# 2NC DRR Round 1

## Distinguish CP

### Overview---2NC

#### The Court does not consider itself to be bound by precedent.

HLR 23 – Harvard Law Review Note

Harvard Law Review, The Thrust and Parry of Stare Decisis in the Roberts Court, 137 Harv. L. Rev. 684 (Dec. 2023), https://harvardlawreview.org/print/vol-137/the-thrust-and-parry-of-stare-decisis-in-the-roberts-court/#footnote-ref-8

Professor Karl Llewellyn famously demonstrated that for almost every canon of statutory interpretation, there exists an opposite and equally plausible countercanon.1 Fashioning a fencing analogy, he described each pair of dueling canons as containing a “[t]hrust” and “[p]arry.”2 More than seventy years after Llewellyn’s seminal work, the same dynamic of thrust and parry appears to be operating behind the Supreme Court’s reasoning in a context different from — and potentially more alarming than — statutory interpretation: stare decisis. While one should beware any attempt to reduce the Roberts Court’s jurisprudence into a simplistic arc,3 this Court is undeniably marked by many moments of overturning precedent.4 This Note assembles and structuralizes the various modes of reasoning used by the Justices in either preserving or discarding precedent to demonstrate that stare decisis is not, as some may believe, “a bedrock principle of the rule of law”5 but rather a malleable rhetorical tool.

The raw observation that the Roberts Court has on many occasions flouted stare decisis is not in itself groundbreaking.6

[Footnote 6 *See, e.g.*, Khiara M. Bridges, *The Supreme Court, 2021 Term — Foreword: Race in the Roberts Court*, 136 Harv. L. Rev. 23, 53 (2022) (“[T]he Roberts Court does not appear to consider itself particularly bound by stare decisis.”).)

#### Empirics.

Howe 25 – Co-founder of SCOTUSblog and primary reporter, served as counsel for Supreme Court cases, previously professor at American University School of Law, J.D. from Georgetown University.

Amy Howe, “Overturning precedent on the Roberts court,” SCOTUSblog, 10/29/2025, https://www.scotusblog.com/2025/10/overturning-precedent-on-the-roberts-court/

And even if the Roberts court has overruled, on average, relatively few precedents, some of the recent cases in which it has done so have been landmark ones, such as Dobbs v. Jackson Women’s Health Organization, in which the court overturned which recognized a constitutional right to an abortion, and Loper Bright Enterprises v. Raimondo, in which the justices struck down the Chevron doctrine, which counseled courts to defer to federal agencies’ interpretation of a statute.

As a general rule, courts apply the doctrine of stare decisis, which literally means “to stand by things decided.” It is the principle that courts should follow their earlier decisions in similar cases – even if they might believe they are wrong – unless there is good reason to do otherwise. The doctrine is intended to promote stability, predictability, a sense of fairness, and public confidence in the courts.

At the same time, the Supreme Court has made clear that stare decisis “is not an inexorable command,” particularly when it comes to the interpretation of the Constitution. “An erroneous constitutional decision can be fixed by amending the Constitution,” Justice Samuel Alito acknowledged in Dobbs, “but our Constitution is notoriously hard to amend.”

In recent decisions that overruled earlier cases, the justices in the majority began their analysis by considering the merits of the question at the center of the dispute. In Dobbs, for example, Alito concluded that “a right to abortion is not deeply rooted in the Nation’s history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973.”

In Loper Bright, Chief Justice John Roberts wrote that the Chevron doctrine “defies the command of the” Administrative Procedure Act, the federal law governing administrative agencies, “‘the reviewing court’—not the agency whose action it reviews—is to ‘decide all relevant questions of law’ and ‘interpret . . . statutory provisions.’”

And in another notable decision, Janus v. American Federation of State, County and Municipal Employees, the court overturned Abood v. Detroit Board of Education, a 41-year-old decision holding that government employees who are represented by a union but do not belong to that union can be required to pay a fee to cover the union’s costs to negotiate a contract that applies to all employees. In a 5-4 opinion written by Alito, the majority agreed with the challengers that such “arrangements violate the First Amendment.”

#### That zeros solvency. AND it proves the CP solves better by eliminating a potential motive to overturn.

Roser-Jones 24 – Assistant Professor, The Ohio State University Moritz College of Law

Courtlyn G. Roser-Jones, “The Roberts Court and the Unraveling of Labor Law,” 108 MINN. L. REV. 1407 (February 2024), Nexis

Indeed, it is this conservative judicial activism and commitment to anti-labor decisions where the Lochner Court and the Roberts Court are most alike. However, Cedar Point Nursery also highlights significant differences between the two. While both the Lochner Court and the Roberts Court have applied constitutional theories to undo labor regulation, only the Roberts Court has done so in the face of decades of administrative precedent and constitutional interpretations upholding the NLRA.280

In defense of the Lochner Court, the modern labor scheme was untested, and decades of interwoven Board decisions did not exist when the validity of labor law clashed with the Lochner Court. Furthermore, while the Lochner Court's laissez-faire constitutional values were used to invalidate labor laws, the Court was at least consistent in these values-applying steady freedom of contract principles to a variety of cases over the Lochner Era's thirty-plus years.2 8 1 But the Roberts Court is so committed to invalidating labor laws that it is willing to run roughshod over its own professed interpretive methods and institutional values, and some of the High Court's most seminal decisions to do so. 2 8 2 As such, nods to their decisions being limited to circumstances involving labor, or rather, true applications of precedents despite being utterly transformative in context are perhaps even more institutionally costly than a Lochner Court with steady views on a constitutional landscape contrary to the democratic government branches.

The "nine old men" who made up the Lochner Court were rightly criticized in the 1930s for being out of touch with the changing world and using their own laissez-faire constitutional views to thwart popular reforms. 283 But they were at least consistent-rather, everything around them had changed. The Roberts Court, on the other hand, not only holds views different from a majority of the public's when it comes to labor law, but also compromises its own interpretative theories and popular Court precedents when these do not yield the anti-labor outcomes the Court wants. 284 In this respect, the long-term consequences of the Roberts Court will likely end up being far more significant for labor law than the Lochner Court's, and far more institutionally delegitimizing, too.285

B.UNDOING CONCERTED ACTIVITY PROTECTIONS AND SHIELDING ECONOMIC LOSS After recalibrating the weight given to individual property rights in Cedar Point Nursery, the Court sought out another opportunity to balance these weighted interests against labor rights. Only this time, in Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174,286 the Court had the quintessential protected concerted activity-the "strike"-in its crosshairs. While the number of strikes had been steadily declining in decades prior, Glacier Northwest, Inc. arrived during a wave of headline-grabbing organizing, strikes, and collective bargaining activity that led to historic increases in employee pay and benefits. 287 Glacier Northwest, Inc. involved one of these strikes, this one ending with a Seattle-based concrete company (Glacier Northwest) agreeing to "record-setting" collectively- (describing the problems with a Court that is "out of step with the populace" like that of the 1930s). 284. Cf. id. (noting popularity of left-leaning policies among Americans). 285. See id. (describing "the makings for a serious collision" between the Court and the public). 286. Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174, 500 P.3d 119 (Wash. 2021), rev'd, 143 S. Ct. 1404 (2023). 287. See Faiz Shakir, America Is in the Midst of a Dramatic Labor Resurgence, NEW REPUBLIC (Oct. 8, 2021), https://newrepublic.com/article/163936/ america -midst-dramatic-labor-resurgence [https://perma.cc/47U8-HEYY] (describing a "renewed breath of labor activism" and the highest approval rating of unions in decades); Max Zahn, Amazon and Starbucks Workers Led a Union Resurgence in 2022. Will It Last?, ABC NEWS (Dec. 22, 2022), https://abcnews .go.com/Business/amazon-starbucks-workers-led-union-resurgence-2022/story? id=95090198 [https://perma.cc/DDGB-LAEU] (discussing a fifty-three percent increase in petitions for union representation and the highest level of public support for unions since 1965). 1473 MINNESOTA LAW REVIEW bargained-for employment terms.288 But the strike's contract victories have since been eclipsed by the strike-related litigation that followed. By overshadowing this labor victory, Glacier Northwest, Inc. was already a win in the eyes of labor opponents. 289 But by the time Glacier Northwest, Inc. arrived at the Supreme Court, the case came with colossal implications for the legal right to strike and the new wave of labor activity in general. The key events at Glacier Northwest began in the summer of 2017, when the company and International Brotherhood of Teamsters Local Union No. 174 (Local 174) began new contract negotiations. 290 Negotiations, however, did not go smoothly, and Local 174 filed a charge with the NLRB alleging Glacier Northwest had refused to bargain in good faith. 29 1 Likewise, on July 22, 2017, members of Local 174 voted to authorize a strike, and the union gave notice to Glacier Northwest that a strike could commence at any time. 292 That time came the morning of August 11, 2017, when fiftyeight employees across three Glacier Northwest locations went on strike. 293 Included in these striking employees were several truck drivers who, when the strike began, were either in the process of having their truck loaded with concrete or had already set out to make deliveries with batched concrete in tow. There was widespread confusion among these drivers about what to do with the ready-made concrete in the trucks when the strike commenced, and drivers took various courses of action. 294 Most truck drivers returned their trucks to Glacier Northwest's facilities with the truck's mixing drum left spinning, so as to prevent the concrete inside from hardening and causing damage to the truck.295 Three drivers returned their trucks and, upon specific direction, dumped their remaining concrete into facility bunkers. 296 Another driver completed all his deliveries before returning to the facility, having tried but been unable to get other instructions from a supervisor on the radio. 297 Another driver brought his loaded truck back to the company facility, turned it off, and left the truck there with the key in the ignition.298 Once the strike began and drivers returned loaded trucks to the facility, Glacier Northwest needed to take quick action to prevent the loaded concrete from hardening in the truck's drums and causing damage.299 With the help of non-striking employees, the company managed to identify all the trucks with concrete inside, offload the mixed concrete into facility bunkers, and prevent any truck damage-but the dumped concrete was destroyed. 300 Within eight days, the parties had agreed to a new contract and the strike was over.301 But after Glacier Northwest sent disciplinary letters to sixteen drivers for failing to deliver their batched concrete during the onset of the August 11th strike, Local 174 amended its NLRB charge to include these letters as alleged interferences in the drivers' protected activity. 30 2 Four months later-rather than first challenging the protective nature of the drivers' activities via the ongoing NLRB's investigation- Glacier Northwest sued Local 174 in state court for the concrete loss and other related damages.30 3 While state lawsuits involving striking activities are generally preempted under the NLRA,304 Glacier Northwest's complaint alleged their claims fell within an exception to Garmon preemption reserved for intentionally violent or tortious acts.30 5 Indeed, the company's short complaint did not mention the words "strike" or "work stoppage" at all.3 0 6 Rather, it alleged a "conspiracy" to "sabotage" its business relationships by the union and its members, and a carefully timed "abandon[ment]" of its property, done with the "malicious" intent of its "ruination and destruction."3 0 7 Relying on this recitation of the facts, the company went on to allege that, even if Local 174's activities did not fall within this limited exception to Garmon preemption for intentionally tortious acts, its claims were still not preempted by the Board.308 Glacier Northwest highlighted the behavior of the truck drivers who returned their full trucks to their facilities and turned them off and, omitting any discussion about the other drivers' activities, alleged this behavior to be so indefensibly far from the reasonable precautions employees must take to protect property from imminent harm during the commencement of a strike that it was not even arguably protected under the NLRA.309 Years of procedural mess would follow, as the same striking event was adjudicated contemporaneously through administrative and Washington State judicial processes. First, the union amended its pending NLRB charge against Glacier Northwest to include their initiation of the litigation as also violative of the Act.3 10 Then Local 174 filed a motion to dismiss Glacier Northwest's lawsuit as preempted by the NLRB.311 After a state trial court granted Local 174's motion to dismiss on preemptive grounds and an appellate court reversed, 312 the Washington Supreme Court reinstated the dismissal of the lawsuit in December 2021.313 In its opinion, the court distinguished "intentional destructions" of property that fell within the exception to Garmon, and those property losses that are the direct result of a work stoppage during a labor dispute. 314 Glacier Northwest's claims being the latter, the court reasoned that they were not excluded from Garmon-lest every strike that was timed strategically to maximize employers' economic losses would fall outside of Garmon's purview.3 15 As for whether employees took reasonable precautions to protect Glacier Northwest's property from foreseeable, imminent harm, the state's highest court left this determination to the Board. 316 Acknowledging the employers' property interests behind the reasonable precautions standard and the interests of striking employees in leveraging the incidental destruction of perishable goods as a bargaining tactic, the court noted that when two competing labor principles are implicated as they were here, "the strike is, at least, arguably protected conduct under section 7."317 About a month after the Washington Supreme Court's decision, the NLRB's Regional Director completed its initial investigation of the union's charge and issued a complaint against Glacier Northwest. 318 Among other things, the agency's complaint asserted that the truck drivers probably had been engaged in arguably protected conduct when they stopped working and took the precautions they did on August 11th.319 But, despite the NLRB's initial investigation giving credence to the lawsuit's preemptive status and providing a fuller picture than Glacier Northwest's complaint of the facts and circumstances on August 11th, the Supreme Court granted Glacier Northwest's certiorari petition in October 2022.320 Regardless of the agency's views, the Court would decide "whether the NLRA preempts Glacier's tort claims alleging that the union intentionally destroyed its property during a labor dispute." 321 Now represented by anti-union juggernaut, Jones Day, Glacier Northwest's Supreme Court briefs and oral argument took issue with the standard the Washington court applied in deciding whether the union's conduct was preempted as arguably protected under the NLRA.322 But the case's unique procedural circumstances also meant that the company needed to convince the Court of this interpretation in a false reality, that false reality being the factual allegations made against the union in Glacier Northwest's own initial complaint. 323 While the NLRB's investigation and complaint had discredited Glacier Northwest's factual allegations of coordinated "sabotage" and the "abandon[ ment]" of trucks without taking any reasonable precautions to protect the company's property, 324 the motion to dismiss stage and appellate reviews accepted the allegations in the complaint as true.325 And while the company had some help directing the Justices to the four corners of their complaint, the elephant in the room-what to do with the agency's subsequent complaint,326 nine-day hearing, and hundreds of pages in post-hearing briefs 327-soon engulfed oral argument.328 So much so, that by its conclusion, some Justices seemed prepared to toss the entire line of Board cases at the center of the procedural mess the Court helped to make. 329 Even more drastic, at least two Justices appeared ready to toss Garmon preemption altogether.330 In light of the more extreme alternatives, when the Court did decide Glacier Northwest, Inc. on June 1, 2023, many proponents of labor law's integrative design heaved a sigh of relief.331 note 300 (quoting the language in Petitioner's Complaint to describe the Union's actions on August 11, 2017). Yes, the union had lost eight to one, 332 but the majority opinion written by Justice Barrett had left intact labor's preemption regime, and the line the Board had drawn between work stoppages timed when the incidental destruction of perishable goods was foreseeable, and work stoppages where employees must take "reasonable precautions" to protect their employer's property from foreseeable, aggravated, and imminent harm.333 Accepting the complaint's allegations as true, Glacier Northwest, Inc.'s fact-specific and narrowly tailored opinion viewed the union's activities as more akin to killing the cow than spoiling the milk,334 or more like stopping a molten iron pour mid-production than stopping mid-production the making of cheese. 335 Rather than getting rid of the Board's delineating line between perishable goods and non-perishable property, Justice Barrett's opinion, if anything, expanded on it. Adding an addendum to the protection of work stoppages when the destruction of perishable products is foreseeable, her majority opinion carved out a caveat for when striking employees "prompt ... the creation of the perishable product."33 6 While this decision is not the disastrous tort damages for work stoppages when the destruction of any product is foreseeable holding Glacier Northwest, Inc. could have been, 337 it is not without consequence. For one, different types of workers do countless different things in relation to perishable products that could be construed as prompting their creation. And now, Glacier Northwest, Inc. is open season for an array of courts and jurisdictions to opine on where the legal limits of all these countless activities are. Particularly, the prompting of perishables standard, or the idea of starting or completing any product production seems an especially grey area for the wave of new organizing activities in (expressing hesitant optimism that the Court had not done away with Garmon altogether). the service, creative, and intellectual industries. 338 After Glacier Northwest, Inc., can graduate students who time their striking activities around finals be liable to a university because, in beginning to teach the semester, they have prompted the production of an entire fourteen week course?33 9 What if they miss grant opportunities because a timed strike begins during the grant application process? Can Starbucks baristas stop work mid-pumpkin spice latte, or does Glacier Northwest, Inc. not apply to de minimis prompts of perishable products however delicious and seasonal they may be? The workers affected by this decision span almost every conceivable industry and occupation. 340 Besides avoiding these inevitable incongruities being precisely the point of the NLRB, it is hard to imagine that riskaverse workers who handle perishable products, or those who live in places where state court judges are hostile to unions, will not have Glacier Northwest Inc.'s four-year litigation in the back of their mind when deciding whether or when to strike. 34 1 Indeed, if employers collectively bargain to lessen the economic harm of a strike, but Glacier Northwest, Inc. also minimizes a strike's economic harms, then some employers may forego collective bargaining.342 But regardless as to whether lawsuits to recover strike-related economic damages are successful in assessing tort liability under Glacier Northwest, Inc.'s new "prompting production" standard, in just allowing a potential lawsuit to impact workers' striking tactics, the Court has already struck the heart of labor law's purposeful design and disrupted the Board's careful balancing of competing interests. 34 3 Speaking of drawn-out litigation and the disproportionate cost it imposes on organized labor interests, Glacier Northwest, Inc., as written, may have another lasting procedural legacy to this effect. An oddity of Glacier Northwest, Inc. was that no one thought the company's initial lawsuit had a chance of succeeding on the merits by the time the case reached the Court for oral argument. Indeed, arguing counsel for Glacier Northwest conceded almost as much, admitting that while the Court must take the facts alleged in the pleadings as true at the motion to dismiss stage, after costly discovery, the Board's proceedings would likely be persuasive evidence for a dismissal at summary judgment. 344 Likewise, if nothing else, Glacier Northwest, Inc. creates an overlapping jurisdiction where an employer who suffers strike-related economic harm can craft such intentional striking activity as an intentional tort.345 Then with an artfully crafted complaint, employers can sustain a lawsuit in state court concurrently with the Board's proceedings for months, if not years. 346 C. DIMINISHING THE BOARD AND LABOR LAW'S UNDERLYING PRINCIPLES Both Glacier Northwest, Inc. and Cedar Point Nursery undergo a significant rebalancing of workers' collective and employers' property interests. But their questioning of labor law's facilitative protections and underlying redistributive principles is perhaps not even the most appropriate headline. Instead, even more concerning about these cases may be that the Court decided to hear them at all. That the Roberts Court appoints itself- instead of Congress or the expert regulatory agency-as the decision-maker on labor policy is the most threatening to our democracy.347 As Justice Jackson highlights in her dissent, a strict preemption regime has defined U.S. labor law for decades. 348 In light of the Board's expertise and the importance of uniform application of labor law's centralized labor regime, federal and state courts are preempted from deciding cases where an activity is arguably subject to Section 7 or Section 8 of the NLRA.349 And although the NLRB is not immune to criticism, nowhere else in labor law has it earned its deference quite like it has in its protection of concerted activity, like the strike, while maintaining to the greatest extent possible individual property interests. 350 Charged with this challenge early on, the Board has answered difficult line-drawing questions concerning sit down strikes, slow-down strikes, intermittent strikes, wildcat strikes, and everything in between.35 1 It has been asked to apply opaque language like "coercive" to secondary concerted activities, while walking the constitutional tightrope that recognizes speech outside of the labor contexts as being the most persuasive to the extent it persuades people into taking actions they wouldn't have otherwise done. 352 One could only imagine the different and conflicting interpretations of labor law's restrictions on secondary concerted activity, had a bunch of different courts-all with their own local procedures and attitudes towards organized laborbeen allowed to opine. Fortunately, uniformity in the law governing industrial relations has embodied the Court's interpretation of labor law's broad preemption doctrine until now. 353 Nevertheless, if the Roberts Court's anti-labor decisions can be consistently reconciled with any value at all, it is with its crusade against the regulatory state. 354 There was no need to hear Glacier Northwest, Inc. The Washington Supreme Court had decided unanimously in the union's favor, there was no split in the circuit courts, and the agency's subsequent complaint provided the Court with plenty of grounds to vacate the judgment below and remand to the lower court's for consideration. 355 So, why take another politically unpopular case that that threatens to erode the Supreme Court's legitimacy in the eyes of a public, if not also to strike another decided blow to the authority of federal agencies? There are "dark clouds" shadowing the Glacier Northwest, Inc. opinion. 356 These clouds are in full view in Justices Gorsuch and Thomas's Glacier Northwest, Inc. concurrence, where they proclaim their willingness to do away with Garmon preemption as soon as the court can get a better case with which to achieve this objective. 357 Hinting at this outcome, lifelong enemy of the administrative state, Justice Gorsuch, asked employer's counsel at oral argument for Glacier Northwest, Inc. "[w]hat's at stake" in allowing state courts, rather than the NLRB, to hear claims against striking workers. 358 Answering the Justice's question, the attorney said, frankly, that Glacier Northwest preferred not to be in a venue "where the agency is the judge, jury, and executioner" of their claims. 359 The overwrought terminology about agencies as executioners reeks of the conservative majority's expressed views of federal agencies, and litigants are catching on.360 [BEGIN FOOTNOTE 360] 360. See West Virginia v. Env’t Prot. Agency, 142 S. Ct. 2587, 2618 (2022) (proclaiming that federal agencies’ regulatory powers “pose a serious threat to individual liberty”). [END FOOTNOTE 360] And, for anyone against the administrative state, the NLRB is an irresistible target. It is the model New Deal administrative agency. An agency where expertise and professionalism, balanced by political accountability and careful institutional design, was thought to yield the best possible governance in a decidedly imperfect and changing world.36 1

