# 1NC Round 1 NSD

### 1

#### The state exists with necessitation of rejecting deviancy from the ideal Man. The 1ac’s understanding of the political is grounded in this fantastical idea of incorporation, where the question is always who possesses enough personhood to constitute the public. Their reform is uniquely violent—even so-called successful movements broaden the scope of Western Man by necessitating a new group to join its oppressive regime. Rights-based progress is not possible—the very structure of western jurisprudence prevents incremental change by constantly finding new voices to exclude and otherizes those voices by saying they “need” more rights. Thus, the role of the ballot is to deconstruct the Western Man.

Weheliye 14

Alexander Weheliye, Professor of African American Studies at Northwestern University, 2014, “Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human” Dulles RB

We are in dire need of alternatives to the legal conception of personhood that dominates our world, and, in addition, to not lose sight of what re­mains outside the law, what the law cannot capture, what it cannot magi­cally transform into the fantastic form of property ownership. Writing about the connections between transgender politics and other forms of identity- based activism that respond to structural inequalities, legal scholar Dean Spade shows how the focus on inclusion, recognition, and equality based on a narrow legal framework (especially as it pertains to antidiscrimination and hate crime laws) not only hinders the eradication of violence against trans people and other vulnerable populations but actually creates the condition of possibility for the continued unequal “distribution of life chances.”22 If demanding recognition and inclusion remains at the center of minority politics, it will lead only to a delimited notion of personhood as property that zeroes in comparatively on only one form of subjugation at the expense of others, thus allowing for the continued existence of hierarchical differ­ences between full humans, not-quite-humans, and nonhumans. This can be gleaned from the “successes” of the mainstream feminist, civil rights, and lesbian-gay rights movements, which facilitate the incorporate[ed]ion of a privileged minority into the ethnoclass of Man at *the* cost of the still and/or newly criminalized and disposable populations (women of color, the black poor, trans people, the incarcerated, etc.).23 To make claims for inclusion and humanity via the U.S. juridical assemblage removes from view that the law itself has been thoroughly violent in its endorsement of racial slavery, indigenous genocide, Jim Crow, the [PIC] prison-industrial complex, domestic and international warfare, and so on, and that it continues to be one of the chief instruments in creating and maintain[s]ing the racializing assemblages in the world of Man. Instead of appealing to legal recognition, Julia Oparah suggests counteracting the “racialized (trans)gender entrapment” within the [PIC] prison-industrial complex and beyond with practices of “maroon abo­lition” **(**in reference to the long history of escaped slave contraband settlements in the Americas) to “foreground the ways in which often overlooked African diasporic cultural and politicallegacies inform and undergird anti- prison work,” while also providing strategies and life worlds not exclusively centered on reforming the law**.**24 Relatedly, Spade calls for a radical politics articulated from the “‘impossible’ worldview of trans political existence,” which redefines “the insistence of government agencies, social service pro­viders, media, and many nontrans activists and nonprofiteers that the ex­istence of trans people is impossible.”25 A relational maroon abolitionism beholden to the practices of black radicalism and that arises from the in­compatibility of black trans existence with the world of Man serves as one example of how putatively abject modes of being need not be redeployed within hegemonic frameworks but can be operationalized as variable liminal territories or articulated assemblages in movements to abolish the grounds upon which all forms of subjugation are administered**.**

#### Power operates not by exclusion but by incorporation and capture – this is a machine known as faciality: a mode of coding which includes all bodies into spheres of recognition but in wholly differential ways – the 1AC conceives of power as a scale between inclusion and non-inclusion – you should instead understand it as a circle with an idealized face at the center and deviant faces along its circumference. Your staticized ubjecthood cannot account for the infinite proliferation of identities within this machine which guarantees domination

Saldanha 07Arun Saldanha, Associate Professor of Geography, Environment, and Society at University of Minnesota, Senior Lecturer of Social Sustainability at Lancaster University, 2007, “Psychedelic White: Goa Trance and the Viscosity of Race,” / MM

