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#### Framing strikes as a “right” to be granted instead of a “freedom” cements state power over the working class and destroys class solidarity.

Dimick 19

Matthew Dimick, Professor @ University at Buffalo School of Law, 12-13-2019, "Labor Rights Will Not Save the Labor Movement," Jacobin, <https://jacobinmag.com/2019/12/labor-rights-movement-freedom-nlra-nlrb-mass-picketing> //MLT

Everyone agrees that labor law is broken. Under the auspices of the National Labor Relations Act (NLRA) — which was passed in 1935 at the height of the New Deal and laid the foundation for our current regime of collective bargaining — union membership rates have declined to existentially low levels. Though the weaknesses in labor law have been glaringly apparent for some time, and intermittent attempts have been made to reform it, discussion about labor law reform is now reaching a critical mass. Labor law reform has been central to the campaign promises of both Bernie Sanders and Elizabeth Warren. There is much in common between the Sanders and Warren plans, though the level of detail in the Warren plan burnishes her reputation as a technocrat. Liberal think tanks have jumped on board. Left-leaning publications have also directed their attention to labor law reform. What unites most of these proposals is the idea of strengthening labor rights. I wrote an essay recently in Catalyst arguing that this approach is wrong. The labor movement should be wary of labor rights and instead seek to expand labor freedoms. A right is some legally enforceable claim, backed through the coercive machinery of the state (fines, injunctions, imprisonment, etc.), that one legal subject has against another because of some interference caused or threatened by that other. A freedom, in contrast, is the absence of a legally enforceable duty to refrain from some action. A “right to strike,” for example, means that workers are protected from any interference an employer might take against an employee for engaging in a strike. During a strike, hiring permanent replacement workers counts as the most obvious form of interference, and indeed such replacements have had a devastating impact on the effectiveness of strikes. A fully recognized right to strike would prohibit the hiring of permanent replacements and legally compel employers to discharge their replacements when striking workers decide to call off the strike and return to work. All well and good, except that this rights approach overlooks the most important reason employers get away with hiring permanent replacements: labor law effectively bans mass picketing, the picketing of large numbers of workers near the struck business. Before mass picketing was banned, it was the most potent weapon in labor’s arsenal in the 1940s, and its repeated use established an “unofficial norm” against hiring permanent replacements, a norm that lasted until employers started defying it in the 1980s. Elimination of the ban on mass picketing would give workers a labor freedom rather than a labor right. With the labor freedom, it is workers themselves, through mass picketing, who enforce their strike power; with the labor right, it is the state, through the ban on permanent replacements, that does the enforcement. One might ask, “What’s the difference, if workers win the strike in the end?” Part of the answer comes from asking yourself, “Which of the two will build stronger and longer-term working-class solidarity?” The other part of the answer is that in numerous other cases, the effect of labor rights has been far more insidious. Labor rights, unfortunately, have been frequently used by judges, politicians, and bureaucrats as reasons for prohibiting or eliminating protection for strikes and other forms of collective activity. One example of this is the NLRA’s ban on organization and recognition picketing. Labor law prohibits any picketing (or even threats of picketing) “where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees.” This provision exists not because of some cynical, ideologically motivated, anti-union impulse. Rather, it exists because the NLRA already provides workers with a “fair” and “neutral” administrative method for choosing a bargaining representative and establishing a bargaining relationship: the National Labor Relations Board’s election procedure. In practice, however, these provisions virtually compel workers to make use of the board’s election procedure, which is characterized by legal-bureaucratic delay and employer intimidation.

#### The aff’s strike-focused politics privatizes and atomizes worker struggle – it channels it towards specific employers rather than class domination as a whole while ensuring the dictatorship of the bourgeoisie by privileging alternative modes of settlement outside and in spite of the specifics of the law itself.

Feldman, 94

[George, Assistant Prof. @ Wayne State Law: “Unions, Solidarity, and Class: The Limits of Liberal Labor Law,” Berkeley Journal of Employment and Labor Law, Volume 15, No. 2, 1994. https://heinonline.org/HOL/Page?handle=hein.journals/berkjemp15&div=14&g\_sent=1&casa\_token=&collection=journals#]//AD

In other ways, however, the liberal vision of labor law that Justice Brennan exemplified has been severely limited. 19 One obvious limitation, for instance, has been the Court's preference for arbitration.20

\*\*\*FOOTNOTE 20 STARTS HERE\*\*\*

20. The Court's tendency to privilege arbitration has led it to impose legal limitations on the right to strike that are unsupported by the language, policy, or history of the labor laws. See Boys Mkts., Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970); Gateway Coal Co. v. United Mine Workers of Am., 414 U.S. 368 (1974), discussed infra at part III.C. For criticism of the Court's weakening of the right to strike, see Matthew W. Finkin, Labor Policy and the Enervation of the Economic Strike, 1990 U. ILL. L. REV. 547, 548-49; JAMES B. ATLESON, VALUES & AssuMiPTIONS IN AMERICAN LABOR LAW

\*\*\*FOOTNOTE 20 ENDS HERE\*\*\*

(1983). Yet a different kind of limit also has been present in the labor jurisprudence of the Court's liberal wing-a limit that is less obvious, usually has less immediate impact, but that is perhaps more deeply seated. The Court's privileging of arbitration restricts the means by which unions legally may act in response to concerns that are concededly legitimate. The limits discussed here, by contrast, define the legitimate boundaries of collective actions and collective concerns. The cases discussed here reflect the liberal doctrine that labor law protects unions only insofar as they limit their role to that of representative of the employees of an individual employer, and that the law will resist any union attempt to move beyond this limitation. That doctrine rejects protection when the underlying issue implicates the proper role of unions in American society.

That question emerges in a variety of contexts. In some, a broad definition of unions' societal function may require, or may seem to require, limiting individual rights;21 in others, the Court's conclusion, or something very similar to it, is so clearly required by statute that the conclusion cannot be ascribed to the conscious or unconscious ideological views of the Justices.22

\*\*\*FOOTNOTE 21 STARTS HERE\*\*\*

21. When such a conflict is actually present, the proper place to draw the line is fairly subject to debate; a judge determined to protect both strong unions and individual employee rights might resolve apparent conflicts between the two in different ways without forfeiting a claim of taking each seriously. See infra notes 237-41; cf Emporium Capwell Co. v. Western Addition Community Org., 420 U.S. 50 (1975).

\*\*\*FOOTNOTE 21 ENDS HERE\*\*\*

At other times, however, liberal members of the Court have narrowed the range of permissible union concerns and therefore of unions' social role in contexts in which the law would have allowed a broader understanding, and in which the danger of conflict with individual rights was either absent or too attenuated to serve as a reasonable justification. In some cases this desire to narrow the sphere of union activity is central to the Court's reasoning; in others, it is a subsidiary theme, or is present only as an underlying assumption, unstated and perhaps unconscious, whose presence helps account for the result reached.

This article examines what the members of the Supreme Court who have been identified with its liberal wing have said explicitly or by necessary implication about what is the legitimate sphere of union activity in American life. This vision of the role that unions should play in society has both practical and ideological consequences. Modern labor law, faithful to the Wagner Act's premises, aims to particularize rather than generalize workers' struggles; it directs them towards their specific relationship to their employer, rather than to the larger relationship of their class to employers and to work; it privatizes and depoliticizes those struggles.23

\*\*\*FOOTNOTE 23 STARTS HERE\*\*\*

23. It is in this sense that I think the frequently voiced point of authors associated with the Critical Legal Studies movement is correct. It is not that workers' struggles are channeled to arbitration rather than to a public body like the National Labor Relations Board (NLRB), see Katherine Van Wezel Stone, The Post-War Paradigm in American Labor Law, 90 YALE L.J. 1509 (1981). but rather that whatever method workers employ-even including a strike or other collective job actions-the locus of the struggle remains the particular workplace or employer. It is in this sense that workers' struggles are channeled away from "political" dimensions.

