# 1NC---Round 6---DRR

## OFF

### 1NC

#### Lacan K.

#### The cultural fantasy of collective bargaining reinforces unattainable desire, creating a vicious cycle of exploitation.

Muzammel Shah 24. Assistant Professor (HRM) at School of Management (AUSOM), Air University. “The desire for employability and self-exploitation: concretizing Lacan's psychoanalysis on employability.” *Evidence-Based HRM*. February 19, 2024. https://www.emerald.com/ebhrm/article-abstract/12/1/130/1229044/The-desire-for-employability-and-self-exploitation?redirectedFrom=fulltext

Based on the Lacan perspective (as cited in Bloom, 2013), it is argued that employability ends up in self-exploitation. The Lacan frame informed the conceptual model of the study. Lacan argued that we desire something that is missing in our lives. For completeness in our lives, we desire things such as power, prestige, wealth, status, knowledge, etc. Employees in contemporary organizations constantly desire employability and then positions of higher authority, status and prestige. This is followed by a desire for learning, growth, development and self-mastery. Bloom (2013) discussed that employability is a cultural fantasy that shapes the identity around the desire to benefit from an employable self and self-mastery. Fantasy happens via illusory strivings for a perfect and model/ideal future in which current troubles will not happen. Voronov and Vince (2012) argued that fantasies have a strong influence on a person’s actions and preferences in organizations. The cultural ideals of the marketplace and managers shape individual identities. Employees constantly engage in learning and developmental activities to improve and nourish their careers. Specifically, this paper argues that in this process, employees strive to remain relevant to their organization, engage in employability activities and end up being self-exploited. Ironically, despite the abundance of literature in the domain of employability, the different streams of research on employability have explored the various aspects of employability (Greco et al., 2019; Kassotaki, 2019; Maurer, 2002; McDonald and Hite, 2005; Van Dam et al., 2006; Van der Pol, 2011; Wilms et al., 2019), but the dark side has been ignored or overlooked. Thus, the picture of employability presented in the literature to date is incomplete.

Given the body of scholarly work in this field, it is appropriate to reflect on this debate, its themes and perspectives. It is a novel perspective on employability research because not enough research has explicitly investigated or explored the potential implications of employability related self-exploitation. The study has theoretical implications. This discussion will help us better understand the phenomenon of employability. It will give employability scholars a new road map. Furthermore, the research will help inform practice and improve policy and decisionmaking. Accordingly, this study was carried out to develop and test a theoretically comprehensive model that included learning, commitment, employability and self-exploitation.

The study employed the psychoanalytic approach to employability. Fantasies, according to Lacan (Bloom, 2013), play an important role in shaping people’s self-hood. People form an elusive vision of their romanticized self: a more appealing version of the socially endowed self that motivates individuals to strive for a perfect and model future in which current problems do not occur. The romanticized self is linked to culturally fabricated fantasies. People are constantly working on and attempting to master their socially provided selves. One such example is employability. Employees in work environments construct illusory self definitions. Their occupation choice ensures that current performance will meet the requirements of an ideal future, free of life’s existing hiccups.

According to Lacan and Alan (1981) framework, broad system-level (economic and social) factors shape micro factors. Individuals as units of a system are influenced by cultural and market ideals. The Lacanian viewpoint is applied to individual employability-related behavior in an organization. According to Bloom (2013), individuals strive to continuously improve their employability. They overcome their personal and financial estrangement by increasing their self-exploitation. Individual thinking and employability-related decisions are influenced by structural factors such as labor market conditions, etc. However, structural or systemic factors are outside the scope of this study.

The paper focuses specifically on individual employability-related behavior. The psychoanalytic lens provides a distinct approach to understanding employability. Scholars (such as Arthur and Rousseau, 1996; Hall, 2002) have debated that employability is the essence of proclaimed empowerment, which includes not only obtaining employment but also ‘controlling their employment fate’. In reality, it is far from empowering workers and instead increases their reliance on capitalist ideologies and managerial control (Cremin, 2010). According to Costea et al. (2007), organizations exploit individuals’ desire for employability. They foster a culture in which management’s agency and power are re-established through the formation of a committed and autonomous labor force/employees.

The norms of reciprocity (Blau, 2017; Cook et al., 2013; Cropanzano and Mitchell, 2005; emphasize that one party’s investment is returned by another party’s investment. When applied to the employee-employer relationship, the employer’s investment creates an obligation in the employee to return the investment. That sense of obligation to reciprocate leads to commitment and individual participation in employability activities. Furthermore, the illusive view of commitment that reflects employees striving to model an ideal future is continuance commitment followed by the drive to remain employable. It instils in people: that they have an obligation to repay the employer’s investment. And that leaving an organization means having few or no options.

The central concept of Lacan’s psychoanalysis is fantasy (Driver, 2017). Individuals become affectively committed to aspects of society that provide endurance and protection from the emotional pain associated with everyday failures. Fantasies have a significant impact on an individual’s preferences and activities, as well as on organizations, political life and pro-social work (Clancy and Vince, 2019; Glynos, 2003; Voronov and Vince, 2012). Lacanian framing demonstrates that micro-level effects are linked to larger societal and institutional discourses, making it appropriate to shed light on the relationship between learning, commitment, employability and self-exploitation.

The prior literature does not portray self-exploitation as a detrimental aspect of employability. In reality, though, it is the unfavorable result of a misguided notion of autonomy and self-determination. Self-identity mastery allows managers or bosses to dictate or control career choices and take advantage of their employees. People who engage in self exploitation out of a false sense of self-determination and self-mastery are alienated or estranged from their true selves. By examining employability as a cultural fantasy that leads to exploitation, this study contributes to the body of literature on employability and advances developed knowledge on the topic. The study examines workers in the context of their working environments, which display their decisions regarding the employable self. The proposed conceptual framework is presented in Figure 1.

#### The impact is fascism.

Alexander Stagnell 25. Postdoctoral Research Fellow in Rhetoric at the Free University of Brussels. “Tragedy, Then Farce: Slavoj Žižek’s Theory of Populism.” *Crisis & Critique* 12(1). p. 324-341.

The Domestication of Objet a

In the contemporary political landscape, Marx’s old formula ‘first as tragedy, then as farce’ seems particularly adapt when applied to the trajectory of populism. The hopeful energy of the early 2010s, marked by for instance the Occupy Movement, the Arab Spring, and the electoral breakthroughs of movements like Syriza and Podemos, soon gave way to tragedy: the rise of right-wing populists like Donald Trump and the repeated failures of left-populist political movements to translate their popularity into durable structural changes. Today, the farcical dimension of populism is not only embodied by the theatrical antics of Trump and other right-wing populist leaders across the globe, but also by in increasingly populist radical center. This centrist establishment, once aligned with progressive causes as a way to combat a more radical left, has begun disavow ‘wokeness’ and the concern for representation and inclusion of minorities, instead positioning itself as a voice for the poor and the working-class against the alleged overreach of ‘woke PMC’s’ and ‘symbolic capitalists’.43

This centrist attempt at populism offers an image of a society in need of balancing the relations between classes, a manner of depicting class relations which Žižek associates with fascism and populism. What is assumed within such perspectives is the restoration, or at least the formation, of a harmonious society capable of, at the minimum, limiting the effect of social antagonisms. However, “[f]or a Marxist,” as Zizek writes, “the relationship between classes is by definition that of a discord and imbalance, so that the only way to abolish class antagonism is to abolish classes as such.”44 Yet, is it not precisely the same issue that plagues Laclau’s populist theory? Consider his own example of the populist logic in action:

Let me give an example of how isolated demands emerge, and how they start their process of articulation. This example, although it is imaginary, corresponds pretty well to a situation widely experienced in Third World countries. Think of a large mass of agrarian migrants who settle in the shantytowns on the outskirts of a developing industrial city. Problems of housing arise, and the group of people affected by them request some kind of solution from the local authorities. Here we have a demand which initially is perhaps only a request. If the demand is satisfied, that is the end of the matter; but if it is not, people can start to perceive that their neighbours have other, equally unsatisfied demands – problems with water, health, schooling, and so on. If the situation remains unchanged for some time, there is an accumulation of unfulfilled demands and an increasing inability of the institutional system to absorb them in a differential way (each in isolation from the others), and an equivalential relation is established between them.45

What this example reveals is that the emergence of a populist subject, the people, is contingent not upon any immanent structural antagonism, but on the failure of the state to meet isolated demands. The political identity that emerges is, at root, a response to administrative inadequacy, not to the irreconcilable logic of class struggle. In this view, populism becomes a reactive movement aimed at restoring balance, an appeal to the authorities to rectify a dysfunctional distribution of resources or attention. A call for populism is, in other words, a call for a rebalancing of the current configuration of society. This is in turn brings us to Žižek’s critique of liberal democracy as the ultimate horizon for Laclauian populism. Apropos the relation between antagonism and democracy in Laclau, Žižek writes:

Democracy it may seem, thus not only can include antagonism; it is the only political form that solicits and presupposes it, that institutionalizes it. What other political systems perceive as a threat (the lack of a “natural” pretender to power), democracy elevates into a “normal” positive condition of its functioning. The place of power is empty, there is no natural claimant for it, polemos or struggle is irreducible, and every positive government must be fought out, gained through polemos. 46

Against the threat of post-political depoliticization, a return to populism as “the democratic element in contemporary representative systems” appears tempting. However, as this struggle between the existing hegemony and its populist counterpart is inscribed within an existing framework, as a call from the people to the big Other to fulfill its demands, democracy must be assumed as “a basic structural feature”47 of every populist situation. The issue, once again, lies in theory not in practice. So, when Žižek claims that “[t]he conclusion to be drawn is that populism (the way we supplemented Laclau’s definition of it) is not the only mode of existence of the excess of antagonism over the institutional-democratic frame of regulated agonistic struggle”48, we need to think the excess of populism, the reason that it is sometimes good enough in practice, from a different theoretical perspective. The aim must be to avoid what Zizek describes as Laclau’s mistake of inscribing into democracy an antagonistic struggle as the middle ground between two extremes, “on the one side, the celebration of heroic struggle-confrontation that suspends democracy and its rules [….] [and] on the other side, the evacuation of true struggle out of the democratic space so that all that remains is anemic rule regulated competition […].”49 Such a perspective only constitutes a domestication of the immanent antagonism.

#### Vote neg for authentic self-affirmation. That rewires the ecological system of debate.

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All systems are being experienced concurrently (Ancis & Davidson, 2013). The self constantly seeks empathic attunement through the roles, activities, and settings that an ecological system provides or withholds (Blau & Wagman, 2022; Heft, 2001; Strozier et al., 2022). Similar to how the self object functions in the dyad, selfobjects function in the environment to maintain an individual’s cohesive sense of self (Kohut, 1971). When the environment is conducive to self-affirmation, the ideals that pattern it are fluid and liberating (Brandchaft et al., 2010; Kassouf, 2023). The environment is able to be idealized via feelings of belonging and comfort. The self feels “at home” in engaged systems that afford the individual to develop freely with current capacities. In turn, the environment optimally reacts to the individual in ways that promote exploration, self-determination, and community involvement. The self is supported by the environment and creates ideal conditions for the self to grow without threat or fear of fragmentation (Kohut, 1977). Likewise, the environment is not fearful of its own disintegration or fragmentation throughout its interactions with the developing individual (Kohut & Strozier, 1985).

Conversely, failure to affirm ontological selfhood through empathic transference thrusts the individual into what Fanon calls “a zone of nonbeing” (Fanon, 1952, p. xii) or what Kohut would describe as fragmentation (Kohut, 1971). When rigid ideals are used to determine a macrosystem, which then pattern all systems beneath it, selfobject failure via the environment is likely to follow. Instead of selfhood being sustained, the environment operates with a collective narcissistic rage to affirm its own rigid grandiose ideals that can never be attained (Foucault, 2013; Kohut, 1977; Preciado, 2025). All systems are a unique area within the selfobject milieu that can empathically fail an individual even if other systems within the broader ecosystem are empathically attuned to them.

As the self acts, the environment reacts and vice versa. This is sensible in psychodynamic understanding and much more so in an intersubjective systems framework, specifically regarding the leading edge and trailing edge. The self is constantly having to navigate the hopes and dreads that are entangled within an environment (Zimmerman, 2019). The hope of one system may be the dread of another. Depending on power relations, these can be developmentally emboldening or catastrophic to the self-structure.

Take for example the Black Panther Party movement that took place in the late 1960s to the early 1970s. For many in the movement or those associated with it, the authentic self was optimally responded to by the environment thanks to the microsystems the BPP created. However, these microsystems tailored to the hope of black liberation and self-determination conflicted with the dread of fragmentation possessed by the exosystem and greater macrosystem of white hegemony that ruled United States culture, controlled federal resources, and launched numerous propaganda campaigns to control the discursive norms surrounding black liberation (Bloom & Martin, 2016).3 When revolutionary culture engaged counter-revolutionary hegemony, psychological consequences on the BPP members across the organization followed due to the malice of the systems that encased the BPP.

The action and reaction between the self and the environment are almost always misaligned, often resulting in narcissistic injury, sometimes leading to trauma. Across the world in every region, someone is empathically failed by the systems they are encased within. Yet, with an intersubjective self-psychology logic of the leading edge, as this destruction is taking place it does not alter that the individual is still striving to belong and function in a given ecosystem (Paul et al., 2019). The tension between the environment repressing the nuclear self and the self’s striving to belong in the environment causes dynamic shifts of self-concept on a daily basis. These shifts extend the empathic attunement of a therapist beyond the bounds of the clinical dyad and connect the contextually entangled selves of both therapist and patient.

Clinically speaking, Brandchaft et al. (2010) initially argued that the self was entangled solely in the context of the patient and therapist dyad. Paralleling the enmeshment of children with a caretaker, the self is paralyzed by recurring rigid structures produced by intersubjective factors. However, extended beyond the dyad, patterns appear across other ecological systems entangling the self. These patterns occur across numerous systems, represented by activities, roles, affect, and self-concepts that entangle the “authentic and purest self” central to self-organization (Brandchaft et al., 2010, p. 107). Both the patient and therapist’s selves are dynamically engaged across various systems that are then brought into the therapeutic setting.

Therapy does not take place solely in an intersubjective context but also in an intersectional one (Nathan et al., 2013). The self is constantly having to mitigate communication based on what’s acceptable within that environment by paying attention to roles, activities, discursive norms, and relations that encase the self-structure (Bronfenbrenner, 1979). For hegemonic culture groups, this takes minimal effort whereas for individuals on the margins of society, mobilizing the nuclear structure is laborious due to the rigidity of the systems that entangle the self-structure (Brandchaft et al., 2010; Layton, 2020; Rebadulla et al., 2024).

Unique to each individual will be the degree to which the environment has empathically sustained or failed the selfobject relationship and thus each system will need to be disentangled from one another in order to understand where these empathic failures lie. These failures can be from national identities, state institutions, community conflict, religious beliefs, socioeconomic systems, all in addition to the caregiver dyad that has commonly been the focus of self-psychology.

The authentic self resembles the nuclear self-concept; but is interdependent and connected to entangled systems. Kohut originally envisioned a “virtual self” structured by caregiver projection that is then introjected and structured by the child (Seligman, 2005). Similarly, the authentic self is bidirectionally projected and affirmed environmentally. Authenticity is determined by the congruence of internal affect systems and external ecological systems. How they engage with one another in context determines how authenticity will present itself. Kohut (1971) and Neisser (1994) labeled this dynamic engagement as “multiple selves”; however, this doesn’t resolve how the auxiliary selves and the central nuclear self were connected. The selves that are projected are not necessarily “false” selves but are the myriad projections of the authentic self in response to the environment.

### 1NC

#### Extra-T.

#### “The USFG should” means fiat must be the locus of the 1AC’s offense.

Hiland, 24—Senior Lecturer in Communication & Media at Rensselaer Polytechnic Institute (Alexander, “Analyzing Debate Topics,” *A Short Guide to Policy Debate*, Chapter 1, pp. 5-7, dml)

In preparing for policy debates, topic analysis serves three essential functions. The first is to develop a tentative understanding of what specific issues will be argued by both sides of the topic. The second is to develop a strategy for how to research the topic, to maximize the likelihood of being adequately prepared to be competitively successful. The third is to determine what the affirmative must demonstrate to be true in order to justify the judge voting for them, and by extension what the negative side will have to disprove.

To satisfy the first function, a debater would be well served to consider two things. The first is what area of policy is the focus of the resolution. The easiest way to make this early determination is to identify the relevant “terms of art” within the resolution. These terms are typically nouns or verbs that, either singly or frequently in combination, denote something greater than what is found within the dictionary for the terms used individually. These terms of art typically are used by the topic committee to ensure that the resolution reflects debates taking place outside the narrow confines of the debate community.

To identify terms of art, there are a couple of productive steps that one should follow. First, consider punctuation, the inclusion of hyphens or quotation marks are good indicators that a term of art is in use. Second, look for terms that only seem to make sense in conjunction with each other. Below, we will look at one example from the 2023–2024 debate season. One more strategy would be to review the controversy paper submitted for the topic, which often has research compiled about the terms of art relevant to the controversy.

Using the 2023–2024 debate topic, one example would be the phrase “nuclear triad.” A search of the term from Merriam-Webster would return no results, but a search that entailed looking for “nuclear” and “triad” separately would produce results that provide definitions of both words. The result would be:

Nuclear: 2c(1)

: being a weapon whose destructive power derives from an uncontrolled nuclear reaction6

Triad: 1

: a union or group of three: TRINITY7

This combination of definitions provided without context might allow someone familiar with the term to deduce the correct interpretation, but for those who are less familiar with the term of art, it is not an especially helpful pair of definitions because it doesn’t really provide much specificity for how those words are used in conjunction.

By contrast, recognizing the term “nuclear triad” as a term of art allows rather rudimentary searches (for more detail on how to perform searches, see Chapter 3) to produce much more helpful definitions contextualized to ongoing debates in the field of nuclear weapons policy. For example, the Center for Arms Control and Non-Proliferation, a non-partisan non-profit that advocates for the reduction of nuclear arsenals,8 defines the “nuclear triad” in the following way,

The U.S. nuclear arsenal comprises thousands of nuclear weapons and three methods of delivery, sometimes called “legs.” Warheads can be launched from the air via strategic bombers carrying gravity bombs or cruise missiles, from the sea by submarines holding ballistic missiles, or from underground silos housing intercontinental ballistic missiles. Collectively, these delivery methods are referred to as “the Triad.” Currently all three legs of the Triad are being modernized at a cost of $494 billion, or about $50 billion every year from 2019 to 2028.9

This definition, although it carries a suggestion of bias given the interests of the organization offering the definition and the emphasis placed on the cost of modernizing the legs of the triad, is much more helpful because it is contextualized to ongoing debates about what to do with the triad. To help ensure the validity of the definitions provided for a term of art, it’s always a good idea to find two or three definitions that are essentially similar to help control for bias.

After identifying terms of art within the resolution to help clarify the topic students would be well served to grammatically interpret the topic in order to validate their interpretation of how the topic will be debated. Although many debaters and their coaches ignore this step because they assume the wording of the topic is secondary to the norms for how collegiate debate typically functions, those assumptions can be risky, especially where certain terms might carry a substantial meaning for the topic depending on their usage. More importantly, for those looking to get started debating, this step can be remarkably productive in understanding how debates tend to play out.

In the resolution which we will be using, the object of the sentence is identified as the “United States Federal Government,” which is significant because in standard English grammar, the object of the sentence has agency to affect the subject of the sentence; hence, the United States Federal Government is referred to as an agent. The verb in the sentence is “should restrict,” indicating that the agent of the resolution will be obligated to curtail the subject of the sentence which is indicated by the determiner “its.” The subject of the sentence is “nuclear forces.” The sentence is modified after the subject by the phrase “one or more” meaning that the affirmative might choose between multiple options, with a list indicated by “following ways” and the subsequent colon.

In each of the listed items we have a gerund form of the verb indicating that where the interpretation of the verb is not clear from the definition of the word it will be interpreted as a form of the initial verb in the sentence (restrict). This illustrates why reading the topic grammatically is helpful because it clarifies that the gerund form of the verb beginning each sentence subject to the term restrict, meaning the affirmative cannot defend an expansion of nuclear forces.10 Subsequently, each line has a subject noun that sets the parameters for what the United States Federal Government can do under the auspices of the resolution by constraining the number of subjects which can be acted upon.

Performative or reps advantages undermines limits and ground.

### 1NC

#### Extraterritoriality PIC.

#### The United States federal government should should substantially strengthen collective bargaining rights for workers in the United States.

Trump would circumvent th eplan text to give bargaining rights to the IDF in israel.

### 1NC

#### Advantage CP.

#### The United States federal government should:

#### ---declare [that the United States federal government should substantially strengthen collective bargaining rights for workers in at least the United States.

#### ] impermissible on the basis that it violates international custom.

#### Meanwhile, the counterplan declares the aff’s protection of unions impermissible, revitalizing international custom.

Kushtrim Istrefi 25. Assistant Professor of Human Rights Law and Public International Law with the Netherlands Institute of Human Rights (SIM) at Utrecht University. Luca Pasquet. “Mind Your Attitude: The Erosion of International Law?” https://www.ejiltalk.org/mind-your-attitude-the-erosion-of-international-law/

In international law, however, attitude plays a significantly different role in shaping norms, influencing the use of international institutions, and determining the authority of law. What States think is a crucial factor in the formation of customary international law. Opinio juris – the belief that a practice is legally required – is shaped by State attitudes and perceptions. Moreover, consent, the foundation of international legal obligations, can be expressed through various means, including tweets, public statements, and even phone calls. This makes language a critical element of international law. In fact, international law is fundamentally dependent on words and attitudes.

According to the International Court of Justice (ICJ), the attitude of States more than their actions determine the strength or weakness of the validity of legal norms. Addressing the issue of repeated violations of international law, the ICJ in the Nicaragua case stated that:

“If a State acts in a way prima facie incompatible with a recognised rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State’s conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule”.

As Hart observed, a legal system can only exist if its secondary rules are “effectively accepted as common public standards of official behavior by its officials” (p 116). Thus, beyond the question of compliance, in order to understand the relevance of international law in international affairs, one must ask whether States are still willing to use the language of international law to define what is permissible in international politics.

The attitude of States towards international has not always been amicable. Jens David Ohlin, in his book Assault on International Law, shows concerted efforts made by State officials, legal advisers and academics to undermine international law and its compliance. However, these assaults – driven by self-interest – targeted specific norms and institutions. There is a fundamental difference between contesting specific rules of the game and refusing to play the game as a whole, and while the examples discussed by Ohlin seem to mostly illustrate the former attitude, recent developments seem to highlight a growing tendency towards disregarding the international legal system in its entirety. Looking at the current global affairs, the general attitude of certain powerful States towards international law has never been worse. According to the US President Trump, “[h]e who saves his Country does not violate any Law”. Reading this in the context of his recent statements and narrative one can easily conclude that Mr Trump is not referring to circumstances precluding wrongfulness under ARSIWA when he refers to actions that justify saving the country. Instead, it suggests that national interests, whatever they imply, may justify any kind of action in international affairs. On this ground, he has not excluded the possibility of the use of force to take over Greenland and has threatened other neighbouring countries.

Attitude is usually matched with behaviour, and it is this combination that may erode international legal order as a whole. Sanctions against the International Criminal Court (ICC) aim to paralyse an international organisation and send a clear message against international accountability. The recent approach of Mr Trump with regards to Russia-Ukraine peace talks further undermines not only the position of Ukraine, but of international law as a whole. By favouring a negotiation where everything is on the menu, we disregard the fact that acquisition of territory through aggression is prohibited under international law, the obligations to ensure reparations, and that there should be international criminal responsibility for international crimes. This attitude also suggests that amnesties for international crimes are open to negotiation, and power sharing arrangements incompatible with human rights could be accepted.

This new attitude of disregard for international law is matched with a new attitude of rubbish justifications for breaches of international law. In the wake of Russia’s aggression against Ukraine, Fuad Zarbiyev, argued that the most remarkable thing concerns Putin’s attitude towards international law. Zarbiyev distinguishes lies, used by other States in relation to other breaches of international law, and the bullshit argumentation in the case of Russia’s invasion of Ukraine:

“the allegations of the United States about the development of weapons of mass destruction in Iraq and the latter’s links with terrorist organizations were lies because even though they were factually inaccurate, they were made with an eye on the truth. In contrast, Russia’s allegations about the genocide in Ukraine are bullshit because they were made without the slightest attention to or concern with the truth. But more generally, I submit that all the justifications put forward by Russia in connection with the invasion of Ukraine are situated vis-à-vis international law exactly how bullshit is situated vis-à-vis the truth: they are not on either side of the game of international law”.