My disagreement is not with Fanon’sand Martín Alcoff’sinsistence on embodiment and emotion, but with their reliance on a Hegelian notion of recognition to explain encounter.Because of this they tend to treat white and nonwhite not only as a dyad, but as almost naturally opposed entities. There is, then, little attention paid to the complicated processes whereby some racial formations become dominant,that is, how racial formations emerge from material conditions and collective interactions, which greatly exceed the spatiality of self versus other. Deleuze and Guattari’s concept of faciality is not based on an intersubjective dialectics enlarged to world-historical scope. In fact, Deleuze and Guattari stronglydistance themselves from phenomenology and psychoanalysis**.** First of all, for them**,** it isn’t consciousness but an abstract machine of faciality that arranges bodies into relations of power. And second, faciality constantly invents new faces to capture deviant bodies, multiplying possible positions far beyond any binaries such as black/white (though binarization can be an important effect**).** That is precisely its strength. There are thousands of encounters, thousands of trains. Deleuze and Guattari believe faciality’s imperialism arose with institutional Christianity. Being imposed in lands populated by different phenotypes, faciality became a matter of imperialist racialization. That faciality originated in Renaissance humanism and depictions of Jesus seems a plausible if one-sided interpretation. It is less relevant than Deleuze and Guattari’s unusual theory of contemporary racism**:** If the face is in fact Christ, in other words, your average ordinary White Man, then the first deviances, the first divergence-types, are racial: yellow man, black man, men in the second or third category. They are also inscribed on the [white] wall [of signification], distributed by the [black] hole [of subjectivity]. They must be Christianized, in other words, facialized. European racism as the white man’s claim has never operated by exclusion, or by the designation of someone as Other: it is instead in primitive societies that the stranger is grasped as an “other.” Racism operates by the determination of degrees of deviance in relation to the White-Man face, which endeavors to integrate nonconforming traits into increasingly eccentric and backward waves, sometimes tolerating thematgiven places under given conditions, in a given ghetto, sometimes erasing them from the wall, which never abides alterity (it’s a Jew, it’s an Arab, it’s a Negro, it’s a lunatic...). From the viewpoint of racism, there is no exterior, there are no people on the outside. There are only people who should be like us and whose crime it is not to be.5 For Anjuna’s psy-trance parties, there were “no people on the outside.” Locals, domestic tourists, charter tourists, and beggars would join the white Goa freaks on the dance floor, sometimes even in Nine Bar. In fact, as with the United Colors of Benetton, it will be remembered that the rhetoric of PLUR demonstrated faciality’s inclusiveness—the parties were supposed to be open to all. But immediately, the faciality machine would place all bodies in relation to the Goa freak standard, both spatiotemporally and subjectively, measuring their acceptability through increasingly meticulous signs: sociochemical monitoring, scene savviness, chillum circles, sexual attractiveness. Many nonfreaks felt uneasy being pigeonholed like this—especially domestic tourists, who would retreat to the darker corners. The result was viscosity, bodies temporarily becoming impenetrable—more or less. It would seem to me that to understand the intricate hierarchies of racism, a framework that allows for gradual and multidimensional deviances is preferable to a dialectical model. Faciality also explains why after colonialism, with television and tourism, there is scarcely place left for any “dark others.” Everyone is included; everyone is facialized. At the same time, Euro-American ways of life continue to spread, and White Man (Elvis Presley, Sylvester Stallone, David Beckham) remains the global standard against which all other faces are forced to compete. What this account of racism has in common with the Fanonian is that whiteness is the norm, even in our “post”-colonial era. Where it differs, however, is that deviance is based not on lack of recognition or negation or annihilation of the other, but on subtle machinic differentiations and territorializations. The virtual structures behind racial formations don’t look like formal logic (a/not-a; they continually differentiate as actual bodies interact and aggregate. Racism, then, can’t be countered with a Hegelian sublation

#### Outsourcing due to US unionization just exports labor exploitation onto the global south – faciality in progress.

https://www.managementstudyguide.com/case-against-labor-unions.htm

By the 1990’s, almost all industries in the nation were tired of the oppressive tactics used by labor unions. Labor unions were never interested in win-win situations. Instead, they were interested in gaining at the expense of others. This is the reason that fiber optic cables changed the world! When it became possible to work from remote locations, companies queued up to outsource their work. Outsourcing was extremely cheap because of two reasons. Firstly, there were differences in the currency rates of two countries. This made one country’s money more valuable in another country. However, the main reason was that the third world countries did not have labor unions to raise prices. Hence, outsourcing became a proposition that was too good to refuse. The irrational raising of wages ended with millions of people losing their jobs as corporations found viable alternatives at offshore locations! To sum it up, labor unions do the exact opposite of what they are supposed to do. Instead of protecting the worker's interest, they end up harming them.

#### We embrace Habeas Viscus. Instead of relying on narrow, rights based legal solutions, the alternative plays with the law by exploring the power of liminal spaces. We are new freedom, a fresh start, an understanding of the state as something that isn’t necessary and defining. The state will never release itself from Western Man, so why do we stay reliant on it?

