. Things only seem this way if we allow our understanding to be shaped by a confused understanding of morality. What we should say is that the result we wind up with is morally best. That is what it comes to to say that, within the context of the philosophical critique, there is no room for EA-style talk of the “most good.”10

This critique alleges that EA’s claim to be doing the most good founders on a misunderstanding of the nature of morality and that the enterprise needs to be either radically reconceived or abandoned altogether. It confronts EA with challenges that it cannot meet with mere internal adjustments.

The Composite Critique

The philosophical critique charges that EA’s god’s eye moral epistemology disqualifies it from authoritatively trafficking in values, and it thus casts new light on the institutional critique’s charge that EA fails to do justice to sets of actions aimed at progressive social change. The resulting composite critique presupposes, in line with the philosophical critique, that values are essentially woven into the texture of the social world and that EA’s Archimedean take on moral reflection deprives it of resources needed to describe—irreducibly normative—social circumstances. The upshot of this new line of criticism is an update of the institutional critique, charging that EA cannot give accurate evaluations of sets of actions because it forfeits the capacities necessary for all social assessment. This means that the tendency of EA-affiliated organizations to wrongly prioritize evaluation of the proximate effects of particular actions is not a fixable methodological flaw. The organizations focus on these evaluations because it is only here that their image of the moral enterprise seems plausible. It is often right to act in ways that aim to improve the welfare of others. But recognizing the instances in which this is (or isn’t) right requires capacities for engaged social thought that EA disavows. Further, when it comes to evaluating actions coordinated with an eye to social transformation, EA’s image of the moral enterprise is patently implausible. Such actions are efforts to restructure the normative organization of society, and their relevant “effects,” far from obeying merely causal laws, are at home in the unpredictable realm of politics. Attempts to evaluate these efforts in EA’s terms are manifestly confused.

This composite critique finds extensive support in philosophical reflection about the social sciences. At the critique’s heart is an image of the social world as irretrievably normative, such that understanding it requires non-neutral resources. A classic argument for this image within social philosophy centers on a conception of actions as conceptually articulated and constitutively normative. Granted that social concepts are categories for actions (or for character traits, practices, and institutions that can themselves only adequately be understood in reference to actions), it follows that these concepts need to be understood as tracing out patterns in an irreducibly normative ground—patterns that only reveal themselves to an evaluatively non-neutral gaze (Winch 2008, 98–99).11 Further arguments for conceiving social understanding as thus normative can be found in numerous discussions about methods and authority of the social sciences. This includes anti-positivist debates in sociology,12 disputes in anthropology about the need for ethnographic methods alongside quantitative ones,13 and calls by Frankfurt School theorists to retain an ineluctably normative notion of social analysis.14 These interrelated literatures supply additional backing for the verdict that EA, with its abstract methods, bars itself from dealing responsibly in social assessments.

Yet further support can be found in contemporary discourses of liberation. Anguish at the violence of being forced to live within “false universals” is a rallying cry echoing through numerous strands of twentieth- and twenty-first-century emancipatory thought. What inspires the cry is the experience of being subjected to forms of social life that appear to conform to laudable social ideals (e.g., equality, freedom, and nonviolence) only when looked at from elite perspectives that are wrongly presented as neutral and universal. Expressions of this experience often go hand in hand with claims about how the route to a just understanding of a set of unjust social circumstances must involve not a new supposedly neutral stance, but a stance shaped by an appreciation of the suffering of the marginalized. Such claims recur in a wide array of overlapping—feminist, anti-racist, decolonial, anti-ableist—liberating theories,15 and, against the backdrop of this theoretical corpus, EA’s insistence on an abstract approach to evaluation assumes the aspect of a refusal to listen to demands for justice.

In practice, the composite critique suggests that, within any domain in which they operate, charities guided by EA ratings will in general direct funds toward simple interventions capturable with metrics such as income levels or health outcomes, and in a manner relatively insensitive to whether these interventions contribute to perpetuating the institutions that reliably produce the ills they address, while also disparaging as less “effective” systematic attempts to change these institutions. This is what typically happens with EA-oriented organizations that rate animal charities. In addition to emphasizing welfare improvements in the treatment of animals caught up in industrial “farms,” these organizations tend to depreciate pro-animal organizations that are dedicated to transforming social attitudes toward animals and whose achievements aren’t demonstrable in EA’s terms. This includes vegan organizations in predominantly Black and brown neighborhoods in the United States that seek to address people not through easily quantifiable methods like leafleting but through outreach to churches and regular participation in local markets and fairs. It includes many long-standing activist groups in the Global South working to contest the spread of factory farms; many sanctuaries for domestic animals; and, more generally, a vast array of grass-roots pro-animal organizations and movements that, even when working in solidarity with larger networks, arrive at their methods in ways that are context-sensitive and bottom-up.