Because of the particularly high hopes it had for the Board at the time it was created, Congress vested broad discretion in it for interpreting and administering labor law.36 2 But today, Glacier Northwest, Inc.'s attempt to narrow this discretion highlights how this Court's broad goals of unraveling labor and reigning in federal agencies' power-even when Congress directs this power explicitly to it-are inextricably linked. 36 3 That the deregulatory goal "shifts more power to courts" to apply the NLRA's malleable statutory language in lieu of the Board enables the Roberts Court to have an even more determinative role in the once-democratic labor-policy debate.364

### Solves---2NC

#### The case can be distinguished.

Re 14 – UCLA Law School Assistant Professor.

Richard Re, November 2014, ESSAY: NARROWING PRECEDENT IN THE SUPREME COURT, 114 Colum. L. Rev. 1861

Pick your least-favorite Supreme Court precedent--the one that, in your view, was most wrongly decided--and imagine that you are a Justice. If asked to apply the precedent in a new case, you would probably try to distinguish it. In other words, you would like to conclude that the precedent, when best understood, does not actually apply to the new case before you. But what if you think that the precedent, when best read, does apply to the new case at hand? You would then be faced with an uncomfortable choice. You could overcome your opposition to the precedent and follow it, notwithstanding its wrongness and any resulting injustice. Alternatively, you could overrule the disfavored case, notwithstanding the drastic nature of that action. Yet another option remains. Instead of either following the precedent or overruling it, you could narrow it. That is, you could interpret the precedent in a way that is more limited in scope than what you think is the best available reading. If you took that last route, then the precedent would survive in an altered form. It would remain on the books and valid within a certain domain. But it would have been denied a zone of application that, when best read, it should have had.

#### It's not distortionary.

Walsh 15 – U. Richmond, Associate Professor of Law.

Kevin Walsh, 2/11/15, Richard M. Re, Narrowing Precedent in the Supreme Court, 114 Colum. L. Rev. 1861 (2014), courtslaw.jotwell.com/expanding-our-understanding-of-narrowing-precedent/

Re argues that “[l]egitimate narrowing is the decisional-law analogue to the statutory-law canon of constitutional avoidance.” The analogy holds insofar as both techniques exploit ambiguities to constrain the legal force of one source of legal authority (a precedent or a statute) as a way of giving effect to other legal principles (whether found in other cases or the Constitution or some background source of legal principles). But another, and in some circumstances closer, analogy may be holding a statute partially unconstitutional coupled with statutory severance. After all, as Re puts it elsewhere in the essay, narrowing effects “a partial erasure of decisional law.” Following this insight a bit further might lead one to believe that when narrowing ventures beyond strained distinguishing (akin to constitutional avoidance), it becomes partial overruling (akin to partial unconstitutionality plus severance).

One benefit of recognizing the functional equivalence of narrowing and partial overruling in certain circumstances is to highlight what may be an unduly constricted but pervasive misunderstanding of lower-court freedom to narrow Supreme Court precedent. Re’s essay understandably brackets off implications for vertical stare decisis; assessing the legitimacy of narrowing by lower courts presents different and harder issues than horizontal narrowing. But by showing that narrowing is common and often legitimate at the horizontal level, the essay’s taxonomy at least reveals that it is a mistake to preemptively rule out the possibility of all lower-court narrowing simply by affixing to it the label of partial overruling.

To explore what this might mean for vertical stare decisis, it would be illuminating to run through each of the examples of legitimate narrowing that Re discusses at the Supreme Court level and to inquire whether a lower court would likewise have been free to narrow. That is, would the lower court have complied with governing stare decisis norms by narrowing precedent in the way that the Supreme Court did? If the answer for a given case is “yes,” even though the kind of narrowing that the lower court engaged in could easily be understood as an instance of partial overruling (i.e., overruling with respect to a particular set of potential applications), then the principle that lower courts may not anticipatorily overrule an undermined precedent may have a more confined reach than many think. Take, for example, Hein v. Freedom from Religion Foundation, in which the Supreme Court held that the taxpayer standing authorized by Flast was limited to specific legislative appropriations rather than executive action funded by general discretionary appropriations. This narrowing of Flast could be understood as a partial overruling of it. And yet the line adopted by the governing plurality decision is the very line identified and applied by the district court. While the Seventh Circuit reversed this decision (and itself was later reversed in turn), the discussion throughout was about how best to apply the set of cases in the Flast line rather than about whether the district court or court of appeals had violated some norm of vertical stare decisis. And that is as it should be.

The practical fluidity of the conceptual boundaries between narrowing a precedent, partially overruling a precedent, and figuring out the best application of a set of precedents gives rise to a final observation. The customary way of thinking about how particular judicial decisions change the content of the law is in terms of their effect on particular legal materials like a precedent or a statute, and usually in terms of subtraction. Narrowing Precedent sharpens this way of thinking. But using Re’s conceptual tools can reveal a different frame altogether, one that is consistent with Re’s even while describing changes in the content of the law in a precisely opposite manner.

Re’s central concept is the idea of the best reading of a precedent. In his taxonomy, the mirror image of narrowing (“not applying a precedent, even though the precedent is best read to apply”) is extending (“applying a precedent where it is not best read to apply”). The reason that both narrowing and extending can be legitimate practices is that precedents are never best read in isolation from all the other relevant legal materials in a case. The inquiry in every case is what the court has added or should add to the law going forward; only sometimes does this also involve the metaphorical paring back or cutting out of some particular source of law. And even then, there is no conceptual or legal need to describe that removal in terms of excision rather than displacement. For instance, the narrowing of Flast is simultaneously the extension of the principles and cases that countervail against taxpayer standing.

#### It avoids fragmentation.

Re 14 – UCLA Law School Assistant Professor.

Richard Re, November 2014, ESSAY: NARROWING PRECEDENT IN THE SUPREME COURT, 114 Colum. L. Rev. 1861

Practicality has distinctive implications in the Supreme Court. When lower courts assume the authority to narrow higher-court precedents, several severe practicality problems can result. Perhaps most importantly, different lower courts are likely to narrow in different ways, yielding fragmentation of the doctrinal landscape and all the normal difficulties of national disuniformity. In addition, each higher-court precedent would be subject to frequent and nearly immediate narrowing by a multitude of lower courts, thereby undermining public reliance on higher-court rulings. But these difficulties do not arise when the Court narrows. Because its decisions to revisit precedent necessarily sweep in the entire country, the Court can narrow without spawning doctrinal fragmentation. And, as a single body that hears only several dozen cases per year, the Court is unlikely to narrow at a rate that would jeopardize reliance interests.

Moreover, practicality is generally a less pressing concern in connection with narrowing, as compared with overruling. For one thing, narrowing typically preserves significant aspects of the doctrinal status quo ante n75 and so is less likely than overruling to disrupt precedent-based expectations. n76 For another thing, the Court itself can more easily reverse course after narrowing, since a decision to narrow tends to signal that a doctrinal area is in flux. n77 Most importantly, narrowing creates a window for responsive action by private parties, political branches, and courts. n78 [\*1879] By problematizing a disputed area of law, an act of narrowing can catalyze new research, reflection, and creativity in the affected jurisprudential area, while enhancing the Court's own flexibility to act. In all these respects, narrowing can offer a fruitful form of judicial minimalism. n79

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## States CP

### Overview---2NC

#### The CP directly regulates desired outcomes.

Galvin 18 – Associate Professor of Political Science, NU. IPR Fellow, NU.

Daniel Galvin, “From Labor Law to Employment Law: The Changing Politics of Workers' Rights,” Northwestern Institute for Policy Research, 12-17-2018, https://www.ipr.northwestern.edu/documents/working-papers/2018/wp-18-14.pdf

Notably, all such reforms share two key features. First, they all represent workaround solutions. Contending with a national labor that is irrelevant for the vast majority of American workers but also an immovable object, they layer new forms atop old forms, exploit loopholes in existing law, and seek to scale up local experiments. Second, each envisions a central role for employment law in galvanizing, empowering, and protecting workers.16 This, I will argue, 5 reflects an historical-institutional development of vast significance: the gradual shift from labor law to employment law as the primary “guardian” of workers’ rights.17

As I will document and explain more fully below, over the last six decades, states (and a growing number of cities and counties) have enacted a rich variety of employment laws aimed at raising minimum workplace standards, establishing substantive individual rights, and providing legal and regulatory pathways for workers to vindicate those rights. 18 At precisely the same time that labor law has withered, employment law has flourished, proliferating at the subnational level and expanding into new substantive domains.19

[Footnote 19]

Although the terms “labor law” and “employment law” are sometimes used interchangeably, legal scholars draw an important distinction between the two: whereas labor law focuses on collective bargaining, unionization, and other issues that may arise between groups of workers and their employer, employment law covers all other laws, regulations, and policies regarding individual workers’ rights and the relationship between the employer and the individual employee. By establishing minimum workplace standards (like the minimum wage, enforced through regulation) and individual rights and protections (like workers’ privacy rights, which may be vindicated in court), employment law uses the alternative delivery mechanisms of regulation and litigation to achieve many of the same objectives labor law ostensibly seeks through collective bargaining: namely, boosting wages and regulating the terms and conditions of employment.