Weheliye 4 [Alexander G. Weheliye, (Alexander G. Weheliye is Professor of African American Studies and English at Northwestern University.) "Habeas Viscus: Racializing Assemblages, Biopolitics, And Black Feminist Theories Of The Human" Duke University Press., 8-1-2014, <https://www.dukeupress.edu/habeas-viscus>] / MM \*brackets in original text

Because black cultures have frequently not had access to Man’s language, world, future, or humanity, **black studies has developed a set of assemblages through which to perceive and understand a world in which subjection is but one path to humanity**, neither its exception nor its idealized sole feature. Yet black studies, if it is to remain critical and oppositional, cannot fall prey to juridical humanity and its concomitant pitfalls, since this only affects change in the domain of the map but not the territory. In order to do so, the hieroglyphics of the flesh should not be conceptualized as just exceptional or radically particular, since this habitually leads to **the comparative tabulation of different systems of oppression that then serve as the basis for defining personhood as possession.** As Frantz Fanon states: “All forms of exploitation are identical, since they apply to the same ‘object’: man.”28 Accordingly, humans are exploited as part of the Homo sapiens species for the benefit of other humans, which at the same time yields a surplus version of the human: Man. **Man represents the western configuration of the human as synonymous with the** heteromasculine, white, propertied, and **liberal subject that renders all those who do not conform** to these characteristics **as exploitable nonhumans, literal legal no-bodies.** If we are to affect significant systemic changes, then we must locate at least some of the struggles for justice in the region of humanity as a relational ontological totality (an object of knowledge) that cannot be reduced to either the universal or particular. According to Wynter, **this process requires us to recognize the “emancipation** from **the psychic dictates of our present** . . . **genre of being human and therefore from ‘the unbearable wrongness of being,’ of desetre, which it imposes upon . . . all non-white peoples**, as an imperative function of its enactment as such a mode of being[;] this emancipation had been effected at the level of the map rather than at the level of the territory.”29 The level of the map encompasses the nominal inclusion of nonwhite subjects in the false universality of western humanity in the wake of radical movements 136 Chapter Eight of the 1960s, while the territory Wynter invokes in this context, and in all of her work, is the figure of Man as a racializing assemblage. Wielding this very particular and historically malleable classification is not an uncritical reiteration of the humanist episteme or an insistence on the exceptional particularity of black humanity. Rather, Afro-diasporic cultures provide singular, mutable, and contingent figurations of the human, and thus do not represent mere bids for inclusion in or critiques of the shortcomings of western liberal humanism. The problematic of humanity, however, needs to be highlighted as one of the prime objects of knowledge of black studies, since not doing so will sustain the structures, discourses, and institutions that detain black life and thought within the strictures of particularity so as to facilitate the violent conflation of Man and the human. Otherwise, the general theory of how humanity has been lived, conceptualized, shrieked, hungered into being, and imagined by those subjects violently barred from this domain and touched by the hieroglyphics of the flesh will sink back into the deafening ocean of prelinguistic particularity. This, in turn, will also render apparent that black studies, especially as it is imagined by thinkers such as Spillers and Wynter, is engaged in engendering forms of the human vital to understanding not only black cultures but past, present, and future humanities. As a demonic island, black studies lifts the fog that shrouds the laws of comparison, particularity, and exception to reveal an aquatic outlook “far away from the continent of man.”30 The poetics and politics that I have been discussing under the heading of habeas viscus or the flesh are concerned not with inclusion in reigning precincts of the status quo but, in Cedric Robinson’s apt phrasing, “the continuing development of a collective consciousness informed by the historical struggles for liberation and motivated by the shared sense of obligation to preserve [and I would add also to reimagine] the collective being, the ontological totality.”31 Though **the laws of Man place the flesh outside the ferocious and ravenous perimeters of the legal body, habeas viscus defies domestication both on the basis of particularized personhood as a result of suffering, as in human rights discourse, and on the grounds of the universalized version of western Man**. Rather,habeas viscus **points to the terrain of humanity as a relational assemblage exterior to the jurisdiction of law** given that the law can bequeath or rescind ownership of the body so that it **becomes the property of proper persons but does not possess the authority to nullify the politics and poetics of the flesh found in the traditions of the** Freedom 137 oppressed. As a way of conceptualizing politics, then, **habeas viscus diverges from the discourses and institutions that yoke the flesh to political violence in the modus of deviance. Instead, it translates the hieroglyphics of the flesh into a potentiality in any and all things, an originating leap in the imagining of future anterior freedoms and new genres of humanity. To envision habeas viscus** as a forceful assemblage of humanity **entails leaving behind the world of Man and some of its attendant humanist pieties.