\*\*\*FOOTNOTE 23 ENDS HERE\*\*\*

Given the contextual limitations mentioned, this analysis necessarily must be cautious. It must take account of the constraints of statutory language and congressional intent and, where applicable, of judicial deference to the decisions of the NLRB. 24 This analysis also must recognize the presence of other policy or ideological considerations that are unrelated to the theme of limiting the breadth of union concerns. Nonetheless, this theme is demonstrably present in a wide variety of legal settings, transecting the doctrinal categorizations that abound in labor law.

#### Our critique independently outweighs the case - neoliberalism causes extinction and massive social inequalities – the affs single issue legalistic solution is the exact kind of politics neolib wants us to engage in so the root cause goes unquestioned. Farbod 15

( Faramarz Farbod , PhD Candidate @ Rutgers, Prof @ Moravian College, Monthly Review, http://mrzine.monthlyreview.org/2015/farbod020615.html, 6-2)

Global capitalism is the 800-pound gorilla. The twin ecological and economic crises, militarism, the rise of the surveillance state, and a dysfunctional political system can all be traced to its normal operations. We need a transformative politics from below that can challenge the fundamentals of capitalism instead of today's politics that is content to treat its symptoms. The problems we face are linked to each other and to the way a capitalist society operates. We must make an effort to understand its real character. The fundamental question of our time is whether we can go beyond a system that is ravaging the Earth and secure a future with dignity for life and respect for the planet. What has capitalism done to us lately? The best science tells us that this is a do-or-die moment. We are now in the midst of the 6th mass extinction in the planetary history with 150 to 200 species going extinct every day, a pace 1,000 times greater than the 'natural' extinction rate.1 The Earth has been warming rapidly since the 1970s with the 10 warmest years on record all occurring since 1998.2 The planet has already warmed by 0.85 degree Celsius since the industrial revolution 150 years ago. An increase of 2° Celsius is the limit of what the planet can take before major catastrophic consequences. Limiting global warming to 2°C requires reducing global emissions by 6% per year. However, global carbon emissions from fossil fuels increased by about 1.5 times between 1990 and 2008.3 Capitalism has also led to explosive social inequalities. The global economic landscape is littered with rising concentration of wealth, debt, distress, and immiseration caused by the austerity-pushing elites. Take the US. The richest 20 persons have as much wealth as the bottom 150 million.4 Since 1973, the hourly wages of workers have lagged behind worker productivity rates by more than 800%.5 It now takes the average family 47 years to make what a hedge fund manager makes in one hour.6 Just about a quarter of children under the age of 5 live in poverty.7 A majority of public school students are low-income.8 85% of workers feel stress on the job.9 Soon the only thing left of the American Dream will be a culture of hustling to survive. Take the global society. The world's billionaires control $7 trillion, a sum 77 times the debt owed by Greece to the European banks.10 The richest 80 possess more than the combined wealth of the bottom 50% of the global population (3.5 billion people).11 By 2016 the richest 1% will own a greater share of the global wealth than the rest of us combined.12 The top 200 global corporations wield twice the economic power of the bottom 80% of the global population.13 late environmentalist Barry Commoner's insistence on the efficacy of a strategy of prevention over a failed one of control or capture of pollutants. At a lecture in 1991, Commoner remarked: "Environmental pollution is an incurable disease; it can only be prevented"; and he proceeded to refer to "a law," namely: "if you don't put a pollutant in the environment it won't be there." What is nearly certain now is that Instead of a global society capitalism is creating a global apartheid. What's the nature of the beast? Firstly, the "egotistical calculation" of commerce wins the day every time. Capital seeks maximum profitability as a matter of first priority. Evermore "accumulation of capital" is the system's bill of health; it is slowdowns or reversals that usher in crises and set off panic. Cancer-like hunger for endless growth is in the system's DNA and is what has set it on a tragic collision course with Nature, a finite category. Secondly, capitalism treats human labor as a cost. It therefore opposes labor capturing a fair share of the total economic value that it creates. Since labor stands for the majority and capital for a tiny minority, it follows that classism and class warfare are built into its DNA, which explains why the "middle class" is shrinking and its gains are never secure. Thirdly, private interests determine massive investments and make key decisions at the point of production guided by maximization of profits. That's why in the US the truck freight replaced the railroad freight, chemicals were used extensively in agriculture, public transport was gutted in favor of private cars, and big cars replaced small ones. What should political action aim for today? The political class has no good ideas about how to address the crises. One may even wonder whether it has a serious understanding of the system, or at least of ways to ameliorate its consequences. The range of solutions offered tends to be of a technical, legislative, or regulatory nature, promising at best temporary management of the deepening crises. The trajectory of the system, at any rate, precludes a return to its post-WWII regulatory phase. It's left to us as a society to think about what the real character of the system is, where we are going, and how we are going to deal with the trajectory of the system -- and act accordingly. The critical task ahead is to build a transformative politics capable of steering the system away from its destructive path. Given the system's DNA, such a politics from below must include efforts to challenge the system's fundamentals, namely, its private mode of decision-making about investments and about what and how to produce. Furthermore, it behooves us to heed the without democratic control of wealth and social governance of the means of production, we will all be condemned to the labor of Sisyphus. Only we won't have to suffer for all eternity, as the degradation of life-enhancing natural and social systems will soon reach a point of no return**.**

#### The alternative is to affirm the model of the Communist Party – only party organizing can provide effective accountability mechanisms to correct chauvinist tendencies, educate and mobilize marginalized communities, and connect local struggles to a movement for global liberation.

Escalante, Philosophy @ UOregon, 18

[Alyson, M.A., is a Marxist-Leninist, Materialist Feminist and Anti-Imperialist activist. “PARTY ORGANIZING IN THE 21ST CENTURY” September 21st, 2018 <https://theforgenews.org/2018/09/21/party-organizing-in-the-21st-century/>] rVs