#### Generic indicts of “commissions” miss the boat.

Glass and Madland 22 – Policy Analyst for Inclusive Economy at the Center for American Progress, M.A. in International Economics and Finance from Johns Hopkins University; Senior Fellow and Senior Adviser at the American Worker Project at the Center for American Progress, PhD in Government from Georgetown University.

Aurelia Glass and David Madland, “Worker Boards Across the Country Are Empowering Workers and Implementing Workforce Standards Across Industries,” Center for American Progress, 02-18-2022, https://www.americanprogress.org/article/worker-boards-across-the-country-are-empowering-workers-and-implementing-workforce-standards-across-industries/

State and local policymakers are increasingly regulating workplace standards—including compensation, scheduling, training, and safety—through industrywide councils or boards that include worker representatives. This helps create a path to improve working conditions and empower workers. Since 2018, four states and three local governments have enacted laws that include workers and employers in the process of recommending or implementing workplace standards for an entire sector. Additional action is planned, most notably in California, where the Fast Food Accountability and Standards Recovery Act—which would create a sector council for the fast-food industry—is being considered by the state Senate after the state Assembly passed it in January 2022.

These standard-setting bodies go by a number of names, including industry councils, workers standards boards, and wage boards. However, what unites them is that they bring together representatives from both the workforce and their employers in an official capacity to help set and enforce workplace standards that cover all workers in a particular industry and geography—for example, domestic workers in Seattle or farm workers in New York.

These boards are often empowered to make recommendations on a broad range of interrelated issues rather than focus on a single problem such as low wages. They commonly conduct hearings and outreach activities as well as issue reports on their findings. Unlike most commissions and other bodies, their recommendations carry significant legal weight and usually trigger governmental review and action.

Standard-setting bodies can benefit both workers and employers. Worker boards can help workers come together and gain a stronger voice to advocate for themselves and help push an industry forward. Employers, meanwhile, gain a forum to discuss issues with workers and other firms in their industry; and raising standards across an industry creates a level playing field for all firms in the industry. This makes it more likely that these gains for workers will be sustainable.

### Combine---2NC

### Perm Do Both---2NC

### Perm Do CP---2NC

#### Do the CP severs the USFG.

Thompson 21 [Thompson School District; 2021; Public school district for Loveland, Colorado and surrounding area; Thompson Schools, “Structures of Government,” https://www.thompsonschools.org/cms/lib/CO01900772/Centricity/Domain/3627/Structures%20of%20Government.pdf]

Australia, Switzerland, Canada, Mexico, Germany, India, and some 20 other stats also have federal forms of government today. In the **U**nited **S**tates, the term ‘**Federal Government**’ is often used to refer to the **National** Government, but note that the **50 state** governments are unitary in structure, **not federal**.

### Preemption---2NC

#### 1. They “functionally…replace…bargaining.”

MacDonald 24 – Co-Chair of the Workplace Policy Institute, Littler Mendelson P.C.

Alexander T. MacDonald, “Predistribution, Labor Standards, and Ideological Drift: Why Some Conservatives Are Embracing Labor Unions (and Why They Shouldn't),” Federalist Society, 09-23-2024, https://fedsoc.org/fedsoc-review/predistribution-labor-standards-and-ideological-drift-why-some-conservatives-are-embracing-labor-unions-and-why-they-shouldn-t#\_ftnref93

The state-approval structure also helps avoid another federal law—the NLRA. Again, the NLRA is built on “enterprise” bargaining.[92] And that enterprise model is generally exclusive: courts have interpreted the NLRA to preempt any conflicting or alternative state laws.[93] That means states cannot simply opt out of the enterprise model and create alternative organizing schemes.[94] If workers are covered by the NLRA, the enterprise process is their only option.[95]

But there is a potential workaround. While the NLRA regulates the bargaining process, states can still establish minimum labor standards.[96] Those standards can include minimum wages, mandatory benefits, and job protections.[97] These minimum standards do affect bargaining indirectly; they take certain proposals off the table (e.g., pay rates below the minimum wage).[98] But they don’t disrupt the bargaining process. They simply set a new floor, and the parties bargain up from there.[99] Both sectoral schemes and labor boards try to fit into that gap. They create new workplace standards through quasi-private negotiations.[100] And while those negotiations mirror collective bargaining, a public official decides whether the negotiated standards take effect.[101] So local governments can present them as essentially regulatory processes. Functionally, they replace private bargaining. But formally, they set minimum work standards by law.[102] [Footnote 102] See Estlund, supra note 7, at 555–56 (arguing that state “co-regulation” schemes solve the “preemption problem” by setting new terms through regulatory processes). [End FN] That approach might solve predistribution’s preemption problems.[103] But it effectively wipes out the idea’s supposed benefits from the conservative point of view. Remember, predistribution policies are supposed to reduce the need for government intervention.[104] But in practice, these schemes only embed the government even further into the workplace. Labor-standards boards can dictate everything from wages and hours to training and hiring policies.[105] And they impose those terms through binding regulations, enforced by state officials.[106] This is not the soft touch of the market, but the iron fist of the law.[107]

#### It doesn’t touch the NLRA.

Elmore 24 – Professor of Law, University of Miami School of Law.

Andrew Elmore, “Confronting Structural Inequality in State Labor Law,” Boston University School of Law, 2024, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4963&context=faculty\_scholarship

C. Negotiated Sectoral Standard-Setting

Unions and worker centers, recognizing the structural inequality in the NLRA's framework for enterprise-based collective bargaining at the individual firm level, have recently sought to establish state-created boards within administrative agencies, through which they can negotiate with employer representatives for sectoral, state-level work standards. State laws authorizing negotiated sectoral standard-setting, unlike collective bargaining laws, are laws of general applicability that do not implicate NLRA preemption because the standards are sector-wide, not employer-specific.' 34 Since 2015, after its first, recent, high-profile use by Fight for $15 in New York, negotiated sectoral standard-setting has primarily grown in tentative steps through cities.1 35 But through successive, larger, and more ambitious experiments, it has taken root for home health care in Nevada and, beginning this year, fast food in California. While currently limited to a handful of states, it appears to be gaining momentum as a state-level policy choice.1 36 At the same time, TNCs have sought to establish company-dominated forms of sectoral standard-setting in New York and Connecticut, as part of a "third category" legislative compromise to classify app-based drivers as independent contractors in return for limited forms of representation by organizations that are dependent on TNCs for their existence.

#### Empirics.

CLJE 24 – Harvard Law School’s hub for labor policy research and innovation. Executive Director, Sharon Block, is a professor at Harvard Law School with a J.D. from Georgetown.

CLJE:Lab, “Building Worker Power in Cities & States: Workers’ Boards,” Harvard Law School, Center for Labor and a Just Economy, 09-01-2024, https://clje.law.harvard.edu/publication/building-worker-power-in-cities-states/workers-boards/

Preemption Risk

Since the relatively recent inception of current models of worker boards in the United States, few boards have faced preemption challenges,8 and none of those challenges have succeeded. However, many cases remain ongoing. Some local laws have been invalidated outside the courts, whether by referendum or superseding state laws. In addition, state preemption of wage- or standard-setting at the municipal level may impact the viability of city-level boards.9

Developments surrounding the hotly contested fast-food workers’ board in California offer clues about future preemption challenges. California AB 257, known as the FAST Recovery Act, aimed to establish a sector-wide labor council composed of workers, advocates, government officials, and fast-food company representatives within the fast-food industry in the state of California. It was signed into law in September 2022 but suspended in January 2023 after fast-food companies garnered enough signatures to put it to a ballot referendum.

Opponents claimed that the FAST Act would displace the NLRA’s collective bargaining process and interfere with the “free play of economic forces,” setting grounds for preemption. But such challenges would likely have failed because the council would not have impeded private collective bargaining and minimum labor standards are not preempted by the NLRA.10 It was ultimately repealed in favor of a new bill, AB 1228, which eliminates some provisions of the former bill but keeps intact the structure of a workers’ council that gives workers a seat at the table in determining their wages and working conditions.11

#### If the preemption risk gets too high, the boards can be made advisory.

CLJE 24 – Harvard Law School’s hub for labor policy research and innovation. Executive Director, Sharon Block, is a professor at Harvard Law School with a J.D. from Georgetown.

CLJE:Lab, “Building Worker Power in Cities & States: Workers’ Boards,” Harvard Law School, Center for Labor and a Just Economy, 09-01-2024, https://clje.law.harvard.edu/publication/building-worker-power-in-cities-states/workers-boards/

The preemption risk also can be lowered by charging the workers’ board with making recommendations to a government agency instead of setting standards directly. The more that the workers’ board resembles participatory rulemaking, as opposed to direct authority, the more likely it is to survive a preemption challenge.

#### 2. The feds won’t bring a case. Empirics.

Bennett 22 – Associate Professor and Wall Family Fellow, University of Missouri School of Law and Kinder Institute on Constitutional Democracy  
Thomas B. Bennett, “State Rejection of Federal Law”, Notre Dame Law Review Rev, Volume 97, Issue 2, 2022, https://scholarship.law.nd.edu/ndlr/vol97/iss2/6/

Or can it? Consider how press reports described Colorado’s Enhance Law Enforcement Integrity bill, a broad package of police reforms enacted in the wake of sustained activism against police violence during the summer of 2020. The Denver Post said the bill “removes the qualified immunity defense.”4 The Hill said the law “includes the end of qualified immunity for officers.”5 U.S. Representative Ayanna Pressley called on legislators in her state of Massachusetts to follow Colorado’s lead and “end qualified immunity.”6 State legislators in New Mexico, New York, and Virginia similarly moved to “eliminat[e] qualified immunity.”7

Because the doctrine of qualified immunity is part of federal law, the simple view of federalism holds that states cannot “end” qualified immunity. In one sense this objection is correct. As some observers noted, Colorado’s bill does not purport to alter the application of qualified immunity as a matter of federal law.8 Rather, the law creates a state law cause of action analogous to the federal civil rights statute, 42 U.S.C. § 1983, and specifies that qualified immunity will be no defense to claims under that new provision of state law.9

Yet in nearly every way that matters, Colorado ended qualified immunity.10 Colorado’s constitution protects the same individual rights as the federal constitution, and its statutory scheme for enforcing those rights matches section 1983—minus qualified immunity. Anyone aggrieved by unconstitutional police practices in Colorado may now use state law to sue for money damages without worrying that qualified immunity will stand in the way. On the other side of the coin, police now face financial incentives to respect constitutional rights during their official duties.

This is more than just states going above the floor set by federal law. In adopting the qualified immunity defense, federal courts saw themselves as carefully balancing competing values to reach an ideal legal regime. The Supreme Court’s reasoning rested on a belief that, absent qualified immunity, the threat of liability would deter police and other government officials from doing their jobs to the best of their abilities.11

States that reject qualified immunity thus challenge the policy balance struck by federal law in two ways. First, as a practical matter, those states disrupt the balance by creating a different set of rules and incentives for government officials within their borders. This disruption is a direct challenge to federal courts’ wisdom in crafting the qualified immunity doctrine in the first place. Second, states that reject qualified immunity run an experiment to evaluate empirically that doctrine’s necessity and efficacy. If those states toss the doctrine with no great damage to public safety, federal courts will find it harder to insist on a need to protect government actors through official immunity. For those reasons, these states propose to do more than just exceed the floor for official liability set by federal law.

This phenomenon of states rejecting federal law is not new, nor is it limited to qualified immunity. For many years and across many areas of law, from eminent domain to antitrust, states have intentionally departed from federal law in ways that challenge the simple metaphor of floors and ceilings.

#### 3. If they did, the Court would be extremely hesitant to find preemption.

Nelson 15 – Paralegal, Freedom Foundation. Quoting decisions by SCOTUS & Courts of Appeals

Kirsten Nelson, “An Analysis of Federal Preemption and a Clean Fuel Standard in Washington State,” Washington Law Review Online, Volume 90, Article 5, 2015, https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1006&context=wlro

Courts are generally reluctant to find a conflict between state and federal law. A finding of preemption requires a “high threshold” to be met “if a state law is to be pre-empted for conflicting with the purposes of a federal Act.”53 “[H]ypothetical or potential conflict[s]” do not meet this threshold,54 and courts are heavily discouraged from “seeking out conflicts between state and federal regulation where none clearly exists.”55 Therefore, although it can be difficult to determine how a court will rule in an obstacle preemption case, there is a tendency to find against federal preemption.56

[Footnotes]

53. Chamber of Commerce of U.S. v. Whiting, \_\_ U.S. \_\_, 131 S. Ct. 1968, 1985 (2011) (citing Gade v. Nat’l Solid Wastes Mgmt. Ass’n, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring)). 54. Roce v. Norman Williams Co., 458 U.S. 654, 659 (1982). 55. English v. Gen. Elec. Co., 496 U.S. 72, 90 (1990) (citing Huron Portland Cement Co. v. Detroit, 362 U.S. 440, 446 (1960)). 56. Dickinson, supra note 41, at 682–83.

[End FN]

#### That’s especially true in the context of labor law.

Pearce 25 – former Chairman, the National Labor Relations Board (NLRB); Visiting Professor, Georgetown University Law Center

Mark Gaston Pearce, also served as the Executive Director of the Workers’ Rights Institute, Georgetown University, and a visiting senior scholar and Lecturer, Cornell University’s School of Industrial Labor Relations, “One Step up and Another Step down: Modern Labor Action and the Judicial Response,” 63 U. LOUISVILLE L. REV. 213 (Spring 2025)

Starbucks v. McKinney is not the first case where this court has issued an 8-1 decision taking aim at the NLRB-we saw a similar dynamic in Glacier Northwest last term. There, the issue was federal preemption. The facts of the case centered on union workers' strike activity.4 7 Glacier, a concrete company, alleged that during a strike, workers walked off the job with some of their trucks containing partial or full loads of wet concrete.4 " As a result, Glacier had to take mitigating measures to dispose of the concrete and clean out their trucks to ensure that the concrete did not harden inside. 4 9 None of Glacier's trucks were actually damaged.5 o Yet, Glacier filed a lawsuit in Washington state court alleging that the Union had "intentionally" destroyed its property.5 1

Typically, such a case is barred from proceeding under Garmon preemption, a doctrine that says that the NLRA preempts state law whenever a lawsuit is based on conduct that is either "arguably" protected or prohibited by the NLRA.5 2 Here, the Washington State Court applied Garmon and found that workers' strike was arguably protected by the NLRA, and thus, the NLRB would get first bite at the apple. 53 But the employer appealed and the Supreme Court granted certiorari, leading many to predict the end of Garmon.