** As opposed to depositing the flesh outside politics, the normal, the human, and so on, we need a better understanding of its varied workings in order to disrobe the cloak of Man, which gives the human a long-overdue extreme makeover; or, in the words of Sylvia Wynter, “the struggle of our new millennium will be one between the ongoing imperative of securing the well-being of our present ethnoclass (i.e. western bourgeois) conception of the human, Man, which overrepresents itself as if it were the human itself, and that of securing the well-being, and therefore the full cognitive and behavioral autonomy of the human species itself/ourselves.”32 **Claiming and dwelling in the monstrosity of the flesh present some of the weapons in the guerrilla warfare to “secure the full cognitive and behavioral autonomy of the human species,” since these liberate from captivity assemblages of life, thought, and politics from the tradition of the oppressed and, as a result, disfigure the centrality of Man as the sign for the human.** As an assemblage of humanity, habeas viscus animates the elsewheres of Man and emancipates the true potentiality that rests in those subjects who live behind the veil of the permanent state of exception: freedom; assemblages of freedom that sway to the temporality of new syncopated beginnings for the human beyond the world and continent of Man. German r&b group Glashaus’s track “Bald (und wir sind frei) [Soon (and We Are Free)]” performs this overdetermined idea of freedom as disarticulated from Man both graphically and sonically. Paying tribute to both the nineteenth-century spiritual “We’ll Soon Be Free,” written on the eve of the American Civil War, and Donny Hathaway’s 1973 recording, “Someday We’ll All Be Free,” Glashaus’s title “Bald (und wir sind frei)” enacts the disrupted yet intertwined notions of freedom, temporality, and sociality that I am gesturing to here.33 In contrast to its predecessors, which are resolutely located in the future via the use of soon/someday and the future tense, Glashaus’s version renders freedom in the present tense, albeit 138 Chapter Eight qualified by the imminent future of “bald [soon]” and by the typographical parenthetical enclosure of “(und wir sind frei) [and we are free].” The flow of the parentheses intimates both distance and nearness, ragging the homogeneous, empty future of “soon” with a potential present of a “responsible freedom” (Spillers) and/as sociality. The and and the parentheses are the conduits for bringing-into-relation freedom’s nowtime and its constitutive potential futurity without resolving their tension. The lyrics of “Bald (und wir sind frei)” once again exemplify this complementary strain in that the words in the verses are resolutely future oriented, ending with the invocation of “bald” just before the chorus, which, held in the potential abyss of the present, repeats, “und wir sind frei.” Likewise, in the verses, Glashaus’s singer Cassandra Steen, accompanied only by a grand piano, just about whispers, whereas she opens up to a more mellifluous style of singing in the chorus; as a result, the verses (bald/future) sound constricted and restrictive but only when heard in relation to the expansive spatiality of the chorus (present). What initially looks like a bracketed afterthought on the page punctures the putatively central point in the sonic realm. It is not a vacant, uniform, or universal future that sets in motion liberty but rather the future as it is seen, felt, and heard from the enfleshed parenthetical present of the oppressed, since this group’s now is always already bracketed (held captive and set aside indefinitely) in, if not antithetical to, the world of Man. **The domain of habeas viscus represents one significant mechanism by which the world of Man constrains subjects to the parenthetical, while at the same time disavowing this tendency via recourse to the abnormal and/ or inhuman. Heard, seen, tasted, felt, and lived in the** ethereal **shadows of Man’s world**, however, a **habeas viscus unearths the freedom that exists within the** hieroglyphics of the **flesh**. For the oppressed the future will have been now, since Man tucks away this group’s present in brackets. Consequently, the future anterior transmutes the simple (parenthetical) present of the dysselected into the nowtime of humanity during which the fleshy hieroglyphics of the oppressed will have actualized the honeyed prophecy of another kind of freedom (which can be imagined but not [yet] described) in the revolutionary apocatastasis of human genres.