EA as Moral Corruption

EA is a movement based on a flawed conception of morality that encounters opposition not only from ethics, political theory, and philosophy of the social sciences, but also from many critical theorists, organizers, and activists who are committed to causes, such as animal protectionism, that Effective Altruists support. This raises the question of the source of its appeal. Effective Altruists couch their moral assessments quantitatively in terms of doing the most good, trafficking in tropes of economic efficiency that align them with the institutions of neoliberal capitalism. It’s no secret that EA urges its adherents to work within these institutions. Singer is openly dismissive of critiques of global capitalism in its current form,16 and, along with MacAskill and many other proponents of EA, he encourages the practice of “earning to give”; that is, taking high-paying jobs in business and finance in order to be able to give more.17 Singer goes so far as to laud the billionaire philanthropists Bill Gates and Warren Buffett as “the greatest Effective Altruists in human history.”18 EA owes its success as a philosophical-philanthropic movement largely to its eagerness and ability to work within existing political-economic systems.

This source of EA’s success is also its most grievous shortcoming. Effective Altruists present their philanthropic program as the expression of an uncontextualized moral theory, in a manner that reflects no awareness of the significance of their situatedness within capitalist forms of life. How it happens that EA has at its disposal an audience of people with excess wealth is not a question that they take up. Within discussions of EA, it is difficult to find a hint of the plausible and well-grounded view—defended in the writings of many theorists of care, ecofeminists, ecological Marxists, and other theorists of social reproduction—that the disproportionate material advantages of the wealthy in the Global North depend on continuously treating as “free resources” not only animals and other aspects of the nonhuman natural environment, but also the reproductive labor of women and the subsistence and care work of marginalized people the world over.19 It is equally hard to find mention of the now extensive literature on how practices of “internalizing” these things into capitalist markets displace without halting or slowing the devastation of nature and the oppression of vulnerable humans.20 Critical outlooks in which these ideas are at home have played no discernible role in discussions of EA, where there is rarely any suggestion of a tie between the forms of misery we are enjoined to alleviate and the structures of global capitalism. What is foregrounded instead is a paternalistic narrative about how the relatively wealthy should serve as benefactors of relatively poor and precarious humans and animals, and thus “do good.”

Granted this tendency toward ahistorical theorizing, it is unsurprising that enthusiasts of EA tend to regard reliance on ideals of economic efficiency as in itself unproblematic. Among other things, they betray no worry that the reach of these discourses into domains in which EA operates will displace political discourses shaped by values not capturable in terms of the logic of exchange. This insouciance about depoliticization—another expression for EA’s lack of any meaningful response to the institutional critique—is the counterpart of an inability to recognize how the instrumentalization of public space can produce outcomes, rational only from the standpoint of capital, that reliably generate the forms of suffering EA aims to stamp out.21

**Building a society around the principle of labor solidarity means rejecting subjecting morality to what can be measured.**

Hal **TRIEDMAN** PhD Student Computer Science @ Cornell Tech **ET** **AL ’22** (Additional authors: Archana Ahlawat Former Fellowship at Auschwitz for the Study of Professional Ethics and Jessica Dai PhD Student CS @ UC Berkeley https://joinreboot.org/p/ineffective-altruism “Towards Ineffective Altruism”

What might “moral good” look like outside of market-derived values (like the maximization principle)? How can we collectively decide to allocate resources? How can we build societies based on principles that cannot be measured, like mutual respect and solidarity? How can we eliminate material misery from the world? What might we do to ensure the flourishing of future generations, rather than just their survival? How can we depart from a society where those who have the privilege to choose to care about others can, and move towards a society where everyone has the power to care about others and must?

People all over the world have been attempting to answer these questions for generations. After massive street protests in 2019 in Chile, 80% of the population voted to redraft the nation’s constitution — an effort that is currently in progress and will be finalized this September. In Taiwan, Digital Minister Audrey Tang is building effective tools for building consensus and making decisions online. Tang helped enable a highly effective set of COVID-19 policies that kept the disease largely outside Taiwan for more than two years, influenced what digital democracy looks like on the island, and inspired other online civil processes around the world. And in the United States, the last few years has seen rising interest in small-d democratic institutions like labor unions and mutual aid organizations. These efforts may be inefficient or messy or unpredictable, but are good in part because of those facts, not in spite of them.

As we get some distance from effective altruism and longtermism, we can also begin to consider other ways of thinking about the long-term future. Our conceptions of the future inform our actions today, and the future is much too important to cede to an ideology with the ethos and rhetoric of longtermism. Seventh-generation decision making, for example, is an indigenous principle that is enshrined in the Constitution of the Iroquois Nation. It mandates Iroquois leaders to consider the effects of their actions over seven generations, encompassing hundreds of years. Seven generations is a long time, but it is also a finite amount of time. Although this framework prioritizes long-term thinking, it doesn’t bring the weight of infinity to bear on the present. And unlike longtermism, the seventh-generation principle doesn’t pretend to be scientific. It doesn’t rely on unfalsifiable guesses about a future we can’t even imagine to assign expected values to different political decisions; rather, it makes thinking about the future a moral imperative.