Zarbiyev reminds us that “there are justifications and justifications… [and] taking Putin as offering international legal justifications would be adding insult to injury.”

Attitudes and behaviours are contagious, and this is especially so when it concerns the actions of powerful States. According to philosopher René Girard, humans’ ability to copy each other was the characteristic that most differentiated us from other animals. In his view, imitation also explains our desires – they are copied from others, either consciously or unconsciously. Following on Girard’s work, Pieter Thiel claims that China and the United States are increasingly becoming ‘mimetic doubles’ of each other. As they compete more strenuously to be the world’s number one power, and mirror each other’s strengths in order to advance that goal, they will inevitably become more and more alike – and their mutual antipathy will grow.

The fact that the attitude of disregard for international law characterises the approach of global superpowers is particularly worrying. The capacity of international law to inform the behaviour of States is in fact largely dependent on the willingness of the most powerful States to observe and engage with international law. In The Concept of Law, Hart stressed that while “no individual is so much more powerful than others, that he is able, without cooperation, to dominate or subdue them for more than a short period’, in ‘international life’ there are ‘vast disparities in strength and vulnerability between the states” (p 195). Whereas the “approximate equality among individuals would [make] obvious the necessity for a system of mutual forbearance and compromise which is the base of both legal and moral obligation, the inequality between the units of international law is one of the things that has imparted to it a character so different from municipal law and limited the extent to which it is capable of operating as an organized coercive system” (ibid). Although the pessimistic stance of Hart towards international law is well-known, it is hard to deny that the disparities among States make it necessary to involve powerful States in international institutions, and in the game of international law more at large. To provide an illustration, the veto power of the five permanent members of the Security Council was the price that the international community was willing to pay in order to ensure the survival of the UN project despite macroscopic power disparity. Acting within the framework of international law is, we contend, in the best interest of every State, including the most powerful ones. However, given the de facto inequality among States, it is not impossible to imagine a world where regional powers play their own individual games, opting out from or simply ignoring universal legal rules and principles.

Since the end of WWII, our discipline was based in a belief that when a State feels compelled to justify its actions in terms of international law, it acknowledges rather than disregards its relevance. At times international law was used only as a performative act, but other times it has also encouraged behaviour of compliance, solidarity and cooperation. Most importantly, it has ensured that international law is intact, despite flaws, weakness and moments of desperation.

International lawyers have traditionally criticised the ‘hypocrisy’ of international actors which deliberately violated international norms while speaking the language of international law and human rights. However, it would be a mistake to believe that the disregarding attitude of some States towards international law is just a more direct way to conduct business as usual. Despite its undesirability, the hypocritical use of international law preserves the grammar, categories and criteria of international law for future use and signals that international law continues to be perceived as an authoritative discourse. By contrast, the alternative put forward by some actors seems to consist in a logic where everything that is physically possible is acceptable if it serves national interest.

The current attitude toward international law brings a new and unprecedented challenge to the world legal order. It undermines international law as a basis for resolution of disputes in international relations, and makes international institutions redundant in their task to ensure and monitor compliance. History of the 1930s and the end of the League of Nations teaches us that the end of such rules and institutions has a potential to produce horrors that we have witnessed twice in the past century. It is precisely because of the latter that all States must react against the bullisation of international law, and step in to protect international law and institutions. The response of 79 States in support of the ICC against the US sanctions, and the recent UN General Assembly resolution condemning Russia’s aggression against Ukraine, despite and especially considering the US, Russia and China’s objections, are a move in the right direction. European States have the power and platforms to do more in this regard, and the Global South can be a valuable partner in ensuring that the conversation on reform is distinct from one that undermines international law.

#### Declaration of CIL as prior and binding without state consent crystallizes a generalized legal order that’s necessary to respond to existential threats

Dr. Rebecca Crootof 16, PhD in Law from the Yale University Graduate School of Arts and Sciences, JD from Yale Law School, Executive Director of the Information Society Project, ISP Research Scholar, and Lecturer in Law at Yale Law School, “Change Without Consent: How Customary International Law Modifies Treaties”, Yale Journal of International Law, 41 Yale J. Int'l L. 237, Summer 2016, Lexis

This Article challenges that presumption by presenting situations where customary international law has both lessened and expanded states' treaty rights and obligations, thereby supporting the few scholars who have posited - usually in purely theoretical works - that customary international law may modify treaties. By advancing a doctrinal justification for such modification based on lex posterior, this Article also contributes to the growing literature questioning whether the legitimacy of the binding nature of international legal obligations can be grounded solely in state consent. This argument is novel to the extent that it presumes that general - rather than universal - acceptance of a new customary rule may be sufficient to work a treaty modification, thereby avoiding the holdout problem inherent to multilateral treaty modification under the Vienna Convention's consent-focused rules (whereby a single state can upset the consensus of the majority).

Finally, this Article advances the counterintuitive argument that this less consensual basis for treaty modification requires a state to engage in more consensus-respecting conduct. When a state wishes to argue against a traditional understanding of a treaty provision, the usual approach of adaptive interpretation - attempting to reinterpret a treaty's text to permit an action previously understood as forbidden - actually encourages states to act unilaterally and risk destabilizing the international legal order. In contrast, a state that bases its legal argument on the claim that the treaty has been modified by subsequently developed customary international law will have to identify and engage in coalition-building conduct.

Part I reviews how treaties were historically relatively flexible bilateral agreements concluded against a stable background of default customary international law. While foundational customary norms and bilateral agreements are still the norm, today's international legal structure is complicated by a proliferation in multilateral treaties and an increasing demand for international regulation of new areas, technologies, objects, actions, and ideas. In the absence of directly relevant treaty law, and in need of reliable guiding principles, states are developing practices standardizing their rights and duties in these new spheres. As a result, treaty text is increasingly running up against conflicting state action and swiftly developing customary international law. Part II describes consent-based means of modifying treaties and concludes that these traditional methods do not legitimately resolve all conflicts between treaty and later-in-time customary international law. Part III demonstrates that the possibility of treaty modification by customary international law has long existed in the international legal structure and evaluates different doctrinal justifications for such modification. Part IV employs the threatened U.S. unilateral use of force in Syria as a case study to tease out the relative benefits and drawbacks of these different means of treaty modification.

I. A New International Legal Order

Customary international law and treaty law are the two primary sources of international legal obligations. Sometimes they operate independently, governing particular fields; sometimes they serve as mutually reinforcing regulations; sometimes one fills the other's lacunae; sometimes they mandate apparently contradictory actions. As this Article is concerned with how customary international may modify treaties, this Part traces how, due to ideological, geopolitical, and technological developments, the relationship between these two sources of international legal obligations has grown more complicated and more prone to conflict.

[\*242]

A. The Classic Account

1. Stable Customary International Law

A rule of customary international law is recognized as existing when states generally engage in specific actions (the "state practice" requirement) and accept that those actions are obligatory or permitted (the "opinio juris sive necessitatis" element). Thus, unlike custom in many domestic legal systems, which derives much of its authority from its long-standing nature, customary international law has no formal temporal requirement. Instead, a rule of customary international law is authoritative because states generally abide by it in the belief that it is law.

That being said, because of the generalized state practice requirement, customary international law was slow to develop in a world of limited communication and sporadic technological advances. Accordingly, historic customary international law comprised long-established, well-known, and relatively fixed rules governing relations among all states. It regulated the recognition of new states and state responsibilities; the exchange of diplomatic counsels and their immunities; the conduct and resolution of wars; the creation, interpretation, and termination of treaties; and other subjects associated with state interaction.

2. Flexible Treaties

Against this background of static customary norms, states concluded [\*243] bilateral treaties - written documents memorializing agreements between two states - clarifying their respective legal rights and duties. These treaties were relatively flexible legal regimes: they could be modified or terminated with the consent of states parties, by the conclusion of a subsequent, conflicting treaty between the same parties, by the denunciation of one party after a material breach by the other, or by a fundamental change in circumstances or other supervening event resulting in the impossibility of performing a promised legal obligation. Additionally, certain types of treaties - for example, commercial or trading treaties or treaties of alliance - were generally presumed to allow for unilateral denunciation. Accordingly, treaties have long been celebrated as a source of adaptive positive law that reflects states parties' needs.

B. The Modern World

Today's international legal structure is far more complicated. Certain customary rules still serve as background defaults governing many areas of state interaction, and the majority of new treaties are still bilateral. But two factors - the rise of multilateral treaties and swiftly developing customary international law - have changed the dynamic between treaty and customary international law, resulting in treaties sometimes being the fixed backdrop against which new state practice and norms develop.

1. Constitutive Treaties

The past century has seen a dramatic rise in multilateral treaties - treaties [\*244] concluded by multiple countries that often aspire to universal participation. As early as the 1920s, scholars were recognizing that there were "an increasing number of multilateral treaties." According to one study, eighty-six multilateral treaties were concluded in the century between 1648 through 1748 - but more than two thousand such treaties were concluded in the twenty-five years between 1951 and 1975! This proliferation might be traced to a growing conviction that certain global problems - including combating the training and financing of transnational terrorist organizations, minimizing human-driven climate change, and reducing the development or use of weapons of mass destruction - are best addressed through global solutions.

### 1NC

#### Midterms DA.

#### The United States federal government should:

#### ---maintain and enforce Section 2 of the Voting Rights Act;

#### ---commit to and hold the 2026 midterm election;

#### ---impeach president Donald Trump.

#### Dems win the house now That’s polymarket.

https://polymarket.com/event/which-party-will-win-the-house-in-2026

A graph of a graph of a house

AI-generated content may be incorrect.

#### Delivering on Pro-Labor policies locks in working-class support for Republicans

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But even those who question Hawley’s motives don’t doubt his ambition, particularly as jockeying for 2028 begins. One thing he appears to recognize is that siding with unions has become popular even on the right. In March, American Compass, a conservative think tank, and YouGov conducted a survey that illustrated this fact. Among Republican respondents, the poll found that labor unions had a net favorability of eight percentage points. Among young Republicans, defined as those born after 1980, the margin was thirty-eight points. Young Republicans also overwhelmingly backed several provisions of the PRO Act that the survey tested, such as expediting the collective-bargaining process, posting information about labor rights in workplaces, and penalizing companies that violate the law.

Daniel Kishi, a policy adviser at American Compass and a former aide to Hawley, told me that the generational divide captured by the survey is mirrored among Republican elected officials, with those who entered office after the 2008 financial crisis—such as Hawley and Vance—more likely to view unfettered markets skeptically and to see rank-and-file union members as potential supporters. These officials understand that, while voters in union households still tend to back Democrats, the gap has narrowed, a dynamic that has enabled Trump to win states like Michigan and Pennsylvania. Some Republicans are even beginning to see the labor movement’s leaders as allies, rather than as Democratic operatives who will turn out the vote for their opponents—in particular Sean O’Brien, the general president of the International Brotherhood of Teamsters, who spoke at the Republican National Convention this past summer. Kishi believes that enacting some of the pro-union reforms that drew support from young Republicans in the American Compass survey could solidify the political realignment that has occurred in recent years, leading more and more blue-collar workers to view the Republican Party as their home.

Thus far, of course, what the Trump Administration has prioritized is not passing such reforms but selling influence to wealthy patrons and granting unchecked power to billionaires including Elon Musk, whose Department of Government Efficiency fired thousands of federal employees who are union members. On March 27th, Trump issued an executive order that cancelled the union contracts of nearly a million federal workers. The order is “by far the largest single action of union-busting in American history,” the labor historian Joseph McCartin recently told the Center for American Progress, which has estimated that it ended collective-bargaining rights for one of every fifteen workers currently protected by a union contract. Trump’s tax-and-spending bill contains a few measures designed to appeal to low-income workers, such as eliminating taxes on tips and overtime pay. But assessments by the Congressional Budget Office and other nonpartisan sources show that the benefits will go mainly to the wealthiest households, while the poorest ten per cent of Americans will see their income decline.

#### Dem house restrains Trump, solving a slew of existential threats.

Mitch Jackson 25. J.D., Western State College of Law, California Lawyer Attorneys of the Year (CLAY) Award, Attorney at Maneuver Mediation law firm. “The 2026 Midterms Could Save America — If We Show Up.” Uncensored Objection. 5/29/2025. https://mitchthelawyer.substack.com/p/the-2026-midterms-could-save-america

This is an urgent and unflinching call to action that argues the 2026 midterms may be our last, best chance to stop Donald Trump’s dangerous grip on power, restore constitutional checks and balances, and protect the future of American democracy. With Congress currently enabling the White House, the piece lays out in plain, forceful terms how a Democratic majority in the House and Senate could block further damage, reverse harmful executive actions, hold corrupt officials accountable, and defend fundamental freedoms under siege.

It connects the dots across the economy, environment, global alliances, civil rights, and the rule of law, showing how much is at stake and how much power voters still hold. For anyone who thinks their vote won’t matter, this article makes one thing clear: it absolutely does.

How Do You Feel Right Now?

I’m going to be honest: like many of you, I’ve felt a knot of worry in my stomach when I think about our country lately. Over the past several months, I’ve heard friends and neighbors say they’re discouraged, that they feel our democracy is slipping away. I understand that fear deeply, because I feel it too. But I’m not writing today to dwell on despair. I’m here to share a path forward.

We are not powerless. We, the everyday Americans, have the ability to change the course of history in the 2026 midterms. By voting for Democrats to take back the majority in both the House and Senate, we can restore the checks and balances that safeguard our democracy and begin to repair the damage being done right now. This isn’t just a political preference; it’s a democratic necessity. It’s how we save our democracy from a real and present danger.

Democracy at the Brink

President Donald Trump’s return to the White House in 2025 has brought our nation to a crisis point. In just a short time, his actions and rhetoric have inflicted serious harm on the pillars of American democracy.

We’ve watched as he casts aside constitutional norms and treats the presidency like a personal fiefdom. He’s openly undermining the rule of law, pardoning those who committed violence in his name and urging his Justice Department to target political rivals. He’s using words like “vermin” to describe his opponents and calling the free press the “enemy of the people,” language that shocks me as an American. This is not normal disagreement or routine politics; it’s an assault on the values that hold us together.

Our economy, too, is caught in the crossfire of chaos. Instead of working to lower costs for working families, Trump and his allies in Congress have focused on tax breaks for billionaires and gutting programs that everyday people rely on. They tried to slash health care for millions by cutting Medicaid, and they even moved to shrink food assistance for struggling families. While costs of groceries and gas went up for us, the only “plan” from this leadership has been more breaks for the wealthy and leaving the rest of us to fend for ourselves. It feels like the powerful are playing a different game entirely, one that leaves regular folks behind.

Socially, the fabric of our nation is being pulled apart. Rather than seek common ground, this administration doubles down on dividing us, by race, by religion, by who we love or where we come from. Hate crimes and violent extremism have been emboldened by wink-and-nod encouragement from our nation’s highest office.

Instead of firmly denouncing white supremacists and conspiracy theorists, Trump often echoes their slogans or welcomes their support. It’s no wonder so many Americans feel a sense of dread and disunity. We are all tired of the constant outrage cycle and the feeling that we’re at each other’s throats. This is not the America we know and love, where despite our differences we used to believe we were on the same team.

Internationally, the United States’ standing has plummeted. Longtime allies are questioning whether they can rely on us, as President Trump cozies up to dictators and strongmen around the world. He has hinted at abandoning NATO and other alliances that have kept us safe for generations.

He pulled back on global agreements, like those on climate and human rights, leaving America isolated on the world stage. I can’t tell you how heartbreaking it is to see the country that once championed democracy and freedom now shaking the confidence of our friends and giving comfort to our adversaries. When America doesn’t lead with its values, the world becomes a more dangerous and unstable place.

All of this sounds dire, and it is. We have to face that truth head on: our democracy is at the brink. The Constitution, the economy, our unity as a people, and our global reputation are all under assault by a president who will stop at nothing to aggrandize his own power. It’s easy to feel hopeless hearing that.

But here’s the thing I want you to remember: this story isn’t over. We are not helpless spectators. America’s strength has always been the ability of its people to course-correct, to come together and insist on change when it’s needed most. And right now, what’s needed is a restoration of checks and balances. We need a Congress that will stand up and say no to this march toward authoritarianism and division. We need a Congress that works for us, the people, not for the president’s whims.

Checks and Balances: Why Congress Matters So Much

When the founders of our nation wrote the Constitution, they were deeply worried about any one person having too much power. That’s why they built a system of checks and balances, so no president could act like a king.

The legislative branch, Congress, was given the duty to be the people’s voice and a check on the executive branch. In plain terms, it’s Congress’s job to rein in a president who goes off the rails. For most of our history, this system has (more or less) worked. No matter which party a president came from, Congress was there to question, to oversee, and sometimes to say “hold on, that’s not right.” Checks and balances are the brakes on the car when the driver is speeding toward a cliff.

Right now, those brakes aren’t working. With Trump in the Oval Office and his party holding slim majorities in the House and Senate, the usual safeguards are failing. Instead of putting country over party, too many current congressional leaders have chosen to be rubber stamps. They’re either too afraid or too complicit to stand up to the President’s worst instincts.

We’ve seen congressional committees that should be investigating genuine problems instead wasting time targeting the President’s perceived enemies or spreading his preferred narratives. We’ve seen silence or shrugs in response to blatant abuses of power. This lack of pushback is exactly what enables the dangerous trajectory we’re on. When one party controls all levers of government and refuses to police its own leader, the checks and balances are effectively gone.

But here’s the hopeful part: we can fix this by changing who’s in Congress. In our democracy, the people are the ultimate check. If our representatives won’t do their job, we can fire them at the ballot box.

By electing a Democratic majority to the House and Senate, we will restore the balance that our system needs. I’m not talking about giving one party power just for the sake of it. I’m talking about ensuring that someone in power is finally willing to stand up to the president and say, “Enough.” We need lawmakers who will actually perform oversight, who will act as a co-equal branch of government instead of a subordinate.

Throughout history, there have been moments when Americans chose a new Congress to correct the course of a runaway presidency, and it worked. I think of 1974 after Watergate, or the 2018 midterms after Trump’s first two years, when voters elected a House that could hold the administration accountable. Those were turning points that pulled our country back from the brink. We have that same kind of moment before us in 2026. By voting for Democrats, we aren’t handing power to a party so much as we are reclaiming power for the people, via a Congress that will actually do its job.

The Powers Congress Can Use to Stop the Damage

How exactly can Congress constrain a president gone rogue? It’s important to understand that the legislative branch has real, tangible powers, tools that, in the right hands, can halt abuse and even begin to undo it.

If we flip the House and Senate, a Democratic-controlled Congress can deploy these powers on our behalf. Here are the major ways Congress can act as a safeguard:

Oversight and Investigations: Congress has the authority to oversee the executive branch. This means they can hold hearings and launch investigations into misconduct, corruption, or unconstitutional actions by the President or his administration. With a Democratic majority, those committees investigating would no longer turn a blind eye.

They can shine a bright light on what’s been happening behind closed doors. Think about the power of truth, when wrongdoing is exposed in the public eye, it becomes a lot harder for it to continue. Hearings can reveal, for example, if officials are abusing power, if taxpayer money is being misused, or if rights are being violated.

We saw this work in the past: it was congressional investigations that uncovered the Watergate scandal long ago, and more recently, a Democratic-led House in 2019 was able to investigate and impeach Trump over abuse of power. Oversight is a way of saying, “We’re watching, and you will be held accountable.”

Subpoena Power: As part of oversight, Congress can issue subpoenas to compel witnesses to testify and produce documents. This might sound technical, but it’s basically the power to force the truth out into the open.

Right now, a lot of truth is being hidden from the American people, whether it’s details about backroom deals, communication with foreign powers, or internal decisions that affect all of us. A Congress willing to use subpoena power can drag those facts into the sunlight.

For instance, if there are allegations that the administration is using government agencies to persecute political opponents or that officials are violating ethics laws, subpoenas can bring those officials before Congress to answer under oath. It puts a real check on abuse because lying under oath is a crime, and refusing a lawful subpoena can lead to contempt charges. In short, subpoenas are how Congress says, “You must tell the truth, whether the president likes it or not.”

The Power of the Purse: This is one of Congress’s most critical powers. Only Congress can appropriate money for government operations. In practice, this means if the President wants to fund a controversial project or enforce a harmful policy, a determined Congress can say, “Not with taxpayer dollars, you won’t.” A Democratic majority could block funding for any number of Trump’s harmful initiatives.

For example, if Trump issues an executive order that hurts the environment or sets up some kind of overreaching task force to target his critics, Congress can pass a budget that explicitly prohibits spending money on that. On the positive side, Congress can direct funding toward the things that help people, education, healthcare, disaster relief, infrastructure, and away from things that do harm. It’s an immense leverage point. Even the most powerful president cannot spend money that Congress refuses to provide. By controlling the purse strings, a Democratic House and Senate can effectively stop many of the damaging policies in their tracks.

Legislative Authority (Passing and Blocking Laws): Congress is the only branch that can make federal laws. With a majority, Democrats could block any new laws Trump’s allies try to push that would hurt our democracy or rights.

Think about proposals that may be on the table: a national abortion ban, cuts to Social Security or Medicare, laws undermining voting rights, or extremist cultural laws that attack LGBTQ citizens or other groups. Right now, those kinds of bills might have a chance. With a Democratic majority, they would never see the light of day.

Blocking bad legislation is vital, it prevents further damage. But it’s not just about defense. A new majority can go on offense by passing bills that protect our democracy and our people. Now, it’s true that Trump as president could veto bills he doesn’t like, but passing them still matters. It forces a public conversation and pressures even members of his party to take stands. In some cases, if enough Republicans feel the heat, Congress could even override a veto.

For instance, a law to safeguard elections or to help veterans shouldn’t be something a president vetoes without paying a political price. A Democratic Congress can put good legislation on his desk and dare him to reject it. And in any must-pass bills (like funding the government), they can include provisions that rein in abuses, knowing the President has to sign or face a shutdown that he’d be blamed for. In these ways, writing and shaping laws gives Congress immense power to direct the country’s course.

Advice and Consent (Senate’s Confirmation Power): The Senate has a unique role in confirming or rejecting the President’s appointments for key positions, from Cabinet secretaries to federal judges, including Supreme Court justices. If Democrats have the majority in the Senate, they can ensure that unqualified or extreme nominees don’t get rubber-stamped into lifetime judgeships or critical agency roles.

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#### Soft Secession CP.

#### Text: The fifty states and all relevant subnational entities should suspend their cooperation in the administration of federal programs until [the United States federal government substantially strengthens collective bargaining rights for workers in at least the United States].

#### The counterplan’s leverage of soft secession in the context of labor unlocks dual sovereignty on a host of issues.

Mike Baker 25. JD, Washington University School of Law; International Law Society. “Soft Secession vs. Soft Fascism: How States Quietly Resist Federal Overreach.” https://mikebakerlaw.com/blog/2025/08/22/soft-secession-vs-soft-fascism-how-states-quietly-resist-federal-overreach/.

The Legal Foundation: A Conservative Gift to Blue States

The anti-commandeering doctrine, crystallized in two landmark Supreme Court cases, provides the constitutional roadmap for state resistance:

Printz v. United States (1997): Justice Antonin Scalia ruled that the federal government cannot “issue directives requiring the States to address particular problems, nor command the States’ officers… to administer or enforce a federal regulatory program.” This struck down provisions requiring local sheriffs to perform federal background checks.

Murphy v. NCAA (2018): Justice Samuel Alito expanded this principle, ruling that federal law cannot put state legislatures under the “direct control of Congress,” whether through commands or prohibitions.

These decisions established that states cannot be forced to actively participate in federal enforcement, even when federal law remains supreme. The federal government can pass laws, but without willing state cooperation, much of its agenda becomes practically unenforceable.

Yale’s Framework: “Uncooperative Federalism”

Yale Law Professor Heather Gerken coined the term “uncooperative federalism” to describe this strategy. Rather than viewing states as either sovereign or servant, Gerken argues that states derive significant power from their role as servants in the federal system.

