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#### The right to strike is a dangerous distraction that prevents the labor movement from challenging systems at the root cause of class inequality and that make it structurally impossible for legal institutions to protect workers. Empirically “right to strike” legislation hamstrings actual strikes via circumventive policies that jail strikers for engaging in theft, violence, etc while allowing for a façade of acceptance and forcing union representation, wages, and economic equality to plummet. The AFF results in scattered, ineffective, and “respectable” strikes and labor disputes re-routed towards legal arbitration while increased legal incorporation results in more tools for the elite to constrain the labor movement -- turns case and kills workers’ movement writ large. Vote NEG for a “direct endorsement of militancy and a turn away from the law and instead towards a political program that might advance the interests of the working class regardless of what the law might hold”

White 18 (Ahmed White – Nicholaus Rosenbaum Professor of Law @ University of Colorado Law School, “Its Own Dubious Battle: The Impossible Defense of an Effective Right to Strike”, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2369&context=articles , 2018, pgs. 1065-1073, EmmieeM)

One of the most important statutes ever enacted, the National Labor Relations Act envisaged the right to strike as the centerpiece of a system of labor law whose central aims included dramatically diminishing the pervasive exploitation and steep inequality that are endemic to modern capitalism. These goals have never been more relevant. But they have proved difficult to realize via the labor law, in large part because an effective right to strike has long been elusive, undermined by courts, Congress, the NLRB, and powerful elements of the business community. Recognizing this, labor scholars have made the restoration of the right to strike a cornerstone of labor law scholarship. Authorities in the field have developed an impressive literature that stresses the importance of strikes and strongly criticizes the arguments that judges, legislators, and others have used to justify their degradation of the right to strike. But this literature has developed without its authors ever answering a fundamental question, which is whether an effective right to strike is a viable aspiration in the first place. This Article takes up this question. It documents the crucial role that strikes have played in building the labor movement, legitimating the labor law itself, and indeed validating the New Deal and, with this, the modern administrative state; and it confirms the integral role that strikes play in contesting the corrosive power capitalism accords employers over the workplace and the spoils of production. But this Article also shows how the strikes that were effective in these crucial ways were not conventional strikes, limited to the simple withholding of labor and the advertisement of workers’ grievances. Instead, they inevitably embraced disorderly, coercive tactics like mass picketing and sit-down strikes to a degree that suggests that tactics such as these are indeed essential if strikes are to be effective. Yet strikes that have featured these tactics have never enjoyed any legitimacy beyond the ranks of labor, radical activists, and academic sympathizers. Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities. From this vantage, it becomes clear that an effective right to strike is not only an impossible distraction but a dangerous fantasy that prevents labor’s champions from confronting the broader, sobering truths that this country’s legal and political system are, at root, anathema to a truly viable system of labor rights and that labor’s salvation must be sought elsewhere.

INTRODUCTION

“They say ‘you got a right to strike but you can’t picket,’ an’ they know a strike won’t work without picket-in’.”1 This is the angry lament of Mac McLeod, a central character in John Steinbeck’s 1936 novel, In Dubious Battle, delivered just after Mac and fellow unionists were enjoined by a carload of heavily-armed police “to keep order.”2 “You can march as long as you don’t block traffic,” said the head cop, “but you are not going to interfere with anybody. Get that?”3

Recently adapted to film in a movie that is notably long on stars but short on distribution,4 the novel is considered one of Steinbeck’s finest.5 It is also perhaps the most powerful depiction of a labor strike in American literature. A bitter reflection on the intense interpersonal conflicts, moral dilemmas, and political impasses that are central to labor struggles, and based on the author’s acquaintances with workers and organizers in the region, the book tells the tragic story of a fruitpickers strike led by radicals in Depression-era California.6 In Dubious Battle broaches a set of crucial issues, which are seldom discussed anymore, concerning the nature of strikes and the acceptable limits of class struggle and workers’ protests in liberal society.7

For much of this country’s post-Civil War history, “hitting the bricks” was a way for workers to try to push back against capitalist employers. Sometimes the strikers succeeded, gaining union recognition and better working conditions. But often enough, their impertinence was repaid with arrests, beatings, and blacklisting; and the strikes ended in failure, sometimes with blood pooled on the streets and soaked into the dirt, as in Steinbeck’s story. Hundreds, possibly thousands lost their lives8 —one can only roughly estimate the numbers, so commonplace and prosaic were these practices in the late nineteenth and early twentieth centuries. Nevertheless, excluding the years 1906 through 1913, for which there are no records, between 1881 and 1935, the year Congress enacted the National Labor Relations Act (or Wagner Act, in its early form), there were in the neighborhood of 80,000 strikes in America, involving about 30 million workers.9 Despite all the dangers and the likelihood that their efforts would prove futile, workers in these millions downed the tools and picketed, convinced that doing so was not only necessary to their immediate interests but a mandate of their position in class society.

The Wagner Act purported, for the first time in American history, to extend a definite, readily enforceable right to strike to most American workers. Not coincidentally, the years surrounding its enactment featured the most intense wave of labor conflict in the country’s history. When the statute became effective in 1937 (having been widely ignored by employers and blocked by hostile courts), the violence of strikes began to diminish, though not so much their frequency. For much of the period after the Second World War, strikes remained common even as they also became less ambitious in their aims and less militant in their conduct. Beginning about forty years ago, things changed again. Strikes suddenly became rare as well, to the point that workers today basically do not strike at all. From 1947 through 1976, the government documented an average of just over 300 “major work stoppages” (strikes and lockouts involving at least 1000 workers) every year; over the last decade, the annual average was only 14.10 Even the much-ballyhooed mini-strike wave of 2018 appears to be largely an illusion built on a combination of wishful thinking and a convenient misconstruction of a string of well-reported, and sometimes impressive, strikes, as a trend.11 In any event, militancy of the sort that was commonplace when Steinbeck wrote his book, along with the open strife and bloodshed that made the novel a work of undeniable realism, are nearly unheard of today.

The waning of bloody battles may be a good thing. But there is not much to celebrate about the overall demise of strikes—not if you are a worker or care about the working class. For strikes are the most important mode of working class protest, the best way, it seems, for workers to directly challenge capitalist hegemony by their own hand, to alter the terms of exploitation if not to build a new world. As they have declined, so has the strength of the labor movement and, with this, the ability of workers to contest the power that employers wield over their work lives and economic fortunes. And so it is that with the demise of strikes, union representation has plummeted, wages have stagnated, economic inequality skyrocketed, and the everyday caprices and tyrannies of capitalist management have been entwined in the web of demeaning indignities, patronizing indulgences, and suffocating bureaucratic rules that define the contemporary workplace.