​​Philosopher Karl Popper on about the dangers of exclusive focus on the utopian ideal of the far future over the material concerns of the present day:

We must not argue that a certain social situation is a mere means to an end on the grounds that it is merely a transient historical situation. For all situations are transient. Similarly we must not argue that the misery of one generation may be considered as a mere means to the end of securing the lasting happiness of some later generation or generations; and this argument is improved neither by a high degree of promised happiness nor by a large number of generations profiting by it. All generations are transient. All have an equal right to be considered, but our immediate duties are undoubtedly to the present generation and to the next.

When we critically examine effective altruism and longtermism, we can see them as falsely utopian ideologies cloaked in the opaque vocabulary of science and math. Let’s instead strive for a world where altruism doesn’t have to be maximally effective for it to be worthy, where doing good doesn’t have to be optimized, where morals aren’t a function of the market.

### States

**The fifty states and subfederal territories should uniformly grant and actively supervise collective bargaining and organizing rights to gig workers, which at least include the protections offered to “employees” under the National Labor Relations Act.**

**States can enshrine collective bargaining rights for gig workers. Parker immunity solves antitrust.**

Kate **Andrias 23,** Patricial D. and R. Paul Yetter Professor of Law, Columbia Law School, "Constitutional and Administrative Innovation through State Labor Law," HeinOnline, 12/31/2023, https://heinonline.org/HOL/LandingPage?handle=hein.journals/wlr2024&div=44&id=&page=

B. Laws Allowing Excluded Workers To Unionize and Strengthening Rights for Public Sector Workers

States and localities have also been creating new pathways to organization and voice for workers not covered by the NLRA. For example, over the last couple of decades, unions have used innovative lawyering and legislative strategies to transform state-funded homecare and childcare workers into state employees, or quasi-state employees, in numerous jurisdictions.77 After doing so, they won the right to hold representational elections for these workers and to bargain on a sectorwide basis.78 This has helped significantly expand the ranks of union members in states including Illinois, Minnesota, and California.79

More recently, due to efforts by worker centers, alt-labor groups, and some traditional unions, several progressive states and localities have expanded protections for domestic workers and farmworkers, long excluded from federal labor law.80 As discussed in more detail in Part III, many of these new systems emerge from an assertion of state constitutional rights and employ new forms of participatory administration. 81 For example, New York State recently enacted bargaining rights for farmworkers after the Court of Appeals, the state’s highest court, held that the State Constitution required such rights; the Legislature included a worker standards board in the new statutory framework.82 Domestic worker organizations have successfully pushed for new “bills of rights” and worker standards boards in eleven states and three cities, including California, Connecticut, Illinois, Nevada, New York State, Philadelphia, and Seattle.83

Other groups of workers, including gig workers who provide app-based driving and delivery services, are currently working with unions to push for organizing rights at the state level.84 These workers are currently considered outside the NLRA’s definition of “employee,” thus granting states and cities the opportunity to legislate on their behalf.85 However, while most experts agree that labor law preemption does not apply to such initiatives, the extent to which antitrust law preempts collective action among workers classified as independent contractors is disputed. 86 One way to ensure an exception from the antitrust law is for states to design collective bargaining regimes consistent with the Parker exception, which allows collective action when clearly permitted and actively supervised by the state.87 In most cases, these laws have been staunchly opposed by industry groups.88 They also divide the labor movement; some unions take the position that seeking union rights without full employee status is a mistake, while others emphasize the importance of building collective power and achieving interim gains. 89

## Adv 1

**Circumvention – 1NC**

**Circumvention. Employers and courts nullify enforcement.**

Harold **Meyerson 25**, editor at large of The American Prospect, "A Federal Appellate Court Finds the NLRB to Be Unconstitutional," American Prospect, 8/25/25, https://prospect.org/justice/2025-08-25-federal-appellate-court-finds-nlrb-unconstitutional/

Today, the NLRA hovers somewhere between de facto and de jure nullification. It’s been slowly eroding for at least half a century, as employer resistance to it has heightened, and as the penalties to employers for violating its terms have weakened. Currently, the fact that the five-member National Labor Relations Board is down to just two members—not enough to constitute a quorum—means the Board can make no rulings. This enables employers who’ve been found to have violated workers’ rights by lower NLRB administrative courts to appeal those findings and penalties to the Board, which cannot rule on anything—essentially, giving those employers leeway to keep on doing what they’re doing, however illegal it may be.

The Board is only down to two members because President Trump fired Biden-appointed and congressionally confirmed Board chair Gwynne Wilcox in the middle of her term, which, as for all Board members, was set by the NLRA to run for five years. Under the law, presidents had the power to remove members before their terms expire only in the event of “neglect of duty or malfeasance in office,” which Trump didn’t even allege when he fired Wilcox.