Her framework identifies three key mechanisms:

Regulatory resistance: Using federally-conferred power to resist federal policy

Information control: Withholding cooperation in data sharing and enforcement

Resource denial: Refusing to provide state resources for federal programs

As Gerken notes, in an integrated federal system, “sovereignty is rarely, if ever, to be had,” making the “power of the servant” more realistic and effective.

Historical Proof: From Personal Liberty Laws to Sanctuary Cities

Northern Personal Liberty Laws (1780-1859): The Original Sanctuary Movement

The most powerful precedent involved Northern states systematically undermining the Fugitive Slave Acts through “personal liberty laws” legislation that sounds remarkably similar to today’s sanctuary city ordinances.

Massachusetts’ 1855 Personal Liberty Act declared that “The writ of habeas corpus may be issued by the supreme judicial court… and it may be issued by any justice of the peace.” Vermont’s 1850 Habeas Corpus Law required state judicial and law enforcement officials to assist captured fugitive slaves rather than federal agents. Michigan’s 1855 law prohibited “county jails from being used to detain recaptured slaves” and directed “county prosecutors to defend recaptured slaves.”

The language was deliberate and defiant. These laws guaranteed jury trials for alleged fugitive slaves, forbade state officials from cooperating in captures, and penalized state officers for “voluntarily engaging in slavecatching.” Wisconsin’s 1857 law went further, forbidding state judges from issuing certificates of removal under federal law.

The result? Despite federal law requiring the return of fugitive slaves, only 330 slaves were returned over nearly 80 years due to state non-cooperation. The federal Fugitive Slave Act became what Ralph Waldo Emerson called “a dead letter” in Massachusetts and other resistant states.

Chicago: From Harold Washington to J.B. Pritzker

The direct line from 19th-century personal liberty laws to modern sanctuary cities runs through Chicago. Mayor Harold Washington’s 1985 Executive Order establishing Chicago as a sanctuary city used language that deliberately echoed earlier resistance: the order “prohibited police and city employees from questioning residents about their immigration status and terminated cooperation with federal immigration authorities.”

Washington’s executive order was written to “assure that all residents of the City of Chicago, regardless of nationality or citizenship, shall have fair and equal access to municipal benefits, opportunities and service” language that directly parallels the personal liberty laws’ guarantee that state courts would protect all persons within state boundaries.

By 2006, Chicago’s sanctuary protections became the Welcoming City ordinance, which “prohibited the use of city funds and resources to assist federal immigration enforcement,” the defining characteristic of a sanctuary city. The ordinance banned officers from ” arresting anyone just because they were suspected of being undocumented” and directed police to ignore federal requests to detain people beyond their release date.

Governor Pritzker’s Modern Resistance

Illinois Governor J.B. Pritzker has scaled this resistance to the state level through the Illinois TRUST Act, which “generally prohibits local law enforcement in Illinois from participating in immigration enforcement.” The Act’s language mirrors 19th-century personal liberty laws: it limits officials from “complying with immigration detainer requests” and forbids “stopping, arresting, searching or detaining an individual solely based on immigration status.”

When testifying before Congress in 2025, Pritzker’s language was defiant: “We will not participate in abuses of power. We will not violate court orders. We will not ignore the Constitution.” This echoes Wisconsin’s 1857 declaration that the state would not assist in enforcing federal fugitive slave laws that violated state constitutional protections.

Pritzker’s recent signing of legislation extending student financial aid to undocumented immigrants represents the modern equivalent of personal liberty laws that provided legal protections and state resources to those threatened by federal enforcement.

Modern Examples Beyond Immigration

Cannabis: 40 states have legalized medical cannabis and 24 have legalized recreational use, despite federal prohibition. The federal government has essentially abandoned enforcement.

REAL ID: When 25 states refused to implement requirements starting in 2007, they delayed enforcement by nearly two decades from 2008 to 2025.

The Infrastructure of Resistance

Legal Warfare

During Trump’s first term, Democratic attorneys general filed over 130 multistate lawsuits against the administration with an 83% success rate. They maintain “brief banks” with pre-drafted lawsuits ready for immediate filing, the modern equivalent of the coordinated legal resistance Northern states mounted against fugitive slave laws.

Economic Leverage

Massachusetts sends $4,846 more per capita to the federal government than it receives

New York contributed $142.6 billion more than it received over five years

California has accumulated $76 billion in reserves

Illinois sends more to Washington than it receives back, giving Pritzker economic leverage in federal disputes

Red States Wrote the Playbook

Texas demonstrates that soft secession works regardless of party. Operation Lone Star achieved an 87% reduction in border crossings through state action alone, independent of federal immigration policy. This $11 billion operation employs the Texas National Guard and state troopers, effectively governing in areas traditionally considered federal domain.

Meanwhile, 46% of U.S. counties have declared themselves Second Amendment sanctuaries, with eleven states officially designating themselves as such. These declarations use language similar to personal liberty laws, stating that no governmental resources will be used to enforce federal laws that “unconstitutionally” infringe upon rights.

The Infrastructure Already Exists

Blue states aren’t building resistance from scratch, they’re scaling existing systems:

Voting Rights: Eight states have enacted State Voting Rights Acts exceeding federal protections

Election Security: Colorado has created the “gold standard” through risk-limiting audits with paper ballot requirements

Automatic Registration: Twenty-two states have implemented automatic voter registration

The Washington State Test Case

The Adams County Sheriff case in Washington State illustrates how far this resistance extends. The state Attorney General is seeking an injunction against the sheriff for cooperating with federal immigration enforcement, arguing he’s violating the Keep Washington Working Act. This creates a direct conflict where local officials must choose between federal directives and state law, the same dilemma faced by Northern officials during the fugitive slave era.

What This Means for America

Soft secession represents a fundamental realignment toward a confederation of semi-autonomous regions rather than a unified nation-state. States are building parallel systems for abortion rights, labor protection, civil rights, immigration policy, and election security.

The federal government increasingly resembles what Armitage calls a “hollow” structure that states have a “moral imperative to ignore” when democracy fails or federal funds are withheld as political punishment.

The Ultimate Irony

Conservative legal theory has provided the tools for progressive state resistance. The anti-commandeering doctrine, designed to protect conservative state sovereignty, now empowers the very blue state opposition its creators likely never intended to enable.

This represents one of the most significant constitutional ironies in recent American history: Justice Scalia’s jurisprudence becoming the foundation for Democratic resistance.

The Historical Echo

The progression from personal liberty laws to sanctuary cities to comprehensive state resistance reveals a consistent pattern: when federal law conflicts with state values, states find ways to nullify federal authority through non-cooperation quietly. The language may evolve, but the strategy remains the same.

Just as Northern states used personal liberty laws to make the Fugitive Slave Act “a dead letter,” modern blue states are using sanctuary laws, economic leverage, and coordinated legal resistance to make much of the federal immigration enforcement apparatus similarly ineffective.

The Path Forward

Rather than violent rupture, soft secession offers states a path to quietly walk away from each other. Blue states build progressive policy infrastructure while red states pursue different directions, all within the constitutional framework that conservative justices provided.

The question isn’t whether soft secession will continue; the legal precedents are established, the economic leverage exists, and the political will is evident. The question is whether this represents a temporary political strategy or a permanent restructuring of American federalism.

As states increasingly choose their own paths on fundamental issues, we may be witnessing the emergence of something unprecedented: a United States that’s united in name only, held together by a federal structure that states systematically choose to ignore.

The infrastructure for resistance is already built. The legal precedents are established. The only question remaining is how far states are willing to go in walking away from a federal system that no longer serves their values or their people.

#### Dual sovereignty ensures a flexible regulatory ecosystem necessary to check countless existential threats. Else, Trump locks in disease, nuclear war, and existential emerging tech.

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We are needlessly allowing technology to take the world to the brink of disasters from accidental climate disruption, nuclear war, and pandemics— at the same time that we are allowing the means for controlling these technologies to erode. In effect, we are edging closer and closer to cliffs from which we have removed the guardrails. Fortunately, people are beginning to develop— or at least to think about— protections against some of these dangers.

A technology-based model of authoritarian government is being promoted and exported as a technological, economic, and political challenge to Western liberal democracies. The Internet and social media, conceived as vehicles for free exchange of information and platforms for untrammeled innovation, in some countries have become instruments of repression. At the same time, a systematic, worldwide campaign of misinformation and disinformation, spread via social and mass media, has deliberately sown distrust in the democratic process, in government, in international institutions, in science, in expertise of all kinds, and in the very idea that there is such a thing as truth. In the United States, the scientific consensus concerning climate change has been overwhelmed by misinformation and disinformation spread by political and business interests that it threatens, while public messaging regarding the CO VID-19 pandemic has been at best mixed. All this has made it difficult for people to understand the complex and dangerous new threats to the environment, to their health, to their security, and to democratic government.

Stimulating and Guiding Technological Change

Science and technology have much to contribute to the resolution of all these issues. We need better scientific understanding of the climate, of the ways in which diseases spread, and of the likely impact of gene drivers and geoengineering. We need technological innovations to prevent or cure non- communicable diseases, alleviate malnutrition, conserve resources, defend against cyberattack, and restructure our economies along more sustainable and equitable lines.

But we cannot depend on science and technology to address these issues on their own. We also need policies and institutions that not only support research and encourage technological innovation but also guide scientific research and technological change in responsible directions. This will require both “top-down” measures by national governments and “bottom-up” pressures from public opinion, from nongovernmental organizations (NGOs) and from state and local governments that are often more directly responsive to public pressure. It will need ideas and inspiration from businesses, universities, research institutes, individual inventors, and ordinary citizens, and support from public opinion and from the actions and advocacy of individuals and communities. In some cases, it will require sustained effort to resist commercial, political, and military pressures to ignore broader social and environmental problems when investing in research and innovation and to deploy technologies before at least some of their consequences are understood and anticipated. The response to the COVID-19 pandemic and the denial of the reality of climate change in a number of countries show how even the best scientific advice can be undercut by the words and actions of shortsighted, self-interested political leaders.

We need to devise limits on technological innovations like autonomous weapons and hypersonic missiles that can lead to unintended nuclear war. We need to restructure our economy and redesign our cities to end, or at least to limit the use of fossil fuels and to increase the efficiency of our use of energy and materials. We need controls on technologies like artificial intelligence, gene drivers, and geoengineering, all of which both promise major benefits and involve great risks. We need to defend ourselves against technology-based attacks on the values of freedom of thought, communication, innovation, and access to information that were embodied in the original design of the Internet and social media but are now under attack.

At the same time, we need new science and technology to develop novel approaches to environmental sustainability: improved sources of renewable energy and innovative approaches to efficient energy use. We need both to expand and to restructure our electric energy grids to electrify our economy and to improve their efficiency, reliability, and security. We need to restructure our agricultural economy, our urban infrastructure and our transportation systems. We need explicit measures to ensure that everyone can participate in the benefits of technological change. We need research and development on orphan technologies, and vaccines and cures for the diseases that mainly affect people in low- income countries. Not a small menu.

Some of these issues, like climate change, nuclear weapons, and global health, are governed by long-standing regimes, norms, and institutions that now need strengthening and refurbishing to meet new political, economic, and techno­ logical challenges. Nonproliferation and anti-missile agreements need to be restored and extended to limit or ban development and deployment of hyper­ sonic missiles, destabilizing weapons that are now under rapid development in many countries. Voluntary national limits on greenhouse gas emissions need to be urgently increased. Time is running out, and costs will be much greater the longer we take for effective action to mitigate and adapt to climate disruption. In the global health sphere, the system for emergency preparedness and pandemic control needs increased and sustained political and financial support to replace the long-standing pattern of crisis-to-crisis, feast-or-famine funding. Most low- income countries still need basic health infrastructure, both to provide health services to their population and to identify and control epidemic disease that could spread beyond their borders.

Cyberweapons, too, can quickly get out of control and wreak enormous damage on critical infrastructure, including the systems of command-and- control on which we would depend to prevent accidental escalation of a localized conflict to full-scale war. Like hypersonic missiles, the response to these weapons depends on artificial intelligence. Unlike hypersonic missiles, cyberweapons do not lend themselves to the type of verifiable arms control regime that has so far been successful for nuclear weapons. What is more, many governments op­ pose any limits on the use of cyberweapons, despite the risk they pose of acci­ dental escalation. Continued research and international discussion on how these weapons can be controlled are urgent priorities.

Geoengineering and gene drivers also take the world into uncharted terri­ tory. Their governance is complicated by the fact that they are accessible not only to governments, but also to private businesses, NGOs, and individuals. It is far from clear how decisions should be made as to whether and under what circumstances these technologies should be developed, and what criteria should govern any such decisions. Advocates for these technologies have developed roadmaps for deploying them in a way that minimizes risks. Still, there are fundamental disagreements over whether geoengineering and gene drivers should be developed and implemented at all, and there is substantial support for the idea that one or both should be banned outright. Critics have called for moratoriums until the broader questions can be explored by a broad range of worldwide stakeholders, disciplines, and cultures. However, the disagreements we have outlined will probably never be totally resolved to everyone’s satisfaction, and deployment decisions will eventually have to be made one way or the other.

The governance of the Internet and social media involves measures to pre­ serve the global Internet and to address those issues of cybersecurity that are of common concern to countries with very different political systems and very different ideas concerning civil liberties and human rights. The competition be­ tween authoritarian and democratic governments over freedom of information and innovation is likely to go on for a long time, but both sides have a strong in­ terest in maintaining a functioning global Internet and in avoiding catastrophic damage to information and telecommunication systems.

Several academies of science, research institutes, NGOs, and religious organ­ izations have proposed codes of conduct and declarations of principle to deal with the difficult philosophical, ethical, and practical issues involved in all these issues. These represent a useful beginning, and one may hope that they will reach the level of consensus that would allow them to be codified into national legisla­ tion or international agreements.

Dealing with these issues will require respect for expertise in the fields to which we have often referred: science, technology, politics, economics, business, law, and culture. We will need to incorporate scientific advice into decision­ making processes, and to acknowledge and manage the risks and uncertainties in our understanding of the science and the technology we are trying to manage, as well as in their ramifications for the larger society. There is also a need to edu­ cate governments and the public, both on the underlying science and technology and on their links to the broader context. Finally, I would urge that there is a need for an international obligation to identify areas for scientific research and technological innovation that can help to resolve these issues and to support this research with adequate financial, human and institutional resources. This last re­ quirement should become a general principle that should become part of the ac­ cepted framework for thinking about global issues and incorporated into formal agreements on these matters as a matter of usual practice.

Dealing with complex global, technology-intensive issues like these is a tall order, especially when they require democratic countries to find common in­ terest with countries with whose governments they are otherwise deeply at odds. Nevertheless, the world has faced such issues successfully before under the arguably more difficult conditions of the Cold War, which pitted two ideologically opposed superpowers against each other that nevertheless managed to agree on elaborate and technically demanding measures to avoid nuclear holocaust.

There have been major innovations since the days of the Cold War that will help with these new challenges. Civil society is a source for new ideas and new institutional arrangements. The Intergovernmental Panel on Climate Change (IPCC) and epistemic communities provide scientific advice and education on climate to international negotiators and to the public. Multi-stakeholder meetings develop “bottom-up” codes of conduct, norms, and standards that sometimes make their way into more formal government and international declarations and eventually into national legislation and international agreements. State and city governments combine forces across borders to deal with issues when their national governments shrink from action. Flexible, informal, or voluntary arrangements facilitate international cooperation in situations where binding obligations and formal agreements would be cumbersome or slow moving. Pragmatic, informal institutional arrangements arise to manage international resources when more formal institutions or agreements would be cumbersome or impractical. Private foundations support research in areas neglected by governments and intergovernmental organizations. “Innovative developing countries” like India and China develop and market profitable products for low- income people. Multinational corporations and NGOs support innovations to meet the needs of people without market power. And a billion-dollar network of agricultural laboratories develops improved technology for small-scale farmers in low-income countries.

### 1NC

#### Delaware CP.

#### The State of Delaware should determine that corporations have a duty to [xxx].

#### The counterplan alone ensures DExit

George Shepherd 21. Professor of Law, Emory University School of Law. "Not Just Profits: The Duty of Corporate Leaders to the Public, Not Just Shareholders." University of Pennsylvania Journal of Business Law, 23.3, 823-861.

The currently dominant view of the corporation ignores history, is harmful and unfair, and should be rejected in favor of the view that existed for the United States’ first 150 years. Corporate leaders should be required to manage their corporations in the public interest as compensation for the state’s granting their corporations limited liability. Without limited liability, the corporation could not exist. Only because of limited liability can a corporation raise sufficient sums from equity investors to complete its projects.85 Limited liability is a valuable resource that the government controls. As it did in the United States’ early decades, the government should distribute this resource to corporations only on the condition that corporations compensate the government for the valuable resource by operating in the public interest.

A way to assure that corporations implement this duty to serve the public interest would be to impose the duty not only on the corporation itself, but also on the corporation’s officers and directors. In other situations where the government distributes benefits to professionals, the professionals are required to promote the public interest.86 For example, state governments provide lawyers with the valuable monopoly right to sell legal services; no one other than lawyers can provide such services. In return, lawyers are required to act as “officers of the court,” and to act in the public interest. 87 Furthermore, they are held to a higher standard of behavior than nonlawyers: the state will deny a legal license to a person who has been convicted of a serious crime.88

Similarly, certified public accountants have a duty to act in the public interest.89 Again, this is appropriate because the government has provided the accountants with the large benefit of the monopoly right to perform certain accounting services.90

Corporate officers and directors too should have a duty to lead their corporations in the public interest. The states have provided corporations with the valuable benefit of limited liability. Like lawyers and accountants, corporate officers should be required to reciprocate by acting in the public interest. Because the state has provided the corporation with the benefit of limited liability, the corporation’s leader has a duty to run the corporation to benefit the public.

Perhaps this duty should be described in a way that resembles how the duty for lawyers is described. A lawyer is called an “officer of the court.” A corporate officer or director might be called an “officer of the public.”

This duty for corporate leaders to manage their corporations as officers of the public would help protect groups that are vulnerable to corporations’ behavior. A corporation might protect communities that surround its factories by not immediately closing less-profitable factories. Cigarette manufactures might choose to leave the cigarette business, even if the business were profitable.

The penalties for violating this duty would be the same penalties that punish lawyers and accountants who violate their respective ethical duties. Just as some criminal acts disqualify a person from serving as a lawyer, a person’s acts that harm the public interest should disqualify said person from serving as a director or officer of a corporation. If a corporate leader causes their corporation to harm the public interest, the government should have the authority both to remove them from their corporate position and to eliminate their corporation’s limited liability.

Although federal or state courts, especially Delaware courts, might impose this duty as part of the common law, the duty might be best imposed at the federal level, by federal statute. Otherwise, state courts and state legislatures have a strong economic interest not to impose such a requirement. A state that did impose such a requirement would be at a disadvantage in the market for incorporations in which states compete to attract corporations to incorporate there. For example, Delaware might fear that it would lose its dominance in this market if it imposed a requirement that corporations promote the public interest. Corporations would reincorporate in other states that did not impose the requirement. To assure that the requirement governs all corporations in all states, federal legislation might be necessary.91

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This is not an extreme proposal. Instead, the proposal would return corporate governance to the requirements that existed for the United States’ first 150 years.92 Until the mid-1950s, it was understood that corporations should operate in the public interest.93 The current prevailing approach of hard profit maximization is extreme, deviating from a system that had existed for almost 200 years. My proposal is conservative: it would return corporate governance to its moderate mainstream.

VII. Current Responses Are Inadequate

In the last decades, and even more recently, there have been halting suggestions that corporations assume obligations to more than shareholders. As discussed in the introduction and bibliographical appendix, scholars have made various proposals.94 Two other approaches have arisen from industry itself. First, some companies have chosen to become “benefit corporations,” also called B corporations. Second, a group of corporate leaders has suggested that corporations should have duties to more than shareholders. I discuss each in turn and explain why both are inadequate to achieve the goal of appropriate corporate responsibility.

A. Benefit Corporations

Benefit Corporations are normal corporations that have voluntarily committed to serving interests other than those of shareholders. Indeed:

Just what is a benefit corporation? A for benefit corporation has the same structure as a traditional for-profit corporation. Each has a board of directors, officers, and shareholders who own shares in the company. The officers and directors run the business, yet the shareholders can hold them accountable for the decisions they make. Shareholders have several means to do this, including filing a shareholder lawsuit.

The difference between a traditional corporation and a benefit corporation is in its purpose. A traditional for-profit corporation’s purpose is to make profits for shareholders. This means that corporate managers are judged based on the company’s financial performance. They may face shareholder action if they make decisions that sacrifice profits to achieve nonmonetary goals.

A benefit corporation still has a profit-making goal, but it also has a broader public benefit purpose: to make a material positive impact on society and the environment. Managers must work to achieve this purpose and therefore they have flexibility to make decisions that balance profits with social causes and environmental responsibility.

The first benefit corporation law was enacted in Maryland in 2010, and currently about 30 states allow them. A benefit corporation is best suited to a company that has an important social or environmental mission but also wants to generate profits. For example, Yonkers, NY-based Greyston Bakery was founded in the early 1980s to give hard-to-employ people a new chance in life. It is profitable, has stayed true to its mission, and has developed new community programs. It reorganized as New York’s first benefit corporation in 2012. 95

Additionally, while it may vary from state to state, forming a benefit corporation is no more difficult than forming a normal C corporation:

Benefit corporation laws vary somewhat from state to state but, in general, a benefit corporation must have a general benefit purpose stated in its articles of incorporation. A B corporation is formed by filing articles of incorporation with the state—the same as with a traditional corporation.

In most states, a BENEFIT ORGANIZATION must demonstrate that it is upholding its public benefit purpose by publishing an annual benefit report that assesses social and environmental performance using a third-party standard. The report must be sent to shareholders and published on the company’s website. State law also may require it to be filed with the state.

Because they may sacrifice profits in order to achieve social goals, for-benefit companies may not be as popular with investors as traditional profit-centered corporations. Owners of benefit corporations may have to develop a strategy to attract investors that value contributions to social or environmental causes as highly as they value profits.96

Whether a given benefit corporation achieves the goals that it establishes for itself is based on the honor system; by itself, registering as a benefit corporation does not require the corporation to achieve these goals. However, the corporation may also agree to monitoring by an outside entity. For example, the corporation may not only become a benefit corporation, but also become certified by an outside organization as a certified B Corporation:

Another way to show that a business is focused on environmental and social goals is to apply for B CORP. CERTIFICATION through the nonprofit organization B Lab. Certification is available to all types of businesses, including traditional corporations and LLCs. Some businesses, like King Arthur Flour Company and Greyston Bakery, are organized as benefit corporations and also are B Lab certified B corporations.

Certification involves completing an assessment that evaluates the company’s overall impact on its stakeholders. The assessment is then reviewed by B Lab staff members, who may require supporting documentation. Some companies must amend corporate formation documents or bylaws to include a general benefit purpose. B Lab also offers a free tool that can assist companies in meeting their annual benefit corporation reporting requirements.

Forming a benefit corporation can help a company fulfill a social purpose without risking shareholder action for placing social good ahead of profits. Certification and reporting requirements help business managers assess progress and set new goals. And, in an era where so many are trying to be authentic and sustainable, becoming a BENEFIT COMPANY helps you stand out from the crowd by demonstrating your commitment to your employees, your community, and the environment.97

That some corporations may choose to become benefit corporations is admirable. However, the existence of benefit corporations does not achieve the goal of imposing a duty to serve the public interest on all corporations. A corporation becomes a benefit corporation only if its organizers choose to do so. The large majority of companies that do not choose to become a benefit corporation have no enhanced duty to the public.98

B. The Business Roundtable’s Statement

The Business Roundtable is an association whose members are CEOs of major U.S. corporations.99 For decades, the group indicated that the goal of a corporation should be to promote the interests of the corporation’s shareholders.100 However, in 2019, the group issued a statement that suggested that corporations should consider the interests of a broader group of stakeholders. The “Statement on the Purpose of a Corporation” provided:

Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity. We believe the free-market system is the best means of generating good jobs, a strong and sustainable economy, innovation, a healthy environment and economic opportunity for all.

Businesses play a vital role in the economy by creating jobs, fostering innovation and providing essential goods and services. Businesses make and sell consumer products; manufacture equipment and vehicles; support the national defense; grow and produce food; provide health care; generate and deliver energy; and offer financial, communications and other services that underpin economic growth.