Nevertheless, in most quarters the decline in strikes has been taken in stride, if noticed at all. For most people, strikes are hardly more than historical relics or quaint curiosities that seldom affect their daily lives or command much of their attention. Ironically, this is probably one reason the very modest labor conflict of the last year has been so overcharacterized. Once a preoccupation of newspaper editorialists, lawyers, and other commentators, a concern of government, and the subject of numerous hearings and reports, abundant litigation, and seemingly endless attempts at legislation, strikes are now rarely of any interest in any of these quarters. Where judges, politicians, and editorialists once worried greatly over how to deal with strikes of the kind that Steinbeck fictionalized, how to protect the economy (not to mention the interests of individual capitalists) from the disruptive effects of labor unrest, and sometimes how to preserve the ability of workers to strike in meaningful ways, their successors stand mute in the context of the near extinction of this form of protest. It has been two decades since Congress, which once grappled with these issues on a regular basis, has seriously confronted the question of strikes.12 Its last engagement with the right to strike attempts, in the early 1990s, to enact modest changes in the law relative to employers’ use of replacement workers during strikes. And even this effort, which collapsed in the mid 1990s, hardly seemed possessed of the kind of urgency that characterized earlier forays on these issues.13

Among the few Americans who well remember what strikes are and why they are important are labor scholars. For them, at least, strikes remain a preoccupation. Prominent students of labor like James Atleson, Julius Getman, Karl Klare, and James Pope—to name the most notable of this group—have expended much effort over the past few decades identifying and critiquing legal doctrines which have undermined the right to strike. Important to them in this regard are doctrines that give employers the prerogative to easily replace striking workers; that allow employers to enjoin and even fire strikers on the ground that they have engaged in coercive “misconduct,” or because they have protested the wrong issue or in the wrong way; that prohibit sympathy strikes and general strikes, and spontaneous “wildcat” strikes; and that funnel labor disputes off of picket lines and into legal proceedings and arbitrations.14

These doctrines have eviscerated a once-vital right to strike, these scholars tell us, subverting a prerogative that earlier in the century was central to improving conditions for workers and lending legitimacy to the very idea that workers have rights to claim in the first place. Indeed, in the 1930s and 1940s, especially, a massive and sustained campaign of strikes proved crucial to the formation of the modern labor movement, the political and legal validation of the Wagner Act, and ultimately the survival of the New Deal itself. This was true even as the Wagner Act itself seemed to play a crucial role in conveying to workers, for the first time, an effective right to strike. But the problem as far as the right to strike goes, we are told, is that the statute was later weakened and corrupted by the connivances of judges and Congress, urged on by a business community relentless in its contempt for organized labor, and abetted at times by inept or corrupt union leaders and a weak and politically diffident National Labor Relations Board (NLRB, the entity with primary authority for enforcing the labor law). And so the Wagner Act is said to have had a great potential, only to have been tragically “deradicalized,” as Klare puts it; and workers are said to have “lost” the right to strike, in Pope’s words, with devastating consequences for workers today and ominous portents for generations ahead.15 Critically, these authors argue, an effective right to strike must be restored at the expense of these unjustified impositions.16 Only then will the labor law regain its relevance and the labor movement its ability to improve the lives of workers.

Early on, this attempt to defend an effective right to strike was the object of mean-spirited criticism by more conventional scholars who, in the guise of unmasking its interpretative shortcomings, rejected its radicalism and recoiled at its underlying supposition that law is not only malleable and untethered to its formal, elite iterations, but within the province of workers to reshape around their own interests and visions.17 Despite these efforts, which focused on the work of Klare and Katherine Stone, whose critique of post-war “industrial pluralism” shared a similar reasoning—or maybe, to some extent, anyway, because of them—support for this campaign to restore the right to strike seems like a mandate among scholars and commentators who purport to take seriously the interests of workers.18 And yet for all its appeal, this project nevertheless suffers from a remarkably negligent oversight, one that has nothing to do with morality of its pretense that the law is malleable and that workers can remake it—a proposition that is broadly true and eminently defensible. Instead, it has to do with its practical feasibility. In fact, as this Article argues, a critical reflection on this question suggests that the effort to realize an effective right to strike is actually quite impossible and that attempts to do so, however earnest and thoughtful they may be, represent as dubious a battle as the hopeless walkout dramatized in Steinbeck’s book.

This doleful conclusion rests on a frank understanding of the legal and political realities in which strikes necessarily play out. There are many kinds of strikes, but those that are apt to be successful in challenging employers’ power and interests entail a level of militancy that sets them against well-entrenched notion of property and public order. This was true in the 1930s and 1940s when these values contradicted, at once, strike militancy and whatever radical potential the Wagner Act may have had. Ironically, it is perhaps even truer today, now that workers do in fact enjoy the right to strike, albeit only in more conventional ways. Seen in this light, those doctrines that have undermined the right to strike are not aberrations or jurisprudential failings—not mistakes in any sense, in fact, nor a retreat from some earlier, truer iteration of the labor law. Rather, they represent a settling of the labor law on bedrock precepts of the American life. However illegitimate those precepts may be from a vantage that questions capitalism’s essential legitimacy and takes the rights of workers seriously, they reign supreme, foreclosing an effective right to strike.

All of this, as I argue in this Article, is made plainly evident by a critical review of the history of strikes and striking. To anticipate a bit more of the argument that follows, the strikes most crucial to the building of the labor movement in the 1930s and 1940s were not built only around peaceful picketing and a withholding of labor. Rather, they were sit-down strikes and strikes built on mass picketing, as well as, to some extent, secondary boycotts. And strikes of this kind were never considered lawful or politically appropriate. Ironically, it was these strikes that legitimated the Wagner Act itself and the New Deal. But they could not legitimate themselves.

Those who call for resurrecting the right to strike contend that the flourishing of strike militancy reflected, if not the inherent politics of the original Wagner Act before it was “de-radicalized,” then at least its potential. To be sure, it is clear that the Wagner Act was a remarkable document which did more to advance workers’ rights than any statute in American history; and it was at least ambiguous on the question of the legal status of strike militancy. But what seemed like its support for worker militancy was not a product of any particular potential. Rather, it was a reflection of the difficulty that judges, legislators, and other authorities, who dedicated themselves to restraining these strikes even as they flourished, encountered in prosecuting these values amid the unique economic and political conditions of the 1930s and 1940s. These obstructive conditions were quite temporary, though, and the authorities’ efforts culminated soon enough in the near-categorical prohibition of the tactics that had made strikes so effective. It is in this way that the history of strikes shows less in the way of de-radicalization than an encounter with the unyielding outer boundaries of what labor protest and labor rights can be in liberal society.

As this all played out, it left in its wake a right to strike, but one whose power consists almost entirely of the ability of workers to pressure employers by withholding labor, while also maybe publicizing the workers’ issues and bolstering their morale. But while publicity and morale are not irrelevant, in the end they are not effective weapons in their own right. Nor are they generally advanced when strikes are broken. Moreover, the withholding of labor, unless it could be managed on a very large scale—something the law also tends to prohibit by its restrictions on secondary boycotts, by barring sympathy strikes and general strikes—is inherently ineffective in all but a small number of cases where workers remain irreplaceable. Of course, striking in such a conventional way accords with liberal notions of property and social order; but precisely because of this it is simply not coercive enough to be effective. And it is bound to remain ineffective, particularly in a context where workers far outnumber decent jobs, where mechanization and automation have steadily eaten away at the centrality of skill, where the perils that employers face in the course of labor disputes are as impersonal as the risks to workers are not, where employers wield overwhelming advantages in wealth and power over workers, where the state’s machinery for enforcing property rights and social order have never been more potent—where, in fact, capital is capital and workers are workers.

From this perspective, the quest for an effective right to strike emerges as a fantasy—an appealing fantasy for many, but a fantasy no less, steeped in a misplaced and exaggerated faith in the law and a misreading of the class politics of modern liberalism. The campaign to resurrect such a right appears, too, not only as a dead-end and a distraction, but an undertaking that risks blinding those who support viable unionism and the interests of the working class to the more important and fundamental fact that liberalism and the legal system are, in the end, antithetical to a meaningful system of labor rights. It is for this reason that the call for an effective right to strike should be set aside in favor of more direct endorsement of militancy and a turn away from the law and instead towards a political program that might advance the interests of the working class regardless of what the law might hold.