into the universal.

#### **Judges have a responsibility to encourage educational spaces that are critical of everything**

Schlag 3 (Pierre, Distinguished Prof. @ U. of Colorado and Byron R. White Professor @ Colorado Law School, 57 U. Miami L. Rev. 1029) / MM

The presumption is that the words of the judge (if they are well crafted) will effectively produce a social reality that corresponds roughly with the words uttered. But what reason is there to believe this? False Empowerment (No. 2) The endlessly repeated question in first year, "What should the court do?" leads law students to believe that courts respond to the force of the better argument. This would be tolerable if one added two provisos:1. The better argument often means little more than the one the courts are predisposed to believe; and 2. In the phrase "force of better argument" it's important to attend not just to the "better" part, but to the other term as well. False Empowerment (No. 3) Law students first learn of many complex social and economic realities through the medium of case law. What they learn is thus the law's vision of these economic and social realities. Not surprisingly, there is an almost magical correspondence between legal categories and social or economic practices. This magical fit leads law students (later to become law professors) to have an extremely confident view of the efficacy of law. Many law students are cured of this belief-structure by a stay in the legal clinic or by law practice. n4 There is one group of people, however, who are generally not cured of this belief-structure at all, but whose faith is actually intensified. These are the people who hold prestigious judicial clerkships where an emotional proximity to and identification with their judge ("my judge") leads to an even greater confidence in the efficacy of law. These people are frequently chosen to teach in law schools. False empowerment can be disempowering. It can also lead to pessimism and despair. Many people react to a loss of faith in law or legal studies with despair or pessimism. But this is the despair and pessimism that comes from giving up a naieve or a romantic vision of law and/or legal studies. The onslaught of this despair and pessimism is a good thing. It is like the thirty-something who realizes that he is mortal and that life is brief. Generally, this is not welcome news. At the same time, it may help prevent a life spent in Heideggerian dread, tanning salons, or the interstices of footnote 357.When the academic loses faith in law or legal studies, typically that person is most troubled because they have lost the framework that makes their academic project possible. But so what? Isn't the demand that law conform to an academic project arguably a selfish one? The Con, The Joke, and The Ironic Truth The Con: In the courtroom, the appellate judge is typically seated behind an elevated bench. On the classroom blackboard the appellate judge is chalked in above the plaintiff and the defendant. This is both a reflection and a reinforcement of the belief that the appellate judge is an intellectually and politically privileged legal actor. The Joke: In actuality, the appellate judge is a person who operates in conditions of severe information deficits and whose outlook is thoroughly manipulated by professional rhetoricians. Very often he has little or no understanding of the configurations of the social field to which his rulings will apply. What's more, this is a person who is prohibited from talking about the social field, except with a highly restricted number of people. The Ironic Truth: On the other hand, because we believe the appellate judge is a particularly privileged intellectual and political actor, we contribute to making him so. Legal intellectuals like to believe that law is an intelligent enterprise. They like to believe that the law offers an interesting vocabulary, grammar, and rhetoric through which to think about the world and law itself. This is naive. The political demand that law be efficacious means that law must track, must indeed incorporate popular beliefs about social and economic identities, causation, linguistic meaning, and so forth. (Those beliefs are often intellectually bereft.)The Argument Room The argument room is a place where academic advocates go to argue passionately about law and politics. (Apologies to Monty Python.) Within the room, arguments are won and lost; triumphs and defeats are had. But generally, no one outside the room pays much attention to what goes on inside the room. Sometimes there is seepage and fragments of the conversations are heard outside the room. Participants most often spend their time arguing about what should happen outside the room. This they call “knowledge” or "understanding" or "jurisprudence" or “scholarship” or “politics.” The one thing that generally cannot be talked about inside the room is the construction of the room itself. Politics (No. 1) For progressive legal thinkers, politics is a "theoretical unmentionable": The concept "politics" does a great deal of theoretical work and yet its identity remains generally immune from scrutiny. The categories (right, left) and the fundamental grammar of politics (progress, reaction, and so forth) generally go unquestioned. Oddly, while everything else seems to be contingent, conditional, contextual, and so on, the categories of politics seem to be oddly stable, nearly transcendent.

#### I get new 2nr responses to the 1AC – a) I don’t know the implications of each argument until after they are used in the 1ar which means it is impossible for me to engage with it. b) it is key to clash so I can better engage with the aff.

### 1NC – Turn

#### No impact to the economy – BUT – decline increase cooperation.

Christina L. **Davis &** Krzysztof J. **Pelc 17**, Christina L. Davis is a Professor of Politics and International Affairs at Princeton; Krzysztof J. Pelc is an Associate Professor of Political Science at McGill University, “Cooperation in Hard Times: Self-restraint of Trade Protection,” Journal of Conflict Resolution, 61(2): 398-429

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

### 1NC – Mandatory Arbitration

#### Alt cause – *mandatory arbitration*

Stone and Colvin 15 [Katherine V.W. Stone, Professor at the UCLA School of Law and Alexander J.S. Colvin, Alexander Associate Dean for Academic Affairs, Diversity, and Faculty Development and the Martin F. Scheinman Professor of Conflict Resolution at Cornell University. The arbitration epidemic: Mandatory arbitration deprives workers and consumers of their rights, Economic Policy Institute, 12-7-2015, Accessible Online at http://www.epi.org/publication/the-arbitration-epidemic/] 7-30-2017