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.

Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.

Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.

Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses. Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders.

Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.101

As with the benefit corporation, the Business Roundtable’s statement is merely aspirational. It does not require corporations to do anything. It is a suggestion by some powerful CEOs that they might consider the interests of stakeholders other than shareholders. It does not require the CEOs to consider these other interests.

Moreover, the statement is unenforceable. If a CEO were to ignore other stakeholders’ interests and continue to focus solely on shareholders’ interests, neither the CEO nor their corporation could be punished. No one would be able to sue to enforce any rights of other stakeholders.

Looked at most favorably, the statement is a statement of aspiration that might inspire some corporate leaders to think more broadly beyond shareholder maximization. A more cynical view would be that the statement is public relations hot air, which is designed to make corporations seem more appealing, while requiring them to do nothing.

The statement does not appear to have marked a dramatic turning point in corporate behavior. Indeed, a recent study shows that, more than a year after the statement was issued, those companies whose executives signed the statement have done no better in serving the public interest than those whose executives did not sign it. 102 Corporations whose executives signed the statement did not change their objectives beyond shareholder primacy. 103

This failure is easy to understand. As before, a CEO who focused on something other than profits might soon be out of a job. Disgruntled shareholders would have them fired. Alternatively, the resultant declining stock price would make the corporation an enticing takeover target, which again would result in the CEO being fired.

As with the benefit corporation, the statement allows corporate leadership to continue on as before, but with a new public relations halo.

VIII. Corporate Responsibility And Vulnerability

Various stakeholders of corporations are uniquely unprotected from their vulnerability to the corporations.104 Often, a corporation holds large power over the workers and surrounding community, and they are at the corporation’s mercy. Workers and the surrounding community must make large investments in the corporation, which, under traditional law, the corporation can destroy at its whim, with no recourse for the workers and community. 105

A. Employees of the Corporation

Employees of a corporation must often make large investments in the corporation, the value of which the corporation can easily destroy. For example, workers often must move to a new community when the corporation hires them, cutting off valuable ties with their former communities.

Likewise, workers must invest in the specific skills that the corporation requires, skills which often will not be transferable to another corporation.

The workers and their families establish valuable social ties with institutions in the community, such as schools and churches.

The workers buy houses in the community.

The value of all of these investments will decline or even be completely lost if the corporation decides to close its local plant. If the workers are forced to move, the workers’ ties to the community will be lost. The value of the workers’ non-transferable employer-specific skills will be destroyed.

Likewise, if the corporation closes, this will cause the value of the real estate in the surrounding area to decline, decimating the value of the former workers’ homes.

Examples of this are the many workers in the industrial middle of the United States, whose lives were shattered when corporations closed manufacturing plants.

B. The Surrounding Community

Apart from the workers, the community surrounding a major corporate employer is also unprotected from its vulnerability. Families and businesses invest in the community. If the corporation leaves, the whole community is devastated.

Likewise, if the corporation begins emitting larger amounts of pollution, the community is often defenseless. Because the community depends so deeply on the corporation, the community can neither confront the corporation nor defend itself against the corporation, for fear that the corporation will leave.

Examples of communities that have been devastated by corporate decisions are present through the U.S.’s industrial middle.

C. The Environment

Because the corporation holds power over the surrounding community, the surrounding community cannot effectively demand that the corporation reduce pollution. The community fears that environmental activism will cause the corporation to leave for another area or another country. Accordingly, the environment enjoys few protections against its vulnerability.

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D. Unions

Because the corporation can threaten to leave, the corporation has effective power to destroy unions. Unions have declined as corporations have moved their factories from union areas in the U.S.’s north to non-union areas in the south. Workers have gotten the message: if you try to organize a union, the corporation will leave and destroy your community.

This is what happened when Amazon suddenly revoked its commitment to build a large headquarters near New York City. The community had made various requests that Amazon protect workers and the environment. Rather than agree to them, Amazon left. To workers and communities, the message is clear. If you request protections from a corporation, your jobs and community are at risk.

The duty that I propose in this paper would permit corporations’ workers and communities to enjoy some resilience and to be protected to some degree from their vulnerability to corporations. Corporate law presently provides many protections to shareholders who have invested in a corporation. My proposal provides protections to the workers and communities who have invested in a corporation not just with money, but with their lives. My proposal would require a corporation to consider the interests of all investors in it, including workers and the surrounding community, not just shareholders.

The proposal would also be fair and efficient. Just as it is fair and efficient for shareholders to expect a reliable return on their money investment in the corporation, the corporation should be required to attempt to provide its workers and the surrounding community with a similar reliable return on their nontransferable investment—or, at minimum, to consider in the corporation’s decision-making the workers’ and community’s interests.

IX. Conclusion

Over the past century, corporations have freed themselves of a duty that they previously had: the duty to promote the public interest. The recent development of the benefit corporation does not change this. Any publicspirited acts that corporations take as benefit corporations are purely voluntary. A corporation can choose not to be a benefit corporation. If it chooses to be a benefit corporation, it still has complete discretion whether to act in the public interest.

Likewise, the recent statement by the Business Roundtable does not impose any new duties. It merely suggests that corporate leaders might aspire to promote the interest of “stakeholders” other than stockholders. However, the statement does not specify how exactly the leaders should do this. Nor does it provide any enforcement or penalties if they don’t.

Instead, a new duty should be created for corporate leaders to act in the public interest. Just as lawyers are required to be “officers of the court,” corporate leaders should be “officers of the public.” Just as some criminal acts disqualify a person from serving as a lawyer, acts that harm the public interest should disqualify people from serving as directors and officers of corporations. If a corporate leader harms the public interest, the government should have the authority both to remove them from their corporate position and to eliminate their corporation’s limited liability.

Furthermore, if corporations violate this duty to act in the public interest, limited liability should be eliminated for that corporation’s shareholders. If the corporation fails to provide the quid, then the corporation and its shareholders should no longer receive the quo.

This new duty could be created by the courts. For example, the Delaware courts could hold that corporate directors and officers have a fiduciary duty that runs not only to the corporation, but also to other stakeholders. Just as lawyers and accountants have duties beyond serving their clients, corporate leaders would also have duties to serve the public interest.

Alternately, this public duty could be achieved through legislation. It could be done at the state level. For example, the Delaware legislature could pass a statute that imposes the new duty.

The duty could also be imposed by federal legislation.106 There would be benefits of this. With federal legislation, the duty would be consistent across all jurisdictions. In contrast, market forces would probably prevent this duty from arising in the states, either in state legislatures or state courts. No state would act individually to impose such a duty for fear of losing incorporations to other states that do not impose the duty. Accordingly, the best way to impose the duty would be through federal legislation, which applies to all states, and which gives no state an advantage in the market for incorporations.

#### DExit is key to eliminating shareholder primacy

Adam Chodorow and James Lawrence 20. Jack E. Brown Professor of Law at the Sandra Day O’Connor College of Law at Arizona State University. Associate at Fennemore Craig, P.C., J.D. 2019, Sandra Day O’Connor College of Law at Arizona State University. "The Pull of Delaware: How Judges Have Undermined Nevada’s Efforts to Develop Its Own Corporate Law." Nevada Law Review, 20.2, 401-426.

III. Nevada’s Story

In 1991, Nevada sought to join the ranks of states that had rejected Unocal and Revlon117 by adopting Nevada Revised Statute (NRS) 78.138.118 Nearly identical to the Massachusetts statute discussed above, NRS 78.138 permitted directors and officers of Nevada corporations to consider the interests of employees, customers, society as a whole, and the long-term interests of the corporation.119 Perhaps most important, Nevada’s constituency statute also plainly applied in the takeover context, noting that directors may consider whether “these interests [are] best served by the continued independence of the corporation.”120 The stated purpose of the statue was to modernize Nevada corporate law with regard to takeovers and to “encourage[] those wishing to acquire [Nevada] corporations to negotiate with the board of directors . . . before attempting to do so.”121 But despite these efforts to deviate from Delaware law, Nevada courts were reluctant to do so.

In Hilton Hotels Corp. v. ITT Corp., 122 the United States District Court for the District of Nevada relied extensively on Delaware case law to enjoin ITT’s use of defensive tactics in a takeover battle.123 In 1997, Hilton Hotels Corp. announced a $6.5 billion124 tender offer for the stock of Nevada-based ITT Corp.125 ITT sought to block Hilton’s acquisition by staggering the board126 so that only one-third of ITT’s board would be up for election at any annual shareholder meeting,127 thereby preventing Hilton from quickly gaining control of ITT’s board of directors.128 ITT moved to implement its plan without shareholder approval.129 Hilton sued to enjoin ITT from doing so, arguing ITT’s plan breached its directors’ fiduciary duties.130

Despite NRS 78.138, which explicitly applied to hostile acquisitions, the Hilton court began its analysis by noting that there was no on-point Nevada statutory or case law dealing with hostile takeovers or the ability of target boards to implement defensive measures.131 The court then turned to Delaware case law.132 The ITT board “argue[d] that Nevada does not follow Delaware case law [because NRS] [Section] 78.138 provides that a board, exercising its powers in good faith and with a[] view to the interests of the corporation can resist potential changes in control of a corporation based on the effect on constituencies other than the shareholders.”133 But the court interpreted Nevada’s constituency statute as consistent with the Delaware’s heightened standards: “Delaware case law merely clarifies the basic duties established by the Nevada statutes,” the court noted.134 “This Court will not eliminate the principles articulated in Unocal . . . and Revlon . . . without any indication from the Nevada Legislature . . . that that is the legislative intent.”135 The court permanently enjoined ITT’s defensive measures.136

A. The Nevada Legislature Responds

In response to Hilton Hotels Corp., the Nevada Legislature amended the state’s corporate law in 1999 to make explicit that Nevada does not follow Delaware case law.137 The legislative intent behind the amendments was to abrogate the Hilton court’s use of Delaware’s enhanced standards and “preserve[] the application of the business judgment rule even in takeover situations” for Nevada corporate boards.138 The Nevada Legislature created NRS 78.139, dealing specifically with takeovers.139 Much like the Maryland and Indiana anti takeover laws discussed above140 , NRS 78.139 precluded courts from reviewing director conduct with any greater scrutiny than the business judgment rule, even in takeover situations.141 The amendments also refined Nevada’s constituency statute by reinforcing the notion that corporate boards could appropriately resist takeover by considering non-shareholder interests and that neither Revlon nor Unocal apply in such cases. 142

#### Shareholder primacy causes extinction

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[[Begin Abstract]]

The purpose of the corporation is contested. The heart of the debate is whether corporations ought to maximize shareholder value, or rather balance shareholder gains against the welfare of other constituencies. Lawyers and policymakers alike commonly hold that most corporations rightly regard the interests of shareholders as their highest priority. Even after repeated challenges from scholars,1 high-profile statements from corporate executives,2 and the promise of ESG investments,3 the common view is that maximizing shareholder value is the law. And while other non-corporate legal fields such as labor law, tax law, consumer laws and environmental laws may strive to protect the interests of stakeholders, corporate law instructs officers and directors to prioritize shareholders.

The paper challenges this interpretation of corporate law. It argues that even without any changes to current regulation, a constituency-oriented obligation to consider the social and economic impact of corporate conduct on corporate stakeholders exists within current corporate law.

By analyzing the legal framework of corporate law in Israel, the US, and the UK it is possible to show that corporate law itself is capable of a broader interpretation; and that such interpretation—one that considers the impact of corporate behavior on social welfare—is necessary for a sustainable society. With unprecedented corporate power, and the threats it poses to the environment and to democratic principles, its reinforcement of structures of privilege and its role in deepening inequality, the interpretation of corporate law needs to re-conceptualize corporate purpose. After a series of global crises has exacerbated and exposed the frailty of our social structures, a new interpretation of corporate law is required, one which identifies the duty to consider the wellbeing of the corporate constituencies. We argue that this duty is already embodied in current regulation. The law of corporations in all three jurisdictions allows for such a reading.

[[End Abstract]]

Introduction

On February 24, 2022, Russia launched a full-scale invasion to Ukraine.4 A coordinated response by the West followed; many countries sent military and humanitarian aid,5 and a unified front of the U.S., the EU, and the UK implemented a series of economic sanctions against Russia. The U.S. banned Russian oil imports, and the UK joined in freezing the assets of Russia’s central bank and in seizing assets of the oligarchs of Putin’s inner circle. The objective of these sanctions was to cut Russian economy off from the global markets. Interestingly, the role of transnational corporations in Russia’s isolation was vital. After only a few days of war, large multinational corporations have pulled out of the Russian economy. Oil and gas companies such as BP, Shell, and ExxonMobil cut their investments in Russian energy companies;6 finance companies such as Visa, MasterCard, American Express, and PayPal suspended their business dealings in Russia;7 tech giants Samsung and Sony suspended shipments to Russia, and Apple has restricted its Apple Pay services.8 The most significant blow to Russian economy was its partial disconnection from SWIFT, the global messaging system for financial transactions. SWIFT is a non-state international cooperative of banks, linking more than 11,000 institutions in over 200 countries,9 founded as a member-owned cooperative society under Belgian law, and is controlled and owned by its members.10 While some central banks are also members of SWIFT, its governing structure guarantees that the control of the organization is proportional to the volume of usage of its services. As an organization comprised mostly of private banks, it is regarded as a “neutral third party” and in previous political crises, such as that of Iran in 2012, it was very late to respond to an international campaign pressing it to join the sanctions against Iran. In its attempt to stay neutral in 2012, SWIFT initially insisted that the system is “only a secure messaging service,” and that its activities fell “beyond the remit of current law.”11 A press release from February of 2012 by SWIFT, along the same lines, stated that it was “committed in maintaining its role as a neutral global financial communications network.”12 It wasn’t until the U.S. Senate Banking Committee proposed legislation to permit the sanctioning of SWIFT that it reluctantly joined the effort to cut off Iranian finance. On this occasion, however, SWIFT has joined the sanctions against Russia.

The significance of the private sector’s cooperation with the embargo on Russia in 2022, illustrates the extent to which corporate discretion and conduct impacts geopolitical, economic, and social issues. While the majority of transnational corporations chose to join the opposition against Russia’s aggression on this occasion, it seems that things might have turned out very differently had they acted only in accordance with their financial interests and refrained from acting on ethical grounds. In the past, more often than not, they turned a blind eye. The very same companies that withdrew from Russia have not only ignored, but have also, at times, benefitted from atrocities taking place in other parts of the world. Boeing, for instance, which suspended its operations in Russia in March of 2022,13 has made huge profits from the war in Yemen,14 a war that, according to the UN, has placed over 20 million people in need of humanitarian aid.15 Shell, quick to divest from Russian oil and gas companies, has been accused of complicity in horrific crimes committed by the Nigerian military in the 1990s.16 BP was responsible for the single largest environmental disaster ever, the oil spill in the Gulf of Mexico in 2010.17 Other examples abound.18 For better or worse, corporate impact far exceeds an imagined neutral and detached marketplace.

It is our contention that law does not do enough to hold private power responsible for undermining human well-being. The reason, however, lies not in law itself, but in its cultural environment.19 This is true not only in the face of wars, a global pandemic, or the imminent climate crisis, but also in what may seem the most mundane of circumstances, that in fact shape our public sphere, communities, and lives.

Indeed, corporate power is everywhere. From Google, Amazon, and Meta, to Pfizer and Moderna, state regulators and legal scholars alike express growing concerns with the overwhelming power of corporations.20 But while countless articles and books are written on corporate excessive power, and while high-profile declarations by corporate leaders promise to “ensure a more inclusive prosperity” through corporate action,21 not much real change is in evidence. Corporations rarely consider the detrimental impact of their conduct on other constituencies and focus on share value as the (almost) exclusive measure of their success. The law of corporations, as currently understood, is failing to respond. We argue that the reason for this is that corporate culture pushes the interpretation of law towards an assumption of shareholder primacy. But that this is neither the only possible interpretation of the law, nor a desirable one.

The paper challenges the conservative, dominant, interpretation of corporate law in the U.S., the UK, and Israel. It argues that the multifold, and growing, power of corporations, and the threats it poses to democratic principles and environmental issues, its reinforcement of structures of privilege and its role in deepening inequality, mandates the adoption of a different, constituency-oriented, reading of the law. We will show that the law in all three jurisdictions already allows for such a reading and argue that adopting a constituency-oriented interpretation reflects an understanding of the corporate entity which is better fitted for today’s challenges.

The paper proceeds as follows. It starts, in the first part, with a depiction of the growing corporate power, through the lens of a series of global crises that have both exacerbated and exposed much of the frailty of our social structures; it then moves to discuss the changing equilibrium between corporations and states, mainly through privatization in its many forms; the last section of the first part focuses on the rise of the CSR discourse and the changing social expectations from corporations, which have led, in part, to growing doubts about the dominant paradigm of shareholder value maximization. Special attention will be devoted to the web platform corporations, the global impact of which on people’s lives has become unparalleled. The purpose of this part is to present the overwhelming increase of corporate power in the past few decades, in both magnitude and reach. This, we argue, mandates re-thinking the role of corporations that can be facilitated through a broader reading of corporate law.

The most urgent change, we believe, is to re-conceptualize corporate purpose. Corporations are not neutral economic spheres but social institutions, embedded within society. This must lead to recognizing their legal responsibility. The integration of a standard of responsibility into corporate regulation will naturally result in the rejection of the shareholder primacy norm as a legal imperative.

We will not engage with the economic case for rejecting the shareholder primacy norm. Rather, we will build on it, and focus our attention on highlighting the urgency of pushing back on corporate power by re-interpreting current law, and re-conceptualizing corporate purpose. We show that this transformation does not require any legislative amendments, as current law already includes a latent requirement for corporate responsibility and already allows for a broader reading of corporate purpose. What needs to change is the doctrines that coddle corporate interests.

The second part of the paper will analyze the legal status of corporations in Israel, the UK and the U.S. It will show that while much has been written about the purpose of the corporation as more than just a vehicle to enable investment or produce profits, and while the laws prescribing its status allow for a broader understanding than the shareholder primacy norm, these broader interpretations have not been applied.

Against this backdrop, the third part of the paper will offer a different perspective on corporate law. Its essence is a re-conceptualization of the place of corporations in society, one that denies their standing as a private entity operating in an allegedly neutral economic sphere, but rather highlights their status as socio-economic enterprises, inseparable from the broader social context in which they operate.

I. Corporate Power

In 1995, when the Israeli Corporate Law Reform bill was introduced in Parliament, Larry Page and Sergey Brin had only just met, and the Google corporation was, at best, a vague idea. Facebook was founded as an open social network just two months prior to the enactment of the UK Companies Act of 2006, and Apple’s iPhone had not yet been released. The world we live in today, in which the total market value of the five big tech companies is at 7 trillion USD,22 is different from any world the legislators of both company laws could have even imagined. The transformation in corporate power, its ubiquity and countless manifestations, translates into an ever-growing impact on both global and local social realities. Corporate power, and its potential to cause harm, require a more suitable legal perception of the corporate entity. Dethroning the shareholder primacy paradigm as the overarching interpretive norm of corporate law is a necessary first step, as it impedes such change.

Corporate power, however, is only one aspect of the new global reality. The changing equilibrium between transnational corporations and states should be considered as well, as it exposes the diminishing power of people around the world to take part in shaping their own environment. The globalization process, which in many ways was only emerging when the Israeli corporate law reform bill was introduced, played a crucial role in these two parallel processes: on one hand, the boosting of corporate power—legally, economically and politically;23 and on the other hand, the retreat of the state, and the erosion of its sovereignty in shaping independent socio-economic policies, especially in fiscal and monetary aspects, and, in turn, in terms of the robustness of welfare policies.24 Globalization affects the power balance between corporations and governments in various ways: first, the global mobility of corporations induces a “race to the bottom,” reflected in tax breaks and trade agreements, intended to draw corporate investment. Corporate global mobility also allows corporations to make use of tax havens and financial secrecy agreements and regulations. Both practices, in turn, reduce tax revenues for hosting states, and diminish the scale and quality of the social services it can offer.25 In addition, aggressive tax planning allows further wealth accumulation by corporations, fortifying their economic power. This too works in their favor vis-à-vis states. Finally, trade agreements and regulatory contracts that corporations take a major role in drafting, and which are only loosely overseen by parliaments, leads to light, nontransparent regulation that usually serves the interests of capital, rather than those of the public.26

Another aspect of the effects of globalization on the erosion in state sovereignty is the impact of international institutions, such as the world bank and the IMF on the economic policies of many states. These have advanced a neoliberal agenda that has led many poor countries to eliminate trade barriers, as well as reducing subsidies in support of their local agriculture or industry. The direct beneficiaries were banks and transnational corporations.27

Yet another aspect of the weakening of the state is the privatization of public services. Under the neoliberal philosophy, “government is not the solution to our problem; government is the problem,” as President Reagan famously declared.28 The implications are setting the “small government” as an objective, strengthening the private sector, and the recommodifications of goods and services. The culmination of this process is the privatization of services that are traditionally thought of as distinctively public, such as defense, incarceration, and policing.29 The assumption of superior private efficiency, and the quest for international economic competitiveness are important contributors to the retreat of the state from a variety of economic activities. The natural beneficiaries are corporations, who correspondingly acquire a more central position in the social and economic sphere.

The implications of these processes for the public interest are not encouraging. The IMF, in itself an agent of globalization for many years, published in 2017 a comprehensive study concluding that the mobility of capital and labor, coupled with the small government agenda, are a major cause of the rapid growth in inequality.30 Research also shows that when governments are more involved in public services, inequality decreases, and economic growth is enhanced.

One of the most significant aspects of corporate dominance is the growth of the tech platform giants (Google, Meta, Apple, Amazon, etc.), who have become, in the past two decades or so, major actors in the global economy. The “Big Data” age, and the unprecedented monitoring of every aspect of human activity, has turned cyberspace into the most salient locus of the changing equilibrium between states and corporations. The platform corporations have become the gate keepers of the vast content available on the web. Through search engines, social networks, e-commerce and more, these platform corporations control, via nontransparent algorithms, the way information is presented, used, interpreted, and exposed to billions of users around the world. Their advantage in dictating the terms of agreement with individual clients, and the ability to take down, promote or block content or users, endows the platform corporations with de facto control over knowledge, its hierarchy, its traffic, focus, and ultimately over public opinion, and its perception of reality—actual or imagined.31

Under the current interpretation of corporate law, these companies strive to maximize shareholder value, which often leads to harmful business strategies affecting personal autonomy, democracy, mental wellbeing, etc.32 An example is Facebook’s exploitation of user information without their consent or knowledge in the Cambridge Analytica scandal to support Trump’s presidential campaign.33 In this sense, the power of these corporations transcends that of governments, and reflects the potential danger they pose to human rights and wellbeing. This new reality challenges the classic theory that considers the state as the major threat in this regard.

It is not surprising, therefore, that new attempts to better regulate these aspects of private power—in both antitrust and privacy34—are slowly becoming more common. As we will argue below, however, these specific regulatory additions are not enough. What is required instead is a new interpretive paradigm for corporate law—one that is not guided by the shareholder primacy norm but rather takes into account the broad implications of corporate conduct on society at large.35

We have thus far described the shift in power relations between states and corporations, especially as a result of the globalization and privatization processes, and with a focus on the unique position of platform corporations as significant agents of this change. These have resulted in the rise of the corporate social responsibility movement and the changing expectations from corporations.

Since the end of the 1990s and especially following the uncovering of harmful practices by transnational corporations, the discussion of corporate social responsibility has made progress, especially among civil society organizations, but also among the general public. Stakeholder discourse is becoming more demanding and various civil-society campaigns are trying to rein in corporate conduct. As the private sphere expands into the public domain, the interest of the public in the private sphere grows. This includes a deeper scrutiny of harmful corporate practices, production conditions, employment terms, detrimental impact on the climate and human rights breaches. Civil society organizations push corporations to meet higher normative standards. Using consumer boycotts, urging divestments, fair trade campaigns, class actions, etc., these demands may resonate in corporate boardrooms.36

Another aspect of the same phenomenon is the “business and human rights” discourse that has also developed in recent years with an impact on social expectations from corporations. The business and human rights movement argues that human rights law, mostly restricted to states, should be extended to transnational corporations.37 Its efforts are bearing fruit, and in 2011, the UN Human Rights council published guiding principles on Business and Human Rights, asserting that corporations, in addition to states, must also respect human rights.38 While this is not a legally binding document, the UN principles enjoy wide support from leading corporations as well. In 2019, the UN Human Rights Council issued a draft-treaty aimed specifically at corporations in relation to human rights.39 While there is still a long way to go before, and if, it is ratified, the draft is yet another signal for the growing understanding that private power must be restrained, and that managing the company to maximize shareholder value is no longer viable (if indeed it ever was).