On the one hand, the result was not as bad as some commentators predicted: the Court did not get rid of Garmon altogether. But, in an 8-1 majority opinion written by Amy Coney Barrett, the Court held that the drivers' strike was not protected because the employees did not take "reasonable precautions" to protect the employer's property.5 4 The Court reasoned that the workers went further than the right to strike, taking affirmative steps to endanger Glacier's property by loading the trucks with perishable cement before walking off the job.5 5 As a result, the union's conduct was not even "arguably protected" by the NLRA, and the state-level lawsuit against the union can proceed. 6 The result is that it is now easier for employers to sue unions in state court over strike-related actions-a move that could seriously chill unions' ability to undertake crucial concerted activity.

As a sidebar, the "reasonable precautions" rationale of the Court should cause one to wonder whether the court would apply the same logic to employers in a lockout.57 Is an employer obligated to take "reasonable precautions" against workers losing their homes, healthcare, their children's loss of tuition, and the worker's all-around emotional stability? Would a civil suit of this nature be likewise outside of the preemption doctrine? Alas, the majority made no mention of this.

Ironically, after a subsequent hearing before the NLRB, an ALJ found the allegations that the union failed to take "reasonable precautions" were unsupported by the evidence.

So, while Garmon survives another term, there is still cause for concern. Justices Thomas, Alito, and Gorsuch wrote separately to question the doctrine's legitimacy.59 Second, this decision chips away at unions' ability to operate without fear of overzealous and aggressive lawsuits by employers. This will subject unions to expensive discovery at least until the union can get the NLRB to issue a complaint against the employer."o

### Theory---50 State Fiat---2NC

#### \*Strengthen includes everything.

Mandel 18 – Provost and Professor of Law, Temple University. J.D., Stanford Law School.

Gregory Mandel, “Institutional Fracture in Intellectual Property Law: The Supreme Court Versus Congress,” Minnesota Law Review 102:803, 2018.

Recent legislative and judicial actions concerning intellectual property law reveal several stark trends. Congress has been remarkably hospitable to stronger intellectual property rights. Congress passed forty-three intellectual property laws during the time period in question. Of those that affected the substantive strength of intellectual property rights, over 80% made rights stronger.1 These laws made it easier to acquire intellectual property rights, broadened the scope of protection, and strengthened enforcement. The Supreme Court’s intellectual property jurisprudence, however, has moved largely in the opposite direction. The Court decided forty-four intellectual property cases from the October 2002–2003 Term through the October 2015–2016 Term, and of those that substantively affected the extent of rights, two-thirds weakened protection.

#### Collective bargaining rights include all terms and conditions of employment.

Witlin 25 – Partner & Administrator, Labor & Employment Department, Barnes and Thornburg. J.D., Stanford Law School. The Best Lawyers in America, 2024-2025.

Scott J. Witlin and Michael P. Witczak, “REPLY by Knauf Insulation, Inc. re 15 Motion to Dismiss,” Guerra V. Knauf Insulation, Inc., US District Court for the Eastern District of California, 01-21-2025, filed, Lexis.

Tellingly, Guerra's Opposition concedes that the NLRB defines "collective bargaining rights" as the right to "bargain collectively" about wages hours and other terms and conditions of employment. (Plaintiff's Opposition, 4: 25-28.) It is also clear that the phrase "concerted activity" refers to the act of "employees . . . band[ing] together in confronting an employer regarding the terms and conditions of their employment." N.L.R.B. v. City Disposal Sys. Inc., 465 U.S. 822, 835, 104 (1984). Accordingly, Guerra's Complaint explicitly seeks to unite or band together all alleged class members with the express purpose of improving the wages and working conditions of the alleged class members.

#### 3. LITERATURE: States is a key debate with tons of ground on both sides.

Andrias 24 – Patricia D. and R. Paul Yetter Professor of Law, Columbia Law School.

Kate Andrias, “Constitutional and Administrative Innovation Through State Labor Law,” Columbia Law School Scholarship Archive, 11/2024, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=5628&context=faculty\_scholarship

This Essay will explore these and other recent efforts to transform labor policy in states, as well as countermobilization by business and conservative groups, with a focus on emerging administrative mechanisms and constitutional law designed to enable collective worker rights. It will argue that state and local efforts have the potential not only to reshape American labor law but also to serve as a model for a more democratic approach to administrative governance and constitutional law generally.

This Essay proceeds in three parts. Part I surveys the political economy of labor law at the federal and state levels, examining why labor law reform has been largely unachievable at the federal level but not at the state level. Part II surveys the legal constraints on how states and localities can legislate on unionization and collective bargaining and examines several recent efforts to take advantage of the interstices of the preemption rules, as well as countermobilization by business. Part III focuses on two of labor’s efforts—tripartite administrative boards and constitutional rights articulation—both of which aim to build greater power for workers while improving working conditions. It considers the extent to which labor’s innovations offer a model for a more social democratic approach to public law that could be expanded beyond labor. This Essay concludes by acknowledging the countermobilization by business and the challenges to reshaping labor law, public law, and the political economy of the United States.

I. THE POLITICAL ECONOMY OF FEDERAL AND STATE LABOR LAW REFORM

The COVID-19 pandemic brought to the fore the essential nature of workers’ contributions to society. At the same time, dangerous working conditions, persistently low wages, staggering economic inequality, and the looming threat of artificial intelligence and algorithmic management underscored for many just how thoroughly the U.S. political economy fails workers. Against this background, support among Americans for unions has increased considerably in recent years with more than sixty-five percent expressing favorable views in opinion polls. 10 An upsurge in labor activity has accompanied the rise in unions’ favorability rates. Since 2018, hundreds of thousands of workers have engaged in work stoppages, while others have organized new unions at companies once thought unorganizable, ranging from Starbucks to Amazon to numerous news outlets and universities.11 Overall, there has been a more than fifty percent increase in workers petitioning the National Labor Relations Board (NLRB) for union elections,12 and strike activity has reached its highest peak since 2000. 13

A. The Political Economy of Federal Labor Law

Yet even with all of this labor activity, only about six percent of private sector employees are unionized.14 One key reason for the gap between preference and reality is the structure of federal labor law. The National Labor Relations Act (NLRA) promises to protect workers’ rights to organize, bargain, and strike,15 but it fails to do so in practice. 16

Several weaknesses pervade federal labor law. 17 First, minimal penalties and limited enforcement mechanisms, along with strong protections for employer property and managerial rights, make it exceedingly difficult for workers to organize new unions and reach first contracts with their employers.18 One study found that U.S. employers are charged with violating the law in over forty percent of union campaigns, 19 and nearly two-thirds “of all organized units had no collective bargaining agreement 1 year after certification.”20

Second, the primary mechanism workers have for achieving gains is collective action, but protections for the right to strike have been significantly whittled down by both courts and Congress since the 1930s.21 To take just one example, the law purports to protect the right to strike but permits employers to permanently replace workers who strike for economic reasons.22

Third, the law excludes too many workers from its protections, including independent contractors, agricultural workers, and domestic workers—exclusions that are, in part, a legacy of institutionalized racism.23 These exclusions have become more capacious and detrimental as more firms rely on workers they classify as independent contractors.24 Public sector workers too are excluded, resulting in a patchwork of coverage for government workers around the country.25

Finally, the NLRA’s orientation around worksite-by-worksite bargaining fails to give workers sufficient power to set wages and working conditions throughout their sector even when they do successfully organize at a given workplace.26 This problem, too, has become more acute with the rise of the “fissured workplace,” with more corporations relying on outsourcing, franchising, temporary labor, and other precarious work arrangements. 27 Workers at one McDonald’s franchise who win a union election, for example, are only entitled to bargain with their franchise owner; they have little bargaining power vis-à-vis the multinational corporation that controls more than ten thousand franchise and corporate stores.28

In contrast to the U.S. system, nearly all other industrial democracies provide mechanisms for workers to bargain together across a sector, while also providing for worker voice at the local “shop” level.29 In light of these features of U.S. labor law, it is not surprising that the United States has some of the lowest levels of collective bargaining coverage in the industrialized world—and some of the highest levels of income and wealth inequality. 30 As social scientists have demonstrated, with the decline of unions, the United States has lost a key equalizing force in politics and the economy.31

Yet despite widespread scholarly consensus about the shortcomings of U.S. labor law—and substantial overwhelming popular support for unions—efforts to reform labor law at the federal level have repeatedly failed.32 Political scientists like Jacob Hacker and Daniel Galvin have demonstrated that the failure to amend the NLRA has resulted in substantial “policy drift.”33 That is, labor policy has not remained static but rather has become weaker over time because of the failure to reform the law in light of changing economic conditions and structures. 34

#### There’s a long history of uniformity in labor law.

Dr. Michael Goldfield 12, PhD in Labor Economics from the University of Chicago, Emeritus Professor of Industrial Relations and Human Resources in the Department of Political Science at Wayne State University, also with Amy Bromsen, “The Changing Landscape of US Unions In Historical and Theoretical Perspective”, Annual Review of Political Science 16(1), DOI:10.1146/annurev-polisci-032211-214003

By the 1960s, there was a change in public policy. At the federal level, in 1962, President Kennedy issued Executive Order 10988, the first of a series of executive orders and laws that encouraged, facilitated, and regulated the recognition of federal employee unions. Under President Nixon, formal legislation was passed as well. In 1959, Wisconsin had become the first state to pass strong, state-level collective bargaining laws (with an administrative apparatus set up in 1962).5 By 1977, 29 states had passed similar laws, with Illinois and Ohio enacting laws in the 1980s. During the 1960s and 1970s, the majority of states passed surprisingly uniform, strong public sector collective bargaining legislation, in order to legalize and structure increasingly contentious labor–management relations. A question much discussed in the literature is what caused these laws to be passed, and conditions in particular states made them more likely to be enacted.

#### Here's a solvency advocate for uniformity.

Sharon Block et al. 25, Professor of Practice and Executive Director of the Center for Labor and a Just Economy at Harvard Law School, was the Principal Deputy Assistant Secretary for Policy at the U.S. Department of Labor and Senior Counselor to the Secretary of Labor Tom Perez, “The NLRA Under Attack”, https://democracyjournal.org/magazine/77/the-nlra-under-attack/

In this scenario, states or localities can step in and establish their own pro-worker labor laws, and lawmakers in three states (California, Massachusetts, and New York) are currently considering so-called “trigger laws” that would take effect under a variety of scenarios where the NLRA is hobbled. Crucially, states could go above and beyond mirroring the NLRA’s terms and instead more fully embrace its goal of “encouraging the practice and procedure of collective bargaining.” States can, for instance, pass full collective bargaining schemes that include broader swaths of workers and more meaningful remedies than the NLRA, or laws that require employers to remain neutral in bargaining campaigns, giving workers the fair and free right to join a union if they so choose. Some states may want to establish sectoral bargaining regimes that empower workers to bargain at the level of an industry or sector and extend collective bargaining agreements to all workers similarly employed—a concept popular in many other countries and even embraced by some on the new right. If states coordinate their actions—say, by requiring government contractors and goods suppliers to respect union rights—they can leverage their collective economic power to have impacts that extend beyond their own boundaries. In states where elected leaders do not support worker-friendly reforms, state ballot initiatives or constitutional amendments could be used to adopt them anyways, and simply strengthening the democratic process for initiatives could be an important tool.

#### But, if they win uniformity is bad, then assume the CP is regional cooperation. That still solves, and it’s predictable because states did it during COVID.

Racabi 25 – Professor of Labor and Employment Law at Cornell University, PhD from Harvard Law School.

Gali Racabi, “In Lieu of the NLRA,” Wisconsin Law Review, 08-26-2025, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=5197451

Building on the benchmark authority of states to regulate labor relations, regional cooperation of states and between states can be pursued. A regional labor law can be a set of sister laws of similar substantive and procedural character providing comparable forms of access to unions and collective bargaining, along with substantive rights, for workers across multiple states in geographical proximity. Such rights and procedures can reduce capital flight concerns in state policy makers and assist in reducing a race to the bottom process.220 Such regional pacts can be accompanied by regional trigger laws, actualizing those laws only if a certain number of states in a particular region have enacted such laws.

One possibility for a structured way of drafting such regional models could be predicated on recent voluntarist state cooperation formed under the duress of COVID-19. There states formed regional regulatory pacts deciding core public health issues regarding regulation of their internal markets under the stress of the virus.221 Such regional cooperation can also be mapped on the borders of contemporary federal board regions, spread across the country in a (very) rough approximation of existing case numbers. Revamping federal regions as a way to build bottom-up federal policy is an underexplored governance method containing some underlying forgotten history.

### CBR Key---2NC

### Certainty---2NC

### Signal---2NC

### Congress Preempt---2NC

### Conc on---2NC

## Advantage CP

### Top---2NC

## T

### Conditionality---2NC

## HH DA

### Text---2NC

#### The United States Federal Government should not protect gig workers if and only if the United States federal government limits religious exemptions from mandatory collective bargaining with employees in accordance with the Religious Freedom Restoration Act of 1993.

## Advantage 1

### Education D

### Power D

### Arrogance D

#### It’s a neo-Malthusian myth and checked by global mechanisms.

Drezner 23 – Professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University

Daniel, “Are we headed toward a “polycrisis”? The buzzword of the moment, explained.,” Vox, Jan 28, 2023, https://www.vox.com/23572710/polycrisis-davos-history-climate-russia-ukraine-inflation

This warning generated a lot of hand-wringing on the narrow streets of Davos. Little wonder — a “polycrisis” sounds pretty bad! But it also sounds to some like a confusing and redundant neologism. In the opening Davos panel, historian Niall Ferguson rejected the term, explaining it as “just history happening.” In a bit of hot FT-on-FT action, columnist Gideon Rachman characterized polycrisis as one of his least favorite terms, asking, “Does it actually mean anything?”

As someone who has written a book about zombie apocalypses and taught a course about the end of the world, I have a smidgen more sympathy for the polycrisis concept. I think its proponents are trying to get at something more than just history happening. They are putting a name to the belief that a more interconnected, complex world is vulnerable to an interconnected, complex global catastrophe.

That is a legitimate concern. Just because the concept of a polycrisis is real, however, does not mean that the logic behind a polycrisis is ironclad. Some of it echoes 1970s concerns about resource depletion combined with an increasing population — in other words, neo-Malthusianism gussied up to sound fancy. A lot more of it can be reduced to concerns about climate change, which are real but not poly-anything. Those warnings about a polycrisis might be well-intentioned, but they also assume the existence of powerful negative feedback effects that may not actually exist.

The future will not be crisis-free by any stretch of the imagination — but the notion of a polycrisis might do more harm than good in attempting to get a grip on the systemic risks that threaten humanity.

The history of the idea of the polycrisis

As with many buzzwords foretelling despair, the origins of polycrisis can be blamed on the French.

In their 1999 book Homeland Earth: A Manifesto for the New Millennium, French complexity theorist Edgar Morin and his co-author Anne Brigitte Kern warned of the “complex intersolidarity of problems, antagonisms, crises, uncontrollable processes, and the general crisis of the planet.” Other academics began using the term in a similar way. European Commission President Jean-Claude Juncker adopted the term to characterize the cluster of negative shocks triggered by the 2008 financial crisis.

So far, so redundant — none of these initial references really seem to mean much beyond “A Big, Bad Catastrophe.” Tooze’s initial column and Substack post, however, referenced the work of political scientists Michael Lawrence, Scott Janzwood, and Thomas Homer-Dixon. They work at the Cascade Institute, a Canadian research center focusing on emergent and systemic risks. In a 2022 working paper, they provide the fullest etymology of “polycrisis” and what they mean by it.