In May, the Republican majority on the Supreme Court upheld Trump’s power to fire Board members at will, under the still-novel theory of the unitary executive, which holds that the federal agencies that Congress established and presidents signed into law to be independent of presidential power, save only the power to appoint their leaders, are now in violation of the newly discovered right of presidents to completely control these agencies. The Republican justices are expected to soon reverse the Court’s 1935 ruling in a case called Humphrey’s Executor, which limited the president’s power over independent regulatory agencies. By upholding Trump’s firing of Wilcox and other heads of regulatory agencies, those justices have positioned themselves to rule that such limitations violate the Constitution’s vesting of executive power in the president.

Last week, the Fifth Circuit circumscribed the NLRB’s power even more. Before the court was a suit that Elon Musk’s SpaceX had filed against the Board, concerning a pending investigation from one of the Board’s regional attorneys into claims that SpaceX had violated its workers’ rights by firing eight of them for going online to opine that Musk’s online verbal outbursts and abuses actually hurt the company’s standing. SpaceX had sought an immediate injunction overturning the Board’s right to investigate those charges, saying that it inflicted “irreparable harm” on the company, even though it was the fired workers who suffered harm and even though the only entity inflicting irreparable harm on Musk’s companies has been Musk himself, through the very outbursts and bigoted behavior that his employees had warned against. (See, e.g., Musk’s effect on Tesla sales.)

Today, the National Labor Relations Act hovers somewhere between de facto and de jure nullification.

In seeking SpaceX’s injunction to stop any investigation the Board might order, its attorneys, from the union-busting firm of Morgan Lewis, based their claim on the argument that the Board itself was unconstitutional, since it had been established, and had been operating for the past 90 years, as an agency that the president couldn’t completely control. The two Trump-appointed judges and the one George H.W. Bush–appointed judge who heard the case found for SpaceX, in a ruling that will now extend to any and every case brought against the NLRB or against employers or unions that the NLRB would adjudicate in the Fifth Circuit, which encompasses Louisiana, Mississippi, and Texas. And in this era of judge shopping, mega-companies that may have one part-time employee or a single post office box in one of those states “may now flood the Fifth Circuit” to avoid any enforcement of decisions upholding workers’ rights, former NLRB general counsel Jennifer Abruzzo told me in the wake of the court’s ruling.

The neutering or repeal of the NLRA has been in the works for several years. Both Musk and his fellow world’s-richest-human competitor, Jeff Bezos, had initiated suits last year claiming that the act—the only act that gives workers the power to bargain with their employers and seek remedies when those employers violate labor laws—was unconstitutional. Even before then, Musk had publicly proclaimed that he was “opposed to the idea of unions.” And just as Musk’s SpaceX had contested an NLRB finding by seeking an injunction against it premised on the act’s unconstitutionality, so Bezos’s Amazon had filed a similar suit seeking a similar injunction on similar grounds. In the Amazon case, the company was opposed not only by the NLRB but by the union of the affected workers, the Teamsters. (That case is still in the works.) The SpaceX workers neither had a union affiliation nor were seeking one, so the only parties to the case were the company and the agency.

But the agency is now inert at the top, and has an acting general counsel put there by Trump. Trump’s nominee for permanent general counsel, Crystal Carey—a former partner at Morgan Lewis, the firm representing SpaceX in this case—was asked by Bernie Sanders in her Senate confirmation hearing last month whether she believed the NLRB was constitutional. That, she answered, was up to the courts, declining to say whether she herself believed it was, and raising the possibility, verging on probability, that she wouldn’t have the agency oppose the argument that SpaceX was making. As of now, Carey remains unconfirmed, as her over-the-top support for employer rule over workers alienated at least one Republican member of the Senate committee.

The Fifth Circuit could have ruled that it was the act’s language forbidding presidents to make at-will firings that was unconstitutional. But by going beyond that to flatly declare that the Board itself was unconstitutional, it completely blocked workers from any attempts to have the act’s protection of their rights upheld by, or even heard by, federal courts in those three states. By granting that immediate injunction, it nullified Board attorneys’ power to simply investigate allegations. (In a concurring opinion, one of the three justices said he’d tried and failed to find any of the irreparable harm to SpaceX presumably posed by an NLRB attorney’s investigation, but he let the ruling stand nonetheless. In the Trump judiciary’s war on workers, empirical concerns appear only as the faintest of whispers.)

Abruzzo, whose service as NLRB general counsel during Biden’s presidency ranks as the most brilliantly pro-worker tenure of any federal official since Sen. Robert Wagner, the NLRA’s author, has some ideas about what can be done if the NLRB remains deactivated or is abolished altogether. “States have to step in,” she told me, “if the NLRB is no longer functioning.” Already, some states have enacted laws banning employers from compelling their employees to listen to anti-union propaganda. Many have extended bargaining rights to workers excluded from the protections of the NLRA. But if the NLRB is no longer functioning and, for instance, can no longer hold union affiliation elections for a company’s workers, then states should consider holding such elections, she suggested. And even if the NLRA is struck down in toto, she noted, workers would still retain their fundamental right to recourse. The years immediately preceding its 1935 enactment, she recalled, were filled with boycotts, strikes, and even general strikes that closed cities down. Workers will “still have the power to withhold their labor,” she said.