In the past three decades, the Supreme Court has engineered a massive shift in the civil justice system that is having dire consequences for consumers and employees. The Court has enabled large corporations to force customers and employees into arbitration to adjudicate practically all types of alleged violations of countless state and federal laws designed to protect citizens against consumer fraud, unsafe products, employment discrimination, nonpayment of wages, and other forms of corporate wrongdoing. By delegating dispute resolution to arbitration, the Court now permits corporations to write the rules that will govern their relationships with their workers and customers and design the procedures used to interpret and apply those rules when disputes arise. Moreover, the Court permits corporations to couple mandatory arbitration with a ban on class actions, thereby preventing consumers or employees from joining together to challenge systemic corporate wrongdoing. As one judge opined, these trends give corporations a “get out of jail free” card for all potential transgressions. These trends are undermining decades of progress in consumer and labor rights. This report tracks these developments and presents the most recent research findings, summarized here:

It is common for employees to be presented with terms of employment that include both a clause that obligates them to arbitrate all disputes they might have with their employer and one that prohibits them from pursuing their claims in a class or collective action in court.

Employees subject to mandatory arbitration can no longer sue for violations of many important employment laws, including rights to minimum wages and overtime pay, rest breaks, protections against discrimination and unjust dismissal, privacy protection, family leave, and a host of other state and federal employment rights.

### 1NC - Strikes

#### Strikes do more harm than good – they stifle productivity, risk market disruption, and harm ununionized people

Richard A. Epstein 20, legal scholar known for writings on law, economics, and classical liberalism, Laurence A. Tisch Professor of Law at New York University, James Parker Hall Distinguished Service Professor of Law at the University of Chicago 1/27/20, “The Decline Of Unions Is Good News”, https://www.hoover.org/research/decline-unions-good-news

All of these pro-union critiques miss the basic point that the decline of union power is good news, not bad. That conclusion is driven not by some insidious effort to stifle the welfare of workers, but by the simple and profound point that the greatest protection for workers lies in a competitive economy that opens up more doors than it closes. The only way to achieve that result is by slashing the various restrictions that prevent job formation, as Justin Haskins of the Heartland Institute notes in a recent article at The Hill. The central economic insight is that jobs get created only when there is the prospect of gains from trade. Those gains in turn are maximized by cutting the multitude of regulations and taxes that do nothing more than shrink overall wealth by directing social resources to less productive ends. President Trump is no master of transaction-cost economics, and he has erred in using tariffs as an impediment to foreign trade. But give the devil his due, for on the domestic front he has repealed more regulations than he has imposed and lowered overall tax rates, especially at the corporate level. During the 2016 election, President Obama chided Trump by saying: “He just says, ‘Well, I’m going to negotiate a better deal.’ Well, what, how exactly are you going to negotiate that? What magic wand do you have? And usually the answer is, he doesn’t have an answer.” This snarky remark reveals Obama’s own economic blindness. The gains in question don’t come from any “negotiations.” And they don’t require any “magic wand.” They come from unilateral government decisions that allow for private parties on both sides of a transaction to negotiate better deals for themselves. True to standard classical liberal principles, the market has responded to lower transaction costs with improvements that Obama, as President, could only have dreamed of creating. Overall job growth was 5.53 million jobs between 2007 and 2017. But new job creation has exceeded 7 million in the first three years of the Trump administration. In addition, the sharp decline in manufacturing jobs that started in the late Clinton years and which continued throughout the Obama years has also been reversed. Over 480,000 manufacturing jobs have been added to the economy since Trump took office, compared to the 300,000 manufacturing jobs lost in the eight years under Obama. Happily, the distribution of these jobs has been widespread, causing drops in Hispanic and African unemployment levels to 3.9 percent and 5.5. percent respectively, both new lows. Basic neoclassical theory predicts that regulatory burdens hit lowest paid workers the hardest. Hence, the removal of those burdens gives added pop to their opportunities and to the economy at large. Trump’s domestic labor performance is even better than these numbers suggest. Too many state-level initiatives hurt employment, like raising the minimum wage or imposing foolish legislation such as California’s Assembly Bill 5, which takes aim at the gig economy. The surest way to improve the situation is to repeal these regulations en masse. But progressive prescriptions to strengthen unions cut in exactly the wrong direction. Unions are monopoly institutions that raise wages through collective bargaining, not productivity improvements. The ensuing higher labor costs, higher costs of negotiating collective bargaining agreements, and higher labor market uncertainty all undercut the gains to union workers just as they magnify losses to nonunion employers, as well as to the shareholders, suppliers, and customers of these unionized firms. They also increase the risk of market disruption from strikes, lockouts, or firm bankruptcies whenever unions or employers overplay their hands in negotiation. These net losses in capital values reduce the pension fund values of unionized and nonunionized workers alike. Employers are right to oppose unionization by any means within the law, because any gains for union workers come at the expense of everyone else. Of course, the best way for employers to proceed would be to seek efficiency gains by encouraging employee input into workplace operations—firms are quite willing to pay for good suggestions that lower cost or raise output. But such direct communications between workers and management are blocked by Section 8(a)(2) the National Labor Relations Act (NLRA), which mandates strict separation between workers and firms. This lowers overall productivity and often prevents entry-level employees from rising through the ranks. So what then could justify this inefficient provision? One common argument is that unions help reduce the level of income inequality by offering union members a high living wage, as seen in the golden age of the 1950s. But that argument misfires on several fronts. Those high union wages could not survive in the face of foreign competition or new nonunionized firms. The only way a union can provide gains for its members is to extract some fraction of the profits that firms enjoy when they hold monopoly positions. When tariff barriers are lowered and domestic markets are deregulated, as with the airlines and telecommunications industries, the size of union gains go down. Thus the sharp decline in union membership from 35 percent in both 1945 and 1954 to about 15 percent in 1985 led to no substantial increase in the fraction of wealth earned by the top 10 percent of the economy during that period. However, the income share of the top ten percent rose to about 40 percent over the next 15 years as union membership fell to below 10 percent by 2000. But don’t be fooled—that 5 percent change in union membership cannot drive widespread inequality for the entire population, which is also affected by a rise in the knowledge economy as well as a general aging of the population. The far more powerful distributive effects are likely to be those from nonunion workers whose job prospects within a given firm have been compromised by higher wages to union workers. It is even less clear that the proposals of progressives like Sanders, Warren, and Buttigieg to revamp the labor rules would reverse the decline of unions. Not only is the American labor market more competitive, but the work place is no longer dominated by large industrial assembly lines where workers remain in their same position for years. Today, workforces are far more heterogeneous and labor turnover is far higher. It is therefore much more difficult for a union to organize a common front among workers with divergent interests. Employers, too, have become much more adept at resisting unionization in ways that no set of labor laws can capture. It is no accident that plants are built in states like Tennessee and Mississippi, and that facilities are designed in ways to make it more difficult to picket or shut down. None of these defensive maneuvers would be necessary if, as I have long advocated, firms could post notices announcing that they will not hire union members, as they could do before the passage of the NLRA. Such changes to further weaken unions won’t happen all at once. But turning the clock back to increase union power is not the answer. It will only cripple the very workers whom those actions are intended to help.