So what the hell is a polycrisis? The quick-and-dirty answer is that it’s the concatenation of shocks that generate crises that trigger crises in other systems that, in turn, worsen the initial crises, making the combined effect far, far worse than the sum of its parts.

The longer answer requires some familiarity with how complex systems work. Complex systems can range from a nuclear power plant to Earth’s ecosystem. In tightly wound and complex systems, not even experts can be entirely sure how the inner workings of the system will respond to stresses and shocks. Those who study systemic and catastrophic risks have long been aware that crises in these systems are often endogenous — i.e., they often bubble up from within the system’s inscrutable internal workings.

For example, when Lehman Brothers declared Chapter 11 in September 2008, few observers understood that Lehman’s bankruptcy would cause panic in money market funds. That was a relatively risk-free asset class seemingly far removed from the subprime mortgage debt that felled Lehman.

Except the Reserve Primary Fund, the oldest money market fund in the country, had invested some of its assets at Lehman, which had enabled it to offer a slightly higher rate of return. With those investments frozen by Lehman’s bankruptcy, the Reserve Primary Fund had to “break the buck” and price its fund below a dollar — hitherto unthinkable for a fund that was seen as pretty secure. That caused credit markets everywhere to seize up, and the Great Recession unfolded. The crisis cascaded so quickly that it was impossible for regulators and central banks to get out in front of the disaster wave.

The folks who warn about a polycrisis argue that it is not just components within a single system that are tightly interconnected. It is the systems themselves — health, geopolitics, the environment — that are increasingly interacting and tightly coupled. Therefore, if one system malfunctions, the crisis might trigger other systems to fail, leading to catastrophic negative feedback effects across multiple systems and affecting the entire world. Or, as Lawrence, Janzwood, and Homer-Dixon put it in their paper:

The core concern of the concept is that a crisis in one global system has knock-on effects that cascade (or spill over) into other global systems, creating or worsening crises there. Global crises happen less and less in isolation; they interact with one another so that one crisis makes a second more likely and deepens their overall harms. The polycrisis concept thus highlights the causal interaction of crises across global systems.

Think of rising commodity prices triggering the Arab Spring in 2010. Or think of the vicissitudes of the Covid-19 pandemic helping to trigger both the stresses in global supply chains and social dysfunction. These are examples of one systemic crisis generating another systemic crisis. Imagine all the myriad crises that climate change can trigger — from food scarcity to new pandemics to a surge in migration. The Cascade Institute paper defines a polycrisis as when three or more systems wind up being in crisis at the same time.

Given all the interconnections in the current moment, a polycrisis is not hard to conceive. To contemplate it is to be overwhelmed by catastrophic possibilities. Here, look at Tooze’s chart:

**[Figure Omitted]**

Or look at the World Economic Forum’s similar chart:

**[Figure Omitted]**

Or, if you prefer sci-fi narratives as a means to better comprehension, watch this clip from Amazon Prime’s The Peripheral, which talks about a cluster of events called “The Jackpot” in a way that sounds awfully similar to a polycrisis.

How real is the polycrisis?

Take a second now and consider all the shocks that have buffeted you, dear reader, in the past few years alone.

There is the largest land war in Europe in recent memory, a devastating pandemic, the surge in refugee flows, high inflation, fragile global governance, and the leading democracies turning inward as they face populist challenges at home. It seems easy — and enervating — to believe that the polycrisis is upon us.

The thing about the previous paragraph is that it does not just describe the current moment; it also captures the global situation almost exactly a century ago. The First World War devastated Europe. The war also helped to facilitate the spread of the influenza pandemic through troop movements and information censorship. The costs of both the war and the pandemic badly weakened the postwar order, leading to spikes in hyperinflation, illiberal ideologies, and democracies that turned inward. All of that transpired during the start of the Roaring ’20s; the world turned much darker a decade later.

So maybe Niall Ferguson has a point; what some are calling a polycrisis could just be history rhyming with itself.

Those warning about a polycrisis vigorously dispute this. They argue that the growing synchronization and interconnectivity of systemic risks increases the chance of a polycrisis. As one recent New York Times op-ed co-authored by Homer-Dixon explained, “complex and largely unrecognized causal links among the world’s economic, social and ecological systems may be causing many risks to go critical at nearly the same time.”

These concerns are borderline Malthusian. Thomas Malthus famously warned that the human population would exponentially outstrip mankind’s capacity to grow food. This proved to be spectacularly wrong, but the power of Malthusian logic remains. Neo-Malthusians are less concerned about food specifically and more about human civilization outstripping other necessary resources.

In the same op-ed, Homer-Dixon and co-author Johan Rockström worry that “the magnitude of humanity’s resource consumption and pollution output is weakening the resilience of natural systems.” The WEF report ranked a “cost-of-living crisis” as the most severe global risk over the next two years.

Concerns about climate change should not be minimized. At the same time, there are ways in which the notion of a polycrisis obfuscates more than it reveals.

Looking at the charts above makes it seem as though little can be done to prevent a polycrisis. Indeed, the Cascade Institute paper is written as though the polycrisis has already happened.

This sort of framing is bound to generate a sense of helplessness in the face of overwhelming complexity and crisis. In The Rhetoric of Reaction, Albert Hirschman warned about the “futility thesis” — the rejection of preventive action due to a fatalistic belief that it is simply too late.

It is far from obvious that there will be a polycrisis (let alone that we’re already in one). As the economist Noah Smith pointed out in his rejoinder to Tooze, its proponents underestimate how much “the global economy and political system are full of mechanisms that push back against shocks.” Indeed, for all the concerns that have been voiced over the past two years about global supply chain stresses and rampant inflation, both of those trends appear to have reversed themselves quite nicely. Complaints about scarce container ships and computer chips that dominated 2021 have turned into stories about gluts in both markets.

On the sociopolitical side of the ledger, it is noteworthy that as societies emerge from the pandemic, indicators of social dysfunction might start to subside. Political populism has actually been trending downward for the past year or so. Even skeptics of democracy have noticed that autocracies have been facing greater challenges as of late than democracies.

Malthusian arguments rest on producers being unable to keep pace with growing demand, and modern history suggests that the Malthusian logic has been proven wrong time and again. Homer-Dixon in particular has been a strong proponent of neo-Malthusian arguments, positing for decades that resource scarcity would lead to greater international violence. So far, the scholarly research testing his claim has found little empirical support for the hypothesis.

Predicting the unpredictable

The deeper flaw in the polycrisis logic is the presumption that one systemic crisis will inexorably lead to negative feedback effects that cause other systems to tip into crisis.

If this assumption does not hold, then the whole logic of a single polycrisis falls apart. To their credit, the Cascade Institute authors acknowledge that this might not happen, but they posit: “it seems more likely that causal interactions between systemic crises will worsen, rather than diminish, the overall emergent impacts.”

At first glance, this seems like a plausible assumption to make. Remember, however, that the proponents of a polycrisis also assert that the systems under stress are highly complex, leading to unpredictable cause-and-effect relationships. If that is true, then presuming that one systemic crisis would automatically exacerbate stresses in other systems seems premature at best and skewed at worst.

Indeed, over the last year there have been at least two examples of one systemic crisis actually lessening stress on another system.

China’s increasingly centralized autocracy generated a socioeconomic disaster in the form of “zero Covid” lockdowns. Xi Jinping kept that policy in place long after it made any sense, accidentally throttling China’s economy. The timing of China’s lockdown was fortuitous, however, as stagnant Chinese demand helped prevent an inflationary spiral from getting any worse. China’s exit from zero-Covid will likely also be countercyclical, jump-starting economic growth at a time when other regions tip into recession.

Another weird, fortuitous interaction has been the one between climate change and Russia’s invasion of Ukraine. As Europe aided Ukraine and resisted Russia’s blatant, illegal actions, Russia retaliated by cutting off energy exports. Many were concerned that Russia’s counter-sanctions would make this winter extremely hard and expensive for Europe.

Climate change may have provided a weird geopolitical assist to Europe, however. The warming climate is likely connected to Europe’s extremely temperate fall and winter. That, in turn, has required less electricity for heating, leaving the continent with plenty of energy reserves to last the winter. Russia’s ability to wreak havoc on the European economy has been circumscribed.

### !D---Disease---2NC

#### Pandemics won’t cause extinction---immune systems adapt, islands and isolated communities, treatments, vaccines, social distancing---that’s Pappas citing Adalja, an infectious disease expert at Johns Hopkins.

#### Empirics and burnout.

**Farquhar 17 –** Sebastian Farquhar, Leader of the Global Priorities Project (GPP) at the Centre for Effective Altruism, et al., “Existential Risk: Diplomacy and Governance”, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### Pandemics don’t cause extinction.

Vermeer et al. 25 – Technologist and Physical Scientist, Ph.D. in Chemistry from Northwestern University.

Michael J. D. Vermeer, Emily Lathrop, and Alvin Moon, “On the Extinction Risk from Artificial Intelligence,” RAND Corporation, <https://www.rand.org/pubs/research_reports/RRA3034-1.html>

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

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

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

#### No disease impacts—past pandemics, human consciousness, and preparedness check.

Adalja 16 – Infectious disease physician at University of Pittsburgh, Writes for Tracking Zebra.

Amesha Adalja, “Why Hasn’t Disease Wiped out the Human Race,” 06-17-25, https://www.theatlantic.com/health/archive/2016/06/infectious-diseases-extinction/487514/

“You’ll tell us when you’re worried, right?” That was the question posed to me countless times at the height of the 2014 West African Ebola outbreak. As an infectious disease physician, I was interviewed on outlets such as CNN, NPR, and Fox News about the dangers of the virus, and the answer I gave was always the same: “Ebola is a deadly, scary disease, but it is not that contagious. It will not find the U.S. or other industrialized nations hospitable.” In other words, no, I wasn’t worried—and not because I have a rosy outlook on infectious diseases. I’m well-aware of the damage these diseases are causing around the world: HIV, malaria, tuberculosis; the influenza pandemic that took the world by surprise in 2009; the anti-vaccine movement bumping cases of measles to an all-time post-vaccine-era high; antibiotic-resistant bacteria threatening to collapse the entire structure of modern medicine—all these, like Ebola, are continuously placing an enormous number of lives at risk. But when people ask me if I’m worried about infectious diseases, they’re often not asking about the threat to human lives; they’re asking about the threat to human life. With each outbreak of a headline-grabbing emerging infectious disease comes a fear of extinction itself. The fear envisions a large proportion of humans succumbing to infection, leaving no survivors or so few that the species can’t be sustained. **I’m not afraid** of this apocalyptic scenario, but I do understand the impulse. Worry about the end is a quintessentially human trait. Thankfully, so is our resilience. For most of mankind’s history, infectious diseases were the existential threat to humanity—and for good reason. They were quite successful at killing people: The 6th century’s **Plague of Justinian knocked** out an estimated 17 percent of the world’s population; the 14th century **Black Death decimated** a third of Europe; the 1918 **influenza pandemic killed** 5 percent of the world; malaria is estimated to have killed half of all humans who have ever lived. Any yet, of course, **humanity continued to flourish. Our species’ recent explosion in lifespan is almost exclusively the result of the control of infectious diseases** through sanitation, vaccination, and antimicrobial therapies. Only in the modern era, in which many infectious diseases have been tamed in the industrial world, do people have the luxury of death from cancer, heart disease, or stroke in the 8th decade of life. Childhoods are free from watching siblings and friends die from outbreaks of typhoid, scarlet fever, smallpox, measles, and the like. So what would it take for a disease to wipe out humanity now? In Michael Crichton’s The Andromeda Strain, the canonical book in the disease-outbreak genre, an alien microbe threatens the human race with extinction, and humanity’s best minds are marshaled to combat the enemy organism. Fortunately, outside of fiction, there’s **no reason to expect** alien **pathogens** to wage war on the human race **any time soon**, and my analysis suggests that any real-life domestic microbe reaching an extinction level of threat probably **is just as unlikely**. Any apocalyptic pathogen would need to possess a very special combination of two attributes. First, it would have to be so unfamiliar that no existing therapy or vaccine could be applied to it. Second, it would need to have a high and surreptitious transmissibility before symptoms occur. The first is essential because **any microbe from a known class of pathogens would, by definition, have family members that could serve as models for containment and countermeasures**. The second would allow the hypothetical disease to spread without being detected by even the most astute clinicians. The three infectious diseases most likely to be considered extinction-level threats in the world today—influenza, HIV, and Ebola—**don’t meet these two requirements**. Influenza, for instance, despite its well-established ability to kill on a large scale, its contagiousness, and its unrivaled ability to shift and drift away from our vaccines, is still what I would call a “known unknown.” While there are many mysteries about how new flu strains emerge, from at least the time of Hippocrates, humans have been attuned to its risk. And **in the modern era, a full-fledged industry of influenza preparedness exists, with effective vaccine strategies and antiviral therapies**. HIV, which has killed 39 million people over several decades, is similarly limited due to several factors. Most importantly, HIV’s dependency on blood and body fluid for transmission (similar to Ebola) requires intimate human-to-human contact, which limits contagion. Highly potent antiviral therapy allows most people to live normally with the disease, and a substantial group of the population has genetic mutations that render them impervious to infection in the first place. Lastly, simple prevention strategies such as needle exchange for injection drug users and barrier contraceptives—when available—can curtail transmission risk. Ebola, for many of the same reasons as HIV as well as several others, also falls short of the mark. This is especially due to the fact that it spreads almost exclusively through people with easily recognizable symptoms, plus the taming of its once unfathomable 90 percent mortality rate by simple supportive care. Beyond those three, **every other known disease falls short of what seems required to wipe out humans**—which is, of course, why we’re still here. And it’s not that diseases are ineffective. On the contrary, **diseases’ failure to knock us out is a testament to just how resilient humans are**. Part of our evolutionary heritage is our immune system, one of the most complex on the planet, even without the benefit of vaccines or the helping hand of antimicrobial drugs. This system, when viewed at a species level, **can adapt to almost any enemy imaginable**. Coupled to genetic variations amongst humans—which open up the possibility for a range of advantages, from imperviousness to infection to a tendency for mild symptoms—**this adaptability ensures that almost any infectious disease onslaught will leave a large proportion of the population alive to rebuild**, in contrast to the fictional Hollywood versions. While the immune system’s role can never be understated, an even more powerful protector is the faculty of consciousness. Humans are not the most prolific, quickly evolving, or strongest organisms on the planet, but as Aristotle identified, humans are the rational animals—and it is this fundamental distinguishing characteristic that allows humans to form abstractions, think in principles, and plan long-range. These capacities, in turn, allow humans to modify, alter, and improve themselves and their environments. **Consciousness equips us**, at an individual and a species level, **to make nature safe for the species through such technological marvels as antibiotics, antivirals, vaccines, and sanitation**. When humans began to focus their minds on the problems posed by infectious disease, human life ceased being nasty, brutish, and short. In many ways, human consciousness became infectious diseases’ worthiest adversary. None of this is meant to allay all fears of infectious diseases. To totally adopt a Panglossian viewpoint would be foolish—and dangerous. Humans do face countless threats from infectious diseases: witness Zika. And if not handled appropriately, severe calamity could, and will, ensue. The West African Ebola outbreak, for instance, festered for months before major efforts to bring it under control were initiated. When it comes to infectious diseases, I’m worried about the failure of institutions to understand the full impact of outbreaks. I’m worried about countries that don’t have the infrastructure or resources to combat these outbreaks when they come. But **as long as we can keep adapting, I’m not worried about the future of the human race**.