For now, it’s important to remember that the federal assault on workers’ rights isn’t all Trump’s doing, or Musk’s, or Bezos’s. Republican officials and American CEOs and mega-investors have been opposed to workers’ rights and power for a very long time, just as many Democrats—not a lot, but enough to make a difference—have been lax in defending them. Today, the bough has been bent to the point that it’s almost broken. A catastrophic snap may come soon.

### Artificial Intelligence AI Defense---No Black Swans Impact---1NC

#### Ignore the ‘unpredictable downsides’ catch-all.

David Thorstad 23, Assistant Professor of Philosophy at Vanderbilt University, was a research fellow at the Global Priorities Institute and Kellogg College, Oxford, did a PhD in philosophy at Harvard and BA in philosophy and mathematics at Haverford College, “Exaggerating the risks (Part 8: Carlsmith wrap-up),” Reflective Altruism, 6/3/23, https://reflectivealtruism.com/2023/06/03/exaggerating-the-risks-part-8-carlsmith-wrap-up/

In Part 5, I expressed concern about a regression to the inscrutable, in which effective altruists invest increasing confidence in the least scrutable risks. The challenge is that it is very hard to know what to say about such risks because they are nearly inscrutable.

This suggests that effective altruists will have a difficult time motivating the claim that highly inscrutable phenomena pose high levels of existential risk, since the very inscrutability of these phenomena makes it hard to get a detailed risk argument off the ground. If that is right, then a very good strategy for pushing back against less scrutable risks such as AI risk is to carefully examine the arguments and show that (as we might have expected) the arguments provide little evidence for the risk claims they claim to support.

We saw an illustration of this strategy in Parts 7-8 of this series, where I argued that key elements of Carlsmith’s argument (instrumental convergence; AI timelines; implications of instrumental convergence) are relatively undersupported.

“That’s not fair,” you say! “It is almost always going to be hard to construct a plausible argument that inscrutable phenomena pose high levels of existential risk. Therefore skeptics will nearly always be able to point at gaping holes in arguments for AI risk and other inscrutable risks.”

Exactly. That is why it is so hard for me and many others to believe the arguments made by effective altruists for high levels of AI risk. Arguments for inscrutable risks tend, by construction, to have gaping holes in them.

If we do not, and likely cannot come to possess significant evidence that artificial intelligence poses a high level of existential risk to humanity, then we should not believe that artificial intelligence poses a high level of existential risk to humanity. Speculative arguments may take us a few strides beyond our meager evidence, but there is only so much that can be done without more evidence.

## Adv 2

### Innovation Defense---Alt Causes---1NC

#### R&D and immigration shortages thump innovation.

Karishma Vaswani 20, Asia business correspondent, "Ex-Google boss: US 'dropped the ball' on innovation," BBC News, 09/11/2020, https://www.bbc.com/news/business-54100001

In the battle for tech supremacy between the US and China, America has "dropped the ball" in funding for basic research, according to former Google chief executive Eric Schmidt. And that's one of the key reasons why China has been able to catch up. Dr Schmidt, who is currently the Chairman of the National Security Commission on Artificial Intelligence, said he thinks the US is still ahead of China in tech innovation, for now. But that the gap is narrowing fast. "There's a real focus in China around invention and new AI techniques," he told the BBC's Talking Business Asia programme. "In the race for publishing papers China has now caught up." China displaced the US as the world's top research publisher in science and engineering in 2018, according to data from the World Economic Forum. That's significant because it shows how much China is focusing on research and development in comparison to the US. For example, Chinese telecoms infrastructure giant Huawei spends as much as $20bn (£15.6bn) on research and development - one of the highest budgets in the world. Dr Schmidt blames the narrowing of the innovation gap between the US and China on the lack of funding in the US. "For my whole life, the US has been the unquestioned leader of R&D," the former Google boss said. "Funding was the equivalent of 2% or so of GDP of the country. Recently R&D has fallen to a lower percentage number than was there before Sputnik." According to Information Technology and Innovation Foundation, a US research institute, the US government now invests less in R&D compared to the size of the economy than it has in more than 60 years. This has resulted in "stagnant productivity growth, lagging competitiveness and reduced innovation". Dr Schmidt also said the US's tech supremacy has been built on the back of the international talent that's been allowed to work and study in the US - and warns the US risks falling further behind if this kind of talent isn't allowed into the country. Tech war "This high skills immigration is crucial to American competitiveness, global competitiveness, building these new companies and so forth," he said. "America does not have enough people with those skills." The US has been embroiled in a tech cold war with China and in recent months has stepped up its anti-China rhetoric. This week it revoked the visas of 1,000 Chinese students it claims have military links and accused Chinese tech firms of acting as agents for the Chinese Communist Party - claims Beijing and these companies reject. The Trump administration has also taken steps to block Chinese tech firms like Huawei and Chinese apps including TikTok and WeChat, saying they pose threats to national security. Beijing has said this is "naked bullying", and Dr Schmidt says the bans will mean China will be even more likely to invest in its own domestic manufacturing. Dr Schmidt says the right strategy for a US-China relationship is what is called a 'rivalry partnership' where the US needs to be able to "collaborate with China, while also competing with them". "When we're rivals, we are rough, we are pursuing things. We're competing hard, we're trying to get advantage - real competition - which the US can do well, and which China can do well. But there's also plenty of areas where we need to be partners."