I would argue that within the base building movement, there is a move towards party organizing, but this trend has not always been explicitly theorized or forwarded within the movement. My goal in this essay is to argue that base building and dual power strategy can be best forwarded through party organizing, and that party organizing can allow this emerging movement to solidify into a powerful revolutionary socialist tendency in the United States. One of the crucial insights of the base building movement is that the current state of the left in the United States is one in which revolution is not currently possible. There exists very little popular support for socialist politics. A century of anticommunist propaganda has been extremely effective in convincing even the most oppressed and marginalized that communism has nothing to offer them. The base building emphasis on dual power responds directly to this insight. By building institutions which can meet people’s needs, we are able to concretely demonstrate that communists can offer the oppressed relief from the horrific conditions of capitalism. Base building strategy recognizes that actually doing the work to serve the people does infinitely more to create a socialist base of popular support than electing democratic socialist candidates or holding endless political education classes can ever hope to do. Dual power is about proving that we have something to offer the oppressed. The question, of course, remains: once we have built a base of popular support, what do we do next? If it turns out that establishing socialist institutions to meet people’s needs does in fact create sympathy towards the cause of communism, how can we mobilize that base? Put simply: in order to mobilize the base which base builders hope to create, we need to have already done the work of building a communist party. It is not enough to simply meet peoples needs. Rather, we must build the institutions of dual power in the name of communism. We must refuse covert front organizing and instead have a public face as a communist party. When we build tenants unions, serve the people programs, and other dual power projects, we must make it clear that we are organizing as communists, unified around a party, and are not content simply with establishing endless dual power organizations. We must be clear that our strategy is revolutionary and in order to make this clear we must adopt party organizing. By “party organizing” I mean an organizational strategy which adopts the party model. Such organizing focuses on building a party whose membership is formally unified around a party line determined by democratic centralist decision making. The party model creates internal methods for holding party members accountable, unifying party member action around democratically determined goals, and for educating party members in communist theory and praxis. A communist organization utilizing the party model works to build dual power institutions while simultaneously educating the communities they hope to serve. Organizations which adopt the party model focus on propagandizing around the need for revolutionary socialism. They function as the forefront of political organizing, empowering local communities to theorize their liberation through communist theory while organizing communities to literally fight for their liberation. A party is not simply a group of individuals doing work together, but is a formal organization unified in its fight against capitalism. Party organizing has much to offer the base building movement. By working in a unified party, base builders can ensure that local struggles are tied to and informed by a unified national and international strategy. While the most horrific manifestations of capitalism take on particular and unique form at the local level, we need to remember that our struggle is against a material base which functions not only at the national but at the international level. The formal structures provided by a democratic centralist party model allow individual locals to have a voice in open debate, but also allow for a unified strategy to emerge from democratic consensus. Furthermore, party organizing allows for local organizations and individual organizers to be held accountable for their actions. It allows criticism to function not as one independent group criticizing another independent group, but rather as comrades with a formal organizational unity working together to sharpen each others strategies and to help correct chauvinist ideas and actions. In the context of the socialist movement within the United States, such accountability is crucial. As a movement which operates within a settler colonial society, imperialist and colonial ideal frequently infect leftist organizing. Creating formal unity and party procedure for dealing with and correcting these ideas allows us to address these consistent problems within American socialist organizing. Having a formal party which unifies the various dual power projects being undertaken at the local level also allows for base builders to not simply meet peoples needs, but to pull them into the membership of the party as organizers themselves. The party model creates a means for sustained growth to occur by unifying organizers in a manner that allows for skills, strategies, and ideas to be shared with newer organizers. It also allows community members who have been served by dual power projects to take an active role in organizing by becoming party members and participating in the continued growth of base building strategy. It ensures that there are formal processes for educating communities in communist theory and praxis, and also enables them to act and organize in accordance with their own local conditions. We also must recognize that the current state of the base building movement precludes the possibility of such a national unified party in the present moment. Since base building strategy is being undertaken in a number of already established organizations, it is not likely that base builders would abandon these organizations in favor of founding a unified party. Additionally, it would not be strategic to immediately undertake such complete unification because it would mean abandoning the organizational contexts in which concrete gains are already being made and in which growth is currently occurring. What is important for base builders to focus on in the current moment is building dual power on a local level alongside building a national movement. This means aspiring towards the possibility of a unified party, while pursuing continued local growth. The movement within the Marxist Center network towards some form of unification is positive step in the right direction. The independent party emphasis within the Refoundation caucus should also be recognized as a positive approach. It is important for base builders to continue to explore the possibility of unification, and to maintain unification through a party model as a long term goal. In the meantime, individual base building organizations ought to adopt party models for their local organizing. Local organizations ought to be building dual power alongside recruitment into their organizations, education of community members in communist theory and praxis, and the establishment of armed and militant party cadres capable of defending dual power institutions from state terror. Dual power institutions must be unified openly and transparently around these organizations in order for them to operate as more than “red charities.” Serving the people means meeting their material needs while also educating and propagandizing. It means radicalizing, recruiting, and organizing. The party model remains the most useful method for achieving these ends. The use of the party model by local organizations allows base builders to gain popular support, and most importantly, to mobilize their base of popular support towards revolutionary ends, not simply towards the construction of a parallel economy which exists as an end in and of itself. It is my hope that we will see future unification of the various local base building organizations into a national party, but in the meantime we must push for party organizing at the local level. If local organizations adopt party organizing, it ought to become clear that a unified national party will have to be the long term goal of the base building movement. Many of the already existing organizations within the base building movement already operate according to these principles. I do not mean to suggest otherwise. Rather, my hope is to suggest that we ought to be explicit about the need for party organizing and emphasize the relationship between dual power and the party model. Doing so will make it clear that the base building movement is not pursuing a cooperative economy alongside capitalism, but is pursuing a revolutionary socialist strategy capable of fighting capitalism. The long term details of base building and dual power organizing will arise organically in response to the conditions the movement finds itself operating within. I hope that I have put forward a useful contribution to the discussion about base building organizing, and have demonstrated the need for party organizing in order to ensure that the base building tendency maintains a revolutionary orientation. The finer details of revolutionary strategy will be worked out over time and are not a good subject for public discussion. I strongly believe party organizing offers the best path for ensuring that such strategy will succeed. My goal here is not to dictate the only possible path forward but to open a conversation about how the base building movement will organize as it transitions from a loose network of individual organizations into a unified socialist tendency. These discussions and debates will be crucial to ensuring that this rapidly growing movement can succeed.

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#### The AC is an effort in “left legalism”, they believe the right to strike is not adequately protected and the solution is to codify it. This ignores that it is the nature of rights themselves in liberal societies that produce conflict

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

A third example concerns the legal status of concerted activity taken in response to an employer’s unfair labor practices. The Supreme Court addressed this issue in a widely cited and discussed decision, NLRB v. Fansteel Metallurgical Corp.49 In that case, the employees responded to a series of the employer’s unfair labor practices — recognizing only an “independent,” company-dominated union, and employing a labor spy to engage in espionage within the bona fide, “outside” union — by “seizing the employer’s property” in a sit-down strike. The employer countered by announcing that “all of the men in the plant were discharged for the seizure and retention of the buildings.” The employer then appealed to the local sheriff, who with an “increased force of deputies” evicted the workers from the plant and arrested them; most of the workers were eventually fined and given jail sentences. As a remedy for the employer’s unfair labor practices, the Board ordered “‘immediate and full reinstatement to their former positions,’ with back pay.” However, the Supreme Court denied enforcement of this order, concluding that the workers had been legitimately discharged for illegally seizing the employer’s property. The court’s decision has been widely criticized for taking a narrow view of “concerted, protected activity,” and ignoring the workers’ claims to be acting in self-defense against the employer’s violation of their rights granted to them by the Wagner Act. According to Karl Klare, the language of the Fansteel decision reinforces the role of workers as sellers of labor power and consumers of commodities, rather than as producers, and obstructs an alternative perspective presaged by the “‘dereifying’ explosion of repressed human spirit” expressed in the sit-down strike.50 According to James Gray Pope, the Fansteel decision inverts appropriate legal hierarchies, placing the employer’s common-law property rights above those of the employee’s statutory right to engage in collective action, a conclusion that can only be justified by an unstated appeal to a discredited interpretation of the Constitution.51 Both critics, however, overlook the very first words of Chief Justice Hughes’s decision following its statement of facts: “For the unfair labor practices of [the employer] the Act provided a remedy. Interference in the summer and fall of 1936 with the right of self-organization could at once have been the subject of complaint to the Board.”52 Once again, using the strike to enforce workers’ statutory rights is legally duplicitous because the Board already possesses the power to enforce those rights. The court continued, “To justify such conduct because of the existence … of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations.”53 Responding to this language, Klare is correct to draw attention to the inherently peaceful nature of workers’ concerted activity in general and the sit-down strike in particular.54 But it is not the court’s hysterics that are most interesting; instead, it is the overlooked rationale that, whether violent or not, concerted action to enforce rights already subject to Board administration and enforcement subverts the appropriate scheme of rights enacted by the NLRA. Thus, it is not (or not just) ideologically freighted judicial reasoning that has undermined the labor movement, but the very rights themselves, created and enforced by the state apparatus, that have justified restrictions on concerted worker activity.