#### Empirics and isolated populations check extinction.

Beckstead 14 –Research Fellow at the Future of Humanity Institute at Oxford University.

Nick Backstead, “How much could refuges help us recover from a global catastrophe?,” 11-18-14, https://www.fhi.ox.ac.uk/wp-content/uploads/1-s2.0-S0016328714001888-main.pdf

That **leaves pandemics** and cobalt bombs, which will get a longer discussion. While there is **little published work** on **human extinction risk from pandemics**, it seems that it would be extremely challenging for any pandemic—whether natural or manmade—to leave the people in a specially constructed refuge as the sole survivors. In his introductory book on pandemics (Doherty, 2013, p. 197) argues: ‘‘**No pandemic** is likely to **wipe out** the **human species**. Even without the protection provided by modern science, we **survived smallpox**, **TB**, and the **plagues** of recorded history. Way back when **human numbers were** very **small**, infections may have been responsible for some of the **genetic bottlenecks** inferred from evolutionary analysis, but there is no formal proof of this.’’ Though some authors have vividly described worst-case scenarios for engineered pandemics (e.g. Rees, 2003; Posner, 2004; and Myhrvold, 2013), it would take a special effort to infect people in highly isolated locations, especially the 100+ ‘‘largely uncontacted’’ peoples who prefer to be left alone. This is not to say it would be impossible. A madman intent on annihilating all human life could use cropduster-style delivery systems, flying over isolated peoples and infecting them. Or perhaps a pandemic could be engineered to be delivered through animal or environmental vectors that would reach all of these people. It might be more plausible to argue that, though the people in **specially constructed refuges** would not be the **sole survivors of** our hypothetical **pandemic**, they may be the only survivors in a **position to rebuild** a **technologically advanced** **civilization**. It may be that the rise of technologically advanced societies required many contingent factors—including cultural factors—to come together. For example, Mokyr (2006) argues that a certain set of cultural practices surrounding science and industry were essential for ever creating a technologically advanced civilization, and that if such developments had not occurred in Europe, they may have never occurred anywhere. If such a view were correct, it might be more likely that 40 N. Beckstead / Futures 72 (2015) 36–44 people in well-stocked refuges would eventually **rebuild a technologically advanced civilization**, in comparison with societies that have preferred not to be involved with people using advanced technology. However, even if people familiar with Western scientific culture do survive, on a view like Mokyr’s, there would be no guarantee that they would eventually rebuild an advanced civilization. This may be the most plausible proposed case in which refuges would make humanity more likely to eventually fully recover from a period of intense destruction that would otherwise quickly lead to extinction.

### !D---Disease---AT: War---2NC

#### Disease disincentivizes war.

Posen 20 – Ford International Professor or Political Science at MIT & Director of MIT’s Security Studies Program.

Barry R. Posen, “Do Pandemics Promote Peace?,” 04-23-20, https://www.foreignaffairs.com/articles/china/2020-04-23/do-pandemics-promote-peace

As the novel **coronavirus infects the globe**, states compete for scientific and medical supplies and blame one another for the pandemic’s spread. Policy analysts have started asking whether such tensions could eventually erupt into military conflict. Has the pandemic increased or decreased the motive and opportunity of states to wage war?

War is a **risky business**, with potentially very high costs. The historian Geoffrey Blainey argued in *The Causes of War* that most wars share a **common characteristic** at their outset: **optimism**. The belligerents usually start out sanguine about their odds of military success. When elites on both or all sides are confident, they are more willing to take the plunge—and less likely to negotiate, because they think they will come out better by fighting. Peace, by contrast, is served by pessimism. **Even one party’s pessimism can be helpful**: that party will be **more inclined** **to negotiate** and even accept an **unfavorable bargain** in order **to avoid war**.  
  
When one side gains a sudden and pronounced advantage, however, this **de-escalatory logic** can **break** **down**: the **optimistic side** will **increase** its demands faster than the **pessimistic side** can appease. Some analysts worry that something like this could happen in U.S.-Chinese relations as a result of the new coronavirus. The United States is experiencing a moment of domestic crisis. China, some fear, might see the pandemic as playing to its advantage and be tempted to throw its military weight around in the western Pacific.  
  
What these analysts miss is that COVID-19, **the disease caused** by the **coronavirus**, is weakening all of the great and middle powers **more or less equally**. None is likely to gain a **meaningful advantage over** the others. All will have ample reason to be pessimistic about their **military capabilities** and their overall readiness for war. For the duration of the pandemic, at least, and probably for years afterward, the **odds of a war between** major powers **will go down**, not up.

**PAX EPIDEMICA?**

A cursory survey of the scholarly literature on war and disease appears to confirm Blainey’s observation that pessimism is conducive to peace. Scholars have documented again and again how **war creates permissive conditions** for disease—in **armies** as well as **civilians** in the fought-**over territories**. But one seldom finds any discussion of epidemics causing wars or of wars deliberately started in the middle of widespread outbreaks of infectious disease. (The diseases that European colonists carried to the New World did weaken indigenous populations to the point that they were more vulnerable to conquest; in addition, some localized conflicts were fought during the influenza pandemic of 1919–21, but these were occasioned by major shifts in regional balances of power following the destruction of four empires in World War I.)

That sickness slows the march to war is partly due to the fact that war depends on people. When people fall ill, they can’t be counted on to perform well in combat. Military [medicine](https://www.foreignaffairs.com/articles/world/2022-02-28/when-antibiotics-stop-working) made enormous strides in the years leading up to World War I, prior to which **armies suffered** higher **numbers of casualties** **from disease than from combat**. But **pandemics still threaten military units**, as those onboard U.S. and French aircraft carriers, hundreds of whom tested positive for COVID-19, know well. Sailors and soldiers in the field are among the most vulnerable because they are packed together. But even airmen are at risk, since they must take refuge from air attacks in bunkers, where the virus could also spread rapidly.  
  
**Ground campaigns** in urban areas pose still **greater dangers in pandemic times**. Much recent ground combat has been in cities in poor countries with few or no public health resources, environments highly favorable to illness. Ground combat also usually produces prisoners, any of **whom can be infected**. A vaccine may eventually solve these problems, but an abundance of caution is likely to persist for some time after it comes into use.

## Advantage 2

### Rant---2NC

### !D---Civil War---US---2NC

#### No civil war---opportunity costs, few grievance-to-violence transitions, policing.

Koren 22 – Professor of Political Science, PhD in international relations with research on civil conflict and peace studies

Ore Koren, “Civil war in the US is unlikely because grievance doesn’t necessarily translate directly into violence,” The Conversation, 1/14/2022, https://theconversation.com/civil-war-in-the-us-is-unlikely-because-grievance-doesnt-necessarily-translate-directly-into-violence-174456

Claims that America is at the greatest risk of civil war since, well, the Civil War, recently received additional support from some experts in the field of political science.

But civil wars are rare events.

Before the 2020 election, I analyzed the risk of a so-called “Second American Civil War” that some speculated might ignite on or around Election Day. I concluded the risk was very low, while also emphasizing the uncertainty of the times.

Despite the ugly Capitol riot of Jan. 6, 2021, and anti-racism protests of the past few years, some of which included rioting, violent confrontation, and property destruction, my analysis has held, and I remain unconvinced that America is likely to descend into civil war in the near future.

Before proceeding, I want to stress that, as a scholar who studies civil conflict, I discuss the manifestations of violence here not on the basis of their underlying political ideologies but in relation to empirical definitions of different types of political violence.

Grievance doesn’t translate into violence

Researchers usually define civil wars based on a certain threshold of combatant deaths, often 1,000 or more.

In 2020, for example, only eight conflicts crossed that threshold worldwide. They happened in countries – including Syria, Iraq, Afghanistan, Nigeria, Ethiopia, and Yemen – experiencing rampant poverty and underdevelopment, nondemocratic or dysfunctional political institutions, and a long history of conflict along ethnic and religious lines.

[image omitted]

When trying to assess the likelihood of civil war, researchers first look at whether people are willing to engage in violence. Willingness is often attributed to anger and grievances over inequality or political marginalization.

Individuals or groups may have grievances with specific state or national policies, or with other groups. As their anger grows, these people may not only use aggressive and demeaning language, but also become more accepting of the idea of using violence.

Anger and grievances are probably the most frequently highlighted issues in the mainstream media, and especially in social media outlets. Studies of social media outlets have found that their algorithms are designed to amplify anger to appeal to wider groups.

Aggrieved people, however, exist almost everywhere, even in the world’s happiest countries. Feeling aggrieved and even using harsh and violent rhetoric does not mean a person is willing to take up arms against the government or one’s fellow citizens.

Risks to joining a rebellion

But even if they are fully willing, in almost every case, civil war will not happen unless these very angry people have the opportunity to organize and use violence on a large scale.

Joining a rebellion is extremely risky. You can die or be severely wounded. Your chances of winning are low. If you don’t win, even if you survive unscathed, you still risk prosecution and social alienation. You may lose your job, your savings and even your home and put your family at risk.

It doesn’t matter how angry you are, these considerations are usually prohibitive.

All these calculations are part of what economists call “opportunity costs.” Opportunity costs basically measure how much you would have to potentially give up if you were to engage in a given activity, such as rebellion.

In most countries afflicted by civil war, poverty, economic downturn and even food insecurity mean that these costs are relatively low. An unemployed farm laborer in rural Mozambique has, from an economic perspective at least, less to lose from joining an extremist insurgency than, say, Robert Scott Palmer, owner of a cleaning and restoration company from Largo, Florida.

Apparently willing to risk his livelihood by using violence against police during the Jan. 6 riot, Palmer was thwarted by other factors that are highly relevant in determining the potential for a full-fledged rebellion – the government’s capacity to punish and deter violence, and the opportunity, or lack of opportunity, for dissidents to organize and mobilize effectively enough to start a war.

For example, people who want to organize and rebel against the government will find it easier to do in remote areas where the government cannot know or reach them. Tora Bora – the cave complex in the mountain of eastern Afghanistan – is an example of such a place. Insurgents can hide and train there, practically unknown to, and untouchable by, Afghanistan’s military, which generally lacks the capabilities and capacity of its American counterpart.

The high levels of American policing and intelligence capacity mean that insurgency opportunities are rare in the U.S. Individuals who organize, arm themselves and decide to act against the government risk being detected and thwarted before they can become real threats.

Moreover, because of the low urban density of the U.S., even if such rebels are successful in organizing – in rural Alaska, for example – they will be unable to reach, let alone conquer, big cities or threaten American sovereignty in significant ways.

‘Intensified domestic terrorism’

[image omitted]

These low opportunities suggest that civil war in America is still unlikely. But this does not preclude the occurrence of other forms of less intense violence. Concerns about increased violent extremism in the United States recently led the U.S. Justice Department to establish a new domestic terrorism group.

#### Previous tensions were higher.

Kevin M. Levin 25, MA, Member, Board of Directors, National Council for History Education, Former Consultant, National Humanities Center, "No, We Are Still Not Heading Toward Another Civil War," Substack, 03/02/2025, https://kevinmlevin.substack.com/p/no-we-are-still-not-heading-toward. [italics in original]

You can’t open up a major newspaper today without reading a steady stream of op-eds lamenting the end of democracy in the United States or come across a poll predicting a civil war in the next few years. There is a balm for such doom and gloom predictions: It’s called history.

This morning I caught part of an interview between Mehdi Hasan and former Republican Congressman Joe Walsh. Early on in the interview Hasan asks Walsh, “Do you worry about civil war?” Walsh offered the following in response: “The MAGA base, they're welcoming violence... Trump wants violence, MAGA wants violence. I just don't think the American people fully understand the unprecedented moment we’re in.

There is certainly much to be worried about. We can’t go a day without reading about violent incidents taking place around the country.

But “unprecedented”? Really?

The point isn’t to suggest that these are not serious problems or that we shouldn’t be addressing them. We most certainly should, but we also need to do a better job of placing them in historical context. Somehow, in this mode of thought we lose all sight of history and context.

I suspect that most people who are predicting another civil war have an image in their mind of our own Civil War. Who can blame them. We are obsessed with our civil war. Arguably, no other moment in American history looms larger in our popular imagination than the Civil War, but perhaps this is exactly why we are so easily led astray.

The problem isn’t that we don’t know enough about the conditions that led to war in 1861 and which cost roughly 750,000 lives in four short years, though that is certainly lacking, it’s that we don’t seem to know anything about any other moment in our history.

The point here is that history often takes a back seat in these moments when everything appears to be in decline.

I’ve recommended Jon Grinspan’s wonderful book about the second half of the nineteenth century titled, *The Age of Acrimony: How Americans Fought to Fix Their Democracy*, 1865-1915, before. Grinspan tells this story through the lives of radical congressman William “Pig Iron” Kelley and his daughter, Florence Kelly. Early in the book, he writes the following:

Americans claim that we are more divided than we have been since the Civil War, but forget that the lifetime *after* the civil War saw the loudest, roughest political campaigns in our history. From the 1860s through the early 1900s, presidential elections drew the highest turnouts ever reached, were decided by the closest margins, and witnessed the the most political violence. Racist terrorism during Reconstruction, political machines that often operated as organized crime syndicates, and the brutal suppression of labor movements made this the deadliest era in American political history. The nation experienced one impeachment, two presidential elections “won” by the loser of the popular vote, and *three presidential assassinations*. Control of Congress rocketed back and forth, but neither party seemed capable of tackling the systemic issues disrupting Americans’ lives. Driving it all, a tribal partisanship captivated the public, folding racial, ethnic, and religious identities into two warring hosts. (p. x)

According to Grinspan, we are not living through unprecedented times. “It’s not that our problems are the same as those of the late nineteenth century—often they are strikingly different—but that the era in between was so unusual.” (p. xii)

Grinspan offers a vantage point from which we can look more closely at how a period that witnessed a certain amount of progress on various fronts came about. More importantly, it is a reminder that nothing is inevitable.

It’s a reminder that our history is filled with moments of intense violence, much of it racial such as the East St. Louis massacre in July 1917 and the Tulsa race massacre just a few years later in 1921.

Spend some time and read about the intense violence directed at Chinese immigrants in California beginning in the 1850s and culminating in the Chinese Exclusion Act of 1882. Michael Willrich’s new book, *American Anarchy: The Epic Struggle between Immigrant Radicals and the US Government at the Dawn of the Twentieth Century* does a great job of exploring the many violent clashes between anarchists and the federal government in the early twentieth century that inspired the rise of the civil-liberties movement.

I can’t help but think of Frederick Douglass as someone who, at the end of his long life, had every reason to be pessimistic for the nation’s future. Step back and consider the dramatic changes he had witnessed. Born into slavery, Douglass eventually freed himself and became one of the leading abolitionists in the North. Douglass pointed to the nation’s hypocrisy in its celebration as a freedom loving nation. He lived long enough to see his two sons fight to end the institution of slavery. In the years that followed, Douglass campaigned for civil rights for women and African Americans, and stood up against a growing nativism in response to an influx of immigrants.

He also lived long enough to see the gradual erosion of Black civil rights in the last years of his life.

Douglass’s defiance was on full display in one of his last major speeches delivered in Washington, D.C. on January 9, 1894.