### 1NC – Wages

#### Low wages inevitable and structural---labor monopsony, non-compete agreements and no unions

Smith 6-11-2018 – PhD, former assistant professor of finance at Stony Brook University (Noah, “Commentary: A job market this tight should deliver bigger raises,” *Chicago Tribune*, <http://www.chicagotribune.com/business/columnists/ct-biz-job-market-raises-20180611-story.html)//BB>

With the economy strong and unemployment low, why is wage growth so sluggish? Lots of economists and pundits are debating this vexing question. When the labor market gets tight, wages are supposed to rise faster. Instead, median wage growth is slower than it was back in 2016: The most benign explanation is that there's no mystery here -- total compensation, which includes both wages and benefits, may be accelerating: The first quarter of 2018 did see substantial compensation increases -- an annualized rate of almost 4 percent. But one quarter doesn't make a trend. In 2017, compensation growth was running at about 2.5 percent. That's lower than in the early 2000s, even though more prime-age Americans are at work now than then. Another benign explanation is that despite extremely low unemployment, the economy still isn't really at full employment yet. The Great Recession lasted so long that many workers simply gave up looking for jobs -- these people were classified not as unemployed, but as out of the labor force altogether. Some argue that when we take this shadow unemployment into account, the recovery -- and the associated wage growth -- are right on track. However, even in this picture, 2017 looks a bit weak. Also, using total compensation instead of wages might not be a good idea, because benefits might be increasing due to factors unrelated to the business cycle, such the rapid rise in health-care costs. If this is the case, then the disparity between now and the early 2000s increases -- wage growth in early 2018 has been equal to or lower than the trough of the early 2000s business cycle. There's also a possibility that some of the people who dropped out of the labor force during the Great Recession weren't really unemployed, but were just people who decided not to have formal jobs anymore by working under the table or in the black market. If that's true, then using prime-age employment overstates the unemployment rate, meaning that wage growth is even slower than it ought to be at this point in the cycle. So perhaps things aren't OK. It's possible that structural forces, unrelated to the business cycle, may be putting long-term downward pressure on wages. One such factor might be what economists call monopsony, or concentrated market power. Evidence is piling up that employers in the U.S. are able to hold down wages because it's hard for workers to find new jobs at higher pay in the area. If this power is greater now than in past years, it could be restraining wages, as Nobel economist Paul Krugman explains in an excellent blog post. Other structural factors -- increased use of noncompete agreements, and the continued decline of unions -- might be increasing employers' power to avoid raising pay. The idea that employer power is holding down wages is becoming more popular.

