# Off

## 1 – Worker Self-Directed Enterprise CP

#### Plan text: Firms should be transformed into worker self-directed enterprises.

Wolff ND - Richard D. Wolff [professor of economics emeritus at the University of Massachusetts, Amherst and a visiting professor at the New School in New York City. He has also taught economics at Yale University, the City University of New York, and the University of Paris I (Sorbonne)], “Start with Worker Self-Directed Enterprises,” *The Next System Project*. <https://thenextsystem.org/sites/default/files/2017-08/RickWolff.pdf> AT

We therefore propose reorganizing enterprises such that workers become their own bosses. Specifically, that means placing the workers in the position of their own collective board of directors, rather than having directors be nonworkers selected by major shareholders. This is not primarily a matter of workers as owners of these enterprises (fine, but not required), nor primarily as managers (likewise fine, but not required). It is the tasks of direction—the decision making now assigned usually and primarily to corporate boards of directors and only secondarily to the major shareholders who choose them—that must be transferred to the workers collectively. We call such enterprises worker self-directed enterprises (WSDEs). They embody and concretize what we mean by economic democracy by locating it first and foremost inside the enterprises producing the goods and services upon which society depends. WSDEs represent the goal and their growth and proliferation represent the mechanism to transition from the present capitalist system to a far better next system. The strategic focus, then, is not upon the government, as in traditional liberal and socialist thinking; it is rather more microeconomic than macroeconomic. Of course, winning government support of WSDEs and their proliferation would be helpful and sought after—perhaps by political parties rooted in and funded by an emerging WSDE sector within otherwise private or state capitalist economies. But the main emphasis would be on working people who either convert existing enterprises into WSDEs or start new enterprises as WSDEs. Core Goals Briefly, what are the principal, core goals your model or system seeks to realize? Our core goal is the development of a major—and, if possible, prevailing—sector of the economy that is comprised of enterprises (offices, factories, farms, and stores) in which the employees democratically perform the following key enterprise activities: (a) divide all the labors to be performed, (b) determine what is to be produced, how it is to be produced, and where it is to be produced, and (c) decide on the use and distribution of the output or revenues (if output is monetized) therefrom. Major Changes What are the principal changes you envision in the current system—the major differences between what you envision and what we have today? A large portion of existing capitalistically organized enterprises would have to transition out of structures in which owners, top managers, or boards of directors perform the key enterprise activities mentioned above. Principal Means What are the principal means (policies, institutions, behaviors, whatever) through which each of your core goals is pursued? The means to achieve the transition would need to be several. Laws would need to be enacted or changed to facilitate the conversion of capitalistically organized enterprises into WSDEs, the formation of new WSDEs, and the functioning of WSDEs. School curriculums would need to be changed and teachers be trained to explain, explore, and study WSDEs systematically as alternative-enterprise organizations alongside their traditional capitalist counterparts (corporations, partnerships, and family enterprises). Political parties and platforms need to emerge to represent the interests of WSDEs—the WSDE sector—in terms of state policies, much as now the Democrats and Republicans represent the interests of the capitalist sector.

#### Empirics prove that self-directed firms are more democratic and successful.

Jerry **Ashton, 13** - ("The Worker Self-Directed Enterprise: A "Cure" for Capitalism, or a Slippery Slope to Socialism?," HuffPost, 1-2-2013, accessed 11-16-2021, https://www.huffpost.com/entry/worker-self-directed-enterprise\_b\_2385334)//MS

Decidedly so, Wolff responds, providing two financially successful examples of **the workplace being a social activity governed by the norms of community**, one in Spain and one in California. ¶ Wolff offers as his first example, **the Mondragon Cooperative** in the North of Spain. ¶ This co-op took its name from the Mondragan University founded by a local Catholic priest by the name of "Father Arizmendi" as a mechanism to enable the poor in that community to learn how to cooperatively run their own business. ¶ Beginning with six workers producing agrarian goods, some 55 years later **it now employs 120,000** people employed **in some 100 worker-owned enterprises** and affiliated organizations. It is the **10th largest cooperative in Spain** and a bulwark against that country's steep (elsewhere) unemployment rate of 22 percent. ¶ "This is a 'a family of cooperatives' in which the first commitment is to preserve jobs -- not satisfy stockholders." Wolff points out. ¶ That same philosophy infuses **the Arizmendi Bakery** comprising five "sister cooperatives" in the San Francisco Bay Area. Proudly assuming the name of the famous Basque Priest, this group **gets rave reviews** for its pastries and thin-crust pizza **and handily outperforms** its more traditional bakery competitors **in both revenue and employee satisfaction**. ¶ As their website [proudly states](http://arizmendi.coop/), "We are a cooperative -- a worker-owned and operated business. We make decisions democratically, sharing all of the tasks, responsibilities, benefits and risks." ¶

## 2 - Police

#### CP Text: A just government should recognize the unconditional right of non-police workers to strike and ought to deny police the right to strike by abolishing police unions.