The argument that follows further elaborates these main contentions about the history of striking and the nature of strikes in liberal society, augmented by a discussion of the legal terrain on which all of this has played out. It unfolds in three main parts. Part I describes how the concept of a right to strike developed in concert with the history of striking itself, how both were influenced by the evolving condition of labor, and how this history created the circumstances under which it became possible to conceive of an effective right to strike without making this possible in fact. Part II consists of a critical review of the fate of coercive and disorderly strikes, especially those featuring sit-down tactics and mass picketing. It considers how the courts, the NLRB, and Congress confronted these strikes, and how they moved with increasing vigor to proscribe them as soon as these strikes emerged as effective forms of labor protest. Part III looks more carefully at the underpinnings of this repudiation of strike militancy, finding in court rulings and other pronouncements against the strikes an opposition to coercion and disorder that, even if sometimes invoked disingenuously, is nonetheless firmly anchored in modern liberalism and its conception of the appropriate boundaries of class protest and labor conflict. On this rests the argument that an effective right to strike is impossible and the pursuit of it, problematic. The final part is a brief conclusion that sums up some of the implications of this argument.

#### There is no strike wave, just media smoke tricks. Empirics on current strike trends and outcomes of “Right to Strike” legislation go heavily NEG – you cannot legalize revolution and all legislation is merely a ruse to constrain the workers’ movement through the guise of “legal management”

White 18 (Ahmed White – Nicholaus Rosenbaum Professor of Law @ University of Colorado Law School, “Its Own Dubious Battle: The Impossible Defense of an Effective Right to Strike”, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2369&context=articles , 2018, pgs. 1124-1131, EmmieeM)

In fact, at this crucial moment it was common for elites of all stripes to claim that they supported the right to strike and yet to assert that it was being abused by unionists who insisted on winning every labor dispute and using coercive and disorderly methods to do so. In 1946, Hebert Hoover, who might well have denied just such a thing fifteen years earlier, inveighed that “Nobody denies that there is a ‘right’ to strike”; but that right, he said, had been abused to the detriment of the public interest.295 Although considerably more liberal than Hoover, Walter Lippmann, the extremely popular political commentator, offered a similar judgement about a railroad strike that same year, concluding “we must henceforth refuse to regard the right to strike as universal and absolute, and as one of the inalienable rights of man.”296 Also writing in 1946, Henry Ford II, whose father had used a small army of thugs and toughs to enforce the open shop at his plants and bitterly fought unionization until 1941, now purported at once to support the right to strike—and to believe that it should be limited.297 “There is no longer any question of the right of organized workers to strike, but that right,” he said, “is being misused.”298

Like Taft-Hartley’s supporters in Congress, figures like Hoover, Lippmann, and Ford did not trouble themselves to confess that such tactics as they so blithely condemned might actually be necessary to counterbalance the power of employers and give life and meaning to a statute that did not take adequate account of this basic reality, let alone that they were essential in establishing the idea that workers enjoyed any enforceable right to strike. But they did not have to, either; for they honestly did not believe that labor should generally prevail. Liberal or conservative, it did not matter; these were capitalists in a capitalist society, contented, consistent with their values, with a right to strike that went little further than a right to withhold one’s labor.

To be sure, these were not the views of ordinary people. But the public’s perspective did not seem to vary all that much from those of elites. Although overall approval of union membership as measured in Gallup surveys slipped noticeably after 1937, it remained quite high— well above fifty percent right through the 1940s.299 Nevertheless, Gallup surveys taken in June 1937, after the big wave of sit-strikes had waned noticeably, but while mass picketing and overall levels of labor militancy remained high, revealed that fifty-seven percent supported the proposition that the militia should “be called out whenever strike trouble threatens.”300

As with the sit-down strikes, too, the status of mass picketing and other forms of strike militancy can also be gauged by the way these tactics were defended. During the hearings on Taft-Hartley, only a few labor leaders stood against the torrent of criticism of these practices by businessmen, conservative unionists, and congressmen and senators, and tried to parry the move to prohibit the strikes. With only a couple of exceptions, most of them consistently qualified their defense of these tactics by downplaying their coercive qualities—again the very thing that made them so effective in the first place—while also describing them as expedients, presumably temporary, that were justified by the unreasonable stances of some employers.301

While the political motivations and implications of this campaign against these forms of strike militancy might be as dubious as the attacks on the sit-down strikes, their value in expressing dominant political judgments concerning these tactics is not. Repeatedly, it was taken for granted that workers could not be allowed to excessively coerce their fellow workers, that they should be obliged to adhere to their contractual obligations, that they did not own the streets or the workplace, and that whatever the right to strike was, it was surely, as Brandeis had insisted, not an absolute right. Of course, all of this was controversial for many unionists. But unionists were almost the only ones to really push back against these measures. Even President Harry Truman’s dramatic veto of Taft-Hartley is widely regarded as a political move taken with the expectation that Congress would override the veto anyway.302 It is also notable that despite dedicating itself to this aim, the labor movement has never come close to repealing the Taft Hartley Act, or even securing the enactment of favorable amendments to any of its provisions.

And then there is the replacement worker doctrine where, if anything, the change in the law even more clearly reflected the depth and power of liberal norms. For the rule established in Mackay Radio came out of the blue. It was set forth in a case which required no such question to be resolved, in a manner that drew no support from the text of the Wagner Act, and on the basis of legislative history that was ambiguous at best. Worse, as Getman points out, the rule is in direct conflict with the very statutory principle of barring discrimination on the basis of a worker’s assertion of the basic labor rights laid out in § 7 that it was, itself, supposedly derived from.303

As an exercise in statutory construction and administration, Mackay Radio makes no sense; but as a defense of property rights it makes all the sense in the world. One way to see this is to consider what would have happened had the Court decided the matter in a fundamentally different way. If employers were barred from replacing economic strikers, it seems likely that strikes would have proliferated to an extraordinary extent, as workers could at least plausibly have expected to be able to strike under a broad array of circumstances and yet be restored to their jobs no matter the outcome. But precisely because such a doctrine would have given workers so much power, Congress would almost certainly have stepped in with its own rule, codifying employers’ right to permanently replace striking workers and bringing this to an end. Ultimately, it is difficult to imagine a much more liberal alternative to the Mackay Radio rule surviving for very long—a point that also draws support from labor’s failure to repeal the rule in Congress in the early 1990s.304

A simple exercise in counterfactual speculation bears similar fruit in regard to other, more basic, limitations on the right to strike, including those imposed relative to sit-down strikes, mass picketing, and secondary boycotts. Shrill and self-interested though it was, all the testimony from employers and their allies during the hearings on TaftHartley or Landrum-Griffin about the perils posed by these tactics, was fundamentally correct. For were workers able to make unfettered use of sit-down strikes, mass picketing, and general strikes and sympathy walkouts, they could have very much challenged the sovereignty of capitalists in and about the workplace, and with this the bedrock institutions and norms of liberal society. As Jim Pope puts it, Charles Evans Hughes’ opinion in Fansteel established the maxim that “the employer could violate the workers’ statutory rights without sacrificing its property rights, while the workers could not violate the employer’s property rights without sacrificing their statutory rights.”305 This is unquestionably true. But equally unquestionable is that neither this court nor any other important arbiter of legal rights in this country was ever prepared to endorse the contrary view that property rights might be sufficiently subordinate to labor rights as to justify the kinds of tactics by which workers could routinely defeat powerful employers on the fields of industrial conflict

Significantly, there is no reason to believe that any of this has changed or is poised to change today. Quite the contrary: In a culture and political system more immersed than ever in the veneration of order and control, mediated by criminal law and police work, by the celebration of property rights, and by a readiness to punish violence, it is all but unthinkable that the courts or the NLRB would deign to give legal sanction to workers to engage in any sustained way in the kinds of tactics that might make going on strike a worthwhile thing to do.