#### Wages not key to the economy growth- no effect on poverty proves

Dixon ’17 (Lauren is a senior editor for Talent Economy, “Tackling Global Displacement Is in the U.S. Security Interest,” News Deeply, Oct. 10, 2017, <https://www.newsdeeply.com/refugees/community> /2017/10/10/tackling-global-displacement-is-in-the-u-s-s-security-interest)-jg

Minimum Wages and Poverty Proposals to increase the minimum wage can be politically popular because they are viewed as being a way of helping the poor. However, evidence from a large number of academic studies suggests that minimum wage increases don't reduce poverty levels. Some of the reasons include: Many poor Americans (63.5%) do not work, and thus aren't earning wages.42 Even among the working poor, the relationship between earning a low hourly wage rate and living in poverty is weak and has become weaker over time. That is because most workers who gain from a minimum wage increase live in nonpoor families and most of the working poor already have wages above the required minimums.43 While an increase in the minimum wage will lift some families out of poverty, other low-skilled workers may lose their jobs, which reduces their income and drops their families into poverty.44 If a minimum wage is partly or fully passed through to consumers in the form of higher prices, it will hurt the poor because they disproportionately suffer from price inflation.45 Relatively few poor households would benefit from a minimum wage increase even if there were no negative employment or other affects. In the recent federal minimum wage increase from $5.15 to $7.25, only 15.8 percent of the workers who were expected to gain from it lived in poor households.46 In the current proposal to raise it to $9.50, only 11.3 percent of the workers who would gain live in poor households.47 And of those who would gain, 63 percent are second or third earners living in households with incomes twice the poverty line. Since 1995, eight studies have examined the income and poverty effects of minimum wage increases, and all but one have found that past minimum wage hikes had no effect on poverty.48 One recent academic study found that both state and federal minimum wage increases between 2003 and 2007 had no effect on state poverty rates.49These studies generally find that some low-skilled workers living in poor families who remain employed do see their incomes rise. However, other low-skilled workers lose their jobs or have their work hours substantially reduced, which causes income losses and increased poverty. On net, some studies find that the families of low-skilled workers and less-educated single mothers are no better off and may be made worse off by minimum wage hikes.50 The upshot is that there is no free lunch to this sort of top-down mandated attempt at reducing poverty. Conclusions In the American economy, low wages are usually paid to entry-level workers, but those workers usually do not earn these wages for extended periods of time. Indeed, research indicates that nearly two-thirds of minimum wage workers move above that wage within one year.51 For full-time minimum wage workers, research has found that the median first-year raise is about 14 percent.52 While they are often low-paid, entry-level jobs are vitally important for young and low-skill workers because they allow people to establish a track record, to learn skills, and to advance over time to a better-paying job. Thus, in trying to fix a perceived problem with minimum wage laws, policymakers cause collateral damage by reducing the number of entry-level jobs. As Milton Friedman noted, "The minimum wage law is most properly described as a law saying employers must discriminate against people who have low skills."53 Seventy years of empirical research generally finds that the higher the minimum wage increase is relative to the competitive wage level, the greater the loss in employment opportunities. A decision to increase the minimum wage is not cost-free; someone has to pay for it, and the research shows that low-skill youth pay for it by losing their jobs, while consumers may also pay for it with higher prices. Moreover, evidence from a large number of academic studies shows that, even if there were no negative employment or other affects, minimum wage increases don't reduce poverty levels. Only 11.3 percent of the workers who would gain from a recent proposal to increase the minimum wage to $9.50 an hour even live in poor households.54 Some current proposals on Capitol Hill and at the state level to raise minimum wages could not come at a worse time. The current unemployment rate for teenagers is 24.9 percent, and this group's employment rate is near its record low of 25.4 percent. For minority youth the situation is even worse. The unemployment rate for minority teenagers is 38.2 percent, and the employment rate is just 15.5 percent. In these tough economic conditions, employers are simply not going to hire workers whose labor produces less than the cost of hiring them. Employers will not pay $8.25 an hour to hire a worker whose hourly efforts bring in $7.25. A higher minimum wage will price even more low-skilled individuals out of a job. Although a small share of workers will get a raise, others will lose opportunities for employment. Minimum wages generally don't distribute income to workers from employers, but to a small group of lucky workers from the unlucky workers who lose jobs. Rather than pursuing policies such as minimum wage increases that create winners and losers, policymakers should focus on policies that generate faster economic growth to benefit all workers. While minimum wages may be a well-meaning attempt to help workers, economic research clearly shows that somebody must pay the price for any increase, and it is usually the least skilled and least fortunate among us.