#### Subordination- rights weaken labor movements by making them dependent on a corrupt legal system. Cross-national analysis shows rights never help, they only hurt

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

Labor law presents an inescapable problem for the labor movement. If that claim was not already obvious, then the US Supreme Court’s decision in Janus v. AFSCME should have made this clear. Even labor law scholars, who once viewed labor law as a path of liberation for the labor movement, now see it as an ossified millstone around its neck. Recommendations for the reform and renewal of labor law therefore abound. In nearly all of these recommendations, there is no question that the law can and should play a fundamental role in revitalizing the labor movement. Indeed, labor law’s current flaw according to these recommendations is not the rights they provide, but only the “weakness” of these rights. In this essay, I want to ask a question that has quite a different implication for how trade unions should approach labor law: how did the regulation of labor relations come to assume the form of law? The first objective of this essay is to answer this question. As labor movements developed under capitalism in the late nineteenth and early twentieth centuries, the regulation of labor relations took different paths. The path that a particular country took was determined by various material, political, and ideological causes that this essay will try to describe. While some amount of legal regulation is inescapable in a society based on private property and generalized commodity exchange — which logically imply the contestation of private interests — labor movements in some parts of the world have been able to avoid the dependency and displacement that always follows a regime of full-blown legal regulation. Trade unions in Scandinavia in particular have been able to develop a system of labor regulation that avoids the subordination to the state that has been the fate of Anglophone countries, such as the US and Australia, as well as on the Continent, in France and Germany. Another objective of this essay is to show that even labor law sympathetic to unions, rather than loosening, came to bind ever more tightly the cords constraining labor. This is not, or at least not only, because of capitalist-class interest or ideology extrinsic to labor law, but in fact is quite intrinsic to law itself. As this essay will demonstrate, many of the restrictions and prohibitions that hobble the labor movement today are justified by the very rights the labor law statute, the National Labor Relations Act (NLRA), confers. Statutory labor law confers rights, and rights are distinguished by the fact that they constitute claims that are enforced through the machinery of the state apparatus. In the mind of a judge or bureaucrat, one can hardly complain about the suppression of workers’ self-activity to advance or enforce some interest or claim, because the existence of a corresponding legal right makes such activity legally redundant. Of course, there is an enormous sociological difference: if strikes are the means by which workers build solidarity and develop class consciousness, then the substitution of the strike for other means of reaching working-class objectives may, whether intentionally or not, undermine working-class interests.

#### Prefer negative methodology- a comparative history approach reveals flaws in the affirmatives “critical labor law” approach. Their focus on specifics obscures the fundamental issue of statism