In response, corporations themselves and especially those in the public eye, have started to voluntarily adopt a range of socially responsible practices,40 which in turn further stimulated social expectations of responsible behavior. The academic managerial discourse, especially in Europe,41 has also begun to focus more on questions of business ethics, corporate social responsibility, sustainability, and business-and-community relations, reflecting a shift from the contractual-corporate paradigm to a stakeholder model. It seems fair to say, then, the debate today no longer questions the necessity of corporate social responsibility, but rather considers its proper scope.

As will be shown below, however, these changes have not permeated into law itself, or, more accurately, have not informed a broader interpretation of equivocal legal concepts. Corporate and legal actors throughout are still prioritizing shareholder value.42

The first part of the paper focused on the profound transformation in the power relations between states and corporations, showing that globalization, privatization, and the rise of platform corporations have brought about an urgent need to review the overarching principles that inform corporate purpose. A change in public opinion, more aware of the problems of the unregulated power of large corporations and its potential to cause harm, have made possible a normative shift in which corporate social responsibility is now expected. In terms of law, this shift should translate into a new perception of corporate purpose.

It is impossible to discuss the role of corporations in society without mentioning the crises the world has gone through over the past few years— some of which are linked directly to corporate conduct. Most urgent is the climate crisis, defined by the UN as the “defining crisis of our time.”43 Human activity, mostly carried out by corporations, is responsible for the emission of greenhouse gas into the atmosphere. Mining, production, and use of coal, oil and gas releases billions of tons of CO2 causing an unprecedented, and dangerous, rise in temperatures. The consequences are, and will become, devastating.44 The arctic is melting, causing sea levels to rise, threatening the flooding of inhabited lands and cities across the globe; extreme weather conditions, natural disasters and non-perishable human trash lead to soil degradation and desertification. Hyper consumerism leads to reckless deforestation. Business as usual has, literally, devastating implications. However, the fossil fuel industry is still on course to invest billions of dollars into new infrastructure, and to further extract coal, oil and natural gas in both Europe and North America.45 In Europe, it was only following the Russian invasion to Ukraine in February of 2022 that the Nord stream project, owned and led by a consortium of European energy companies, was re-considered. The Nord Stream gas pipeline, described as a climate disaster,46 is one of the largest energy infrastructures in Europe. In addition to its detrimental effect on gas emissions when put to use by consumers, it is also putting the Baltic ecosystem in danger.47 Energy corporations are making huge profits while we edge closer to an ecological disaster. A 2019 study shows that only twenty corporations are responsible for 35% of the total CO2 emissions since 1965, when the dangers of fossil fuel were already known.48

Corporations are accelerating the climate crisis by blocking regulatory initiatives. The hyper consumerist culture corporations strive to foster and spread drives societies across the globe to an excessive use of natural resources. The paradigm of maximizing shareholder value and short-term growth leads these corporations to externalize the costs to society and the environment. As the next part will show, current law allows a much-needed paradigm change. It is up to legal actors to apply a different interpretation to the law, one that corresponds better to the challenges.

### 1NC

#### Rates DA.

#### Prices are lowering and future rate cuts are almost guaranteed.

Scott Kanowsky 1/14. Reporter for Investing.com. “Wells Fargo Sees One More Rate Cut Coming Before Powell’s Fed Chair Term Ends.” 1/14/26. https://www.investing.com/news/economy-news/wells-fargo-sees-one-more-rate-cut-coming-before-powells-fed-chair-term-ends-4447243

In a note to clients, the strategists predicted that a 25-basis point drawdown would come before Powell steps down, finishing an eight-year run at the helm of the world’s most influence central bank.

Another equally-sized rate reduction is then projected to be rolled out this summer, with a new Chair at the head of the Fed’s Board of Governors.

The comments from Wells Fargo come after the Trump administration launched a criminal investigation into Powell, a move the Fed Chair said was a "pretext" to sway interest rate policy. President Donald Trump has frequently badgered and criticized Powell and the Fed for not aggressively cutting rates, even after the central bank rolled out multiple drawdowns last year in a bid to support a weakening labor market.

Concerns around the Fed’s ability to set interest rates free of political influence, long seen as a bedrock feature of the American financial system, have been raised following the start of the investigation into Powell.

Some investors have wondered whether Trump will also look to appoint a loyalist as Powell’s replacement.

Against this backdrop, uncertainty has clouded over the path ahead for Fed interest rates. According to CME FedWatch, the central bank is tipped to keep rates steady at its next meeting later this month, but unveil two more cuts some time this year. When exactly those reductions would be announced remains unclear, however.

"The broader FOMC has been divided in recent months about the appropriate stance of monetary policy, while the recent Department of Justice subpoenas to the central bank further increase the scrutiny and pressure on U.S. monetary policymakers," the Wells Fargo analysts said.

They added that the most recent labor data "continue to point to a jobs market that is modestly on the wrong side of full employment," referring to one of the Fed’s two core mandates, along with maintaining price stability.

Other figures have also pointed to a softening labor picture, with employers are neither hiring nor firing workers. Inflation data earlier this week, meanwhile, showed underlying price growth easing in December.

#### The plan flips it. That controls the direction of economic crises.

Joshua Cova 24. Postdoctoral researcher at the Max Planck Institute for the Study of Societies. "On industrial relations and inflation: a long-term perspective." *European Review of Labour and Research*, 30.3, 278-284.

Introduction

In most advanced capitalist democracies, the years 2021–2023 will be remembered as a period marked by a resurgence of inflation, an economic phenomenon that, for many countries, had long been largely dormant. Although there seems to be little doubt that the COVID-19 pandemic’s supply chain shocks and Russia’s war of aggression against Ukraine and the ensuing increases in food and energy prices constitute the exogenous shocks that increased inflation for most countries in 2021–2023 it is clear that, on the whole, the severity of inflation is – and has been historically – also determined by country-specific dynamics. Explanations of the causes and solutions of this recent bout of inflation have proven, predictably, to be contentious. Policy-makers and researchers at the time were divided on whether this recent inflationary episode can be construed as transitory and therefore dependent on a combination of unique factors that may come to pass, or whether, on the contrary, the inflation of 2021–2023 bears the hallmarks of a caesura in global economic dynamics and might instead presage a kind of ‘permanent inflation’, in which central banks’ target of a 2 per cent inflation rate becomes increasingly untenable.1 Rising inflation rates have also sparked heated discussions regarding the extent to which supply-side or demand-side variables are the more likely culprits with regard to price increases, and whether solutions to alleviate price and cost-of-living pressures should, as a consequence, lean towards supply-side or demand-side measures. This article, by adopting a long-term perspective, examines the relationship between industrial relations and inflation in advanced industrialised economies.

In this article, we focus on one commonly cited reason for progressively higher inflation rates, namely the power of organised labour in demanding expansionary wage policies, which can then lead to higher inflation. Whether inflationary dynamics remain entrenched in an economy, however, is also contingent on the power of organised labour and, in a time of real wage stagnation and diminished labour power, it stands to reason that organised labour has lost its institutional ability to entrench wage growth systematically. It is within this context that we re-examine the long-term relationship between industrial relations indicators and the onset of inflation. It is not only the recent wave of double-digit inflation rates that motivate us to analyse the relationship between industrial relations and inflation differentials through a historical lens, but it is also the fact that across a number of advanced economies, social actors have shown signs of an institutional revival. A wave of often successful strikes in the United States and the United Kingdom, the supposed paragons of liberal market economics, indicate that industrial relations and collective bargaining institutions might perhaps play a more important role in mitigating the incidence of cost-of-living crises in the near future (Minchin, 2024; Visser, 2024). It is worth noting that industrial action in the past years has affected not only different countries, but also different sectors, as strikes concerning rising cost-of-living expenses have affected the generally more unionised public sector (for example, health care and education), as well as the private sector. Understanding the ways in which industrial relations have or have not contributed to higher inflation rates in leading economies thus seems to be of significant contemporary relevance, too.

Our findings can be inserted within two distinct academic research strands. First, we aim to address the voluminous political economy research on the institutional supply-side determinants of inflation. Broadly speaking, economists have argued that strong labour market institutions, usually operationalised by high unionisation, high collective bargaining coverage rates and strong employment protection legislation, lead to greater wage resistance and a stronger persistence of inflationary dynamics in the event of an inflationary shock. While our statistical analyses do not confute this claim, they aim to qualify it by illustrating empirically that the relationship between industrial relations institutions and the entrenchment of inflation varies considerably not only between countries but also, crucially, over time. This constitutes an aspect of the study of industrial relations indicators and inflation that we argue has been insufficiently addressed in existing research. In addition to trying to enrichen our understanding of the relationship between industrial relations indicators and inflation differentials, we aim to speak to the once vibrant debate in economic sociology, which conceptualised inflation as a fundamentally distributional problem. This research tradition underlined the fact that inflationary outcomes are not only the result of distinct political choices, but are also symptomatic of changing relations between capital and labour.

A caveat is in order: this article does not seek to investigate the determinants of inflation. This topic has been covered extensively by economic researchers across various fields, who have pointed to a wide variety of explanations, from trade integration to fiscal policy. Instead, we shall focus on the relationship between indicators of workers’ strength and inflation differentials, and how this relationship has evolved over time.

We aim to contribute to the literature on the labour market-institutional determinants of inflation by arguing that analyses of the relationship between industrial relations and inflation need to do more to incorporate a temporal dimension. Analyses that examine the effects of industrial relations systems on inflation differentials typically focus on a broad period, which commonly ranges from the 1960s and 1970s to the early 2000s. They therefore do not take into consideration the changing impact that industrial relations indicators have had on inflationary growth over time. This, we argue, overstates the negative effect of strong industrial relations indicators on the persistence of inflation. In our statistical analyses, we show that the mediating role that industrial relations play in influencing the effects of an exogenous shock on higher consumer prices has been subject to significant changes over time. In short, our empirical approach thus aims to take time more seriously.

We begin by employing a ‘standard’ time-series cross-sectional analysis. Like much of the existing literature in the field, we also find that by taking in the longue durée a positive relationship does indeed show up between strong industrial relations and protective labour markets and inflation growth. When segmenting the relationship over time by means of different statistical estimation techniques, however, we find that the power of industrial relations institutions has progressively declined when it comes to entrenching inflationary growth. These empirical analyses indicate that labour market institutions have progressively lost the institutional power needed to translate exogenous shocks into persistent inflation.

Our argument, in brief, is that while in the 1970s inflationary dynamics were affected by the strength of industrial relations, the progressive erosion of collective bargaining institutions and the systematic decline of union membership rates have changed the relationship between social actors and inflation rates significantly. This also has important implications for policy-makers. In fact, our study indicates that drastic monetary tightening, designed to attenuate the effects of nominal wages and prevent possible wage-price spirals, may, in a time of weaker social actors, only have a partial effect in addressing the causes of inflation.

Inflation as a distributional conflict between capital and labour

While in recent decades, researchers have construed inflation mainly in monetarist or fiscal terms, research from the field of economic sociology, historically, has understood inflation as a fundamentally distributional problem, which at its core concerns the power relations between employers and organised labour (Goldthorpe, 1978; Rowthorn, 1977; Tarling and Wilkinson, 1977). According to this view, the primary factor influencing the inflation rate lies in the balance of power between workers and capital. It is therefore a result of the conflict between capital and labour for the distribution of economic output. When labour is empowered, it can demand higher wages, which in turn push prices upward, which contributes to inflation through a wage-price spiral. Conversely, when the working class lacks power, wages tend to stagnate, resulting in a lower inflation rate, which benefits capital. Specifically, the nexus that exists between workers’ power and inflation hinges on two separate elements: structural power and associational power (Hung and Thompson, 2016; Schmalz et al., 2018; Wright, 2000). Structural power denotes the existence of favourable conditions in the labour market, which allow workers to bargain for higher wages from a position of strength. The tight labour markets, with low unemployment and high job vacancy rates, which characterised advanced capitalist democracies in the post-war era are examples of strong structural power; in other words, the economic power wielded by workers was considerable. Conversely, associational power denotes the organisational power that trade unions and collective bargaining institutions wield in an economy and is indicative of the institutional ability of labour market institutions to push their wage demands through. This power is typically measured by unionisation and collective bargaining coverage rates, along with the degree of centralisation and coordination within the wage-setting process.

As is well known, workers’ structural and associational power reached an all-time high during the post-war era. During that time, strong labour market institutions helped to undergird the post-war Fordist wage-led growth model. This model was based on the following, theoretically self-reinforcing, mechanism: consumption drove up demand, which in turn increased incomes. Firms, in order to keep up with higher wage demands, needed to become more productive and invest more. This virtuous cycle of Keynesian demand management was brought down by stagflation, which brought to light the endogenous problems in the post-war wage-led growth model. While a full employment regime, strong social actors and high wage-setting centralisation were undoubtedly beneficial for workers, labour discipline progressively broke down as median incomes grew. Prices grew more than productivity and, as already posited by Polish economist Michał Kalecki in a prescient paper written in 1943, economies became subject to destructive wage-price spirals. Thus, organised labour’s increasing wage demands resulted in a ‘pay explosion’ that progressively squeezed capital profits (Arrighi, 2009).

The inflation trajectories in most advanced capitalist democracies exhibited – as confirmed by Bai and Perron’s (1998) statistical test for the existence of structural breaks (Figure 1) – a clear inflection point in the late 1970s. Indeed, the subsequent period saw a significant decrease in inflation rates, as well as lower macroeconomic volatility for most advanced economies. This period has been termed the ‘Great Moderation’. Existing scholarship has provided a variety of reasons for this transformation. Broadly speaking, they point to good policy or to structural reasons as explanations (Bernanke, 2004). Researchers in the former camp have underscored the fact that monetary policy and the decision to delegate interest rate setting power to independent and conservative central banks, which supposedly are not subject to the same ‘time inconsistency’ problems as elected officials and appear to be better suited to anchoring inflationary expectations, have been a key policy development in taming inflationary growth (Galí and Gambetti, 2009; Rogoff, 1985).

[[Figure Omitted]]

This view is not without its critics, however. Indeed, other researchers have focused on structural elements, over which domestic policy can have limited control. They have noted that since the 1970s supply-side shocks in food and energy have become less severe (Stock and Watson, 2003). Thus, overdependence on oil and OPEC-imposed prices have significantly reduced across advanced industrialised economies, as countries have increasingly diversified their energy supply bases, tapping into alternative energy sources, such as natural gas, or developing and expanding domestic energy production (such as renewable energy or fracking). Another set of explanations has prioritised the analysis of labour market dynamics over monetary explanations as the reason for lower inflation. Thus, according to Perry and Cline (2016), decreasing wage shares, lower wage costs and weaker social actors, in the form of lower collective bargaining coverage and lower unionisation rates, have been conducive to moderating wage demands and have thus led to a period of sustained inflationary moderation. Moreover, the combination of lower import prices, stemming from the opening up of national markets, and intensified international competition has contributed to reducing inflation rates in most advanced industrialised economies. The impact of globalisation on inflation reduction becomes evident when considering the significant offshoring of supply chains and utilisation of foreign labour, which have effectively lowered operating costs and prices for firms (Auer and Fischer, 2010). While the growing economic and financial interdependence between economies has led to increasingly synchronised inflation cycles, it has also made countries more susceptible to supply-side shocks (Figure 2) (Ferguson and Storm, 2023).

[[Figure Omitted]]

Irrespective of what interpretation one favours in explaining the onset of the period termed the ‘Great Moderation’, it is incontrovertible that the post-1970s period has coincided with a progressive (economic) liberalisation of the labour market, weakening social actors and hollowing out labour market institutions across different types of market economy (Baccaro and Howell, 2017). International organisations such as the IMF and the OECD began to argue in their policy recommendations (for example, the OECD’s Jobs Strategy or the IMF’s Conditionality plans) that liberalised (deregulated) labour markets were better able to achieve economic growth. These recommendations also had a profound impact on the direction of European labour market reforms (Dostal, 2004). The question of which labour market institutions and industrial relations systems are more capable of bringing down inflation rates has also attracted significant scholarly attention. Bowdler and Nunziata (2007), in their analysis of the relationship between union density rates and inflation, thus found that higher unionisation rates put upward pressure on inflation. When controlling for wage-setting centralisation they find that the more centralised a country’s wage-setting system, the more attenuated the effect of trade union density on raising inflation. Corporatist labour market institutions can thus moderate union demands for higher wages. In their empirical analysis, they also found evidence that stronger employment protection is associated with higher inflation. Other researchers have argued that the effect of extensive wage-setting coordination on lowering inflation becomes stronger the more independent a country’s central bank is (Cukierman and Lippi, 1999). Moreover, according to Hall and Franzese (1998), the more coordinated and centralised the wage-bargaining process is, the more responsive wage-setters will be to signals from an independent central bank, and thus the less likely it is that the central bank will have to resort to restrictive monetary policies that would increase unemployment. In other words, the effect of an independent central bank on unemployment is moderated by the extent of wage bargaining coordination in a country.

In a more recent analysis, Jaumotte and Morsy (2012) illustrate, based on a panel dataset of eurozone countries, that high employment protection, intermediate wage-setting coordination and high union density increase the persistence of inflation. Similarly, Hung and Thompson (2016) find empirical evidence that inflation is connected to the power distribution between labour and capital, and establish, through a panel data analysis, that there is a positive relationship between the wage share and unionisation, on the one hand, and rising inflation, on the other. In the literature, the causal mechanism that often links labour market institutions to higher inflation rates is a ‘second-round’ effect, which takes the form of a wage-price spiral. In a wage-price spiral higher inflation leads to higher wage growth, which then leads to higher prices, which then leads to higher wages. On this account, social actors, in an effort to catch up with rising prices, up their nominal wage demands. As already noted by Kalecki (1943), social actors negotiate on nominal wage increases because real wages are structurally determined by the pricing power of firms and existing market power relations. Nevertheless, empirical evidence for the historical existence of wage-price spirals has been mixed. While Lucotte and Pradines-Jobet (2023) argue, by using a vector autoregression (VAR) estimation strategy, that higher unionisation rates and wage indexation arrangements are linked to greater inflationary persistence in the aftermath of a price shock, a 2022 analysis conducted by the IMF (Alvarez et al., 2022) found scarce historical evidence for the existence of wage-price spirals. In other words, the acceleration of nominal wage growth does not necessarily lead to changes in inflation rates. In an analysis of US labour market data during the recent inflationary episode, Domash and Summers (2022) conclude that for the most part there is no statistically significant effect of wage growth on the lagged value of inflation. This would indicate that, at least in the recent past in the United States, inflation has been a poor predictor of price growth. The reason US wage growth has not kept up with rising cost-of-living indicators has also been attributed, among other things, to workers’ declining power in the US economy (Stansbury and Summers, 2020). This brings back the question of whether it makes sense to compare the inflationary period of the early 2020s to the 1970s, a time in which social actors’ labour market power was significantly higher than it is today. As Storm (2022) concluded, ‘drawing historical parallels between the current inflation and the stagflation of the 1970s is not helpful; unlike in the 1970s and after decades of labour market deregulation and union bashing, […] workers are relatively powerless and incapable of protecting their real wages in this inflationary era’. This is further supported by comparing the varying levels of industrial action between the two time periods. Indeed, according to the UK Office of National Statistics (ONS), while in the 1970s the average number of working days lost due to industrial action was over 12 million a year, the figure for 2022–2023 was only 2.5 million.2 While this figure marks an increase compared with the average days lost due to industrial action in the preceding two decades (which averaged 570,000), it is low compared with the 1970s where the average annual growth in the UK consumer price index corresponded to 12.5 per cent and the average days lost to industrial action were in the millions.

The recent inflationary spike of 2021–2023 has rekindled discussions on the drivers of persistent inflation. Among many other factors, policy-makers and analysts have been concerned that the higher energy and food prices caused by a combination of exogenous supply shocks might become entrenched in the economy through wage-price spirals. As central banks have sought to apply monetarist solutions to inflationary developments by raising the interest rates, policy-makers’ focus has also been on wage policies and the labour market (Cova, 2023). Thus, Philip Lane, chief economist of the European Central Bank, warned that ‘wage inflation will be a primary driver of price inflation over the next several years’,3 and Andrew Bailey, Governor of the Bank of England, cautioned workers to stop demanding higher pay.4 Economists have also noted that low unemployment does not bode well for taming inflationary pressures. In an NBER publication, Domash and Summers (2022) found evidence that high job vacancies/quit rates are associated with higher wage inflation. Contrary to these explanations, however, a novel and innovative understanding of the 2021–2023 inflationary spike has emerged, namely sellers’ inflation. This explanation identifies corporations that exploit supply chain bottlenecks as the main culprits with regard to persistent inflation. A range of empirical analyses that examined the recent increase in inflation have confirmed that, at a time of widespread income stagnation, there is growing evidence that corporate profits and price mark-ups have been driving up inflation rather than wage-price spirals (Matamoros, 2023; Weber and Wasner, 2023). To be sure, while wage-price spirals always constitute a theoretical possibility, the entrenchment phase of inflation is not a necessary condition for inflation, but rather hinges on the institutional strength of organised power in the economy.

The limits of monetary policy

As is well known, the textbook monetary response to an overheated economy experiencing significant price increases is to raise interest rates. Monetary policy in the form of interest rate hikes is aimed at reducing the money supply, making borrowing more expensive and ‘cooling down’ the economy by reducing aggregate demand. Resort to monetary policy in an effort to intervene on the demand side might prove an ineffective instrument, however, if inflation is driven primarily by external supply-side factors, which are beyond the control of domestic demand-side policy solutions. Nevertheless, once inflation started increasing significantly towards the end of 2022, central banks reached for the interest rate lever as a tried and tested method of cutting inflation. At the time of writing (May, 2024), the ECB’s deposit interest rate, at 4 per cent, is at the highest level in the bank’s history. This is a notable departure from the recent years of negative interest rates. Key to the decision on whether to raise interest rates is the development of national wage dynamics, which obviously also depends on the underlying institutional strength of organised labour. Thus, for example, the ECB in its decision to maintain its interest rate policy unchanged in March 2024 cited sustained wage growth and lower labour productivity as a contributing factor.5

#### Uncontrolled economic crises ensure extinction thru nuclear use, exotic weapons, and societal reseilience.

John Braithwaite 24. The Australian National University, Acton Simple Solutions to Complex Catastrophes, Sustainable Development. Chapter 2 “Rapid Cascades, Coupled Crises”. Chapter Open Access First Online: 27 February 2024 pp 9–49. Accessed via Emory Libraries.

Complexity of risk is something modernity accelerates. So is coupling of risk from one kind of crisis to another kind, and speed in the globalization of crises. Crises today cascade faster into one another. This is true of economic and ecological crises, the globalization of disease, and security crises. Crises develop increasingly rapidly because of accelerating innovation in global capitalism. Social media platform innovation accelerated the rapid spread of lies to the point of outpacing older, simpler institutions for the proliferation of truths. This includes lies that motivate new forms of dangerous behavior like advocating a coup to put right an allegedly stolen election, or the lie that war can be waged to sustain a new Caliphate to conquer the Middle East and Africa.

Improved professionalization in the proliferation of falsehoods led to election of climate change deniers during the very period of history when it became too late for fully effective catastrophe prevention. New technologies of cyberwarfare, cybercrime and cyberterrorism, new space warfare by electromagnetic and cyberspace technologies, and new ways of disabling them in space, may cascade to horrific hails of space wars. Coupled cascades put us at risk from cyber-threats that tip security systems toward cascades of nuclear weapons use by accident, miscalculation, or linkages to faulty technologies.

Russia, China, and the United States may not be far from capability for multiple forms of Mutual Assured Destruction (MAD), not only MAD by nuclear weapons, but also Mutual Assured Digital Destruction (MADD) through digital time bombs planted, ready to explode on demand, in electricity grids and other systems that serve nuclear weapons targeting, hospitals, telecommunications, and more. They would explode with malware designed to activate during a crisis. No one knows how advanced great powers are in achieving MADD capability. Only technological pessimists could think that while kinetic MAD is within their grasp, cyber MADD never will be.