CONCLUSION

One of the outstanding ironies in a story rich with many is that the very things which made the prospect of an effective right to strike seem for a time so viable—the unlawful, illiberal, and altogether intolerable coerciveness of sit-down strike and mass picketing, especially—are also what made this concept impossible to ever realize. As we have seen, effective strikes could build the labor movement, validate the Wagner Act, secure the New Deal, and in many ways change America. But they could not make themselves legitimate.

So it is that workers have found themselves with a right to strike that equals little more than a right to quit work—and maybe lose their jobs or their houses and savings in the balance. They have a right to strike, as Steinbeck’s character, Mac, complained, but they “can’t picket”—at least, not in a way that is really apt to change anything. And so they do not strike—in fact, under these circumstances they usually should not strike.

The proof of this is readily evident, not only in the dramatic decrease in strikes since the 1970s, but in the sad regularity with which even the most vibrant strikes have ended in defeat for workers. Phelps Dodge (1983), Greyhound (1983 and 1990), Hormel (1985-1986), Caterpillar (1992, 1993, and 1994-1995), Detroit Daily News/Daily Free Press (1995-1997)—these are but the most notable of a litany of vibrant strikes since the 1970s that ended in failure.306 They are, in fact, the definitive labor struggles of this period, overshadowing a much smaller number of comparable disputes, like the strikes at United Parcel Service in 1997 and Verizon in 2016 that—often shaped by uniquely favorable labor dynamics—ended in something resembling victory for the union.307 Each of these big and unsuccessful strikes was motived by very modest, in fact anti-concessionary, goals and well-supported by workers and the larger public alike. And each featured mass picketing and other attempts at militancy. But these tactics were met with injunctions, civil suits, mass arrests, and criminal prosecutions, which ended the protests and left the employers free to exert their vast advantages in material wealth and political power, end the disputes on their terms, and leave thousands of strikers unemployed.308

It is true that the last year or so has witnessed what many people have declared to be a miniature strike wave, that has been widely celebrated by unionists and their allies as a welcome departure from past trends and portent, many hope, of a sustained resurgence of labor activism.309 Headlined by statewide teachers strikes in West Virginia, Oklahoma, and Arizona, all in the first part of 2018, the strikes commanded a great deal of media coverage, at least compared to what labor disputes usually receive nowadays.310 However, closer inspection suggests that this wave is mainly an artifact of wishful thinking exacerbated by the novelty for many people nowadays of seeing these strikes reported in the media. For in fact, the number of strikes over the last couple of years has remained close to the level that has prevailed for several decades now.311

Perhaps more significant in putting these strikes in proper context is a reflection on their character. None have been organizing strikes. All of these strikes have been over contracts and working conditions, with many driven by workers’ opposition to concessions and ended with less than spectacular gains by the strikers.312 Moreover, the strikes which comprise this supposed wave have been disproportionately mounted by government workers—teachers, mainly—who are not covered by the National Labor Relations Act. For this reason, several of the strikes have been unlawful, as state law typically denies such workers the right to strike anyway. But at the same time—and this may be the most crucial point—none of these strikes has unfolded in an especially militant way, at least by historical standards. There have been no big sit-down strikes, no threatening episodes of mass picketing, no routing of “scabs,” no destruction of property. Which is all to say that the kinds of strikes that built the labor movement eighty or more years ago remain thoroughly in check.

There is little hope within the prevailing political and juridical order that things could ever be any different. Perhaps the right to strike could be made effective if it were fundamentally reconfigured in illiberal, corporatist terms. The right could conceivably be reconfigured such that the government might intervene more aggressively and make the workers protests effective—for example, stepping in to decide by adjudication, mediation, or arbitration which side should win a strike. Elements of this approach, which was vigorously opposed by IWW and AFL unionists alike in the early twentieth century, can be found internationally, in industry-specific statutes like the Railway Labor Act, and in labor statutes that apply to government workers, although most often when the law goes down this path it all but dispenses with the right to strike anyway, treating it as a redundancy, a tool without a purpose. As Senator Wagner himself perceived, alignment between the excessive reliance on the authority of the state to manage labor relations and the denigration of the right to strike was both dysfunctional and dangerous. As he put it back in the summer of 1937, defending the recently-passed statute that bore his name and the right that he placed at the center of it, [t]he outlawry of the right to strike is a natural concomitant of authoritarian governments. It occurs only when a government is willing to assume definitive responsibility for prescribing every element in the industrial relationship—the length of the day, the size of the wage, the terms and conditions of work.313

Clearly no such regime will be instituted in any event, not least because, as interest in such schemes in the twentieth century makes clear, support for this kind of corporatist intervention in labor disputes has itself been an elite reaction against strike militancy that currently does not exist. Where does this leave workers and unions, possessed of a right they cannot afford to surrender but cannot rely on as a means of advancing their interests and standing in society? Are they bound like Steinbeck’s strikers to meet defeat, albeit in a more peaceful way? Maybe. In one of his many commentaries on the sit-down strikes as they raged across the country in the spring of 1937, Walter Lippmann took time to analyze one of the speeches in which James Landis had argued that the tactic might well become a new right, in the same way that the right to strike in general had been created through its persistent assertion in the face of opposition and incredulity. No revolutionary, Lippmann nonetheless understood what Landis apparently did not: that the right Landis spoke of was revolutionary in its conception, and therefore not just an impracticality but a contradiction. “Never in the history of the law has rebellion been made lawful. Only the rights demanded by the rebels have been legalized,” said Lippman.314

As the labor scholars who call for the restoration of an effective right to strike have all understood, the tactics that made such strikes possible were tolerated only so long as there was not a functional system of labor rights in place, one that could stand alone in courts and hearing rooms. Once this was the case—once the rebel unionists’ aims, or at least those imputed to them, were realized—the sit-down strikes were predictably banned, and then so were mass picketing, secondary boycotts, and so forth. Thus it is that in cases like Fansteel and the debates on Taft-Hartley, sit-down strikers, mass picketers, and the like were presented as enemies of the labor law. Even more recent attacks on the right to strike, such as complaints in the 1980s about union violence going uncensored and the modest moves by the NLRB to rein in this, too, have been inevitably justified not in terms of overthrowing the system of labor rights but managing it, reconciling its virtues with the normative and juridical mandates of liberal society. And so it is that the right to strike—the right to an effective strike—has been sacrificed not in the name of capitalist hegemony but on liberalism’s altar of labor peace. Unfortunately, so far as the interests of workers go, these are the same thing.

## DA

#### Both bills pass now and solve the climate – full-court PC press ensures Manchin and Sinema get on board, but new fights complicate the process

Mascaro 11/4 [Lisa, Congressional reporter for the Los Angeles Times “Biden's big bill on brink of House votes, but fighting drags”https://www.startribune.com/bidens-big-bill-on-brink-of-house-votes-but-fighting-drags/600112896/]

WASHINGTON — Democrats in the House appear on the verge of securing President Joe Biden's now-$1.85 trillion-and-growing domestic policy package alongside a companion $1 trillion infrastructure bill in what would be a dramatic political accomplishment — if they can push it to passage.