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

The intent of this brief comparative history is to reveal the uniqueness of the form of labor union organization found in the US. Unlike either the continental or Nordic variants, labor union organization in the US (and other Anglophone countries) is characterized by strong workplace-based organization (when and where it exists) and weak coordinating capacity above the workplace level (i.e., sectoral, national, etc.). This section will trace how that form of union organization gave rise to a law-based, statist form of labor-relations regulation. The shift to a law-based form of regulation was dramatic. Toward the end of the nineteenth century, neither unions nor collective bargaining had any legal existence. The only means available to a union to obtain recognition from an employer, bring the employer to the bargaining table, make a collective agreement, or even enforce a collective agreement, was through “extralegal” economic compulsion — the threat or exercise of strikes, boycotts, and other forms of concerted activity. Court injunctions frequently repressed such tactics — thus “recognizing” collective worker activity only in the negative sense. By the middle of the twentieth century, this had all changed: statutes established comprehensive legal regulation of all stages of a collective bargaining process presided over by an administrative agency, the NLRB, and the federal courts. What explains this transformation? How did the regulation of labor relations come to assume the form of law? Did alternative possibilities exist? DECENTRALIZED UNIONISM AND THE ADOPTION OF THE LEGAL FORM The answer I offer is that this statist regime of labor law is a product of the narrowness of labor relations themselves. Unions in the US have a strong workplace presence but weak coordinating capacity. This decentralized model of trade union organization produced pervasive employer-union conflict as well as union-union conflict. Owing to their lack of coordinating capacity, unions in the US were unable to forge a regime of self-regulation. A statist regime of labor law was constructed to fill the regulatory void. At the heart of the 1935 National Labor Relations Act (or Wagner Act, after its main sponsor Senator Robert F. Wagner of New York) is an election procedure in which the NLRB supervises a secret ballot election and, by majority rule, awards “exclusive representation” status to a union if it prevails. Other features of the Act fit neatly into this “recognition” framework. The Act bans “unfair labor practices” to ensure that the workers’ choice of representative (or whether to be represented) is “fair and free.” After a union is “certified” by the government, the Act provides for elaborate procedures for when workers may decertify a union or an employer withdraw recognition. The legal status of various kinds of economic weapons to which workers may resort often depend on whether a union has been certified. And certification grants to unions themselves certain rights and protections, including machinery for the enforcement of union-negotiated contracts. This regime can only be described as a highly statist form of labor-relations regulation. The origins of this majority-rule recognition procedure can be traced to the pre-New Deal era, specifically to attempts to regulate labor relations on the railroads. Union organization on the railroads is a classic example of the early-industrialization problem. First as fraternal and benefit societies, later as bona fide unions, there were no fewer than twenty different labor organizations representing workers in the railway industry. Each of these organizations, in structure and strategy, enacted the principle of exclusivity described in the previous section. “Each brotherhood, as was customary among American craft unions, claimed sole jurisdiction over the employment conditions governing employees in that craft,” whether or not the worker was a member of the union.34 At approximately the same time, railway unions began appealing to the majority-rule principle both to justify their demands for union recognition vis-à-vis employers and to solve their jurisdictional disputes with one another. This all took place against the backdrop of extraordinary labor strife. Later, this principle was adopted in one of first pieces of national legislation regulating labor relations, the Transportation Act of 1920. Fifteen years later, a series of statutes, court decisions, and policy choices had so narrowed the available options that “the question of Wagner’s intent became secondary to his policy constraints. Wagner built the NLRA upon an ideology that had become self-sustaining.”35 Scholars have criticized the NLRA for enshrining into law the old AFL’s “voluntarist” labor-relations philosophy. This was accomplished either by the passage of the NLRA itself or by its subsequent “judicial deradicalization.” Either version treats the NLRA as a kind of ex nihilo event, without any legal or policy history of its own.36 Ruth O’Brien convincingly demolishes this account. It was not the AFL’s voluntarism that prevailed but the progressive movement’s “responsible unionism.” For progressives, the labor movement was too narrowly self-interested to accommodate the “public interest.” What was needed was a Hobbesian strong state — one that would subordinate the labor movement to the “true” guardian of the public interest.37 I endorse O’Brien’s version of events, but she doesn’t account for the counterfactual: could the AFL’s voluntarism have been a viable alternative solution to the “labor problem”? Given the lack of coordinating capacity among US labor unions, I suggest not. At least partly, the progressives’ critique of the AFL-dominated labor movement was true. It is just that the possibilities, if not the concrete choices available to the labor movement in the early 1900s, were not limited to either a Leviathan or narrow craft voluntarism. The following comparative example makes this claim concrete. In a forgotten story in labor history — forgotten because of the opportunity that was not taken — the International Association of Machinists (IAM) and the National Metal Trade Association (NMTA) signed the so-called Murray Hill agreement in 1900. In terms of the agreement’s substance, employers conceded to a reduction in the working day from ten to nine hours for all machinists in NMTA shops. However, a complication arose from the union’s inability to convince all NMTA employers to also adopt a uniform 12.5 percent wage increase to maintain weekly earnings at earlier levels. The agreement was repudiated in the following strike wave, the union claiming that the employer had failed to agree to the wage increase, the employers accusing the union of calling strikes instead of settling the disputes through the central arbitration system established by the agreement. As told by Peter Swenson, employers would have in time accepted, and many would have even welcomed, centralized bargaining over wages and working conditions in exchange for the unions relinquishing their job-control objectives. Employers “slammed the door shut for all time, however, because union militants used the strikes to impose the closed shop … and rules prohibiting men from operating more than one machine at a time, working for piece rates, and instructing unskilled workers.”38 The IAM leadership did not approve the strikes and in fact had agreed to management’s demand for the open shop and the right to manage. Thus, the objective of taking wages out of competition came to founder on the IAM’s inability to control local militancy and designs on job control. At almost exactly the same time, in 1905, an almost identical experiment in the identical industry led the Swedish labor movement in a very different direction. Confronted with a metal-workers’ strike, the employers’ association in the engineering industry responded with a lockout at eighty-three member firms. The conflict led to the “first industry-wide multi-employer wage settlement for any industry in the country.” The agreement “allowed no restrictions on manning of machinery or hiring of unskilled workers and apprentices … [and] the union agreed to an open shop clause.” The metal workers’ counterpart in the United States, “[m]ilitant skilled craftsmen” in the IAM, “would have regarded the deal with dismay and disgust.” The next year, this industry agreement was followed by a multi-industry, national agreement known as the “December Compromise.” A key section of the agreement prohibits closed-shop agreements and establishes management control over “decisions involving hiring, firing, and supervising work.”39 Yet what workers gave up in firm-level “production politics” they gained in power over the labor market itself. Centralized bargaining has come to deliver high union density, the lowest level of wage dispersion in the advanced capitalist world, and most critically, high inclusivity, encompassing virtually all wage earners. The IAM’s attempt at establishing industry-wide bargaining vividly demonstrates how the US labor movement’s workplace-centered unionism acted as an obstacle to broader and more inclusive forms of worker organization. Centered at the workplace, and pursuing a job-control strategy, US unions had significant power to contest the employer’s domination of the labor process. Unfortunately, for exactly those same reasons, this constellation of power was too weak, too uncoordinated between firms, to contest the domination of the market. As the comparison of the IAM with the Swedish metal workers shows, local power generated conflict but obstructed efforts to develop self-regulation. Following decades of the “labor problem,” the state stepped in as regulator. As a result, “[g]overned by this state-operated regulatory agency [i.e., the NLRB], organized labor no longer shaped its own destiny—it was dependent on this agency.”40 O’Brien is therefore correct to insist that it was the progressives’ statist vision rather than the AFL’s voluntarist philosophy that prevailed. Nevertheless, we should not overlook how historically given forms of labor organization frustrated other possible forms of labor-relations regulation. This gives us another reason why voluntarism per se was not the culprit in labor’s current legal and existential crisis. Scandinavian self-regulation is, after all, another kind of voluntarism. At the same time, as the IAM example demonstrates, the institutional and organizational narrowness of craft unionism left the door open to a statist regime of labor law. THE CONSEQUENCES OF IGNORING THE LEGAL FORM Because of unions’ strong workplace presence but weak capacity for coordinating activity across workplaces, the regulation of labor relations was achieved by recourse to the law. This claim cuts directly against the thrust of a tradition of “critical” labor law. The story told by critical labor law scholars is of a potentially “anticapitalist” National Labor Relations Act that was “deradicalized” by conservative judges and narrow-minded intellectuals.41 In these approaches there is never any question whether the law should be used to regulate labor relations. Rather, the line of attack is to challenge the particular content of the labor law, not the form of regulation itself. Not only is this a mistake as a method of analysis but, as I will also demonstrate, it also commits an instrumentalist error about the nature of the law and the state within capitalism. A content critique of law obscures the way that law does more than simply help or hinder the labor movement achieve various, specific objectives. As a form of social regulation, the law also allocates determinate material and ideological resources as a means to achieve these ends. These means threaten to substitute for the working class’s own material and ideological means of regulation. This would not be an issue if labor unions or other working-class organizations were merely means of achieving gains for workers. But they are not. Whatever their limitations, unions are moments in the process by which workers constitute themselves as a class. Thus, the law — not in its content, but as a form of social regulation — always presents the danger of undermining this process through mechanisms of dependency and displacement.

#### Methodological questions should be prioritized over policy -it’s a logical prior question to solvency

Bartlett ‘90, professor of law at Duke University, 1990 (Katharine, 103 Harvard Law Review 829, February, lexis)

Feminists have developed extensive critiques of law n2 and proposals for legal reform. n3 Feminists have had much less to say, however, about what the "doing" of law should entail and what truth status to give to the legal claims that follow. These methodological issues matter because methods shape one's view of the possibilities for legal practice and reform. Method "organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification." n4 Feminists cannot ignore method, because if they seek to challenge existing structures of power with the same methods that [\*831] have defined what counts within those structures, they may instead "recreate the illegitimate power structures [that they are] trying to identify and undermine." n5

#### TEXT: The Federal Republic of Germany ought to recognize a freedom to strike

#### A “right” gives power to the state, a freedom reduces it. The alternative is mutually exclusive with the case and solves better