### Innovation Defense---High Now---1NC

#### US innovation is high and leading

Martin Wolf 21, Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” 4/27/21, https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

### Innovation Defense---No Impact---1NC

#### Innovation’s tapped out---new products are marginal improvements and social structures can’t adopt or utilize it quick enough.

Tom Valovic 18, author of Digital Mythologies (Rutgers University Press), previously consultant to the former Congressional Office of Technology Assessment and was editor-in- chief of Telecommunications magazine, 9/24/18, “The Limits of Innovation: High Tech’s Diminishing Returns,” https://sociable.co/technology/innovation-tech-diminishing-returns/

Intense levels of high tech competition and innovation have been with us for decades. Rapid change — with all the complexities and anxieties it creates — now seems to be the new normal.

As impressive as the fruits of innovation have been, the pace of change seems relentless and, at times, almost mindlessly linear. It suggests a possible disconnect between the products or services being rolled out to the market and whether a specifically identifiable business or consumer need actually exists in sufficient degree to justify the development and investment of resources involved.

In high tech circles, there’s a particular mindset that can become an occupational hazard for those working on technology innovation — a perspective that seems to have only one speed and one direction. It’s a view of the world that doesn’t look back or tend to reflect on the full implications what a particular product or service is “bringing to the table” in the context of any other life domains — in other words, a very siloed way of thinking. Practical considerations such as day to day lifestyle implications or something slightly loftier such as overall benefit to society or the quality of life are generally left to others to wrestle with.

As the tsunami of innovation continues, we are left with an embarrassment of riches that comes at a price — the decoupling of technology innovation from social and cultural contexts. In many cases, we see something akin to “innovation for innovation’s sake”, a grand apotheosis of sometimes questionable additions to the existing panoply of technology products and services that result from the mantra of “continuous improvement” and the sheer market momentum it generates.

Is “Negative Innovation” Possible?

The Institute of Quality Assurance defines continuous improvement as ” a gradual never-ending change…focused on increasing the effectiveness and/or efficiency of an organization to fulfil its policy and objectives…Put simply, it means ‘getting better all the time.” But can the actual practice of continuous improvement run into an existential brick wall as it were, a point of diminishing returns? Or, to take that a step further, given that innovation has become such a runaway freight train, it seems worthwhile to ask: can there be such a thing as too much innovation or the wrong kind of innovation?

It appears that, indeed, there can be limits to the value of innovation, especially in tech-driven markets such as consumer electronics — inflection points at which companies may have, in effect, innovated themselves out of business or failed to add real value to the marketplace.

An intriguing Wall Street Journal article points out that while innovation certainly is plentiful, many technology investments are simply not leading to positive advances in the standard of living. The author noted that “improvements in everyday life have been incremental, not revolutionary…By all appearances, we’re in a golden age of innovation. Every month sees new advances in artificial intelligence, gene therapy, robotics and software apps. Research and development as a share of gross domestic product is near an all-time high. There are more scientists and engineers in the U.S. than ever before. None of this has translated into meaningful advances in Americans’ standard of living.”

The article speaks to what might be called an innovation gap that exists between new technologies and their ultimately successful and useful adoption. We can speculate that there’s an absorption rate that exists as any new technology works its way into the user base if consumer-oriented, or the workplace if designed for an enterprise application. In other words, for any given technology, regardless of how “innovative” it might be, there may exist limits to how quickly it can be absorbed in the marketplace (which is to say fully or partially utilized).

If It Moves, Automate It

Moving up another level of “magnification” to the macroeconomic big picture, the issue of technology absorption across society at large is both complex and problematic. For example, automation has taken hold in many industries but a known and well publicized unpleasant side effect has been significant levels of social and economic disruption.

Pumping out more technology into organizational structures that have already been destabilized by the first 3 or 4 waves of innovation may seem positive strictly from a business standpoint with the profit motive driving future expectations. But looking at the product or service from a quality of life perspective often yields a different view. What happens is not too complex to understand: given the torrent of innovation being injected into corporate, community, and/or government organizations, those entities to varying degrees may simply be not prepared to absorb them at any moment in time as governed by the limits to innovation described previously.

What’s the Way Forward?

There’s no escaping the fact that we’re living in a golden age of innovation, filled with technology marvels and an unrecognized potential for allowing advanced technology to be applied to some of our most intractable social and environmental problems. Unfortunately, the trajectory of technology and hyper-technology continues to move much faster than the ability of our social structures – especially government — to understand and, when necessary, steer, augment, thoughtfully support, or regulate it.