The House prepared late Thursday for votes now likely on Friday, and White House officials worked the phones to lock in support for the president's signature proposal. House passage of the big bill would be a crucial step, sending to the Senate Biden's ambitious effort to expand health care, child care and other social services for countless Americans and deliver the nation's biggest investment yet fighting climate change.

Alongside the slimmer roads-bridges-and-broadband package, it adds up to Biden's answer to his campaign promise to rebuild the country from the COVID-19 crisis and confront a changing economy.

But they're not there yet.

House Speaker Nancy Pelosi was working furiously Thursday and kept the House late to shore up the votes. The party has been here before, another politically messy day like many before that are being blamed for the Democrats' dismal showing in this week's elections. On and off Capitol Hill, party leaders declared it's time for Congress to deliver on Biden's agenda.

"We're going to pass both bills," Pelosi insisted at a midday press briefing.

Her strategy now seems focused on passing the most robust bill possible in her chamber and then leaving the Senate to adjust or strip out the portions its members won't agree to.

Half the size of Biden's initial $3.5 trillion package, the now sprawling 2,135-page bill has won over most of the progressive Democratic lawmakers, even though the bill is smaller than they wanted. But the chamber's more centrist and fiscally conservative Democrats continued to mount objections.

Overall the package remains more far-reaching than any other in decades. Republicans are fully opposed to Biden's bill, which is called the "Build Back Better Act" after the president's 2020 campaign slogan.

The big package would provide large numbers of Americans with assistance to pay for health care, raising children and caring for elderly people at home.

There would be lower prescription drug costs, limiting the price of insulin to $35 a dose, and Medicare for the first time would be able to negotiate with pharmaceutical companies for prices of some other drugs, a long-sought Democratic priority.

Medicare would have a new hearing aid benefit for older Americans, and those with Medicare Part D would see their out-of-pocket prescription drug costs capped at $2,000.

The package would provide some $555 billion in tax breaks encouraging cleaner energy and electric vehicles, the nation's largest commitment to tackling climate change.

With a flurry of late adjustments, the Democrats added key provisions in recent days — adding back a new paid family leave program, work permits for immigrants and changes to state and local tax deductions.

Much of package's cost would be covered with higher taxes on wealthier Americans, those earning more than $400,000 a year, and a 5% surtax would be added on those making over $10 million annually. Large corporations would face a new 15% minimum tax in an effort to stop big businesses from claiming so many deductions that they end up paying zero in taxes.

From the White House, "the president has been very clear, he wants to get this moving," said principal deputy press secretary Karine Jean-Pierre.

As night fell, Democratic leaders struggled to resolve a catalogue of remaining issues as lawmakers balanced the promise of Biden's sweeping vision with the realities of their home-district politics.

Biden has few votes to spare in the narrowly-divided House and none when the bill ultimately arrives for consideration in the evenly-split 50-50 Senate.

A group of five centrist Democratic lawmakers want a full budgetary assessment before they vote. Others from more Republican-leaning regions are objecting to a new state-and-local tax deduction that favors New York, California and other high-tax states. Another group wants changes to the immigration-related provisions.

In recent days, both the overall price tag and the revenue to pay for it have grown. A new White House assessment Thursday said revenue from the taxes on corporations and the wealthy and other changes are estimated to bring in $2.1 trillion over 10 years, according to a summary obtained by The Associated Press. That's up from what had been $1.9 trillion in earlier estimates.

Pelosi noted a similar assessment Thursday by the bipartisan Joint Committee on Taxation, and she echoed Biden's frequent comment that the overall package will be fully paid for.

But another model from the Wharton School at the University of Pennsylvania suggested a shortfall in revenue for covering the cost, breeding fresh doubts among some of the Democratic lawmakers.

Still, the Democrats in the House are anxious to finish up this week, eager to deliver on the president's agenda and, as some lawmakers prepare to depart for a global climate change summit in Scotland, show the U.S. taking the environmental issue seriously.

Democrats have been working to resolve their differences, particularly with holdout Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, who forced cutbacks to Biden's bill but championed the slimmer infrastructure package that had stalled amid deliberations.

#### Manchin’s broadly opposed to strike activity – plan causes a fight

Furman & Winant 10/17/21 [Jonah Furman is a labor movement organizer and writer for Labor Notes based in Maryland. Gabriel Winant is an assistant professor of history at the University of Chicago. He is the author of “The Next Shift: The Fall of Industry and the Rise of Health Care in Rust Belt America.” "The John Deere Strike Shows the Tight Labor Market Is Ready to Pop." https://theintercept.com/2021/10/17/john-deere-strike-labor-market/]

In terms of strike activity, the current private sector wave picks up where the teachers left off, after an interlude of relative inaction during the height of the pandemic. In 2020, moreover, teachers formed the first major group of workers to refuse to accept whatever terms the employer dictated for reopening the workplace. It is difficult to imagine teachers speaking out against returning to work in unsafe conditions as much as they did without the national wave of militant teachers’ strikes in the two preceding years. This resistance has now spread across the economy, in both organized and individual forms.

TODAY, WORKERS’ ECONOMIC resistance — whether through organized strikes or in the refusal of dangerous, underpaid, and unappealing jobs — is shaping the political agenda. Many of the policies in the Democrats’ $3.5 trillion budget proposal would pursue the same ends as workers’ actions but in the realm of social policy. Proposed subsidies for home health care and child care, the child tax credit, Medicaid expansion, and investments in housing and green energy would all indirectly support workers’ power. Either by increasing demand for labor further or by alleviating some of the grotesque social pressures that have forced employees to accept whatever terms employers offered them, the federal government would strengthen workers’ bargaining position. When Sen. Joe Manchin, D-W.Va., warns against becoming an “entitlement society,” what he is opposing is the shift in labor market power that such policy measures help secure.

#### **Normal means is a congressional amendment of existing labor law to remove exceptions – that draws tons of fire from moderate democrats**

TLA 21 [This Legal Alert provides an overview of a specific federal bill. It is not intended to be, and should not be construed as, legal advice for any particular fact situation. "A Resurrected PRO Act Could Pay Dividends For Big Labor This Time Around." https://www.fisherphillips.com/news-insights/a-resurrected-pro-act-could-pay-dividends-for-big-labor-this-time-around.html]

As we recently forecasted, the House of Representatives has reintroduced a bill designed to radically transform the labor relations landscape, substantially tilting the playing field towards organized labor. The “Protecting the Right to Organize Act of 2021,” or PRO Act, was introduced on February 4 after an earlier version of the same legislation failed to clear the Senate last year. However, now that both houses of Congress and the White House are controlled by the Democratic party, this proposal stands closer than ever to becoming law. What do employers – both unionized and non-unionized – need to know about this startling prospect, and what can you do to help prevent it from becoming reality?

The PRO Act: A Primer

If you think you’ve heard about this proposal before, you’re not experiencing déjà vu. The same bill was passed by the House a year ago this month. But at that time, it faced a hostile Senate controlled by the G.O.P. – which kept the proposal from reaching the floor for an up-or-down vote – and a president that would have vetoed the measure in the unlikely event it reached his desk. The winds of change have shifted, however, and we now have a Senate controlled by the Democrats by the slimmest of margins and an unabashedly pro-union president who campaigned on promises to deliver for organized labor.