Though it may strike down the weak to-day, it will strike down the strong to-morrow. Not a breeze comes to us now from the late rebellious States that is not tainted and freighted with negro blood. In its thirst for blood and its rage for vengeance, the mob has blindly, boldly and defiantly supplanted sheriffs, constables and police. It has assumed all the functions of civil authority. It laughs at legal processes, courts and juries, and its redhanded murderers range abroad unchecked and unchallenged by law or by public opinion. Prison walls and iron bars are no protection to the innocent or guilty, if the mob is in pursuit of negroes accused of crime. Jail doors are battered down in the presence of unresisting jailors, and the accused, awaiting trial in the courts of law are dragged out and hanged, shot, stabbed or burned to death as the blind and irresponsible mob may elect. We claim to be a Christian country and a highly civilized nation, yet, I fearlessly affirm that there is nothing in the history of savages to surpass the blood chilling horrors and fiendish excesses perpetrated against the colored people by the so-called enlightened' and Christian people of the South. It is commonly thought that only the lowest and most disgusting birds and beasts, such as buzzards, vultures and hyenas, will gloat over and prey upon dead bodies, but the Southern mob in its rage feeds its vengeance by shooting, stabbing and burning when their victims are dead.

It must have been a difficult speech to write and deliver as Douglass was forced to respond to many of the very same arguments that racist Americans had posed to the idea of Black civil rights throughout the entire nineteenth century.

And yet Douglass somehow managed to end his speech by reminding his audience of the power of the nation’s founding ideals.

But, my friends, I must stop. Time and strength are not equal to the task before me. But could I be heard by this great nation, I would call to mind the sublime and glorious truths with which, at its birth, it saluted a listening world. Its voice then, was as the trump of an archangel, summoning hoary forms of oppression and time honored tyranny, to judgement. Crowned heads heard it and shrieked. Toiling millions heard it and clapped their hands for joy. It announced the advent of a nation, based upon human brotherhood and the self-evident truths of liberty and equality. Its mission was the redemption of the world from the bondage of ages. Apply these sublime and glorious truths to the situation now before you. Put away your race prejudice. Banish the idea that one class must rule over another.

Recognize the fact that the rights of the humblest citizen are as worthy of protection as are those of the highest, and your problem will be solved; and, whatever may be in store for it in the future, whether prosperity, or adversity; whether it shall have foes without, or foes within, whether there shall be peace, or war; based upon the eternal principles of truth, justice and humanity, and with no class having any cause of complaint or grievance, your Republic will stand and flourish forever.

His faith in the nation’s future wasn’t completely extinguished, even as he watched as the door on Black civil rights was quickly closing. We know how long it took for it to begin to open again.

I am certainly not here to tell anyone how they should feel about the United States or how to assess its future. What I would suggest is that our knee-jerk predictions of civil war reveal a tendency to see violence as somehow the exception in American life or the result of an assumption that Americans are inherently a more peaceful people compared to other nations.

#### No trigger events.

Van Wart et al. 24 – Professor of public administration at Cal State San Bernardino

Montgomery Van Wart, Jeremy L. Hall, and Miranda McIntyre, “Another Civil War in America? Comparing the Social Psychology of the United States of the 1850s to Today,” Administration & Society, 56(5), 515-550. https://doi.org/10.1177/00953997241244701

Concern, then, is widespread among academics and “within the Beltway.” Despite grave worries about current levels of civil discord, most academics and political commentators consider the prospects of a successful coup or civil war to be relatively low (Kelly, 2022; Pan, 2022). A civil war is not nearly as simple as the American “North versus South” paradigm appears (at least prima facie). Many factors can interact and lead to a major violent political conflict. In what follows, we assume that the more entropic factors that exist—and the greater the intensity and duration of those factors—the more plausible a civil war becomes (Goldstone et al., 2022). As with any major historical development, however, civil wars are not inevitable even when the conditions seem ripe, because trigger events may not occur, opposition may be disorganized and unrealistic, or autocratic controls are too well entrenched (e.g., Reisch, 1991).

#### Their evidence is media hype.

Hollywood 24 – Senior Decision Scientist at RAND focusing on public safety and homeland security

John Hollywood, “Against Hyping Civil War and Mass Violence,” Rand, 11/4/2024, https://www.rand.org/pubs/commentary/2024/11/against-hyping-civil-war-and-mass-violence.html

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The hype across media about the prospect of another U.S. civil war needs a response. As a researcher on terrorism and mass shootings, I take note of things like a major Hollywood movie on the subject. But when even the staid magazine Foreign Policy felt compelled to run a series of articles addressing the possibility, things have gotten bad. One of those articles even noted that civil war would be bad for the economy. Indeed, it would.

Given the narratives, it's no surprise that, in a recent poll, a quarter of Americans expressed at least some worries that a new civil war will start after the presidential election. However, what does the evidence show? I believe that if the United States were on the brink of civil war, it's safe to assume that the level of political violence in the country would be far higher than it is.

Mass attacks on the U.S. public are rare, given the size of the country. The FBI documented 50 active shooting incidents in 2023, and few appear to have been motivated by partisan divisions.

RAND studies looking at over 600 plots for mass attacks found that, historically, close to two-thirds were personally motivated, driven by factors like local grievance, desire for infamy, delusion, and so forth. Of the remainder, around one-fifth were al Qaeda– or ISIS-motivated. Less than one-fifth were attributable to domestic political agendas.

Even the would-be assassin who shot former President Trump in July appears to have been in search of a celebrity target, rather than a political one. The shooter looked at opportunities to attack in general and chose the Butler, Pennsylvania rally out of convenience.

Outside of mass attempts to kill, the Armed Conflict Location and Event Data organization notes that incidents of political violence carried out by domestic extremists are down by more than 80 percent since 2020. There were fewer than 10 across the United States during the first eight months of 2024.

Reports of Americans' support of political violence in general appear to be inflated. The think tank Populace conducted a survey that gave Americans privacy so they would be comfortable revealing what they really thought about sensitive issues; it then compared those answers with what they were willing to tell interviewers directly. Some 20 percent told interviewers that it may be necessary to resort to political violence, but, when given privacy, only four percent reported really feeling that way. It is a sad situation that today's U.S. political and information environment apparently is driving Americans to lie about supporting political violence, even when they don't.

According to other recent survey data, Americans on both sides of the political spectrum said they are not interested in subverting democracy. Further, the primary motivation for the fraction who do support anti-democratic measures is to retaliate against political opponents who they believe—you guessed it—are working to undermine American democracy.

#### There are too many costs and risks.

Koren 22 – Professor of Political Science, PhD in international relations with research on civil conflict and peace studies

Ore Koren, “Civil war in the US is unlikely because grievance doesn’t necessarily translate directly into violence,” The Conversation, 1/14/2022, https://theconversation.com/civil-war-in-the-us-is-unlikely-because-grievance-doesnt-necessarily-translate-directly-into-violence-174456

Risks to joining a rebellion

But even if they are fully willing, in almost every case, civil war will not happen unless these very angry people have the opportunity to organize and use violence on a large scale.

Joining a rebellion is extremely risky. You can die or be severely wounded. Your chances of winning are low. If you don’t win, even if you survive unscathed, you still risk prosecution and social alienation. You may lose your job, your savings and even your home and put your family at risk.

It doesn’t matter how angry you are, these considerations are usually prohibitive.

#### Statistical analysis shows civil wars deescalate before existential severity.

Clauset 25 – Professor of Computer Science at CU Boulder, recipient of 2016 Erdos-Renyi Prize, former Omidyar Fellow at Sante Fe Institute.

Aaron Clauset, Barbara F. Walter, UCSD, Lars-Erik Cederman, ETH Zurich, and Kristian Skrede Gleditsch, University of Essex, “Escalation dynamics and the severity of wars,” Cornell University arXiv Physics and Society, March 5, 2025, https://arxiv.org/abs/2503.03945# \*figures omitted

Escalation dynamics in armed conflicts

Substantial conflict escalation is likely to require a ratcheting-up in conflict-waging effort. Repeated escalation over multiple years should thus pose significant political and logistical difficulties from repeatedly building new capacity or continually reallocating resources away from civilian needs. Distinct difficulties are likely to apply to repeated conflict deescalation. Thus, substantial escalation or deescalation in fighting should be punctuated or occasional phenomena rather than continuous, and empirical escalation factors should tend to cluster around λ = 1 (no-change). For instance, in the Afghanistan conflict (Fig. 2A), annual severity was high and relatively steady prior to 1990, when the government supported by the Soviet Union was fighting rebels heavily armed and trained by the United States, killing around 30,000 per year. From 1990, after Soviet forces withdrew, annual severity fell to a substantially lower level, around 5000 per year, reflecting the lessened direct foreign state support to both the government and the non-state actors. In contrast, conflict severity in the Guatemalan civil war (1963-1995) was relatively stable over most of its duration, with around 2000 deaths per year, except for a brief period in the early 1980s where fighting spiked to 10,000 deaths per year before returning to its previous level. For civil wars with durations T > 1 year, empirical escalation factors across all conflict years exhibit a highly symmetric distribution that is peaked at λ = 1 (Fig. 2B) and we find no evidence of a systematic tendency to escalate or deescalate. Instead, we find that (i) the most commonly observed change in severity within a conflict (44% of all escalation factors) is no-change, i.e., fighting holds steady, and (ii) the likelihood that a conflict’s annual severity may increase to be 10 or even 100 times larger in the next year closely follows the likelihood of a concomitant decrease in severity. This unconditional distribution ignores any correlations among escalation factors or correlations with conflict covariates or the conflict’s current severity, a point we return to below. We note that the abundance of λ = 1 escalation factors is likely an artifact of the PBD’s construction: for many multi-year periods within conflicts, or for some entire conflicts, the annual severities simply equal the period’s total divided by its length. However, there is no reason to expect that correcting this artifact would alter the shape of the distribution’s tails, i.e., the tendency to escalate or deescalate. We characterize the shape of the distribution of escalation factors using a piecewise model, in which with probability q, there is no change in severity this year (λ = 1) and otherwise λ is drawn from a double Pareto distribution, which has symmetric power-law tails above and below the modal value. Using standard statistical techniques [30], we find that the maximum likelihood powerlaw tail parameter is ˆα = 2.1 ± 0.1, indicating an extremely high variance distribution [31]. Furthermore, we cannot reject the Pareto distribution as a data generating process for the tails of the escalation factor distribution (pKS = 0.31±0.03). That is, the observed escalation factors are, as a group, statistically indistinguishable from an iid draw from the fitted double Pareto distribution. Interstate wars do not permit an independent characterization of their escalation factor distribution because of their smaller number in the PBD period (1945-2008) and shorter durations. However, we find that interstate war escalation factors (excluding λ = 1) are statistically indistinguishable from the empirical distribution of civil war factors (2-tailed KS test, p = 0.16), and are a plausible iid draw from the estimated model of civil war factors (pKS = 0.61 ± 0.03). That is, we find no evidence that escalation dynamics differ significantly between civil and interstate wars, even as the cumulative sizes and durations of these conflicts differ substantially (Fig. 1C), suggesting that high-variance escalation dynamics are a generic feature of armed conflict. Within civil wars, the escalation factors correlate slightly with annual severity, such that “hot” conflicts tend to deescalate in the next year, while “cold” conflicts tend to escalate (Fig. 2C). The effect at the lower end is attributable to left-censoring, because small conflicts can only become so much smaller before their severity falls below a measurable threshold (in the PBD, xmin = 25). Hence, conditioned on conflict continuing for another year at measurable severities, an otherwise symmetric distribution of conflict escalation factors (Fig. 2A) would be truncated on the left side, shifting the average escalation factor to be hλi > 1 (escalation). Although there is no such constraint on the upper end, we nevertheless observe a symmetric tendency toward deescalation among large civil wars, i.e., hλi < 1 (but no such tendency among large interstate wars Fig. S2). The cross-over point between these two regimes occurs at about xt = 500. Hence, civil wars will tend to regress, over time, toward this “warm” value of severity, although the broad variance of escalation factors will tend to obscure that pattern in any particular conflict. An important direction of future work is to understand the causes of this systematic tendency for large civil wars to deescalate, which could be related to fundamental constraints arising from population, military capabilities, recruitment, bargaining, war fatigue, or even international pressure.

The severity of civil wars

Escalation dynamics highlight how fighting intensity often changes over the course of a conflict, and our results indicate that escalation is a common pattern in armed conflicts. We now develop a generic model of severity dynamics, based on escalation factors, and determine whether escalation dynamics can explain the cumulative sizes of civil wars (Fig. 1C). The escalation model generates a conflict time series x1, x2, . . . , xT in three parts: conflict duration, initial severity, and escalation dynamics. First, we draw the conflict duration T uniformly at random from the empirical distribution of civil war durations Pr(T ) (Fig. 1C inset). Second, we draw the severity in the first year of fighting x1 uniformly at random from the empirical distribution of initial severities Pr(x1). Third, for each year 1 ≤ t < T , we draw an escalation factor λt uniformly at random from the joint distribution of civil war escalation factors and current severity Pr(λ | xt) (see Appendix C) and record xt+1 = λt xt. The simulated conflict’s total severity X is the sum of these annual severities. The escalation model is fully non-parametric, with no fitted parameters, and instead combines the empirical distributions for duration, initial severity, and escalation factors into a simple random walk model of conflict annual severity. We contrast this escalation model with a “no escalation” null model that includes effects for duration and initial severity, but omits any effect from escalation. In this model, we draw the conflict duration T and initial severity x1 as in the escalation model, and then multiply the initial severity by the duration T to obtain the simulated total severity X (this process is equivalent to setting λt = 1 for all t). The no-escalation model poorly reproduces the observed variation in civil war size over the period 1946– 2008 (Fig. 3A), but does so in an interesting way. Initial sizes and durations alone do produce a sufficient number of both very small and very large civil wars, but they produce too few conflicts of intermediate size (those between 1000 and 100,000 battle deaths). Similarly, this model tends to produce conflicts that are systematically smaller in size X for their given duration T than the empirical data (Fig. 3A inset). Although the frequency of the very largest conflicts under the model agrees with the historical record, this agreement is misleading: the model lacks the empirical tendency for large civil wars to deescalate (Fig. 2C), and hence the agreement in the upper tail of the distribution reflects an implicit overestimate of the intensity and duration of these largest conflicts. In contrast, the escalation model closely matches the entire distribution of civil war sizes, reproducing both the overall shape of the distribution, the frequency of intermediate-sized conflicts, and the frequency of the very largest conflicts (Fig. 3B). The escalation model also reproduces the observed pattern in how conflict size X tends to increase with conflict duration T (Fig. 3B inset). Hence, escalation dynamics appear to be essential for explaining the sizes of civil wars.