In addition, public entities continue to play catch-up in their understanding of the fundamentals of how technology works and doesn’t work. The Facebook meltdown of 2018 is perhaps the most salient example of how these disconnects can fail to fully serve the interests of either society or even technology providers themselves. The Congressional hearings associated with Facebook’s political blunders exposed deep levels of poorly understood assumptions on the part of politicians about the fundamentals of the media and information-based technologies now in widespread use.

In the long run, the lose/lose scenarios posed by the unaddressed challenges described serve no one’s best interests. Going forward, such disconnects will need to be addressed not only by the purveyors of technology but by a combination of market correction, viral feedback, changes in social awareness, and NGO-supplied out of the box thinking.

### Emerging Tech Defense---1NC

#### Emerging tech only amplifies social tendencies that would occur anyway. It’s never decisive on its own.

Dominika Kunertova 22, Senior Researcher in the Global Security Team at the Center for Security Studies, "Strategic Trends 2022," Center for Security Studies, 04/01/2022, ISSN 1664-0667

More Hype, Less Sonic

The idea of flying at hypersonic speeds has been around for some time. Although the theoretical foundations were laid down in the 1960s, the lack of suitable manufacturing processes hindered the development of hyper- sonic systems. In addition, air-breath- ing engines for space shuttles were judged too heavy and costly. Today, spurred by great-power rivalry, recent scientific advances have brought these systems within reach, as they have allowed prototypes to be construct- ed and tested. This has sparked hype and impatience among trendspotters about whether hypersonic technology will unleash a new industrial and/or military revolution.

The hype is not unique to hyper- sonic weapons. The phenomenon of emerging and disruptive technologies (EDTs) is plagued with a lack of understanding of the time it takes for a given technology to mature, innovation and adoption challenges, and its real-world effects in both the short and long runs. According to a 2020 NATO Science and Technology Organization report, the EDTs include data, AI, autonomy, space, hypersonics, quantum technologies, biotechnology, and materials. The report suggests that all of these are either currently in nascent stages of development or are undergoing rapid development.25

Technology is labeled as “emerging” when it is coming to maturity. At this stage, the use of such technologies is not widespread, nor are their effects and functions fully known. Although a technology maturity timeline is of- ten difficult to determine, emerging technologies make policymakers re- consider the status quo and ponder their implications for future warfare.

Technologies considered “disruptive” are those that are expected to have major or even revolutionary effects, but have yet to be exploited. For ex- ample, they could undermine nuclear deterrence, increase risk of a nuclear first strike, expand opportunities for crisis escalation, and heighten insecu- rity caused by some form of duality in a technology. Dual-purpose tech- nologies having both civilian and mil- itary uses or application in both the conventional and nuclear realms can be destabilizing.26 In contrast, some experts point out that disruptive technologies can also have stabilizing effects. For instance, this could occur if a technology were to improve early warning and detection mechanisms or enable new arms control verifica- tion measures.27

Other researchers disagree in principle, arguing that a technology itself cannot be disruptive, stabilizing, or game-changing. This view emphasizes the importance of technology adoption processes. For example, here, the success of armed forces in using open architecture and modular systems to absorb fast-paced technological changes is vitally important. Ultimately, the military technology represents the means to the political ends; only the ways in which the latter are achieved can be disruptive.

Insights from the sociology of technol- ogy adoption can help in understand- ing the hype surrounding hypersonic weapon systems and temper unreal- istic expectations. In the early 1990s, Howard Fosdick outlined the stages of technological development through scientific discovery, innovation, and increased public awareness, but also through failures and efforts along ul- timately unproductive avenues. He noted that the greatest amount of discussion about many technologies takes place before they reach maturity, prior to their real use. In doing so, he suggested that usability of a technology and its publicity are inversely correlated.28

According to the Gartner Hype Cycle, the most well-known cycle of techno- logical progress built upon Fosdick’s work on technology adoption, a trending technology goes through five key phases, each of which describes a state of attention towards the technology: 1) the Innovation Trigger, marking a new technology or scientific discovery; 2) the Peak of Inflated Expectations, when the technology gains publici- ty; 3) the Trough of Disillusionment, when the limitations of the technology come to the fore; 4) the Slope of Enlightenment, which comes with a better understanding of the technolo- gy’s utility; and 5) the Plateau of Pro- ductivity, the stage of a mature application of the “unhyped” technology.

Based on these criteria, data, AI, autonomy, space, and hypersonics will produce significant or disruptive im- pacts on military capabilities over the next five to 10 years, while quantum technology, biotechnology and mate- rials are still emerging and will need 10–20 years to produce their disrup- tive effects (see figure).29

This hype cycle shows that the attention does not represent a technical assessment. Instead, it often reflects the interests of political actors and profit-oriented industries. It also highlights the role that media play in promoting the impatient expectation of an impending industrial-military revolution. All technologies face the test of proving their usefulness and viability, but this is something that usually happens only after the hype fizzles out.