So what could you be in store for if this law passes? Whether you currently operate in a unionized environment or have yet to encounter a labor union, be prepared to rethink just about everything you know about the regulatory framework governing your labor relations functions. The PRO Act would make it far easier for unions to organize your workforce, grant far more power to workers protesting working conditions, and shackle unionized businesses like never before, while undermining other longstanding employment models embedded with workplaces across the country.

Radical Shift In Union Organizing

If passed, the PRO Act would radically transform the process of union organizing, tilting the balance of power towards unions to a remarkable degree by altering seven critical steps in the organizing process.

Reinstalling “Quickie” Elections: In the absence of majority card support, the PRO Act would reinstate controversial rules substantially reducing the period of time between a petition for representation and the ensuing election is held, placing employers at a significant disadvantage when it comes to educating workers on the facts they may need to make an informed decision.

Cutting Employers Out Of The Process: The bill would deny employers standing to appear in administrative proceedings for purposes of challenging the petitioned-for bargaining unit or otherwise contesting the representation process. It would also give the petitioner an option to choose whether the election will be conducted electronically, by mail, or at an alternative location not controlled by the employer. If the union loses an election in which it possessed a majority of signed authorization cards, then the agency would be empowered to automatically issue a bargaining order.

Creating A National Gag Rule: Further hamstringing employers, the proposed law would for the first time prohibit all businesses from convening mandatory “captive audience” meetings for purposes of sharing facts on third party representation, effectively gagging them from utilizing their free speech rights in a group setting.

A Return To “Micro” Units: The PRO Act would effectively bar employers from challenging petitions for smaller, gerrymandered groupings of employees within departments or shifts that may be more sympathetic to union interests – representing a stark reversal of gains achieved by employers through the National Labor Relation Board’s (NLRB’s) 2017 decision in PCC Structurals, litigated by Fisher Phillips attorneys.

Expanding Pool Of Potential Union Members: The proposed bill would substantially narrow the statutory definition of “supervisor,” thereby expanding the base of workers who could organize into unions and engage in other “concerted” activities protected by the National Labor Relations Act (NLRA). It would do so by requiring only that workers devote a majority of their worktime to performing supervisory duties in order to be considered a part of management, while eliminating other key “indicia” of supervisory status such as the responsibility to “assign” and “responsibly direct” other employees.

Permitting Workers To Use Company Equipment: The PRO Act would also restrict employer rights to control their own computers, equipment, and related electronic communications systems by establishing statutory employee rights to use them on premises for protected activities, absent compelling business considerations. Not only would employers be forced to allow workers to do so in union organizing campaigns, but they would also be limited in their ability to manage workplace dialogue via company-owned email, intranet, and other digital messaging platforms.

Compelling Disclosure Of Confidential Fee Information: Finally, the law would revive the moribund “persuader” rule, which attempted to require disclosure of confidential information associated with fees paid to legal counsel in connection with virtually all forms advice rendered in the context of an organizing campaign.

Shifting Power To Protesting Workers

The PRO Act would also take steps to further empower workers participating in workplace disputes – at the expense of their employers’ rights to manage the workplace.

Permitting Secondary Boycotts: Breaking from 85 years of established legal authority, the PRO Act would allow unions to extend economic pressure to ensnare companies that are not otherwise involved with them in a primary labor dispute. The law would eliminate the longstanding prohibition on secondary boycotts and allow unions to apply such pressure through protests, pickets and related activities.

Emboldening Protesting Workers: The proposed law would encourage intermittent and recognition strikes, such as the quickie strikes of the Fight for $15 Movement, by amending federal labor law to authorize strikes regardless of the duration, scope, frequency, or intermittence.

Constraining Unionized Employers

Further, the proposed law would restrict the rights of unionized employers when it comes to several critical activities.

Blocking Permanent Replacements: The PRO Act would prohibit employers from exercising their rights to permanently replace workers engaged in an economic strike. This right has long since been recognized as the employer’s counter-right to the union’s right to strike. Without it, strikers will always be entitled to reinstatement whenever the strike is over – regardless of whether they were replaced in the interim.

Prohibiting “Offensive” and Pre-Strike Lockouts: The bill would also prohibit employers from utilizing lockouts as an offensive economic weapon, or from doing so at all prior to a strike – thereby leaving intact only the prospect of a post-strike “defensive” lockout.

Prohibiting Anticipatory Withdrawal of Recognition: The bill would overturn a 2019 Board decision allowing employers to withdraw recognition in anticipation of contract expiration – compelling them instead to work through the agency’s formal decertification election process.

Forcing Union Contracts: The proposed law would force unionized employers to come to the table within 10 days of an initial union demand, and empower a tripartite arbitration board to impose collective bargaining agreements of up to two years in duration on all parties that fail to reach an agreement within the first 120 days of negotiations for an initial contract, depriving employers of a critical input into the terms and conditions governing their workplace against the backdrop of unreasonable union demands. The bill would also prohibit employers from implementing changes to working conditions upon reaching “impasse” in first contract bargaining – forcing them instead to maintain the “status quo” for the duration of such negotiations.

Shattering Commonplace Workplace Standards For All Employers

But the PRO Act wouldn’t just impact unionized workplaces. It would completely transform workplace law for unionized and non-union businesses alike by invalidating arrangements that have become commonplace over the last several decades.

Broadening Misclassification Law: The PRO Act would significantly expand the definition of “employee” to capture workers who are currently independent contractors, making it difficult for businesses to properly classify workers as such. In bringing California’s ABC test to the national stage, the bill would require businesses to prove (a) the individual is free from the employer’s control, (b) the service they perform is outside the usual course of the employer’s business, and (c) the individual is engaged in the same trade or business as called upon to perform. This would deny many individuals their choice and ability to work independently, threatening the expanding gig economy, and eliminating business flexibility to flex their size due to growth. The bill would also make it an independent violation to misclassify workers as independent contractors.

Expanding Joint Employment: The PRO Act would also codify the extremely broad joint employer standard previously established by the Obama NLRB by virtue of its decision in Browning Ferris Industries (“BFI”), exposing employers to liability for workplaces they don’t control and workers they don’t employ. Under this standard, courts and government agencies would be free to consider the exercise of control over employment terms that is either direct or indirect, and actual or potential, leading to a potential joint employer finding merely by establishing that a business has “reserved” such authority.

Prohibiting Arbitration Agreements: The PRO Act would ban pre-dispute arbitration agreements in all workplace settings, effectively overturning the Supreme Court’s landmark decision in Epic Systems upholding use of class waivers. Eliminating the ability of employers and employees to resolve disputes through arbitration would potentially overwhelm the court system by increasing needless and expensive lawsuits, including class action ligation.

Mandatory Posting Requirement: The bill reinstates prior proposed regulations compelling employers to post notices educating employees on their rights under the NLRA, and to notify all new hires of the information on that notice with penalties of $500 for every incident of technical non-compliance.

Expanding Legal Exposure: Finally, the bill would adopt never-before-seen penalties that would liquidate (double) the amount of damages (up to $100,000) for violations, in addition to providing for backpay, front pay and consequential damages. It would also create a new private right of legal action against employers directly in federal court, providing for recovery of back pay (without any reduction for interim earnings), front pay, consequential, liquidated, and punitive damages, and attorneys’ fees. Punishment at such levels could have a severe chilling effect on employers seeking to assert their free speech and other statutory rights when it comes to day-to-day workplace activities.

What's Next?