The severity of interstate wars

Testing the ability of escalation dynamics to explain the sizes of interstate wars requires a different approach, because we lack sufficient within-conflict information on interstate wars in the PBD to define an equivalent nonparametric model. Instead, we adapt the civil war model to interstate conflicts by defining and testing several variations to identify the sufficient conditions for generating large interstate wars. We evaluate these models using the severities of the 95 interstate conflicts in the Correlates of War data [28]. Unless otherwise stated, all versions of the interstate war escalation model have two modifications relative to the civil war escalation model. First, because interstate wars tend to be substantially shorter in duration than civil wars, in the interstate escalation models, we instead draw a conflict’s duration T from the empirical duration distribution for interstate conflicts. Second, we do not expect the tendency for large civil wars to deescalate to also appear in interstate conflicts, in which the belligerents are state actors with much greater capacity for mobilizing resources and hence are less subject to the self-limiting tendencies non-state actors experience in fighting civil wars. For instance, state-level belligerents can mobilize greater resources through taxation and conscription, and wars can expand to additional states, e.g., via alliances or geographic proximity [32, 33]. Hence, for models with escalation, we draw escalation factors λt from the unconditioned distribution of escalation factors Pr(λ), instead of the size-conditioned one. In Model 1, we again include effects only for duration and initial severity, and omit the effects of escalation. Because we lack data on war severity in the initial year of interstate conflicts in the CoW data, we instead use the total severity of wars that lasted only 1 year in duration as a proxy. Hence, in Model 1, we draw the initial severity in this way and multiply it by the drawn duration. In Model 2, we select the initial severity by using the civil war distribution of initial severities Pr(x1) and then multiply the drawn initial size by fixed factor of 20 to capture the larger baseline size of interstate conflicts. Escalation factors are then drawn from the unconditioned distribution as described above. In Model 3, we scale up the initial severities in the same way as Model 2, and then draw two escalation factors for each increment of time in the simulation. This modification captures the idea that escalation dynamics in interstate conflicts unfold at a faster time scale than in civil wars. Model 1, which omits escalation, fails to produce large interstate conflicts and fails to produce large enough conflicts for their durations (Fig. 4A), indicating that, like for civil wars, escalation dynamics are essential for producing large conflicts. In contrast, Model 2, which includes escalation, produces very heavy-tailed distributions in final conflict sizes. However, this model produces somewhat too few of the very largest conflicts, and conflicts tend to be slightly smaller than expected for their duration, relative to the empirical data (Fig. 4B). Model 3, however, closely matches both the observed sizes of interstate wars and largely captures the observed relation between conflict size and duration (Fig. 4C). (See Appendix C for additional simulation results.) The key component of Models 2 and 3 is the unconditioned distribution of escalation factors Pr(λ), which gives large conflicts an equal chance of further escalating or deescalating. In fact, Model 2 includes little other than this feature, and produces a distribution of conflict sizes that is surprisingly close to the empirical data, indicating that the asymmetric tendency of large civil wars to deescalate is the key difference between civil and interstate war sizes. The better agreement of Model 3 among the very largest conflicts suggests that more rapid escalation dynamics is sufficient mechanism for producing the largest conflicts. (We note that other variations of the model can also replicate this empirical pattern; see Appendix C.)

Forecasting civil war severity

If escalation dynamics accurately capture how the intensity of fighting can vary within an ongoing conflict, it may conceivably be used to make model-based forecasts of how large a current or potential future conflict may become. We consider two such forecasting tasks for civil war escalation. In the first, we consider hypothetical civil wars in four large states (the United States, China, India, and Nigeria) beginning in 2025 and in 2060, and we forecast the cumulative size of the hypothetical conflict. In the second, we consider three civil wars that were ongoing in 2008 (the last year of the PBD data), in Turkey, Ethiopia, and Myanmar, and forecast their eventual total duration and cumulative severity. In each case, the primary difference among these forecasts is the escalation model’s initial severity x1, which sets the initial scale of the conflict; the severity of subsequent years are governed by the generic model of civil war escalation. For the hypothetical civil wars, we base the initial severity on the country’s estimated population in the year of conflict onset, which we multiply by a random “intensity” factor γ to produce the initial size of the new conflict. To make these initial severities reflect historical patterns, we calculate the empirical distribution of intensity factors from the PBD data using the recorded initial severities, which we match to UN estimates of state populations in that first year of conflict [29]. For instance, the PKK insurgency in Turkey becomes a civil war in 1984 with 442 battle deaths relative to a population of about 47.6 million, implying an intensity factor of 442/47569000. For the ongoing civil wars, we set the initial severity x0 to be the severity in 2008. To select their future durations, we employ a simple coin-flipping model using a hazard-rate model estimated from the historical civil war duration distribution (see Appendix D). Escalation dynamics drive broad uncertainty in the severity forecasts of all four hypothetical conflicts (Fig. 5A). In the largest states (China and India), these forecasts have a modal value around 50,000 battle deaths, while in the smaller states (**United States** and Nigeria), the forecasts produce a moderately smaller modal value around 10,000 battle deaths. However, the distribution of sizes is very broad, with most of the density ranging from 1000 deaths to 1,000,000 deaths, a difference of 3 orders of magnitude. This broad variance illustrates the way in which escalation dynamics tends to amplify uncertainty in future severity, such that the size of a civil war can be broadly uncorrelated with the size of the state, i.e., a smaller nation can produce a larger civil war than a more populous nation, even as large nations have greater potential for large conflicts. Similarly, the escalation model produces broadly distributed forecasts for ongoing conflicts, with some future severity time series exhibits dramatic escalation, while others exhibit far less variation (Fig. 5B). The resulting distributions of cumulative severity for these conflicts are broad, again highlighting the inherent uncertainty caused by conflict escalation dynamics (Fig. 5C).

#### Existing controversies aren’t even close to enough.

Rose 23 – Editor of Foreign Affairs.  Mary and David Boies distinguished fellow in U.S. foreign policy at the Council on Foreign Relations

Gideon Rose, May 16 2023, “Why Today Is Not Like the 1850s,” Council on Foreign Relations, https://www.cfr.org/article/why-today-not-1850s

Still, the differences seem even more compelling. Most critically, the institution of slavery affected every aspect of southern economic, political, and social life. It was the “cornerstone” of everything else in the south, as Confederate Vice President Alexander Stephens put it, with racial dominance the organizing principle around which the rest of existence was arranged. This all-encompassing system was geographically limited to a single contiguous region of the country and could be sustained only by constant forceful repression inside and out—hence the whips and chains, the suppression of speech and assembly, and the extraterritorial reach of fugitive slave laws.

For the north, in short, there could be no lasting compromise with slavery, only victory over it or submission to it. Nothing in American life today is truly comparable, and without such a driver, you don’t get another civil war. (In Israel, by contrast, the situation today shares enough similarities with the United States in the 1850s to make the analogy disturbingly relevant there.)

### !D---LIO---2NC

#### Litany of recent conflicts prove the LIO was ineffective.

**van de Haar 25** – PhD in International Political Theory from Maastricht University, Past Professor of Political Theory at Brown University

Edwin van de Haar, “The liberal international order is dead. Long live the liberal international order.,” IEA, 6/17/25, https://iea.org.uk/the-liberal-international-order-is-dead-long-live-the-liberal-international-order/

According to Ikenberry, the key feature of the liberal international order is a system of sovereign states (preferably but not limited to liberal democracies) with open, mutual relations, governed by international law, international organisations and other agreements. Although defence cooperation (such as NATO) is an inseparable part of the liberal international order, the larger idea is to constrain power politics through international organisation, not least through the development of mutual interdependence between states. The belief is that global trade, international negotiations, and legal obligations help maintain peace. While there is little convincing evidence for this, as the many wars of recent decades demonstrate, Ikenberry and his supporters still claim that countries in the liberal international order are united by shared values and a common goal of continuous improvement—both materially and in pursuit of a “socially just world”.

Ikenberry’s view is open to criticism, as it’s debatable whether this is an accurate portrayal of international politics over the past decades, where power politics has remained a central tenet. The idea that we are moving towards a socially just world has always been utopian, but is solidly attached to liberalism in world politics, often based on erroneous interpretations of Kant’s Perpetual Peace or the writings of John Rawls. The same applies to the overly simplistic idea (also held by some classical liberals) that trade fosters peace, with Adam Smith as the main victim of misinterpretation.

Recently, Trump’s and Putin’s actions have pushed idealistic notions of international solidarity and progress to the sidelines. Interstate war is back on European soil, between countries previously tightly bound by mutual trade. International organisations like the WTO have been dysfunctional for some time, and many UN agencies are ineffective. The number of democracies worldwide is also shrinking—The Economist counted only 34 last year. In short: if the liberal international order ever really existed, it’s now largely a thing of the past.

#### The LIO is already dead – a lack of flexibility doomed the order.

**Goddard et al. 25** - Mildred Lane Kemper Professor of Political Science at Wellesley College, PhD from Columbia University

Stacie Goddard et al., “Liberalism Doomed the Liberal International Order,” Foreign Affairs, 7/28/25, https://www.foreignaffairs.com/united-states/liberalism-doomed-liberal-international-order

Few of these mourners seem truly ready to accept the order’s passing. But they should. Praying for its resurrection is not just naive; it is counterproductive. All these responses misdiagnose the order’s deepest illness and thus prescribe the wrong remedy. The liberal international order’s crisis cannot be blamed on Trump’s peculiar brand of nihilistic politics, nor on the hard neoliberal turn that the order took in the 1990s, nor on the rise of revisionist, illiberal powers such as China and Russia.

These factors did play a role, but the postwar order ultimately decayed because what many saw as its greatest strength—how its institutions, norms, and rules were grounded in liberal principles—was actually a source of weakness. By providing universally acknowledged public goods, creating inclusive institutions, and committing to the rule of law, its backers believed that the order would prove particularly hardy.

The unexpected consequence, however, was an order that was rigid and unresponsive, which only encouraged the forces clamoring for its demise. Paradoxically, if a multilateral, cooperative international order that facilitates peace and prosperity and allows liberal democracies to thrive is to be revived, its structure and procedures cannot be too rigidly pinned to liberal principles. Instead, it should be resurrected in a much more pragmatic and pluralistic form that replaces liberal proceduralism with greater political contestation.

#### The LIO is inherently unstable – no chance of revival.

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Thomas Aubrey, “Why liberals should embrace the demise of the “liberal international order,” The London School of Economics and Political Science, 12/18/25, https://blogs.lse.ac.uk/politicsandpolicy/why-liberals-should-embrace-the-demise-of-the-liberal-international-order/

The demise of the Liberal International Order has been suggested by John Ikenberry as potentially reflecting the breakdown of Enlightenment principles and modernity. Isaiah Berlin’s liberal pluralism offers an alternative interpretation: that the Order was inherently unstable. This is because the Order was grounded in a monist version of liberalism that emerged from the Enlightenment, where questions on how to organise human affairs have one true answer that are imposed upon humanity. In contrast liberal pluralism, rooted in Enlightenment ideas of toleration, acknowledges that values are often incommensurable. By embracing this plurality, liberals might construct a more resilient theoretical framework for international relations.

Monist vs Pluralist liberalisms

Monist liberal ideas emerged from the Enlightenment including from the pen of Immanuel Kant. Kant argued that an objective universal form of rationality enables individual wills to distinguish between right and wrong, thereby reconciling the individual with the idea of universality. The logic of this universality is that humanity could come to a rational agreement on how to organize society.

In his essay Perpetual Peace, Kant claimed peace between states was possible as long as the constitution of each state was republican. But Kant also provided justification for liberal states to wage war on “barbaric states” indicating there could be one true answer to the structuring of international relations. Kant argued that the international state of nature was so perilous, free states had the right to forcefully bring about a condition of peace governed by right. These monist liberal ideas became influential after 1918 through President Wilson’s League of Nations. Wilson argued that “the world must be made safe for democracy” through international law and collective security.

Herder, one of Kant’s students, crusaded against universalism and instead promoted the beauty and diversity, or plurality of individual cultures which became central to the Romantic reaction to the Enlightenment. This reaction which focused on the importance of language, culture, and feelings in humans heavily influenced Isaiah Berlin.

In his 1965 lectures on Some Sources of Romanticism Berlin noted that a singular answer to the big questions around human affairs is incompatible with freedom, and therefore likely to be ruinous. Romanticism on the other hand forces humanity to appreciate the liberal principle of tolerance, and consequently the necessity of preserving an imperfect equilibrium between competing conceptions of how life should be lived.

Berlin spent much of his life grappling with the question that given monist theories have a tendency to drift towards tyranny, liberals should instead seek refuge in a form of value pluralism to safeguard freedom. But then the challenge is, if values are plural, how can liberals ensure that freedom is not just another value competing with all the others?

During the Cold War, Berlin supported George Kennan’s containment policy to resist Soviet monism. However, once the Cold War had ended, he favoured a multi-polar world where a plurality of cultures and values coexist, implicitly rejecting Fukuyama’s Hegelian thesis of a historical end-point. Berlin sought to ground liberalism in an anti-monist view of politics by adhering to a non-utopian political theory that preached toleration.

From Berlin’s value pluralism, three key principles of foreign policy emerge including: deterring states from imposing singular visions of human affairs upon the international community and hence protecting the right for plurality to exist; tolerating non‑liberal regimes; and prioritizing economic integration among states with shared values.

A value-pluralist foreign policy

A foreign policy of deterrence is central to protect plurality. If Berlin’s vision of a pluralist liberalism is to be achieved at the level of international relations, liberal democracies need to cooperate across the globe to prevent illiberal states from imposing their monist visions on everyone else, echoing Allied resistance to Nazi Germany and Soviet containment during the Cold War. As defence spending rises across liberal democracies, such an approach is plausible although not without significant challenges.

A commitment to pluralism also means that pre‑emptive wars and attempts at regime‑change must be curtailed given they undermine respect for diversity. As Kenneth Waltz famously quipped, if the world is now safe for democracy, one has to wonder whether democracy is safe for the world. Pluralism demands toleration which is at odds with ideological crusading. Intervention is justified only when pluralism itself is attacked.

Finally economic relations between states must be structured to reflect pluralist principles. Given there is no international sovereign authority, sustainable trade requires countries to have shared values, highlighting that economic integration with illiberal states is inherently unstable. The German liberal thinker Wilhelm Röpke argued that economic integration presupposes social integration, hence trade between countries with different values is prone to collapse. Post-1945 trade theorists including James Meade also concluded that positive outcomes for free trade require countries to adopt reasonably similar objectives for their domestic policies.

While the General Agreement on Tariffs and Trade signed in 1947 (GATT) was predicated on the liberal principle of non-discrimination and the equality of competitive conditions, its successor the World Trade Organization (WTO), has enabled an illiberal country, China, to dominate the global trading system. Large scale state subsidies and state‑owned enterprises in China have become ubiquitous, distorting global markets such as in electric vehicles.

The current WTO framework is therefore undermining liberalism which is one of the reasons why liberal democracies are experiencing a rise in support for nationalist authoritarianism and self-reliance. But the lurch towards protectionism also risks concentrating power within firms domestically and eroding freedom. Both paths are, in effect, a road to serfdom.

Pluralism requires de‑risking from authoritarian regimes while deepening trade among liberal partners. Europe’s shift away from Russian energy illustrates the challenges of such transitions. With China, de‑risking is more complex given deeper integration. However the EU’s Economic Security Strategy does reflect a growing recognition of the need for resilience. In addition, urgent reform is required of Western agricultural protectionism which would not only demonstrate commitment to liberal principles but also provide cheaper food for voters. Without such adjustments, liberal states risk sliding into protectionism.

Liberals should recognise the demise of the Liberal International Order as the symptom of the failure of a monist version of liberalism. Instead of mourning this end, they should embrace it and see it as an opportunity to reconstruct liberalism along pluralist foundations. A pluralist liberalism may provide a more fruitful path to sustain freedom in an increasingly unstable world.

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