#### The aff makes police collective bargaining worse and gives more power to police unions.

Andrew **Grim, 20** Ph.D. candidate in history at the University of Massachusetts Amherst, is at work on a dissertation on anti-police brutality activism in post-WWII Newark

- ("What is The Blue Flue and How Has It Increased Police Power," Washington Post, 7-1-2020, 11-2-2021https://www.washingtonpost.com/outlook/2020/07/01/what-is-blue-flu-how-has-it-increased-police-power/)//AW

This weekend, officers from the New York City Police Department are rumored to be planning a walkout to protest calls to defund the police. This builds on a similar tactic used by police in Atlanta less than a month ago. On June 16, Fulton County District Attorney, Paul L. Howard Jr. announced that Garrett Rolfe, the Atlanta police officer who fatally shot Rayshard Brooks, would face charges of felony murder and aggravated assault. That night, scores of Atlanta Police Department officers caught the “blue flu,” calling out sick en masse to protest the charges against Rolfe. Such walkouts constitute, in effect, illegal strikes — laws in all 50 states prohibit police strikes. Yet, there is nothing new about the blue flu. It is a strategy long employed by police unions and rank-and-file officers during contract negotiations, disputes over reforms and, like in Atlanta, in response to disciplinary action against individual officers. The intent is to dramatize police disputes with municipal government and rally the citizenry to their side. But the result of such protests matter deeply as we consider police reform today. Historically, blue flu strikes have helped expand police power, ultimately limiting the ability of city governments to reform, constrain or conduct oversight over the police. They allow the police to leverage public fear of crime to extract concessions from municipalities.

#### Police unions use collective bargaining to reinforce systems of racism and violence. Clark ‘19

Paul F. Clark [School Director and Professor of Labor and Employment Relations, Penn State], 10-10-2019, "Why police unions are not part of the American labor movement," Conversation, [https://theconversation.com/why-police-unions-are-not-part-of-the-american-labor-movement-142538 //accessed 10/20/2021](https://theconversation.com/why-police-unions-are-not-part-of-the-american-labor-movement-142538%20//accessed%2010/20/2021) //marlborough jh