It’s worth noting that although it enjoys the support of the new administration, the bill faces a number of hurdles before it becomes law – chief of which is a filibuster that threatens to block any further progress on this legislation to the extent it remains in place through the current session of Congress. Even within the Democratic side of the aisle, the bill could generate opposition from some of its own moderate members. That being said, one of the chief impediments to its passage has already been removed, and the bill could receive a friendlier reception under the current political climate.

#### Passage allows an unprecedented investment in combatting climate change

Morton 10/28 [Joseph Morton, "Democrats tout climate spending in reconciliation", 10/28/21, https://www.rollcall.com/2021/10/28/framework-includes-clean-energy-tax-credits-omits-methane-fee/]

“At the same time, substantial investments in electric vehicle charging stations and clean heavy-duty vehicles, like school buses, will serve the dual purpose of slashing our carbon emissions while helping American manufacturing stay globally competitive,” Pallone said.

Rep. Cindy Axne, D-Iowa, had pushed for funding to support biofuels infrastructure, complaining it was left out of the bipartisan infrastructure bill even as that measure delivered significant funding for electric vehicles.

The latest reconciliation package text includes $1 billion over 10 years in funding for the Agriculture Department to provide grants for expanding biofuel pump infrastructure, upgrade existing infrastructure and increase usage of higher blends of ethanol and biodiesel.

“Not only does the Build Back Better Act represent the largest investment in clean energy and combating climate change ever — it also confirms that my colleagues have listened to my central argument in our clean energy discussions: biofuels can and should be a part of our fight against climate change,” Axne said in a statement.

The White House framework released earlier in the day envisions that $320 billion would be delivered in the form of clean energy tax credits to accelerate the transition from coal and gas-fired power plants to renewable energy sources such as wind turbines and solar panels.

That includes incentives for both utilities and residents and support for additional transmission and storage capacity — areas where bottlenecks have hampered the development of renewable energy sources.

The framework includes incentives intended to cut the cost for Americans to put rooftop solar panels on their homes and make it easier to purchase electric vehicles. New EV tax credits would lower the cost of a vehicle by $12,500 for a middle-class family, according to the White House.

The framework calls for $105 billion for climate resiliency and addressing legacy pollution in communities.

For example, a new Clean Energy and Sustainability Accelerator that would invest in climate-related projects around the country would allocate 40 percent of those benefits to disadvantaged communities — part of a pledge the Biden administration has made to deliver climate spending to communities traditionally on the front lines of environmental damage.

It also would fund grants to support environmental justice in disadvantaged communities and create a new Civilian Climate Corps with more than 300,000 members working on conservation projects that could help mitigate climate change.

The framework includes $110 billion in spending and incentives to boost domestic supply chains supporting solar power and batteries. It also would fund grants, loans and tax credits aimed at moving steel, cement and aluminum industries toward decarbonization.

There’s also $20 billion for the government to purchase new technologies such as long-duration storage, small modular reactors and clean construction materials.

While the size of the package falls short of initial proposals, some Capitol Hill Democrats declined to say they were disappointed with the climate portion.

Sen. Christopher S. Murphy, D-Conn., said he didn’t want to undersell the framework, as it would represent the most significant spending on climate policy since he joined Congress.

The fact that climate makes up about one-third of the overall spending shows how much the issue has been elevated within the Democratic Party, he said, and negotiations over bolstering it aren’t finished.

“I think there's a number of things that we can still find consensus on that might not be in this agreement. So climate is something you’ve got to work on every single day,” Murphy said. “If we're not passing climate change legislation every year, then we're not doing our job. So this is just one admittedly very big piece of the overall policy puzzle.”

#### Warming causes extinction—cross-apply 1AC Ramanathan.

## Case

#### Aff can’t solve the K - “Right to strike” is a term of art that only covers the act of legalizing the ability to withhold your labor – unconditional right to strike doesn’t legalize the type of strikes in the mandate of the K. Prefer official definitions over their vague no link hand waving in the 1AR.

ILO 98 (pg. 12, “ILO PRINCIPLES CONCERNING THE RIGHT TO STRIKE” http://ilo.org/wcmsp5/groups/public/@ed\_norm/@normes/documents/publication/wcms\_087987.pdf, EmmieeM)

Definition of the right to strike and various types of strike action

The principles of the ILO’s supervisory bodies contain no definition of strike action which would permit definitive conclusions to be drawn regarding the legitimacy of the different ways in which the right to strike may be exercised. However, some types of strike action (including occupation of the workplace, go-slow or work-to rule strikes), which are not merely typical work stoppages, have been accepted by the Committee on Freedom of Association, provided that they are conducted in a peaceful manner (ibid., para. 496). The Committee of Experts has stated that:

When the right to strike is guaranteed by national legislation, a question that frequently arises is whether the action undertaken by workers constitutes a strike under the law. Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralysing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.

#### Politics DA turns their climate advantage—there is no US leadership if Manchin and Sinema aren’t on board with it. Leads to international spillover—that’s their Fiorino evidence.

#### The aff loses on inherency because of the Wagner Act—that was the White evidence.

#### No regional rebalancing or security dilemmas—the only empirical data goes our way.

Fettweis 11—Professor of Poli Sci @ Tulane University [Christopher J. Fettweis, “The Superpower as Superhero: Hubris in U.S. Foreign Policy,” Paper prepared for presentation at the 2011 meeting of the American Political Science Association, September 1-4, Seattle, WA, September 2011, pg. http://ssrn.com/abstract=1902154]

The final and in some ways most important pathological belief generated by hubris places the United States at the center of the current era of relative peace. “All that stands between civility and genocide, order and mayhem,” explain Kaplan and Kristol, “is American power.”68 This belief is a variant of what is known as the “hegemonic stability theory,” which proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules.69 Although it was first developed to describe economic behavior, the theory has been applied more broadly, to explain the current proliferation of peace. At the height of Pax Romana between roughly 27 BC and 180 AD, for example, Rome was able to bring an unprecedented level of peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana in which no power is strong enough to challenge its dominance, and because it has established a set of rules that are generally in the interests of all countries to follow. Without a benevolent hegemon, some strategists fear, instability may break out around the globe.70 Unchecked conflicts could bring humanitarian disaster and, in today’s interconnected world, economic turmoil that could ripple throughout global financial markets. There are good theoretical and empirical reasons, however, to doubt that U.S hegemony is the primary cause of the current stability.

First, the hegemonic-stability argument shows the classic symptom of hubris: It overestimates the capability of the United States, in this case to maintain global stability. No state, no matter how strong, can impose peace on determined belligerents. The U.S. military may be the most imposing in the history of the world, but it can only police the system if the other members generally cooperate. Self-policing must occur, in other words; if other states had not decided on their own that their interests are best served by peace, then no amount of international constabulary work by the United States could keep them from fighting. The five percent of the world’s population that lives in the United States simply cannot force peace upon an unwilling ninety-five percent. Stability and unipolarity may be simply coincidental.

In order for U.S. hegemony to be the explanation for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Since most of the world today is free to fight without U.S. involvement, something else must be preventing them from doing so.71 Stability exists in many places where no hegemony is present. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention, yet few choose to do so.

Second, it is worthwhile to repeat one of the most basic observations about misperception in international politics, one that is magnified by hubris: Rarely are our actions as consequential upon their behavior as we believe them to be. The ego-centric bias suggests that while it may be natural for U.S. policymakers to interpret their role as crucial in the maintenance of world peace, they are almost certainly overestimating their own importance. At the very least, the United States is probably not as central to the myriad decisions in foreign capitals that help maintain international stability as it thinks it is.