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

What then should be the attitude of the labor movement toward the law? The very existence of the state and law requires some engagement with it, if only to avoid it. I address these issues in the next section. LABOR LAW AND UNION STRATEGY I have argued that the regulation of labor relations need not always assume the form of law, and that in fact it does not always assume the extreme form of legalism that we find in the United States. I have also demonstrated the contradictory nature of rights in the regulation of labor relations. What kind of labor legal strategy emerges from this analysis? The introduction drew the distinction between rights and freedoms.68 Rights are those interests or actions that are protected by the coercive power of the state. Freedoms on the other hand are those interests or actions that are not prohibited by the state, but also with which others may interfere; freedoms are neither legally protected nor prohibited. My contention is that the labor movement should advance labor freedoms and be wary about labor rights. This contention follows from the previous analysis. Since rights are distinguished by the fact that they are protected by the coercive power of the state, bureaucrats, judges, and legislators can use that fact to restrict labor’s own means and powers to enforce these interests and claims, subordinating society to the state. Indeed, as I have shown, state officials, with interests and power of their own, are likely to view labor’s competing power as legally redundant and particularly subversive. Labor freedoms restrict the coercive power of the state in a way that gives priority to labor’s autonomous sources of power, subordinating the state to society. Advancing labor freedoms is hardly an unambitious strategy, since direct prohibitions on concerted activities are abundant. The three most restrictive prohibitions on strike activity are those directed to (1) mass picketing,69 (2) organizing and bargaining strikes,70 and (3) secondary strikes and boycotts.71 Each is an affirmative ban on worker collective action, by which an employer may have the actions enjoined and the union fined. As such, they are restraints on workers’ freedom of action. The first ban has done the most to destroy the power of the strike and, as discussed below, to open the door to the employer’s use of replacement workers. The second has done the most to squelch coordinated worker activity across firms and industries. As identified earlier, the third has done the most to derail and suppress organic worker self-organization. These restrictions could be eliminated through various means. Congress could amend the National Labor Relations Act, and remove the offending provisions. Some labor law scholars have argued that these provisions violate the First Amendment and therefore should be declared unconstitutional. The labor movement should entertain all options, but I have little doubt that massive civil disobedience though direct worker confrontation with these legal barriers will also be necessary to discredit and overcome them. If such labor freedoms were achieved, employers would be under no state-imposed duty to refrain from interfering with workers engaged in such activities. Workers could be terminated for engaging in mass picketing, organizing strikes, or secondary picketing. Freedoms may therefore strike some readers as insufficient. Yet, it has been the burden of this essay’s comparative, historical, and legal analysis to demonstrate the self-defeating sociological effects of labor rights. Nevertheless, there is truth to the claim that certain, fundamental labor rights remain essential. Thus, insofar as it facilities worker solidarity and collective action, there seems little reason to eschew, for example, a worker’s right to join a union. Even more fundamentally, the rights of workers to be free from the employer’s physical assaults or from the state’s interference with speech and expression are also necessary. The distinction between rights and freedoms is no talisman. Rather, the ultimate objective must be kept in mind: the collective self-organization of the working class.72 To convince the reader that this proposal is not merely wishful thinking, we should recall the self-regulation models of Scandinavia. In Denmark and Sweden, the regulation of labor relations — including such fundamental matters as union recognition and minimum wages — falls within the purview of unions and organized employer associations. Strikes that are banned in the United States remain viable options in Scandinavia. Enforcement of the rules and agreements depends primarily (though not exclusively) on the economic weapons of labor and employers, rather than the physical compulsion administered by the state. Labor courts, unlike the NLRB, operate outside the hierarchy of the bureaucracy and courts of the state apparatus.

#### Statism destroys value to life

**Kateb** – Professor of Politics and Director of the Program in Political Philosophy at Princeton – **1992** (George, The Inner Ocean p. 117-118)

What is statism? From a broad range of possible meanings, we may confine ourselves for the moment to the sense present in nuclear rhetoric. Let us say that this statism is the belief that a government is not a mere government but a state and that as such it is the locus of identity of a society; that it is not only distinct from but above society; that it has rights (not merely duties); that its survival can be secured at any cost to its own society or to others. We ordinarily associate such thinking with absolute monarchy or with modern party and military dictatorships. We certainly do not think that such a belief is compatible with the Constitution or with the moral ideas connected with political legitimacy in general. Statism is a vision of life in which people are means to the end of the survival of power, in which society is understood as one great quasi-military organization or power base and in which the state is seen not only as a society's leadership but also as its reason for being. Officials may not recognize their rhetoric and themselves in this description. But I do not see what the expressed determination to risk or engage in a sizable exchange of nuclear weapons could mean except that the idea of statism has been accepted. This point becomes especially evident when we see that American nuclear rhetoric explicitly refers to a protracted nuclear war and thus to the readiness to accept massive numbers of American deaths. Even if we choose to leave aside the rhetoric concerning limited or special nuclear uses, and also to leave aside the massive numbers of deaths in other countries, we are compelled to take in the fact that the American government says it is willing to have the American people endure countless deaths. This willingness, in turn, can only mean that officials think that as long as the executive upper echelons survive intact, and with them a corps of military and police, the only other need is enough people left alive to supply the means necessary for the government—that is, the state—and its purposes. Its purposes are one: to remain and continue to bear the true existence and meaning of society, even when millions have been passively victimized unto death. I do not see what other implication can be drawn from any rationalization of the use of nuclear weapons in a sizable exchange. If we insist that even a so-called special or limited use carries with it the immediate or delayed possibility of escalation, then we simply say that the rationalization of any use of nuclear weapons is the most extreme form of statism and therefore is the most extreme form of illegitimate or anti-constitutionalist doctrine.

#### Statism causes extinction

**Beres, 1994** (Louis Rene, Professor of International Law in the Department of Political Science at Purdue University, Spring,, Arizona Journal of International and Comparative Law, Lexis)

The State presents itself as sacred. The idea of the State as sacred is met with horror and indignation, especially in the democratic, secular West, but this notion is indisputable. Throughout much of the contemporary world, the expectations of government are always cast in terms of religious obligation. And in those places where the peremptory claims of faith are in conflict with such expectations, it is the latter that invariably prevail. With States as the new gods, the profane has become not only permissible, it is now altogether sacred. Consider the changing place of the State in world affairs. Although it has long been observed that States must continually search for an improved power position as a practical matter, the sacralization of the State is a development of modern times. This sacralization, representing a break from the traditional [\*20] political realism of Thucydides, n57 Thrasymachus n58 and Machiavelli, n59 was fully developed in Germany. From Fichte n60 and Hegel, through Ranke and von Treitschke, n61 the modern transformation of Realpolitik has led the planet to its current problematic rendezvous with self-determination. Rationalist philosophy derived the idea of national sovereignty from the notion of individual liberty, but cast in its modern, post-seventeenth century expression, the idea has normally prohibited intervention n62 and acted to oppose human dignity and human rights. n63 Left to develop on its continuous flight from reason, the legacy of unrestrained nationalism can only be endless loathing and slaughter. Ultimately, as Lewis Mumford has observed, all human energies will [\*21] be placed at the disposal of a murderous "megamachine" with whose advent we will all be drawn unsparingly into a "dreadful ceremony" of worldwide sacrifice. n64 The State that commits itself to mass butchery does not intend to do evil. Rather, according to Hegel's description in the Philosophy of Right, "the State is the actuality of the ethical Idea." It commits itself to death for the sake of life, prodding killing with conviction and pure heart. A sanctified killer, the State that accepts Realpolitik generates an incessant search for victims. Though mired in blood, the search is tranquil and self-assured, born of the knowledge that the State's deeds are neither infamous nor shameful, but heroic. n65 With Hegel's characterization of the State as "the march of God in the world," John Locke's notion of a Social Contract -- the notion upon which the United States was founded n66 -- is fully disposed of, relegated to the ash heap of history. While the purpose of the State, for Locke, is to provide protection that is otherwise unavailable to individuals -- the "preservation of their lives, liberties and States" -- for Hegel, the State stands above any private interests. It is the spirit of the State, Volksgeist, rather than of individuals, that is the presumed creator of advanced civilization. And it is in war, rather than in peace, that a State is judged to demonstrate its true worth and potential. [\*22] How easily humankind still gives itself to the new gods. Promised relief from the most terrifying of possibilities -- death and disappearance -- our species regularly surrenders itself to formal structures of power and immunity. Ironically, such surrender brings about an enlargement of the very terrors that created the new gods in the first place, but we surrender nonetheless. In the words of William Reich, we lay waste to ourselves by embracing the "political plague-mongers," a necrophilous partnership that promises purity and vitality through the killing of "outsiders."