International security scholars and tech experts who look beyond the allure of wonder weapons question the technical feasibility and military effectiveness of hypersonic weapon sys- tems.30 They warn that these systems have yet to reach maturity in terms of materials, propulsion, and control. Indeed, even though unpropelled hy- personic gliders use existing ballistic missile technology for their boost, such gliders may only become fully operational by 2030 at the earliest.

### Emerging Tech Defense---Governance Fails---1NC

#### Emerging tech regulation fails and AFF can’t solve.

Greg E. Marchant 20, Regents Professor and Lincoln Professor of Emerging Technologies, Law & Ethics, and Faculty Director, Center for Law, Science & Innovation, Sandra Day O’Connor College of Law, Arizona State University, “Governing Emerging Technologies,” Vanderbilt Law Review, Vol. 73(6), 2020, p. 1863-1865

I. THE WICKED PROBLEM OF EMERGING TECHNOLOGY GOVERNANCE

Emerging technologies—such as synthetic biology, gene editing, nanotechnology, artificial intelligence, internet of things, 3D printing, drones, applied neurotechnologies, and blockchain and cryptocurrencies—present a common set of governance challenges.5 Perhaps most significant is the “pacing problem,” where the pace of technology development far outstrips the capability of regulatory systems to keep up.6 Powered by growing market demand and intense business competition, new technologies are being developed, deployed, and commercialized faster than ever before.7 At the same time, traditional governmental processes of legislation, regulation, and judicial review have been slowed by increasing bureaucratic requirements and the increasing politicization of technological disputes.8 The result of accelerating technology and decelerating regulatory oversight is a growing governance gap. Any new statutes or regulations affecting these new technologies are likely to be outdated before the ink dries. As technology governance expert David Rajeski has noted, “[i]f you think that any existing regulatory framework can keep pace with this rate of change, think again.”9 Facing such a bleak prospect, regulators often sensibly defer regulation, waiting for a more stable technology plateau that may or may not ever come.

A second regulatory challenge of many emerging technologies is that they present risks and concerns outside the scope of existing regulatory agency jurisdictions.10 Regulatory agencies, such as the U.S. Food and Drug Administration, are restricted to regulating the safety and efficacy of products. But many applications of emerging technologies raise broader ethical and social concerns relating to human enhancement, “playing God,” autonomy, dignity, fairness, equitable access, privacy, and longer-term impacts on society.11 These issues are largely outside the safety and efficacy scope of current agency jurisdictions and thus often escape any regulatory oversight.

Yet another challenge to the regulation of emerging technologies is their breadth of application. Technologies such as artificial intelligence, nanotechnology, and blockchain span the entire industry spectrum, as well as many nonindustrial activities and sectors. They are sometimes referred to as “enabling” or “platform” technologies that, like computers or the internet, have the potential to affect virtually every industry sector.12 There are thousands, if not tens or hundreds of thousands, of ways these core technologies are used, each with their own context of risks and benefits. These broad applications not only involve many different types of industries and businesses, but also affect many other types of stakeholders and nongovernmental organizations with particular interests in specific applications. The broad applications of these technologies also span many different regulatory agencies, each with their own organic statutes with different requirements, criteria, and goals. The end result of this multitude of applications, regulated parties, stakeholders, and regulators is tremendous regulatory diversity and complexity. Further complicating the regulatory challenge, emerging technologies are inherently international in application, creating the need for some type of international coordination.13

Finally, the unprecedented uncertainty about emerging technologies also impedes effective regulation.14 Because the technologies are so new and moving forward so quickly, there is enormous uncertainty about the trajectories, benefits, and risks of these technologies.15 Given these uncertainties, it is possible to paint unrealistically optimistic or pessimistic visions of the technology at issue, thus fostering public controversy, conflict, and unease.16

In summary, the governance of emerging technologies is characterized by complexity, diversity, and uncertainty. These same characteristics—complexity, diversity, and uncertainty—are the defining characteristics of a wicked problem.17 As a wicked problem, the governance of emerging technologies is unlikely to be solved by a single or simple solution. Traditional government regulation will not be sufficient, or many times even appropriate, for emerging technologies.18 Rather than traditional regulation—consisting of enforceable rules unilaterally imposed by a regulatory agency—emerging technologies will require a “governance” approach that expands the categories of responsible parties beyond government to include the private sector, nongovernmental organizations, and think tanks and also expands the relevant oversight mechanism beyond enforceable government regulations.19 Four alternative governance approaches for emerging technologies are discussed and evaluated in the next Part.

### US Economy Resilient---1NC

#### Economy is broadly resilient and fears are overblown

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc. He holds an M.A. and B.Sc. degrees from Queen’s College, Oxford, and an M.B.A. in finance and a Ph.D. in business economics from the University of Chicago. 10/9/20 “Resilient US Economy Has Overcome the COVID-19 Recession” https://www.independent.org/news/article.asp?id=13290

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.