The June 27, 2017 cyber-attack on Ukraine by Russia turned Ukrainian screens black everywhere. Money could not be withdrawn from ATMs. Ukrainians could not be paid, send or receive mail, pay at gas stations, or buy a train ticket or groceries. Worse, Ukraine could not monitor radiation levels at Chernobyl and Zaporigia. This combined with effects on hospitals rendered the cyber-attack a war crime against humanity. NATO-based companies with major operations in Ukraine were also devastated. Merck and Fedex alone were hobbled at a cost of $1 billion as the Russian malware infected their worldwide communications (Perlroth 2021, 18). A couple of years later, before and after covid and when Ukraine staggered from an unprecedented measles outbreak, Russian trolls surged anti-vaccination dogmas across Facebook accounts of young Ukrainian mothers (Perlroth 2021, 19). War cascaded to escalated epidemic severity.

Russia also attacks NATO states with anti-vaccination messages intended to cause health harm, but more fundamentally to sow division in ways that intersect with other cleavages based on politics, race, neoNazi belief systems, class, and religion. Other states target Russia and China in the same ways; others target this kind of sowing of internal divisions against Israel; Israel in turn sows divisions among Palestinians and Iranians. From unimagined sources seeds are sown for future fascism and war. The argument of this book is that restorative diplomacy, genuine healing among old enemies, is the fundamental solution to this problem that has worked again and again throughout history in persuading old enemies against future meddling in one another’s domestic politics. It is just that restorative prevention and healing are more imperative than in the past, during an era when cyber operations are almost totally undeterrable and do such great crime and war harm that is extremely difficult to prevent technologically. Cybercrime is already the most common and damaging form of property crime for these reasons (Braithwaite 2022); soon cyberwar could become the most harmful form of warfare when the first case of Mutual Assured Digital Destruction turns all the screens black on both sides of alliances fighting a large war.

Russia would be better off had it restored diplomatic relationships with NATO states so they stopped meddling in Russia’s internal affairs, ended financial sanctions against Russia, ceased costly proxy warfare against Russia to defend Ukraine. The United States would be better off had it not provoked Putin to meddle in US politics without which Donald Trump would have been defeated by Hilary Clinton in 2016 (Levin 2020). That meddling has been so effective in dividing Americans against one another that even a coup against an elected government could be attempted. It has been effective in stoking fires of neo-fascism in America, in costing US companies losses as high as a billion dollars from Russian hacks, in causing US taxpayers to suffer an inflation shock and the loss of trillions of dollars preparing Ukraine for war only to see its ally lose big chunks of its territory. A continuation of great power politics as usual is a lose-lose game compared to restorative diplomacy that heals the hurts that motivate all these crimes and weakens both great powers vis a vis China (Chapter 8).

Mutual Assured Destruction capabilities with the satellite communications that allow aircraft to land, and other critical forms of communication may not be far off. Russia and China can already destroy the coupling of financial systems and the internet between Europe and the United States. Subsea cables are responsible for 97% of the data and information flows of transcontinental communication and finance (Acharya 2023). Enemies can cut cables somewhere along a vast ocean floor without being detected. Early in 2022 when Russian President Putin was rattling his nuclear saber, Britain and NATO messaged that cutting submarine cables would be ‘an act of war’ (Bone 2022).

This is an example of chokepoint deterrence because there is little prospect this century that humankind could build the number of satellites that would be required with the bandwidth of what cables can do. Russia cut trans-Atlantic cables on a number of occasions during milder crises of the Cold War. Repairing them can take weeks; then they can be cut again. Or Russia could then follow up by cutting another between the United States and Japan/Korea. The United States could reciprocate. Russia is coupled by cable to a lot less wealth than could be destroyed via the coupling of the United States with Europe or Japan. The coupling most vital to Russia since the war in Ukraine commenced is to China and its allies, not vulnerable cable connections across vast oceans. Google is doing it alone to build its own undersea cable to link its North and South American operations and data centers. This may be an attractive Russian escalation target along some future Russian trajectory to threatening MADD—with few Russian companies traveling that line. MADD by this means requires cutting many cables at once because single cuts can be re-routed along an alternative line, though with significant cost. Something that may have protected the West from the concerted attacks on undersea cables may be that China is a big player in the telecommunications and subsea cable industry. On the one hand, that is not much of an assurance perhaps for a future war with China, backed by Russia. On the other hand, this is another instance of how economic interdependence retains the potential to motivate peacemaking.

Coupling makes us wealthier and more capable of solving problems. Yet the more coupled, the more vulnerable we are. This book argues that because we can no longer ‘contain’ our enemies from cutting our coupling, nor they contain us from cutting theirs, there is no choice but to get better at turning enemies into friends. We can beat cyberbombs into cybershares that plough furrows of digital and quantum cooperation. We must beat nuclear bombs into nuclear fusion that we share to solve our mutual climate and energy crises. Fear of MADD can motivate the peace movement to educate us on where to seek shelter inside buildings when a nuclear mushroom cloud appears on the horizon. It is a mistake to think that messages on what to do will appear on our screens and airwaves; they may all turn blank at the moment the mushroom appears.

Hence, a second fundamental of this book is that rapidity of change is compounded by the tightly coupled character of crises. As Warren Buffet said of the international economic crisis in 2008, risks today are more coupled than in the past, so the collapse of a US bank more readily cascades to collapse of European banks. This is a fact of life. It is also a fact that we become wealthier as banks sell to one another. Bank dominoes fell at first because they were infected with securitized US subprime loans that were bad loans; in no time banks were collapsing because other banks were. Banks did not know how infected with bad loans other banks might be. So they stopped trusting them. This bleeding rapidly congealed the lifeblood of interbank lending.

A tipping point toward systemic collapse was passed when interest rates on risky interbank lending became so high that banks were stuck with bundles of mortgages in good loans. They were unable to sell them to prop up their liquidity. They could not pay their debts. The only line of credit they could access was taxpayer bailout. Risk therefore became both more complex and more systemic. Systemic risks are risks that result in crises of whole systems, as opposed to breakdowns of bits of systems. Systemic risk means that collapse of one bit of a system cascades to many bits infecting other bits with catastrophe. In contemporary risk societies (Beck 1992) characterized by compressed space–time (Harvey 1989) and just-in-time logistics for ensuring that all capital is at work rather than tied into inventory, risk complexity can cascade quickly to systemic global crises.

## Case

### Framing---1NC

#### Default to utilitarianism.

Chappell ’23 [Richard Yetter, William MacAskill, and Dirk Meissner; 2023; Associate Professor of Philosophy at the University of Miami, Ph.D. in philosophy from Princeton University; associate professor in Philosophy and Research Fellow at the Global Priorities Institute at the University of Oxford; Distinguished Professor of economics at the National Research University; Utilitarianism, “Arguments for Utilitarianism," https://utilitarianism.net/arguments-for-utilitarianism]

What Fundamentally Matters

Moral theories serve to specify what fundamentally matters, and utilitarianism offers a particularly compelling answer to this question.

Almost anyone would agree with utilitarianism that suffering is bad, and well-being is good. What could be more obvious? If anything matters morally, human well-being surely does. And it would be arbitrary to limit moral concern to our own species, so we should instead conclude that. That is, we ought to want the lives of sentient beings to go as well as possible (whether that ultimately comes down to maximizing happiness, desire satisfaction, or other welfare goods).

Could anything else be more important? Such a suggestion can seem puzzling. Consider: it is (usually) wrong to steal.3 But that is plausibly because stealing tends to be harmful, reducing people’s well-being.4 By contrast, most people are open to redistributive taxation, if it allows governments to provide benefits that reliably raise the overall level of well-being in society. So it is not that individuals just have a natural right to not be interfered with no matter what. When judging institutional arrangements (such as property and tax law), we recognize that what matters is coming up with arrangements that tend to secure overall good results, and that the most important factor in what makes a result good is that it promotes well-being.5

Such reasoning may justify viewing utilitarianism as the default starting point for moral theorizing.6 If someone wants to claim that there is some other moral consideration that can override overall well-being (trumping the importance of saving lives, reducing suffering, and promoting flourishing), they face the challenge of explaining how that could possibly be so. Many common moral rules (like those that prohibit theft, lying, or breaking promises), while not explicitly utilitarian in content, nonetheless have a clear utilitarian rationale. If they did not generally promote well-being—but instead actively harmed people—it is hard to see what reason we would have to still want people to follow them. To follow and enforce harmful moral rules (such as rules prohibiting same-sex relationships) would seem like a kind of “rule worship”, and not truly ethical at all.7

Similar judgments apply to hypothetical cases in which you somehow know for sure that a typically reliable rule is, in this particular instance, counterproductive. In the extreme case, we all recognize that you ought to lie or break a promise if lives are on the line. In practice, of course, the best way to achieve good results over the long run is to respect commonsense moral rules and virtues while seeking opportunities to help others. (It is important not to mistake the hypothetical verdicts utilitarianism offers in stylized thought experiments with the practical guidance it offers in real life.) The key point is just that utilitarianism offers a seemingly unbeatable answer to the question of what fundamentally matters: protecting and promoting the interests of all sentient beings to make the world as good as it can be.

The Veil of Ignorance

Humans are masters of self-deception and motivated reasoning. If something benefits us personally, it is all too easy to convince ourselves that it must be okay. We are also more easily swayed by the interests of more salient or sympathetic individuals (favoring puppies over pigs, for example). To correct for such biases, it can be helpful to force impartiality by imagining that you are looking down on the world from behind a “veil of ignorance”. This veil reveals the facts about each individual’s circumstances in society—their income, happiness level, preferences, etc.—and the effects that each choice would have on each person, while hiding from you the knowledge of which of these individuals you are.8 To more fairly determine what ideally ought to be done, we may ask what everyone would have most personal reason to prefer from behind this veil of ignorance. If you’re equally likely to end up being anyone in the world, it would seem prudent to maximize overall well-being, just as utilitarianism prescribes.9

It’s an interesting question how much weight we should give to the verdicts that would be chosen, on self-interested grounds, from behind the veil. The veil thought experiment serves to highlight how utilitarianism gives equal weight to everyone’s interests, in unbiased fashion. That is, utilitarianism is just what we get when we are beneficent to all: extending to everyone the kind of careful concern that prudent people have for their own interests.10 But it may seem question-begging to those who reject welfarism, and so deny that interests are all that matter. For example, the veil thought experiment clearly doesn’t speak to the question of whether non-sentient life or natural beauty has intrinsic value. It is restricted to that sub-domain of morality that concerns what we owe to each other, where this includes just those individuals over whom our veil-induced uncertainty about our identity extends: presently existing sentient beings, perhaps.11 Accordingly, any verdicts reached on the basis of the veil of ignorance will still need to be weighed against what we might yet owe to any excluded others (such as future generations, or non-welfarist values).

Still, in many contexts other factors will not be relevant, and the question of what we morally ought to do will reduce to the question of how we should treat each other. Many of the deepest disagreements between utilitarians and their critics concern precisely this question. And the veil of ignorance seems relevant here. The fact that some action is what everyone affected would personally prefer from behind the veil of ignorance seems to undermine critics’ claims that any individual has been mistreated by, or has grounds to complain about, that action.

Ex Ante Pareto

A Pareto improvement is better for some people, and worse for none. When outcomes are uncertain, we may instead assess the prospect associated with an action—the range of possible outcomes, weighted by their probabilities. A prospect can be assessed as better for you when it offers you greater well-being in expectation, or ex ante.12 Putting these concepts together, we may formulate the following principle:

Ex ante Pareto: in a choice between two prospects, one is morally preferable to another if it offers a better prospect for some individuals and a worse prospect for none.

This bridge between personal value (or well-being) and moral assessment is further developed in economist John Harsanyi’s aggregation theorem.13 But the underlying idea, that reasonable beneficence requires us to wish well to all, and prefer prospects that are in everyone’s ex ante interests, has also been defended and developed in more intuitive terms by philosophers.14

A powerful objection to most non-utilitarian views is that they sometimes violate ex ante Pareto, such as when choosing policies from behind the veil of ignorance. Many rival views imply, absurdly, that prospect Y could be morally preferable to prospect X, even when Y is worse in expectation for everyone involved.

Caspar Hare illustrates the point with a Trolley case in which all six possible victims are stuffed inside suitcases: one is atop a footbridge, five are on the tracks below, and a train will hit and kill the five unless you topple the one on the footbridge (in which case the train will instead kill this one and then stop before reaching the others).15 As the suitcases have recently been shuffled, nobody knows which position they are in. So, from each victim’s perspective, their prospects are best if you topple the one suitcase off the footbridge, increasing their chances of survival from 1/6 to 5/6. Given that this is in everyone’s ex ante interests, it’s deeply puzzling to think that it would be morally preferable to override this unanimous preference, shared by everyone involved, and instead let five of the six die; yet that is the implication of most non-utilitarian views.16

Expanding the Moral Circle

When we look back on past moral atrocities—like slavery or denying women equal rights—we recognize that they were often sanctioned by the dominant societal norms at the time. The perpetrators of these atrocities were grievously wrong to exclude their victims from their “circle” of moral concern.17 That is, they were wrong to be indifferent towards (or even delight in) their victims’ suffering. But such exclusion seemed normal to people at the time. So we should question whether we might likewise be blindly accepting of some practices that future generations will see as evil but that seem “normal” to us.18 The best protection against making such an error ourselves would be to deliberately expand our moral concern outward, to include all sentient beings—anyone who can suffer—and so recognize that we have strong moral reasons to reduce suffering and promote well-being wherever we can, no matter who it is that is experiencing it.

While this conclusion is not yet all the way to full-blown utilitarianism, since it is compatible with, for example, holding that there are side-constraints limiting one’s pursuit of the good, it is likely sufficient to secure agreement with the most important practical implications of utilitarianism (stemming from cosmopolitanism, anti-speciesism, and longtermism).

The Poverty of the Alternatives

We have seen that there is a strong presumptive case in favor of utilitarianism. If no competing view can be shown to be superior, then utilitarianism has a strong claim to be the “default” moral theory. In fact, one of the strongest considerations in favor of utilitarianism (and related consequentialist views) is the deficiencies of the alternatives. Deontological (or rule-based) theories, in particular, seem to rest on questionable foundations.19

Deontological theories are explicitly non-consequentialist: instead of morally assessing actions by evaluating their consequences, these theories tend to take certain types of action (such as killing an innocent person) to be intrinsically wrong.20 There are reasons to be dubious of this approach to ethics, however.

The Paradox of Deontology

Deontologists hold that there is a constraint against killing: that it is wrong to kill an innocent person even if this would save five other innocent people from being killed. This verdict can seem puzzling on its face.21 After all, given how terrible killing is, should we not want there to be less of it? Rational choice in general tends to be goal-directed, a conception which fits poorly with deontic constraints.22 A deontologist might claim that their goal is simply to avoid violating moral constraints themselves, which they can best achieve by not killing anyone, even if that results in more individuals being killed. While this explanation can render deontological verdicts coherent, it does so at the cost of making them seem awfully narcissistic, as though the deontologist’s central concern was just to maintain their own moral purity or “clean hands”.

Deontologists might push back against this characterization by instead insisting that moral action need not be goal-directed at all.23 Rather than only seeking to promote value (or minimize harm), they claim that moral agents may sometimes be called upon to respect another’s value (by not harming them, even as a means to preventing greater harm to others), which would seem an appropriately outwardly-directed, non-narcissistic motivation.

Scheffler’s challenge remains that such a proposal makes moral norms puzzlingly divergent from other kinds of practical norms. If morality sometimes calls for respecting value rather than promoting it, why is the same not true of prudence? (Given that pain is bad for you, for example, it would not seem prudent to refuse a painful operation now if the refusal commits you to five comparably painful operations in future.) Deontologists may offer various answers to this question, but insofar as we are inclined to think, pre-theoretically, that ethics ought to be continuous with other forms of rational choice, that gives us some reason to prefer consequentialist accounts.

The Hope Objection

Impartial observers should want and hope for the best outcome. Non-consequentialists claim that nonetheless it is sometimes wrong to bring about the best outcome. Putting the two claims together yields the striking result that you should sometimes hope that others act wrongly.

Suppose it would be wrong for some stranger—call him Jack—to kill one innocent person to prevent five other (morally comparable) killings. Non-consequentialists may claim that Jack has a special responsibility to ensure that he does not kill anyone, even if this results in more killings by others. But you are not Jack. From your perspective as an impartial observer, Jack’s killing one innocent person is no more or less intrinsically bad than any of the five other killings that would thereby be prevented. You have most reason to hope that there is only one killing rather than five. So you have reason to hope that Jack acts “wrongly” (killing one to save five). But that seems odd.

More than merely being odd, this might even be taken to undermine the claim that deontic constraints matter, or are genuinely important to abide by. After all, to be important just is to be worth caring about. For example, we should care if others are harmed, which validates the claim that others’ interests are morally important. But if we should not care more about Jack’s abiding by the moral constraint against killing than we should about his saving five lives, that would seem to suggest that the constraint against killing is not in fact more morally important than saving five lives.

Finally, since our moral obligations ought to track what is genuinely morally important, if deontic constraints are not in fact important then we cannot be obligated to abide by them.24 We cannot be obliged to prioritize deontic constraints over others’ lives, if we ought to care more about others’ lives than about deontic constraints. So deontic constraints must not accurately describe our obligations after all. Jack really ought to do whatever would do the most good overall, and so should we.

Skepticism About the Distinction Between Doing and Allowing

You might wonder: if respect for others requires not harming them (even to help others more), why does it not equally require not allowing them to be harmed? Deontological moral theories place great weight on distinctions such as those between doing and allowing harm, or killing and letting die, or intended versus merely foreseen harms. But why should these be treated so differently? If a victim ends up equally dead either way, whether they were killed or “merely” allowed to die would not seem to make much difference to them—surely what matters to them is just their death.

Indeed, it is far from clear that there is any robust distinction between “doing” and “allowing”. Sometimes you might “do” something by remaining perfectly still.25 Also, when a doctor unplugs a terminal patient from life support machines, this is typically thought of as “letting die”; but if a mafioso, worried about an informant’s potentially incriminating testimony, snuck in to the hospital and unplugged the informant’s life support, we are more likely to judge it to constitute “killing”.26 Bennett (1998) argues at length that there is no satisfactory, fully general distinction between doing and allowing—at least, none that would vindicate the moral significance that deontologists want to attribute to such a distinction.27 If Bennett is right, then that might force us towards some form of consequentialism (such as utilitarianism) instead.

Status Quo Bias

Opposition to utilitarian trade-offs—that is, benefiting some at a lesser cost to others—arguably amounts to a kind of status quo bias, prioritizing the preservation of privilege over promoting well-being more generally.

Such conservatism might stem from the Just World fallacy: the mistake of assuming that the status quo is just, and that people naturally get what they deserve. Of course, reality offers no such guarantees of justice. What circumstances one is born into depends on sheer luck, including one’s endowment of physical and cognitive abilities which may pave the way for future success or failure. Thus, even later in life we never manage to fully wrest back control from the whimsies of fortune and, consequently, some people are vastly better off than others despite being no more deserving. In such cases, why should we not be willing to benefit one person at a lesser cost to privileged others? They have no special entitlement to the extra well-being that fortune has granted them.28 Clearly, it is good for people to be well-off, and we certainly would not want to harm anyone unnecessarily.29 However, if we can increase overall well-being by benefiting one person at the lesser cost to another, we should not refrain from doing so merely due to a prejudice in favor of the existing distribution.30 It is easy to see why traditional elites would want to promote a “morality” which favors their entrenched interests. It is less clear why others should go along with such a distorted view of what (and who) matters.

It can similarly be argued that there is no real distinction between imposing harms and withholding benefits. The only difference between the two cases concerns what we understand to be the status quo, which lacks moral significance. Suppose scenario A is better for someone than B. Then to shift from A to B would be a “harm”, while to prevent a shift from B to A would be to “withhold a benefit”. But this is merely a descriptive difference. If we deny that the historically given starting point provides a morally privileged baseline, then we must say that the cost in either case is the same, namely the difference in well-being between A and B. In principle, it should not matter where we start from.31

Now suppose that scenario B is vastly better for someone else than A is: perhaps it will save their life, at the cost of the first person’s arm. Nobody would think it okay to kill a person just to save another’s arm (that is, to shift from B to A). So if we are to avoid status quo bias, we must similarly judge that it would be wrong to oppose the shift from A to B—that is, we should not object to saving someone’s life at the cost of another’s arm.32 We should not care especially about preserving the privilege of whoever stood to benefit by default; such conservatism is not truly fair or just. Instead, our goal should be to bring about whatever outcome would be best overall, counting everyone equally, just as utilitarianism prescribes.

Evolutionary Debunking Arguments

Against these powerful theoretical objections, the main consideration that deontological theories have going for them is closer conformity with our intuitions about particular cases. But if these intuitions cannot be supported by independently plausible principles, that may undermine their force—or suggest that we should interpret these intuitions as good rules of thumb for practical guidance, rather than as indicating what fundamentally matters.

The force of deontological intuitions may also be undermined if it can be demonstrated that they result from an unreliable process. For example, evolutionary processes may have endowed us with an emotional bias favoring those who look, speak, and behave like ourselves; this, however, offers no justification for discriminating against those unlike ourselves. Evolution is a blind, amoral process whose only “goal” is the propagation of genes, not the promotion of well-being or moral rightness. Our moral intuitions require scrutiny, especially in scenarios very different from our evolutionary environment. If we identify a moral intuition as stemming from our evolutionary ancestry, we may decide not to give much weight to it in our moral reasoning—the practice of evolutionary debunking.33

Katarzyna de Lazari-Radek and Peter Singer argue that views permitting partiality are especially susceptible to evolutionary debunking, whereas impartial views like utilitarianism are more likely to result from undistorted reasoning.34 Joshua Greene offers a different psychological debunking argument. He argues that deontological judgments—for instance, in response to trolley cases—tend to stem from unreliable and inconsistent emotional responses, including our favoritism of identifiable over faceless victims and our aversion to harming someone up close rather than from afar. By contrast, utilitarian judgments involve the more deliberate application of widely respected moral principles.3

### Turn---1NC

#### Collective bargaining entrenches methodological nationalism by reifying labor as a national commodity and enabling global ecological violence.

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Abstract

Labour regulation is often approached either by methodological nationalism or methodological globalism. Main arguments are that labour and its regulation are increasingly dis-embedded and commodified. As an alternative framing we propose a (neo-)institutionalist multi-level and multi-actors approach. Based on literature review and own studies we argue that there is empirical evidence of transnational labour regulation combining different logics of action and institutional contexts. Taking the example of the Bangladesh Accord on Fire and Building Safety, we demonstrate the multi-level, multi-dimensional institutional settings and sketch out basic elements of an integrative perspective on sewing transnational textures of labour regulation.

Introduction

In light of the actual degree of global and transnational social relations and interchanges of goods, capital, information, cognitive maps, and persons, the mechanisms of collective cross-border labour regulation remain considerably weak and ‘underdeveloped.’ Either by global value chains or by Multinational Companies (MNC), either by cross border labour mobility or by the simple threat of transferring production and employment—the local conditions of work, employment and participation of workers are entangled worldwide. In contrast, labour regulation seems to be focused at the national or even local level. A frequently repeated argument is that global capitalism could be characterized by a singular trend towards marketization and economization. Many social scientists now predict a global overall tendency to increase ‘commodification’ of labour and in general to extricate the economy from its societal entanglements.

Referring to Karl Polanyi’s notion of an institutional re-embedding of markets after World War II, Burawoy (2010): 307 claimed that this transformation was only short-lived and was followed by a new wave of market fundamentalism: “The reembedding of markets in the North, during the post-war period, was costly for capital, which responded with an offensive against labour, the environment and money, all in the endless pursuit of profit.” He concludes, “We can call it the era of globalization in which the commodification of labour, money and nature – labour migration, finance capital as well as environmental degradation – for the first time takes on a truly transnational character that is often outside the control of the state” (Burawoy 2010: 311). Following this line of argument and concerning labour regulation, a frequent lament could be summarized as follows: capital is increasingly global; unions as workers’ representatives remain national; work and employment are local—and the overall situation of labour regulation is fatal.