### Case:

#### The role of the ballot is to determine who did the best debating. Evaluate the plan relative to opportunity costs – anything else is self-serving and arbitrary. Anything else filters the NC which means we can’t use generics which crushes equity. Prior questions are regressive, unpredictable, and make generating offense impossible.

#### The IPCC’s UN set goal is contradictory to scientific findings– their conclusions are flawed and political

Carter et. al 15

(Robert M., Ph.D. and a geologist and environmental scientist, is emeritus fellow of the Institute of Public Affairs in Australia and author of Climate Change: The Counter Consensus; Craig D. Idso, Ph.D. and is the founder, former president and current chairman of the board of the Center for the Study of Carbon Dioxide and Global Change; S. Fred. Singer, Ph.D., physicist, and is chairman of the Science and Environmental Policy Project and founder of the Nongovernmental International Panel on Climate Change, The Heartland Institute, “Why Scientists Disagree About Global Warming”, 2015, pg. 76-78, <https://www.heartland.org/sites/default/files/12-04-15_why_scientists_disagree.pdf>, JKS)

Although IPCC’s reports are voluminous and their arguments impressively persistent, it is legitimate to ask whether that makes them good science. In order to conduct an investigation, scientists must first formulate a falsifiable hypothesis to test. The hypothesis implicit in all IPCC writings, though rarely explicitly stated, is that dangerous global warming is resulting, or will result, from human-related greenhouse gas emissions. In considering any such hypothesis, an alternative and null hypothesis must be entertained, which is the simplest hypothesis consistent with the known facts. Regarding global warming, the null hypothesis is that currently observed changes in global climate indices and the physical environment are the result of natural variability. To invalidate this null hypothesis requires, at a minimum, direct evidence of human causation of specified changes that lie outside usual, natural variability. Unless and until such evidence is adduced, the null hypothesis is assumed to be correct. Science does not advance by consensus, a show of hands, or even persuasion. It advances by individual scientists proposing testable hypotheses, examining data to see if they disprove a hypothesis, and making those data available to other unbiased researchers to see if they arrive at similar conclusions. Disagreement is the rule and consensus is the exception in most academic disciplines. This is because science is a process leading to ever-greater certainty, necessarily implying that what is accepted as true today will likely not be accepted as true tomorrow. Albert Einstein was absolutely right when he said, “No amount of experimentation can ever prove me right; a single experiment can prove me wrong” (Einstein, 1996). In contradiction of the scientific method, IPCC assumes its implicit hypothesis is correct and that its only duty is to collect evidence and make plausible arguments in the hypothesis’s favor. One probable reason for this behavior is that the United Nations protocol under which IPCC operates defines climate change as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods” (United Nations, 1994, Article 1.2). Not surprisingly, directing attention to only the effects of human greenhouse gas emissions has resulted in IPCC failing to provide a thorough analysis of climate change. Models, Postulates, and Circumstantial Evidence IPCC offers three lines of reasoning in defense of its hypothesis: global climate model projections, a series of postulates or assumptions, and appeals to circumstantial evidence. The specific arguments are summarized in Figure 2. Figure 2 IPCC’s Three Lines of Argument Global Climate Model Projections IPCC modelers assume Global Climate Models (GCMs) are based on a perfect knowledge of all climate forcings and feedbacks. They then assert: # A doubling of atmospheric CO2 would cause warming of up to 6°C. # Human-related CO2 emissions caused an atmospheric warming of at least 0.3°C over the past 15 years. # Enhanced warming (a “hot spot”) should exist in the upper troposphere in tropical regions. # Both poles should have warmed faster than the rest of Earth during the late twentieth century. Postulates Postulates are statements that assume the truth of an underlying fact that has not been independently confirmed or proven. IPCC postulates: # The warming of the twentieth century cannot be explained by natural variability. # The late twentieth century warm peak was of greater magnitude than previous natural peaks. # Increases in atmospheric CO2 precede, and then force, parallel increases in temperature. # Solar forcings are too small to explain twentieth century warming. # A future warming of 2°C or more would be net harmful to the biosphere and human well-being. Circumstantial Evidence Circumstantial evidence does not bear directly on the matter in dispute but refers to circumstances from which the occurrence of the fact might be inferred. IPCC cites the following circumstantial evidence: # Unusual melting is occurring in mountain glaciers, Arctic sea ice, and polar icecaps. # Global sea level is rising at an enhanced rate and swamping tropical coral atolls. # Droughts, floods, and monsoon variability and intensity are increasing. # Global warming is leading to more, or more intense, wildfires, rainfall, storms, hurricanes, and other extreme weather events. # Unusual melting of Boreal permafrost or sub-seabed gas hydrates is causing warming due to methane release. Source: Summary for Policymakers, Climate Change Reconsidered II: Physical Science (Chicago, IL: The Heartland Institute, 2013). All three lines of reasoning depart from proper scientific methodology. Global climate models produce meaningful results only if we assume we already know perfectly how the global climate works, and most climate scientists say we do not (Bray and von Storch, 2010; Strengers, Verheggen, and Vringer, 2015). Moreover, it is widely recognized that climate models are not designed to produce predictions of future climate but rather what-if projections of many alternative possible futures (Trenberth, 2009). Postulates, commonly defined as “something suggested or assumed as true as the basis for reasoning, discussion, or belief,” can stimulate relevant observations or experiments but more often are merely assertions that are difficult or impossible to test (Kahneman, 2011). IPCC expresses “great confidence” and even “extreme confidence” in its assumptions, but it cannot apply a statistical confidence level because they are statements of opinion and not of fact. This is not the scientific method. Circumstantial evidence, or observations, in science are useful primarily to falsify hypotheses and cannot prove one is correct (Popper, 1965, p. vii). It is relatively easy to assemble reams of “evidence” in favor of a point of view or opinion while ignoring inconvenient facts that would contradict it, a phenomenon called “confirmation bias.” The only way to avoid confirmation bias is independent review of a scientist’s work by other scientists who do not have a professional, reputational, or financial stake in whether the hypothesis is confirmed or disproven. As documented in Chapter 2, this sort of review is conspicuously absent in the climate change debate. Those who attempt to exercise it find themselves demonized, their work summarily rejected by academic journals, and worse.