Third, if U.S. security guarantees were the primary cause of the restraint shown by the other great and potentially great powers, then those countries would be demonstrating an amount of trust in the intentions, judgment and wisdom of another that would be without precedent in international history. If the states of Europe and the Pacific Rim detected a good deal of danger in the system, relying entirely on the generosity and sagacity (or, perhaps the naiveté and gullibility) of Washington would be the height of strategic irresponsibility. Indeed it is hard to think of a similar choice: When have any capable members of an alliance virtually disarmed and allowed another member to protect their interests? It seems more logical to suggest that the other members of NATO and Japan just do not share the same perception of threat that the United States does. If there was danger out there, as so many in the U.S. national security community insist, then the grand strategies of the allies would be quite different. Even during the Cold War, U.S. allies were not always convinced that they could rely on U.S. security commitments. Extended deterrence was never entirely comforting; few Europeans could be sure that United States would indeed sacrifice New York for Hamburg. In the absence of the unifying Soviet threat, their trust in U.S. commitments for their defense would presumably be lower—if in fact that commitment was at all necessary outside of the most pessimistic works of fiction.

Furthermore, in order for hegemonic stability logic to be an adequate explanation for restrained behavior, allied states must not only be fully convinced of the intentions and capability of the hegemon to protect their interests; they must also trust that the hegemon can interpret those interests correctly and consistently. As discussed above, the allies do not feel that the United States consistently demonstrates the highest level of strategic wisdom. In fact, they often seem to look with confused eyes upon our behavior, and are unable to explain why we so often find it necessary to go abroad in search of monsters to destroy. They will participate at times in our adventures, but minimally and reluctantly.

Finally, while believers in hegemonic stability as the primary explanation for the long peace have articulated a logic that some find compelling, they are rarely able to cite much evidence to support their claims. In fact, the limited empirical data we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s, the United States cut back on defense fairly substantially, spending $100 billion less in real terms in 1998 that it did in 1990, which was a twenty-five percent reduction.72 To defense hawks and other believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan.”73 If global stability were unrelated to U.S. hegemony, however, one would not have expected an increase in conflict and violence.

The verdict from the last two decades is fairly plain: The world grew more peaceful while the United States cut its forces.74 No state believed that its security was endangered by a less-capable U.S. military, or at least none took any action that would suggest such a belief. No defense establishments were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred after the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped that spending back up. The two phenomena are unrelated.

These figures will not be enough to convince skeptics. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability, and one could also presumably argue that spending is not the only or even the best indication of hegemony, that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not be expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered.

However, two points deserve to be made. First, even if it were true that either U.S. commitments or relative spending account for global pacific trends, it would remain the case that stability can be maintained at drastically lower levels. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still cut back on engagement and spending until that level is determined. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if, as many suspect, this era of global peace proves to be inherently stable because normative evolution is typically unidirectional, then no increase in conflict would ever occur, irrespective of U.S. spending.75 Abandoning the mission to stabilize the world would save untold trillions for an increasingly debt-ridden nation.

Second, it is also worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then surely hegemonists would note that their expectations had been justified. If increases in conflict would have been interpreted as evidence for the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the relationship between U.S. power and international stability suggests that the two are unrelated. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.It requires a good deal of hubris for any actor to consider itself indispensable to world peace. Far from collapsing into a whirlwind of chaos, the chances are high that the world would look much like it does now if the United States were to cease regarding itself as God’s gladiator on earth. The people of the United States would be a lot better off as well.

#### Mutually assured destruction prevents the aff’s conflict scenarios but unipolar hegemony entangles the U.S. in risky regions, forcing miscalculation

Craig 13 – Campbell Craig, Professor in International Politics. BA Carleton College MA University of Chicago PhD Ohio University, 2013 (“Debating American Engagement: The Future of U.S. Grand Strategy,” *International Security*, Volume 38, Number 2, Fall 2013, Project MUSE)

In making their case for maintaining the United States’ policy of “deep engagement,” Stephen Brooks, John Ikenberry, and William Wohlforth stress that the U.S. security commitment to states in Europe, the Middle East, and East Asia, together with the formidable specter of American preponde2rance, stifles regional rivalries and hinders the resurgence of a dangerous era of multipolar power politics. The authors contend that a policy of U.S. retrenchment could spark the “return of insecurity and conflict among Eurasian powers,” whereas a continuing policy of deep engagement, by “supplying reassurance, deterrence, and active management … lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities.”1 In short, they suggest, deep engagement reduces the chances of a major Eurasian war; a new strategy of retrenchment would increase them.

Brooks, Ikenberry, and Wohlforth do not acknowledge the possibility that a lack of conventional security competition among large Eurasian states, as well as their disinclination to balance against U.S. preponderance by traditional means,2 might be explained by the simpler fact that nuclear weapons make such activity both prohibitively dangerous [End Page 181] and strategically unnecessary.3 Perhaps would-be great powers in Eurasia would launch belligerent campaigns of expansion upon an American retreat to the Western Hemisphere, but they would have to weigh such policies against the reality that a regional war would quickly run the risk of an apocalyptic nuclear exchange. Britain, China, France, Israel, and Russia, after all, possess large nuclear arsenals, and it is impossible to imagine a war in which they would not use them if it came down to that or surrendering to a conquering aggressor. Under such conditions, nations do not envision waging protracted wars of grand territorial conquest.4 We are not in 1940 anymore.

Perhaps even more important, nuclear weapons provide states with the kind of protection that even the most formidable conventional forces could not offer before the nuclear era. If the specter of nuclear war dissuades nations from launching wars of conquest, then it also allows those in possession of substantial arsenals to threaten any foe considering an attack with nuclear retaliation. A putative superpower such as China knows that as long as its nuclear arsenal is invulnerable, it can avoid the military conquest of its territory.5 For what nation, no matter how rapacious, would try to conquer it if there were a good chance that it would suffer the immediate destruction of five or ten of its largest cities, much less total nuclear retaliation?6 Nations have engaged in balancing behavior for many reasons, but the core purpose has always been to accumulate sufficient power to avoid violent subjugation at the hands of their rivals.7 Because a secure retaliatory nuclear arsenal provides a uniquely efficient solution to that problem, nations such as China do not have to preoccupy themselves with the military capabilities and shifting allegiances of major rivals in the way that, say, Britain had to do around the turn of the twentieth century.

By making the prospect of major war apocalyptic, and at the same time giving regional [End Page 182] powers an unprecedented ability to deter wholesale military invasion, nuclear weapons account for the absence of both security competition in dangerous regions of the world and attempts to balance against U.S. preponderance in a remarkably parsimonious fashion. This nuclear factor suggests that these regional powers are unlikely to initiate a major war in the foreseeable future regardless of whether the United States maintains its deep engagement or adopts a policy of retrenchment. The avoidance of general war between India and Pakistan, in a region where the United States plays a less preponderant role, would seem to bolster this claim.8

The geopolitical stasis created by nuclear weapons does not make the debate between advocates of deep engagement and retrenchment unimportant, however. While nuclear weapons make it unlikely that nations will seek regional domination by means of war or try to match U.S. military power, they do not make war itself impossible. Indeed, as long as international politics remain anarchical and some states possess nuclear weapons, one day a warning system will fail, or an official will panic, or a terrorist attack will be misconstrued, and the missiles will fly.9 A policy of deep engagement, by locking in a heavily militarized U.S. presence in volatile regions of the world, promises not only to sustain this anarchical and nuclearized international condition; it also ensures that the United States will find itself in the middle of the nuclear war that will someday occur.