But is this great narrative scientifically solid? Are global marketization and economization actually the only and universal trends? Doesn’t the Trump administration in the USA demonstrate the power of state policy and politicization? Isn’t the economy in China strongly embedded in political party and state structures that control and define the market logics? Couldn’t we argue the same for Russia? Is there a universal trend of global marketization, or could we observe contradictory tendencies of globalization, regionalization, renationalization, and relocalization of markets and economies (Bugra and Agartan 2007)? Doesn’t, for example, the Bangladesh Accord on Fire and Building Safety from May 2013 reflect the possibility of a certain re-embedding of global value chains in frameworks of negotiated and controlled legally binding agreements and corporate social responsibility (CSR) activities (Tighe 2014)?

The main argument strengthened in the following is that, referring to labour regulation and looking through institutionalist glasses, we identify (1) innovative and complex mechanisms of transnational, multi-sited collective regulation of work, employment and participation and (2) social institutions beyond the simple market-states-hierarchies logic. In spite of single-factor approaches such as global marketization and commodification or the universal dis-embedding of national economies and markets, we need conceptual frameworks that combine different institutional forces and tendencies. Market fundamentalism could be a one-sided ideology of economic actors, but it could also be an inadequate platform for social scientists. One alternative approach would be “varieties of capitalism” (Hall and Soskice 2001). Nevertheless, this is not much different from opposing only two models of economies (marketled vs. state-led), and it tends toward the fallacy of “methodological nationalism” (Wimmer and Schiller 2002).

Another option could be the neo-institutionalist approach of world polity. According to this, against the weaknesses of national institutions global regulations need to be institutionalized in a regulative, normative, and cognitive manner (Scott 2001). This requires “institutional work” (Lawrence and Suddaby 2006). Nevertheless, this must not lead to a homogeneous and coherent “world order” (Meyer et al. 1997) but rather could take the form of different emerging and flexible entanglements of transnational labour regulation. As characterized by Besio and Meyer (2015): 237, “Instead of looking for an encompassing, stable order as an explanation for this stability, we claim that modern society has developed ways of mediating heterogeneous logics by generating fragmented and temporary orders.”

#### Else, extinction.

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The Industrial Revolution, which began in Britain in the second half of the 18th century and grew rapidly in Europe, USA, Japan, and other Asian countries in the 19th century, was a structural transformation of agricultural societies to industrialized nations with the introduction of machinery. The Industrial Revolution and its related globalization has plunged Earth into a new geological age, the Anthropocene, replacing the Holocene. Human behavior and activity in the era of the Anthropocene have deeply and irreversibly influenced the planet and thus the preconditions of our social being. Since the middle of the last century, we have produced such destructive forces that the biogeochemical cycles and systems of Earth have been severely affected and permanently changed. The myriad human interventions into the geological, biological, chemical, and physical systems of Earth have caused new ontological and epistemological uncertainty for the largest entity of human being, the planet Earth.

Consequently, we are facing epochal environmental changes caused by human factors, such as climate change, decline of biodiversity, marine pollution, and fresh water and soil degradation. Furthermore, we are experiencing the onset of a radical ecological, socio-cultural, and political transformation that can be seen as a reverberation of the untamed and unmet consequences of the Industrial Revolution, modernization, and uninhibited globalization. The loss of climate stability and the ecological devastation and decline of diverse habitats and species have begun. Many processes cannot be stopped anymore; drastic changes and points of no return in terms of tipping elements are inevitable, but much could be lessened. Many things will no longer be ecologically the same as they were in the past and, therefore, neither will the social and cultural nature of human existence. This present radical global ecological and socio-cultural transformation is one in which environmental, political, social, economic, and techno-digital transformation are inextricably interwoven. This is particularly reflected in the issues and deficiencies of the governance of complex global socio-material systems and their interplay. There is an awareness in international politics and beyond that the global governing authority, legitimation, and capacity of the existing global governance complex consisting of multiple agreements and international institutions and organizations is undermined by its perpetual fragmentariness, lack of coordination, inefficiency, and ineffectiveness (see, for example, Biermann, 2014; Biermann et al., 2009; Biermann and Pattberg, 2012; Held, 2010; Zürn, 2018). My underlying premise is that the navigation of a radical transformation of global socio-material systems and their interlacement and complexity as a planetary entirety can no longer be considered through a lens of spatial and political restrictions.

Beck’s The Metamorphosis of the World (Beck, 2016) captures vividly the contours and phenomenology of the radical transformation of a world risk society that is evoked by unfathomable, indeterminable aspects of the global state of the world in which we live. Beck explores the meaning and implications of global eventuations, especially regarding climate change and how they thrust a process of radical transformation onto the world. The processes and developments ignited by global risks, disturbances, confusion, and uncertainty in the second modernity, he argues, cannot be conceptualized through existing notions of change in social science because change suggests that some things change but others remain the same. Metamorphosis goes beyond change and signifies a global “radical transformation in which the old certainties of modern society are falling away and something quite new is emerging” (Beck, 2016, p. 3), which ought to be governed by a cosmopolitan approach. In the same vein, Latour (2021) argues that the metamorphosis of the world is an opportunity to understand the true nature of global risks and being inhabitants of one Earth for which he provides a map for the necessary cosmopolitan re-orientation.

Radical ecological and socio-cultural transformation is marked by existential challenges, uncertainties, risks, the permanent existence of a global polycrisis, as well as the shortcomings and failings of the governance of complex global socio-material systems. Too many members of the global multitude live in conditions of poverty, socioeconomic despair, environmental degradation, war, illiberalism, and autocracy. The critical question is how we attain and recuperate an overall humanitarian and environmental constellation that is ecologically, socially, and morally endurable and sustainable a 100 years from now. What does this imply in terms of cosmopolitan processes of social-science inquiry and its range of perception and knowledge? First, the cosmopolitan focus of explanation takes sociopolitical levels, such as the local, provincial, and national, into account but does not depend on related normative and empirical theorizing. Furthermore, a new critical methodology of cosmopoliticization can engender a sincere, authentic global striving toward a universal community of the Earth system. Yet we neither have a suitable framework of justification and explanatory virtue in the academic disciplines of the social sciences and humanities or in real-world politics that is sufficiently undergirded theoretically and analytically nor an adequate system of principles, rules, and methods to conduct scientific inquiry on the scale of the entire Earth system that can come to terms with the new planetary issues and challenges. The theoretical and analytical toolboxes of methodological individualism, methodological nationalism, and methodological holism cannot adequately grasp and conceive the global transformations of the world that will change the essence of the human Dasein. In addition, these tools are incapable of meeting the governance needs of the entire Earth system and the welfare of the whole of humankind.

This article is an attempt at a critical methodological response of cosmopolitan approaches in light of current global crises and developments. In this way, a new critical methodology of cosmopoliticization is my attempt to resolve some of the tension between the normative-theoretical, empirical, and methodical aspects of cosmopolitanism that is oriented to what is realized of the cosmopolitan ideas and visions. It refers to a cosmopolitan view that transcends in some way what is depicted as a branch, or doctrine, of philosophy and political theory relating to a broad array of sociopolitical and moral perspectives and conceptions that express an abstract, normatively desirable ontological state of cosmopolitan being featuring an accomplished state of the world society (see Beck and Grande, 2012). A critical methodology of cosmopoliticization focuses on the underlying analytical entities and units that can be operationalized to serve the purpose of an empirical inquiry of a process toward a cosmopolitan horizon. Cosmopoliticization is based on the premise that the being of the world is dynamic and that the dynamic nature of the cosmopolitan is the primary focus of a critical methodology of cosmopolitanism, and this in order to be able to explicate the steps and stages toward a more cosmopolitan reality.

Thus, a critical cosmopolitan methodology accentuates the analytical empirical description of actual processes and transitions toward a more cosmopolitan reality. In this, the term cosmopoliticization concerns the real-world evolution of new action and behavior, processes, institutions, and configurations that instantiate cosmopolitan claims and ideas. A critical methodology of cosmopoliticization encompasses theoretical grounding and conceptualization, empirical inquiry, and inferences from the explanation of cosmopolitan phenomena. More weight can be attached to empirical claims and more attention paid to the analysis of relevant empirical complexity. It is concurrently fundamental, progressive, and innovative by means of which current global problems and challenges can be reconstructed, analyzed, and explained. Thus, the scientific inquiry of cosmopoliticization needs a theoretical concept from which an empirical study can be derived and operationalized and that investigates ongoing activities and the coming about of developments appealing to cosmopolitan principles and goals that occur and interact across boundaries of territorial and political organization.

A crucial issue is how a critical methodology of cosmopoliticization can deliver an appropriate methodological compendium of scientific inquiry in terms of global problems, such as old and new uncertainties, global systemic risks, complex global socio-material systems, and global radical transformations, that cannot be assigned to any of the disciplines in social sciences and humanities that have relatively clear definitions and meanings. Are there common themes that combine these problems and challenges so as to form a single whole and distinguish a new contemporary methodology of cosmopoliticization from other areas of inquiry?

The underlying assumption of this article is that the reasoning of methodological cosmopolitanism provides a better analytical approach and explanation to grasp the global phenomena mentioned above since no mainstream theory of global governance nor methodological nationalism and intergovernmentalism can adequately conceive of them. A cosmopolitan perspective on and analysis of knowledge production about the transformation of the world and a future global order is constructive because a critical methodology can engender alternative conceptualizations of global subject matter, pay greater attention to the ends of methodological cosmopolitanism, and reflect on the epistemological and ontological commitments of methodological cosmopolitanism. Rumination on whether and how cosmopoliticization can help navigate the jungle of challenges and problems of a global metamorphosis and its adherent crises can contribute to the attainment of a global constellation that provides more sustainability of the Earth system and that might be morally tolerable for the global multitude because it can dispel some of the deficiencies in the governance of global socio-material systems.

#### CBRs are structurally territorialized, so the plan’s call to strengthen labor law in “at least the United States” is a double turn.

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Labor law was traditionally a domestic project, defined on the basis of a geographic territory or a synthetic community.1 It was a body of norms that were determined by the state (with the participation of all three branches), and was applied to employers and workers who resided within the state. Labor law is known to be polycentric: Some of its norms are prescribed by agents outside the common legislative circle, most notably the agents of collective bargaining. Collective bargaining was territorialized just like labor law in two senses. First it was embedded in a legal pattern established by the state. Second, the agreement's coverage is usually limited to employers and workers within the territory's borders.

How has globalization affected the project of labor law? Generally globalization includes the intensification of movement across state borders, including the movement of commodities, capital, workers, information, and culture. While intensified movement does not undermine the significance of states and borders, globalization also includes the increased interdependence of markets, the constitution of communities that transcend national borders, and the development of institutions outside and within the nation-state, which displace the locus of regulation from the traditional state level. To assess the effects of globalization on labor law-two distinct movements, not sufficiently viewed as parts of the whole, need to be observed-the movement of people and the movement of capital.2 With regard to the former, globalization includes the movement of people across borders, sometimes to open new economic and professional opportunities, other times as a result of undue hardship in the state of origin, and sometimes as a result of coerced movements (trafficking, but also asylum seekers, stateless people, and the like).3 Broadly defined, the movement of people is regulated by immigration law. The task of labor law is to ensure the application of territorial law to those admitted to the state and to create exceptions to its application when deemed necessary by the state. In most countries, the default norm is that territorial presence entails the application of labor norms and is justified on two distinct grounds: 1) work in the territory is a partial admission to the sphere of social citizenship;' or 2) lower wages and remuneration to migrants could undercut domestic wages and eventually harm the local workforce of the territorial community (the "insiders"). In the first instance migrants are deserving of their own rights, and in the second they are instrumental to the rights of others.

A second component of globalization is movement of capital, which is always treated as asymmetric in relationship to that of labor. While capital is generally courted by all states, the movement of people is often considered a threat.' The main bodies of law that regulate movement of capital are corporate law, investments law, and trade law. Labor law is tasked with lifting labor standards across borders as well as ensuring compliance with prevailing standards. As was the case with the movement of workers, this task is based on two premises. First, workers in other countries are entitled to fair wages and decent (or better, dignified) working conditions. Second, low wages abroad threaten jobs and working conditions in other countries. The first justification views workers abroad as deserving subjects of a global concern and the second justification views working conditions of workers abroad as instrumental to the guarantee of other workers' rights. There is further similarity between the concern of labor law with the movement of capital and the movement of labor. While the aim of ensuring migrant workers' rights has a territorial component-ensuring the equal application of territorial law-the goal of ensuring workers' rights abroad is persistently concerned with respecting the territoriality of the other state's labor law. Thus in the instances labor law frames the movement of capital, it is mindful to respect the sovereignty of the country and not impose foreign legal standards.6

Territoriality is therefore a fundamental principle of labor law, which has ostensibly not been affected by the intensification of globalization. It is based on the assumption that labor law is community-based, that the relevant communities are nested or overlap with the state, and that the fundamental operation of labor law, which is the establishment of markets and the intervention in their mode of operation, requires communal decision making (preferably a democratic one; although not necessarily so).'

If territoriality remains a fundamental principle, why is there a sense that labor law is losing ground in the era of globalization? There are several interrelated reasons for this: some question the "morality of territoriality" and others raise doubt regarding the efficacy of territorial law. First, labor law's territoriality and the dismantling territoriality of production and even now, the provision of services, are incongruent. It may appear that the more relevant bodies of law are those that regulate dynamic movement: immigration law, commercial or trade law, while labor law is associated with anti-modernist stagnation. Second, in the past territoriality was an inclusive premise, constituting communal solidarity and public responsibility. It integrated labor rights with other aspects of citizenship. At present, territoriality is creating borders of synthetic communities, which neither match those of economic communities (capital migration) nor those of societal communities (people's migration). Consequently, territoriality can be inclusive or exclusive. While the dialectical nature of territorialization has always been present, exacerbated processes of globalization magnify these effects. Third, the erosion of state power to control the market and society has challenged the democratic legitimacy of labor law, but in alternative norm-making venues, such as at the sector level or in multinational companies, no alternative democratic fora have been established.

How then must labor law address the matter of territoriality? If territoriality remains a virtue, then law must persistently adhere to it. The fundamental assumption is: Equalize work conditions within the territory; do not infringe upon other states' sovereignty and labor law territorial applicability within the other territory. Yet the discussion thus far indicates that this assumption is potentially dubitable.' As noted, justification for territoriality can be protective, to provide an "anchor"' of stability in a dynamic world; it can also be protectionist, treating some workers as instrumental to others. While labor law fosters a sense of citizenship it also determines who remains outside the sphere of citizenship and hence excludes some in the interest of maintaining privilege for others. The democratic justification for exclusionary norms can be contested due to the discord between territoriality and social-economic spheres, and hence between those who affect the making of norms and those who are affected by them.

### Defense---1NC

#### Modern economics is distinct from market fundamentalism and solves their offense.

Idrees Kahloon 22, Washington bureau chief for The Economist, B.A. in Economics from Harvard, 5/16/2022, "The War on Economics," https://www.newyorker.com/magazine/2022/05/23/the-war-on-economics-elizabeth-popp-berman-thinking-like-an-economist

Nor does the tension between economic and progressive values seem so clear in recent decades. Governments rarely invite wholesale policy redesigns by economists. On the few occasions that they have done so, the results have varied widely. In the nineteen-seventies, after Augusto Pinochet seized power in Chile, the Chicago Boys remade the Chilean economy into a laissez-faire playland of Milton Friedman’s dreams; in the nineteen-eighties, the Princeton economist Uwe Reinhardt persuaded the Taiwanese government to implement an N.H.S.-inspired single-payer health-care system. (Reinhardt considered efficiency in health care too important to leave to the market.) When a generalization about economic thought is ventured, it’s worth taking a look at what’s omitted from the data set.

Dunking on the discipline won’t help progressives get what they want, because partisanship-induced gridlock is a far greater obstacle than technocratic caution is. Barack Obama’s proposal for a public health-insurance option was felled by the realities of Republican filibustering in the Senate, not by dissenting economists. Consider, for that matter, the Biden Administration’s agenda. It calls for the federal government to provide, among other things, generous child tax allowances to fight poverty, a program of universal pre-kindergarten, new subsidies for child care and family leave, stricter enforcement of antitrust rules to limit corporate power over wages and prices, and much more ambitious reductions to carbon emissions in order to halt global warming.

There is no dearth of economists willing to endorse these proposals. Last year, more than four hundred eminent economists—including several Nobel laureates—signed an open letter calling for Congress to make permanent the pandemic policy of near-universal child tax benefits launched as part of Biden’s American Rescue Plan. Their arguments, with references to “long-term fiscal payoff” and “parental labor supply,” fall solidly within the economic style of reasoning whose values allegedly clash with the progressive ideal of equity. Although the policy was hugely successful while it was in effect—reducing, according to researchers at Columbia University, the number of American children in poverty by forty per cent—it lapsed in January. The problem had nothing to do with the economists’ veto, and much to do with legislative vote-wrangling. Build Back Better, Biden’s plan for transforming America in a Johnsonian manner, has been stalled by maverick Democrats like Joe Manchin and Kyrsten Sinema. How does Berman reconcile her story about technocratic paralysis with the fact that the contemporary Democratic Party is quite comfortable with expanding the state? It’s an issue she mainly skirts, save when she cryptically credits “economists not committed to the economic style.”

Of course, the limitations of economics should not be papered over. Borrowing from other fields has improved the discipline, albeit slowly. The Black-Scholes model for pricing certain assets derives from Einstein’s study of the Brownian motion of particles in a fluid. Contemporary behavioral economists are using psychological experiments to update unrealistic stipulations about rational actors; Nobel Prizes are being awarded to economic empiricists who test the ways in which textbook theories fail in the real world; and the Big Data types are hyping machine learning. But economic models are still sensitive to assumptions—as the duelling cost-benefit analyses of Republican and Democratic administrations plainly demonstrate. It is naïve to think that these analyses are immune to political influence and shoddy workmanship in the form of bad starting data, unsound modelling techniques, and poorly qualified findings.

Politics aside, some important things are simply harder to price than others. A measurement of the “social cost of carbon,” the negative effects of an additional ton of carbon-dioxide emissions, may one day underpin a national carbon tax. But arriving at this measurement requires modelling changes in global temperatures, ocean acidification, sea level, extreme weather, agricultural losses, and human population for the next few decades. That leaves a lot of room for discretion informed by political considerations.

Epistemic humility, though, is distinct from epistemic nihilism. Berman’s approach to economic analysis is essentially to disregard it unless it confirms what she already thinks. “When our political values align with those of economics, we should embrace the many useful tools it has to offer,” she writes. “But when they conflict, we must be willing to advocate, without apology, for alternatives.” After all, she says, that’s what conservatives do. Ronald Reagan “led with his values,” and “unapologetically embraced ideology over technocracy”; his Administration “used the economic style when convenient, and ignored it when not.” Progressives ought to learn from the Gipper, she thinks, and demote economics to something like actuarial cheerleading. It would be tempting to follow Berman’s lead and supplant economic analysis with moral certainties—why not just assert that “bigness is badness” when it comes to antitrust policy, and that free health care is simply a right?

Put aside for the moment the problem that people may be gripped by moral suppositions that are not aligned with progressive statism. Even well-intentioned policy can carry unintended consequences—ones that would be harder to detect if economic analysis were forsworn. Certain policies that Berman mourns as casualties of the economic style may have been deservedly jettisoned. Public-housing projects in America have too often devolved into pits of concentrated poverty; after the federal government demolished some of them between the mid-nineteen-nineties and the early two-thousands, outcomes for former residents actually improved. Or take the Community Action Program, a Great Society initiative that Berman says fell victim to the economic style. It sought to encourage the “maximum feasible participation” of the poor in the democratic process and in the distribution of anti-poverty relief money by setting up hundreds of local Community Action agencies. Those are laudable aims, but there’s lots of evidence that the program, heavily paternalist in practice, was a chaotic failure.

If Berman is quick to admire programs for having admirable objectives, she’s quick to dismiss reforms that make use of markets in ways she associates with her detested rand-style technocrats. The fact remains that the cap-and-trade program to limit sulfur-dioxide pollution reduced emissions by ninety-four per cent over three decades. Deregulation of trucking and freight substantially reduced prices for consumers, without jeopardizing the “rough equity in access to, and pricing of, services” which she prizes. The tantalizing central question her book prompts—whether or not the economics revolution in governance has been for the greater good—goes unaddressed. For obvious reasons, Berman does not attempt a cost-benefit analysis of cost-benefit analysis.

And yet purging the Poindexters could hinder the crafting of policies that actually achieve their aim. True progressives will wish to know whether their ideas for rent control backfired in the form of pricier housing, deeper segregation, and more homelessness. They’ll want to know whether charter schools have improved outcomes for poor Black and Hispanic students in American cities. Economists aren’t oracles; all theories have to undergo refinement and reinvention. Measurements and modelling have their limits. But the tools of economics are what built the social-welfare state in the first place; we’ll need them if we want to build it back better.

#### Wholesale abandonment of economics can’t solve anything.

Suresh Naidu et al. 19 Dani Rodrik and Gabriel Zucman. "Economics After Neoliberalism". Boston Review. https://bostonreview.net/forum/suresh-naidu-dani-rodrik-gabriel-zucman-economics-after-neoliberalism/

We live in an age of astonishing inequality. Income and wealth disparities in the United States have risen to heights not seen since the Gilded Age and are among the highest in the developed world. Median wages for U.S. workers have stagnated for nearly fifty years. Fewer and fewer younger Americans can expect to do better than their parents. Racial disparities in wealth and well-being remain stubbornly persistent. In 2017, life expectancy in the United States declined for the third year in a row, and the allocation of healthcare looks both inefficient and unfair. Advances in automation and digitization threaten even greater labor market disruptions in the years ahead. Climate change–fueled disasters increasingly disrupt everyday life.

We believe that these are solvable problems—at the very least, that we can make serious headway on them. But addressing them will require a broad public discussion of new policy ideas. Social scientists have a responsibility to be part of this discussion. And economists have an indispensable role to play. Indeed, they have already started to play it. Economics is in a state of creative ferment that is often invisible to outsiders. While the sociology of the profession—career incentives, norms, socialization patterns—often militates against engagement with the policy world, a sense of public responsibility is bringing people into the fray.

The tools of economics are critical to developing a policy framework for what we call “inclusive prosperity.” While prosperity is the traditional concern of economists, the modifier “inclusive” demands both that we consider the whole distribution of outcomes, not simply the average (the “middle class”), and that we consider human prosperity broadly, including nonpecuniary sources of well-being, from health to climate change to political rights. To improve the quality of public discussion around inclusive prosperity, we have organized a group of economists—the Economics for Inclusive Prosperity (EfIP) network—to make policy recommendations across a range of topics, including labor markets, international trade, and finance. The purpose of this nascent effort is not simply to offer a list of prescriptions for different policy domains, but to provide an overall vision for economic policy that stands as an alternative to the market fundamentalism that is often—and wrongly— identified with economics.

We personally saw the power of this identification in early 2018, when the three of us attended a workshop on “new thinking beyond neoliberalism.” The participants—historians, political scientists, sociologists, legal scholars, and economists—agreed that the prevailing neoliberal policy framework had failed society, resulting in monumental and growing inequality. All of us were horrified by the illiberal, nativist turn in our politics, fueled in part by these chasms. There was consensus around the need for a genuine alternative—a set of policies that were both effective and inclusive, responding to legitimate grievances without sowing deeper societal divisions.

Although we fully embraced these aims, we found ourselves on the defensive. In the eyes of many, the turn toward neoliberalism is closely associated with economic ideas. Leading economists such as Friedrich Hayek and Milton Friedman were among the founders of the Mont Pelerin Society, the influential group of intellectuals whose advocacy of markets and hostility to government intervention proved highly effective in reshaping the policy landscape after 1980. Deregulation, financialization, dismantling of the welfare state, deinstitutionalization of labor markets, reduction in corporate and progressive taxation, and the pursuit of hyper-globalization—the culprits behind rising inequalities—all seem to be rooted in conventional economic doctrines. The discipline’s focus on markets and incentives, methodological individualism, and mathematical formalism stand in the way of meaningful, large-scale reform. In short, neoliberalism appears to be just another name for economics.