#### There’s no alternative- CO2 enrichment is the only way to prevent extinction from food shortages

Driessen 13

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It’s amazing that minuscule bacteria can cause life-threatening diseases and infections – and miraculous that tiny doses of vaccines and antibiotics can safeguard us against these deadly scourges. It is equally incredible that, at the planetary level, carbon dioxide is a miracle molecule for plants – and the “gas of life” for most living creatures on Earth.¶ In units of volume, CO2’s concentration is typically presented as 400 parts per million (400 ppm). Translated, that’s just 0.04% of Earth’s atmosphere – the equivalent of 40 cents out of one thousand dollars, or 1.4 inches on a football field. Even atmospheric argon is 23 times more abundant: 9,300 ppm. Moreover, the 400 ppm in 2013 is 120 ppm more than the 280 ppm CO2 level of 1800, and that two-century increase is equivalent to a mere 12 cents out of $1,000, or one half-inch on a football field.¶ Eliminate carbon dioxide, and terrestrial plants would die, as would lake and ocean phytoplankton, grasses, kelp and other water plants. After that, animal and human life would disappear. Even reducing CO2 levels too much – back to pre-industrial levels, for example – would have terrible consequences.¶ Over the past two centuries, our planet finally began to emerge from the Little Ice Age that had cooled the Earth and driven Viking settlers out of Greenland. Warming oceans slowly released some of the CO2 stored in their waters. Industrial Revolution factories and growing human populations burned more wood and fossil fuels, baked more bread, and brewed more beer, adding still more CO2 to the atmosphere. Much more of the miracle molecule came from volcanoes and sub-sea vents, forest fires, bio-fuels use, decaying plants and animals, and “exhaust” from living, breathing animals and humans.¶ What a difference that extra 120 ppm has made for plants, and for animals and humans that depend on them. The more CO2 there is in the atmosphere, the more it is absorbed by plants of every description – and the faster and better they grow, even under adverse conditions like limited water, extremely hot air temperatures, or infestations of insects, weeds and other pests. As trees, grasses, algae and crops grow more rapidly and become healthier and more robust, animals and humans enjoy better nutrition on a planet that is greener and greener.¶ Efforts to feed seven billion people, and improve nutrition for more than a billion who are malnourished, are steadily increasing the tension between our need for land to feed humans – and the need to keep land in its natural state to support plants and wildlife. How well we are able to increase crop production from the same or less acreage may mean the difference between global food sufficiency and rampant human starvation in coming decades – and between the survival and extinction of many plant and animal species.¶ Modern agricultural methods steadily and dramatically improved crop yields per acre between 1930 and today. That is especially important if we continue to divert millions of acres of farmland from food crops, and convert millions of acres of rainforest and other wildlife habitat to cropland, for biofuel production to replace fossil fuels that we again have in abundance. Carbon dioxide will play a vital role in these efforts.¶ Increased CO2 levels in greenhouses dramatically improve plant growth, especially when temperatures are also elevated; rising atmospheric CO2 levels have likewise had astounding positive impacts on outdoor plant growth and survival. Lentils and other legumes grown in hothouses with 700 ppm CO2 improved their total biomass by 91%, their edible parts yield by 150% and their fodder yield by 67%, compared to similar crops grown at 370 ppm CO2, Indian researchers found.¶ Rice grown at 600 ppm CO2 increased its grain yield by 28% with low applications of nitrogen fertilizer, Chinese scientists calculated. U.S. researchers discovered that sugarcane grown in sunlit greenhouses at 720 ppm CO2 and 11° F (6° C) higher than outside ambient air produced stem juice an amazing 124% higher in volume than sugarcane grown at ambient temperature and 360 ppm CO2. Non-food crops like cotton also fare much better when CO2 levels are higher.¶ Research into natural forest and crop growth during recent periods of rising atmospheric CO2 levels, between 1900 and 2010, found significant improvements under “real-world” conditions, as well.¶ An analysis of Scots pines in Catalonia, Spain, showed that tree diameter and cross-sectional area expanded by 84% between 1900 and 2000, in response to rising CO2 levels. The growth of young Wisconsin trees increased by 60%, and tree ring width expanded by almost 53%, as atmospheric CO2concentrations increased from 316 ppm in 1958 to 376 ppm in 2003, researchers calculated.¶ University of Minnesota scientists compared the growth of trees and other plants during the first half of the 20th Century (which included the terrible Dust Bowl years), when CO2 levels rose only 10 ppm – to the period 1950-2000, when CO2 increased by 57 ppm. They found that CO2 lowered plant sensitivity to severe drought and improved their survival rates by almost 50%. Swiss researchers concluded that, because of rising CO2 levels, “alpine plant life is proliferating, biodiversity is on the rise, and the mountain world appears more productive and inviting than ever.”¶ Other researchers used historical (real-world) data for land use, atmospheric CO2 concentration, nitrogen deposition, fertilization, ozone levels, rainfall and climate, to develop a computer model that simulates plant growth responses for southern U.S. habitats from 1895 to 2007. They determined that “net primary productivity” improved by an average of 27% during this 112-year period, with most of the increased growth occurring after 1950, when CO2 levels rose the most, from 310 ppm in 1950 to 395 ppm in 2007.¶ How does all this happen? Plants use energy from the sun to convert carbon dioxide from the air, and water and minerals from the soil, into the carbohydrates and other molecules that form plant biomass. More CO2 means more and larger flowers; higher seed mass and germination success; and improved plant resistance to droughts, diseases, viruses, pathogenic infections, air pollutants, and salt or nitrogen accumulation in soils. Higher CO2 levels also improve plants’ water use efficiency – ensuring faster and greater carbon uptake by plant tissues, with less water lost through transpiration.¶ More airborne CO2 lets plants reduce the size of their stomata, little holes in leaves that plants use to inhale CO2 building blocks. When CO2 is scarce, the openings increase in size, to capture sufficient supplies of this “gas of life.” But increasing stomata size means more water molecules escape, and the water loss places increasing stress on the plants, eventually threatening their growth and survival.¶ When the air’s CO2 levels rise – to 400, 600, or 800 ppm – the stomata shrink in size, causing them to lose less water from transpiration, while still absorbing ample CO2 molecules. That enables them to survive extended dry spells much better.¶ (The 2009 and 2011 volumes of the Nongovernmental International Panel on Climate Change report, Climate Change Reconsidered, especially this section, and Dr. Craig Idso’s www.CO2science.org website summarize hundreds of similar studies of crops, forests, grasslands, alpine areas and deserts enriched by carbon dioxide. CO2 Science’s Plant Growth Database lets people search for more studies.)¶ One of the worst things that could happen to our planet and its people, animals, and plants would be for CO2 levels to plunge back to levels last seen before the Industrial Revolution. **Decreasing CO2 levels would be especially problematical if Earth cools, in response to the sun entering another “quiet phase,” as happened during the Little Ice Age. If Earth cools again, growing seasons would shorten and arable cropland would decrease in the northern temperate zones. We would then need every possible molecule of CO2 – just to keep agricultural production high enough to stave off mass human starvation … and save wildlife habitats from being plowed under to replace that lost cropland.¶** However, even under current Modern Warm Era conditions, crops, other plants, animals and people will benefit from more CO2. The “gas of life” is a miracle plant fertilizer that helps plants grow and prosper – greening the planet, nourishing wildlife habitats, feeding people who crave larger amounts of more nutritious food, preventing species loss, and even warming the Earth a little.¶ That is an amazing fete for a colorless, odorless, tasteless gas that comprises just 0.04% of our atmosphere! We should praise carbon dioxide – not vilify, ban or bury it.

#### Food crisis outweighs warming—massive wars, turns biosphere

Dr. Idso 11

(Dr. Craig D. Idso, Estimates Of Global Food Production In The Year 2050: Will We Produce Enough To Adequately Feed The World, Center for the Study of Carbon Dioxide and Global Change, 6/15/11, p. 31-32)

In light of the host of real-world research findings discussed in the body of this report, it should be evident to all that the looming food shortage facing humanity mere years to decades from now is far more significant than the theoretical and largely unproven catastrophic climate- and weather-related projections of the world’s climate alarmists. And it should also be clear that the factor that figures most prominently in both scenarios is the air’s CO2 content. The theorists proclaim that we must drastically reduce anthropogenic CO2 emissions by whatever means possible, including drastic government interventions in free-market enterprise systems. The realists suggest that letting economic progress take its natural unimpeded course is the only way to enable the air’s CO2 content to reach a level that will provide the aerial fertilization effect of atmospheric CO2 enrichment that will be needed to provide the extra food production that will be required to forestall massive human starvation and all the \