Consequently, many people view the discipline with outright hostility. They believe the teaching and practice of economics has to be fundamentally reformed for the discipline to become a constructive force. There are, indeed, legitimate reasons for discontent with the way economics is often practiced and taught. Conservative foundations and think tanks have monopolized the banner of economics in policy circles, pushing the view that there is a steep efficiency–equality trade-off and assigning priority to economic growth. Students often leave their introductory economics courses thinking that “markets always work.” Conservatives tend to deploy “economics” as a justification for preferred policies, while liberals are seen as insensitive to the requirements for prosperity.

Our response is fundamentally different. Many of the dominant policy ideas of the last few decades are supported neither by sound economics nor by good evidence. Neoliberalism—or market fundamentalism, market fetishism, etc.—is not the consistent application of modern economics, but its primitive, simplistic perversion. And contemporary economics is rife with new ideas for creating a more inclusive society. But it is up to economists to convince our audience about the merits of these claims, which is why we have embarked on this project. Below, we have outlined a set of policy briefs (full versions are available here) that we hope will stimulate and accelerate economists’ engagement with creative ideas for inclusive prosperity.

Before we get to policy proposals, however, we must first address the issue of how to persuade non-economists that economics is part of the solution. To be sure, many economists’ habits, especially when it comes to how they engage in public debates, are to blame for the misunderstanding of what economics is and what economists do.

Economists study markets (among other things), and we naturally feel a certain pride in explaining the way markets operate. When markets work well, they do a good job of aggregating information and allocating scarce resources. The principle of comparative advantage, which lies behind the case for free trade, is one of the profession’s crown jewels—both because it explains important aspects of the international economy and because it is, on its face, so counterintuitive. Similarly, economists believe in the power of incentives; we have evidence that people respond to incentives, and we have seen too many well-meaning programs fail because they did not pay adequate attention to the creative ways in which people behave to realize their own goals.

Yet too many economists believe their quantitative tools and theoretical lenses are the only ones that count as “scientific,” leading them to dismiss disciplines that rely more on qualitative analysis and verbal theorizing. Many economists feel they need to take the side of markets because no-one else will and because doing otherwise might “provide ammunition to barbarians” (aka, self-interested pressure groups and rent-seekers). And even when some economists recognize market failures, they worry government action will make things worse and sweep many of the discipline’s caveats under the rug. Economists thus get labeled as cheerleaders for free markets and hyper-globalization.

Economists also often get overly enamored with models that focus on a narrow set of issues and identify first-best solutions in the circumscribed domain, at the expense of potential complications and adverse implications elsewhere. A growth economist, for example, will analyze policies that enhance technology and innovation without worrying about labor market consequences. A trade economist will recommend reducing tariffs and assume that devising compensatory mechanisms for people who lose their jobs is somebody else’s responsibility. And a finance economist will design regulations to make banks safe, without considering how these may interact with macro-economic cycles. Many policy failures—the excesses of deregulation, hyper-globalization, tax cuts, fiscal austerity—reflect such first-best reasoning. To be useful, economists have to evaluate policies in the totality of the context in which they will be implemented and consider the robustness of policies to many possible institutional configurations and political contingencies.

But these bad habits aside, contemporary economics is hardly a paean to markets and selfishness. The typical course in microeconomics spends more time on market failures and how to fix them than on the magic of competitive markets. The typical macroeconomics course focuses on how governments can solve problems of unemployment, inflation, and instability rather than on the “classical” model where the economy is self-adjusting. The typical finance course revolves around financial crises, excessive risk-taking, and other malfunctions of financial systems. In fact, the “competitive equilibrium model” in which free markets are maximally efficient—even if they are not good for fair distribution—is the dominant framework only in introductory economics courses. Thoughtful economists (of which there are many) quickly move away from it.

Economics is still somewhat insular within the social sciences because of its methodological individualism, model-based abstraction, and mathematical and statistical formalism. But in recent decades, economists have reached out to other disciplines, incorporating many of their insights. Economic history is experiencing a revival, behavioral economics has put homo economicus on the defensive, and the study of culture has become mainstream. At the center of the discipline, distributional considerations are making a comeback. And economists have been playing an important role in studying the growing concentration of wealth, the costs of climate change, the concentration of important markets, the stagnation of income for the working class, and the changing patterns in social mobility.

Economists still have a strong bias toward market-based policy solutions, and their policy prescriptions tend to be narrowly focused on addressing precise market failures. For example, to address global warming, economists are likely to support putting a steep price on carbon. But the science of economics has never produced predetermined policy conclusions. In fact, all predictions and conclusions in economics are contingent: if x and y conditions hold, then z outcomes follow. The answer to almost any question in economics is “it depends,” followed by an exegesis on what it depends on and why. Back in 1975, economist Carlos F. Diaz-Alejandro wrote, “by now any bright graduate student, by choosing his assumptions . . . carefully, can produce a consistent model yielding just about any policy recommendation he favored at the start.” Economics has become even richer in the intervening four decades. We might say, only slightly facetiously, that today the graduate student need not even be that bright!

Moreover, economics research has become significantly more applied and empirical since the 1990s. The share of academic publications that use data and carry out empirical analysis has increased substantially in all subfields and currently exceeds 60 percent in labor economics, development economics, international economics, public finance, and macroeconomics. This is important because systematic empirical evidence is a disciplining device against ideological policy prescriptions. The recent empirical bent makes it more difficult to idolize markets because it makes it more difficult to ignore inconvenient facts. Recent empirical findings, for example, show that international trade produces large adverse effects on some local communities; minimum wages do not reduce employment; and financial liberalization produces crises rather than faster economic growth.

Economics does have its universals, of course, such as market-based incentives, clear property rights, contract enforcement, macroeconomic stability, and prudential regulation. These higher-order principles are generally presumed to be conducive to superior economic performance. But these principles are compatible with an almost infinite variety of institutional arrangements with each arrangement producing a different distributional outcome and a different contribution to overall prosperity. The recipe thus calls for comparative institutional analysis of economic performance—not glib “markets work” slogans. The abstraction with which economists perceive complex bundles of institutions also gives practitioners tools to help design large-scale alternatives—from precision tweaks to the tax code to full-blown visions of post-capitalist societies.

Consider even the simplest economic setting of a perfectly competitive market economy. When an economist draws a supply-and-demand diagram on the black board, she may not list all the institutional prerequisites that lie behind the two curves. Firms have property rights over their assets and can enforce their contracts with suppliers. They have access to credit, can rely on public infrastructure such as transportation and power, and are protected from thieves and bandits. Their employees accept the terms of employment and show up at work each day. Consumers have all the information they need to make reasonable choices. They are reasonably confident that firms do not cheat them. There is a stable unit of value and means of exchange for buying and selling goods.

Clearly markets rely on a wide range of institutions; they are “embedded” in institutions, as Karl Polanyi would say. But how should those institutions be designed? Take property rights as an example. The Coase theorem suggests it does not matter for efficiency how property rights are allocated as long as transaction costs are zero. But the caveat does a lot of work here: transaction costs matter greatly. So, we must make choices. Should a job belong to a company, a worker, or a combination? Perhaps the company itself should be owned by a third party—a local government entity, say—and simply ensure incentive compatibility for managers and workers. That might sound crazy to most Americans, but China has eked unprecedented rates of economic growth out of such a property-rights regime. Perhaps employers should have property rights (for a fixed period) only over new assets they create, with existing assets distributed among other claimants. That too sounds crazy, unless we realize that is exactly what the patent system does, giving innovators temporary ownership over new “intellectual property.” Perhaps the government, on behalf of the general public, should retain part ownership of new technologies since so much of innovation relies on public infrastructure (public R&D and subsidies, higher education, the legal regime, etc.). The choices that need to be made must consider distributional concerns and depend both on our ultimate objectives and the potential fit with local context.

As we grapple with new realities created by digitization, demographics, and their impacts on labor markets, such questions about the allocation of property rights among different claimants become crucial. Economics does not necessarily have definite answers here. Nor does it provide the appropriate distributional weights (how to weigh the returns to workers, employers, and the government, and what procedural and deontological constraints should be respected). But it does supply the tools needed to lay out the trade-offs, thus contributing to a more informed democratic debate.

The same kind of institutional indeterminacy pervades all other policy domains. Which labor market institutions minimize job insecurity without jeopardizing employment creation? How do we best provide social protection without blunting economic incentives? What kind of financial regulations ensure financial stability without blocking financial innovation? What kind of monetary and fiscal rules are best for an open economy? Economics does not provide a fixed answer to these questions. Instead, it highlights the potential consequences of different arrangements.

There exists today a considerable variety of institutional arrangements. Welfare and labor-market arrangements, for example, differ greatly across the developed world, and the United States can learn a lot from experiments elsewhere. But plausible institutional diversity is not limited to existing practices. We can— and will need to—develop new institutions. Nothing in laissez-faire guarantees that growth will be equitable or globalization sustainable. We need to design policies and institutions that make inclusive prosperity possible and globalization sustainable—politically and economically. With a powerful theoretical machinery that allows them to think in abstract terms about such matters, economists are crucial to the task.

#### Capitalism solves the environment AND disease, the alt doesn’t, and warming’s not existential.

David Friedman 25. Former professor of law at Santa Clara University, Ph.D. in theoretical physics from the University of Chicago. "Externalities, Population and Climate." Nuno Sempere. Reposted 10/21/2025. forum.nunosempere.com/posts/bzFpPwDnJHCe2BwJf/externalities-population-and-climate

All societies face the coordination problem: In order to do anything complicated you have to somehow get millions of people to coordinate their activities. To make automobiles you need steel. To make steel, you need iron and carbon. To make iron you need iron ore and coal.

There are two solutions and one of them doesn't work. The one that doesn't work is the obvious one, centralized coordination, somebody at the top telling everyone else what to do. That might work for a very small group of people, a football team or a small firm, but it scales badly. As the number of people being coordinated increases it becomes harder and harder for the person at the top to figure out what everyone should do, know what everyone is doing and make them do it, more and more likely that the person at the top, separated by many layers from the people he is supposed to be serving, will base his decisions on his interests rather than theirs. At the scale of a country it works catastrophically badly, as demonstrated by, among other things, the collapse of the Soviet Union.

The solution that works is the decentralized one. Everything belongs to someone. Each person decides what to do with himself and his stuff. People coordinate through the market, with prices signaling whether more or less of something should be produced. If there is not enough iron ore for the steel for the chain saws to cut down the trees to make the pencils and for everything else steel goes into, the price of iron ore goes up, giving miners an incentive to mine more, users an incentive to use less.

In order for this to work, to successfully coordinate people, things have to somehow be set up so that it is in each individual’s interest to make the right decision for his part of the problem, the decision that takes account of its effect on everyone else. That cannot be done perfectly but a market system can do it surprisingly well. In order to produce things I have to pay my workers enough so that working for me is at least as attractive as whatever else they could do with their time, pay for my inputs at least as much as they cost to produce or are worth to other people. Selling what I produce transfers the benefit of producing it back to me, so both costs and benefits go into my calculation of what to do. If benefit is greater than cost it is in my interest to do it and in our interest for it to be done. Individual decisions add up to the right group decision. And the decentralized solution scales — up to the size of a global economy.

**<Condensed>**

That is a very sketchy description of what takes a semester or two of price theory1 to fully explain. The mechanism works for voluntary transactions, since you won’t sell me your labor or your goods unless I pay at least what they are worth to you. It does not work for involuntary transactions. You are running a steel mill. To get iron ore, you have to pay someone enough to cover the cost of mining it. To turn it into steel, you have to pay workers enough so they are willing to work for you. Unfortunately, your mill also produces sulfur dioxide, making people who live downwind of you cough. Since that is a cost for them but not for you it gets left out of your calculation of how much steel to produce, how to produce it, what price to sell it for. You might find making steel profitable even if the total cost, including the cost born by downwind neighbors, was greater than the value of the steel to your customers. For other examples, consider a college student playing loud music when other students in the dorm want to sleep, an airplane rattling the windows of houses below the flight path as it comes in to land, someone with a cold — or Covid — going to a party. A sufficiently wise government might be able to fix the problem, get us back to a system where things are done if and only if they are worth doing, by appropriate regulations, but doing that is hard because it replaces the decentralized market system that scales with a centralized command system that doesn’t. Most of the time, for the minor externalities associated with many ordinary activities, it is not worth doing. For larger externalities it might be. Or might not — knowing what should be done is not always easy. Consider two issues that have gotten a lot of attention in my lifetime. Population Sixty years ago population growth played the same role in popular discourse that climate change does now, the impending catastrophe that, in the view of almost everyone who mattered, required drastic action to prevent. The Population Council, a private organization concerned with population issues, asked me to write a piece on population growth looking at the issue from the standpoint of someone generally in favor of the market system. The issue as I saw it was what externalities were associated with the decision to have a child, so I tried to estimate them. My examples so far have been negative externalities, costs produced by one person’s actions that someone else has to bear, but there are also positive externalities, benefits rather than costs. If a student in the dorm room next to mine plays music I like when I am trying to fall asleep that is a positive externality — I like to fall asleep to music. Basic research in medicine produces a positive externality in the form of knowledge of how to cure diseases. When I repaint my house I produce a positive externality for my neighbors, who get a better view out of their windows. If my action produces a negative externality I may do it even when, considering all costs and benefits, it is not worth doing. If it produces a positive externality I may fail to do it even when it is worth doing. What if the same action produces both positive and negative externalities? Your child may become a criminal and impose costs on my children. He may become a novelist or musician and produce works that my children enjoy. He will probably go to a public school, imposing costs on the taxpayers who pay for it, but after he graduates he will pay taxes for the school he is no longer going to, reducing the cost to other taxpayers. He will produce a wide variety of costs and benefits for other people. The conventional wisdom of the time looked only at the costs and concluded that we would be better off if everyone had fewer children. I tried to look at both costs and benefits, negative and positive externalities, and add them up. If costs were much larger than benefits, as most at the time believed, we would be better off with less population growth than would result from individuals freely choosing how many children to have, if benefits were larger than costs, with more. The first implies that governments should try to hold population growth down, perhaps by subsidizing birth control or giving tax benefits to childless couples or by making it illegal for any couple to have more than one child, as China did. The second implies the opposite. And if costs and benefits were roughly equal, making the net externality close to zero, there would be no reason for governments to interfere in either direction. I tried to list all of the externalities I could think of and make rough estimates of their size. My conclusion was that I could not sign the sum, that the estimates were too uncertain to know whether additional population was, on net, a good or bad thing. I published my paper in 1972 and I still don’t know. What I do know is that the conventional wisdom of the time was wrong, because it claimed not only that the net externality was negative but that it was large. The book The Population Bomb, published by Paul and Anne Ehrlich in 1968, confidently predicted unstoppable mass famine in the 1970’s, hundreds of millions of people starving to death due to overpopulation. It sold millions of copies. Not everyone agreed that things were that bad but almost everyone involved in the controversy agreed that population growth, if not greatly reduced, was going to be a major problem making poor countries poorer.2 Populations of poor countries continued to grow. Ehrlich’s famine did not happen. Calories per capita in poor countries went up, not down. Extreme poverty fell sharply. That does not prove the net externality was positive — perhaps we would have been even better off with less population growth. But the effect could not have been as negative as the expert opinion of the sixties and seventies claimed since what happened was the opposite of their predictions.

**<Breaks Return>**

And Climate

Climate change raises the same question. It too will have both positive and negative externalities. The question is again whether the net effect will be positive or negative and how large.

There are two approaches to answering that question. The first is to ask whether there are general reasons to expect climate change along the predicted lines, a gradual increase in average temperatures due mainly to increased CO2 in the atmosphere, to have net negative effects. The second is to look at specific externalities, make some rough estimate of their size, and add them up.

There is one a priori reason to expect net negative effects from change — that current human activity is optimized against current conditions, making change in either direction presumptively bad. Farmers grow crops suited to the climate where they are growing them; a change in climate will require a change in what they grow and how they grow it. Houses are designed for the climate they are built in and located in places not expected, under current circumstances, to flood. Putting it in economic terms, we have born sunk costs based on the current environment. A change in that environment will eliminate some of the quasi-rents that we expected as the return from those costs.

This would be a serious problem if we were facing rapid change, but we are not. Global warming so far has been a little over one degree C a century. If the IPCC projections are correct it is getting more rapid, perhaps several degrees over the next century — about enough to warm Minnesota to the current temperature of Iowa. Over a century most farmers will change the crop variety they find it most profitable to grow multiple times for other reasons. If average temperatures are trending up, those changes will include a shift towards crops better suited to slightly warmer weather. Over a century, many houses will be torn down and replaced; if sea level is rising, houses currently built on low lying coastal ground will be rebuilt a little farther inland — not much farther if we are talking, as the IPCC estimates suggest we should be, about a rise of only two or three feet. The presumption that change is bad is a weak one for changes as slow as those we have good reason to expect from global warming.

At least that is true for humans, who can adapt to change by growing different crops, adding air conditioning to their houses. Other species can do it by evolution or by changing their range, but that could be a problem for species such as trees that evolve slowly and shift their range slowly. It could be a problem for aquatic species currently adapted to the current pH of the ocean, since increased CO2 absorbed by the ocean lowers its pH.3

There is also one reason to expect the climate change produced by the greenhouse effect to make us better off. More warmth is generally a good thing when you are cold, a bad thing when you are hot. Due to the physics of the greenhouse effect, it warms cold times and places more than hot, raises the temperature of winter more than summer, of the polar regions more than the equator.

It is hard to see any other a priori reason to expect climate change to make us better or worse off. The earth and its climate were not designed for our convenience, so there is no good reason to believe that their current state is optimal for us. We are not designed for the current climate — over our species history, climate has varied by considerably more than the changes being predicted for global warming. Currently, humans live and prosper over a range of climates much larger than the range that we expect the climate at any particular location to change by.

That brings us to the other approach to answering the question, trying to identify the externalities from climate change and estimate their size. The question for population was in what ways my having another child makes other people better or worse off. The question for climate change is in what ways my doing something that affects climate, such as burning fossil fuels, make other people better or worse off.

The popular discussion of this issue mostly takes it for granted that all the important effects are negative and their sum, the net effect, very negative. To see how plausible that is, it is worth sorting effects — negative, positive, ambiguous — and trying to estimate their size.

Effects

There are at least four predictable effects of climate change that appear unambiguously negative: sea level rise, more frequent extreme heat, stronger cyclones, and reduction in ocean pH.4 There are at least four effects that are unambiguously positive: expansion of habitable areas towards the poles, less frequent extreme cold, fewer cyclones, CO2 fertilization. There are at least two effects that are ambiguous, might make us better off, might make us worse off: longer growing seasons and increased rainfall. We do not know enough to put all of these on a single scale, in part because they have different sorts of costs, but we can at least try to compare positive and negative effects that produce costs or benefits of similar sorts.

The first step is to specify the amount of climate change being considered. My estimates are for effects by the end of the century based on IPCC projections, about a 3°C increase in average global temperature and one to three feet of sea level rise, both relative to current values.

Start with sea level rise. That it will continue to happen is a pretty safe assumption. How big is the effect?

On average, the U.S. Atlantic coast shifts in by about a hundred feet for every foot of sea level rise. So a meter of sea level rise, towards the high end of the IPCC estimate for the end of the century, shifts the coastline in by about a hundred meters, inconvenient if your house is located ten meters from the high tide mark but invisibly small on any save a very large-scale map. The effect will be larger in some places, smaller in others, depending on the slope of the coastal land. For a more detailed answer, take a look at the Flood Maps website. It lets you set the amount of sea level rise then see the effect on the map. It is not perfect, for reasons some of which are discussed on the site, but it does let you zoom in on the coastline and get at least a rough idea of how large the effect of any level of sea level rise is likely to be.

Compare the map at 0 meters to the map at 1 meter. Even in Bangladesh, usually offered as a country where sea level rise will be catastrophic, the effect is almost invisibly small. The same is true for Miami. I have not looked over the entire world, but the only place I could find where a meter of sea level rise had a large effect was the Nile delta. Another way of looking at the question is to ask how much land is lost worldwide due to coastlines shifting in. My rough estimate is a little more than twenty thousand square kilometers, about the area of New Jersey.

Compare that to the effect of warming on usable land area. Human land use at present is limited by cold not, with rare exceptions, by heat; the equator is populated, the poles are not. As global temperatures increase, temperature contours in the north shift towards the pole. I estimate the increase in land warm enough for human habitation at more than ten million square kilometers — a little less than the area of the U.S. and about five hundred times my estimate of the loss due to sea level rise. The calculations on which both figures are based are webbed and simple enough that you can check them for yourselves to see if you find my conclusions plausible.

Decreases in extreme cold and increases in extreme heat can be compared in terms of their effect on temperature-related mortality. There are two reasons to believe that the net effect is likely to be a reduction, not an increase. The first is that, at present, cold-related mortality is much larger than heat-related — about fifteen times as large globally according to a study published in Lancet in 2015. The second is that climate change is projected to increase minimal temperatures in cold regions by substantially more than maximal temperatures in hot regions.

Increasing the concentration of CO2 substantially increases the yield of many, but not all, crops — the major exception is maize — and reduces the need of all crops, including maize, for water. That is probably the reason that, according to the latest IPCC report, the globe is greening, the total area of vegetation increasing. Doubling the concentration of CO2, about what the IPCC projects for the end of the century, should increase the yield of most crops by more than twenty percent, more for crops currently constrained by a limited supply of water.

That leaves one definitely negative effect and two possibly negative ones for which I have so far been unable to come up with estimates. Decreasing ocean pH is a predictable result of more CO2 in the atmosphere and can be expected to have negative effects on some aquatic life but I have not seen any plausible estimates of the size of the effect. Making cyclones a little stronger and a little less common will have both positive and negative effects. So will changes in weather patterns, probably an increase in both total rainfall and the frequency of very heavy rainfall. More rainfall means more water to fill reservoirs and feed crops, more heavy rainfall may lead to more frequent floods. In addition to these predictable effects, there are a variety of others, both positive and negative, that might happen but cannot be predicted to happen.

My conclusion, as in the case of population, is that the size of the externalities is too uncertain to sign the sum, to tell whether the net effect of climate change is to make us better or worse off. That is not the current orthodoxy. You will have to decide for yourself whether you agree.

Explaining the Orthodoxy

If I am right, why does almost everyone else believe that climate change is a terrible problem? The first answer is that they don’t. If you look at expert opinions such as the IPCC reports or the work of William Nordhaus, an economist who received a Nobel prize for his work estimating the cost of climate change, you discover that they view climate change as undesirable but not as the catastrophe that much of the public discussion implies. Nordhaus, for example, writes that “the best guess in this book is that the economic damages from climate change with no interventions will be on the order of 2.5 percent of world output per year by the end of the twenty-first century” (A Question of Balance, p. 6). That is in a model in which per capita consumption roughly triples by then. So the difference between the world without climate change and the world with climate change is, by his model, the difference between an increase in per capita income by 2100 of 300% and an increase of 292.5%.

Competent authorities, as in that example, do not view climate change as catastrophic but they do view it as a bad thing. Why?

Part of the answer is that with a question that complicated, where you are summing large positive and large negative terms, any calculation of net effects depends on a lot of judgement calls: how large you think each effect, positive or negative, is, how hard you look for possible effects. Nordhaus, for example, includes estimates of very low probability high cost outcomes, things that probably won’t happen but conceivably could, in his estimate of expected cost. As best I can tell he has made no effort to find and include very low probability high benefit outcomes of climate change, of which the most obvious is holding off the next glaciation.

Sometimes the bias is worse than that. Rennert et. al. 2022, a recent article published in Nature, estimates the net negative effect of an additional ton of Carbon dioxide produced now at $185, more than three times the calculation that the EPA has been using for regulatory decisions; the EPA is looking at it with an eye to raising the value it uses.

The article adds up estimated costs from now to 2300. That raises an obvious problem. Most of the costs depend, among other things, on technology — the effect of heat on mortality, the source of about half the cost, depends among other things on medical technology, the effect of climate change on crop yields depends on biotech, other costs depend on other technologies.

Over the past two centuries, technological change has replaced sailing ships with jet planes for long distance transportation. Over the past century, medicine has progressed from a point where almost no contagious diseases were curable to one where almost all are. Over the past fifty years, computer technology has progressed to the point where the typical member of a developed society carries in his pocket a computer more powerful than any that existed fifty years ago. There is no reason to believe that the process has stopped and no way of predicting its effects on the world beyond the very short term.