In the wake of George Floyd’s death at the hands of a Minneapolis police officer, news reports have suggested that [police unions bear some of the responsibility](https://www.salon.com/2020/06/27/police-unions-blamed-for-rise-in-fatal-shootings-even-as-crime-plummeted/) for the [violence perpetrated against African Americans](https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html). ¶Critics have assailed these unions for [protecting officers who have abused their authority](https://www.washingtonpost.com/outlook/2020/06/09/limits-when-police-can-use-force-is-better-solution-than-banning-police-unions/). Derek Chauvin, the former police officer facing [second-degree murder charges for Floyd’s death](https://www.npr.org/2020/06/03/868910542/chauvin-and-3-former-officers-face-new-charges-over-george-floyds-death), had nearly [20 complaints filed against him during his career](https://www.mercurynews.com/2020/05/30/minneapolis-officers-work-personal-background-detailed-2/) but only received two letters of reprimand. ¶Many people who support labor unions in principle, who view them as a countervailing force against the power of employers, have only recently [come to view police unions as problematic](https://www.latimes.com/politics/story/2020-06-15/police-unions-george-floyd-reform) – as entities that [perpetuate a culture of racism and violence](https://www.newyorker.com/news/news-desk/how-police-union-power-helped-increase-abuses). ¶But this sentiment reverberates through the history of the U.S. labor movement. As a [labor scholar](https://ler.la.psu.edu/people/pfc2) who has [written about unions](https://theconversation.com/essential-us-workers-often-lack-sick-leave-and-health-care-benefits-taken-for-granted-in-most-other-countries-136802) for [decades](https://onlinelibrary.wiley.com/doi/full/10.1111/bjir.12526), I think this viewpoint can be explained by the fact that police unions differ fundamentally from almost all trade unions in America. **¶**Foot soldiers for the status quo **¶**For many veterans of the labor movement, [police have been on the wrong side](https://plsonline.eku.edu/insidelook/history-policing-united-states-part-3) of the centuries-old struggle between workers and employers. [Rather than side with other members of the working class](https://www.businessinsider.com/mayhem-in-madison-police-remove-protesters-lockdown-capitol-2011-3), police have used their legal authority to protect businesses and private property, enforcing laws viewed by many as anti-union. **¶**The strain between law enforcement and labor goes back to the origins of [American unions in the mid 19th century](https://plsonline.eku.edu/insidelook/history-policing-united-states-part-3). Workers formed unions to fight for wage increases, reduced working hours and humane working conditions. **¶**For employers, this was an attack on the existing societal power structure. They enlisted the government as the defender of capital and property rights, and [police officers were the foot soldiers](http://america.aljazeera.com/articles/2014/12/22/police-unions-havealwaysbeenalabormovementapart.html) who defended the status quo. **¶**When workers managed to form unions, companies called on local police to disperse union gatherings, marches and picket lines, using [violence and mass arrests to break the will of strikers](https://www.smithsonianmag.com/history/how-1897-massacre-pennsylvania-coal-miners-morphed-galvanizing-crisis-forgotten-history-180971695/). **¶**A narrow focus **¶**Police work is a fundamentally conservative act. And police officers tend to be politically conservative and Republican. **¶**A poll of police [conducted in September 2016 by POLICE Magazine](https://www.policemag.com/342098/the-2016-police-presidential-poll) found that 84% of officers intended to vote for Donald Trump that November. And law enforcement unions like the Fraternal Order of Police, the International Union of Police Associations and the National Border Patrol Council [all endorsed Trump’s candidacy in 2016](https://theintercept.com/2016/10/09/police-unions-reject-charges-of-bias-find-a-hero-in-donald-trump/). **¶**This contrasts sharply with the 39% share of all [union voters who voted for Trump](https://www.wsj.com/articles/democrats-labor-to-stem-flow-of-union-voters-to-trump-11567422002) and the fact that every other union which made an [endorsement supported Hillary Clinton](https://justfacts.votesmart.org/candidate/evaluations/55463/hillary-clinton). **¶**Exclusively protecting the interests of their members, without consideration for other workers, also sets police unions apart from other labor groups. Yes, the first priority of any union is to fight for their members, but most other unions see that fight in the context of a [larger movement that fights for all workers](https://aflcio.org/what-unions-do/social-economic-justice). ¶Police unions do not see themselves as [part of this movement](https://www.teenvogue.com/story/what-to-know-police-unions-labor-movement). With one exception – the [International Union of Police Associations](https://www.theguardian.com/us-news/2020/jun/11/police-unions-american-labor-movement-protest), which represents just [2.7% of American police](https://www.bjs.gov/content/pub/pdf/ftelea9716.pdf) – law enforcement unions are not affiliated with the AFL-CIO, the U.S. labor body that unites all unions. ¶Alternative justice system ¶A central concern with police unions is that they use collective bargaining to negotiate contracts that reduce police transparency and accountability. This allows officers who engage in excessive violence to [avoid the consequences of their actions](https://www.washingtonpost.com/business/2020/06/10/police-unions-violence-research-george-floyd/) and remain on the job. ¶In a way, some police unions have created an [alternative justice system](https://www.theatlantic.com/politics/archive/2016/06/restorative-justice-police-violence/489221/) that prevents police departments and municipalities from disciplining or discharging officers who have committed crimes against the people they are sworn to serve. ¶In Minneapolis, residents filed more than [2,600 misconduct complaints](https://www.wsj.com/articles/the-problem-with-police-unions-11591830984) against police officers between 2012 and 2020. But only 12 of those grievances resulted in discipline. The most significant [punishment any officer received was a 40-hour suspension](https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html). **¶**Besides collective bargaining, police have used the political process – including [candidate endorsements and lobbying](https://www.theguardian.com/us-news/2020/jun/23/police-unions-spending-policy-reform-chicago-new-york-la) – to secure local and state legislation that protects their members and quells efforts to provide greater police accountability. ¶Police officers are a formidable political force because they represent [the principle of law and order](https://www.thedailybeast.com/the-gop-and-police-unions-a-love-story). Candidates endorsed by the police unions can claim they are the law and order candidate. Once these candidates win office, police unions have [significant leverage to lobby for policies](https://nymag.com/intelligencer/2020/06/george-floyd-protests-police-abuse-reform-qualified-immunity-polls.html) they support or block those they oppose. ¶Because of this power, critics claim that police unions don’t feel accountable to the citizens they serve. An attorney who sued the Minneapolis Police Department on behalf of a Black resident who was [severely beaten by police officers](https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html) said that he is convinced that Minneapolis “officers think they don’t have to abide by their own training and rules when dealing with the public.” ¶George Floyd’s death has raised serious concerns about the current role of police and police unions in our society. Several unions have demanded that the International Union of Police Associations be expelled from the U.S. labor federation. Other [unions oppose expulsion](https://www.nbcnews.com/politics/politics-news/national-labor-groups-mostly-close-ranks-defend-police-unions-n1231573). They argue that the labor movement can have a greater impact on a police union that is inside the “House of Labor.” ¶In any case, there is a growing recognition that police unions differ significantly from other unions. And there is a growing acceptance that they are not part of the larger American labor movement but rather a narrowly focused group pursuing their own self-interests, often to the detriment of the nation at large.

#### Police backed by unions are more violent than non-unionized police. Ingraham ’20.

Christopher Ingraham [Reporter] 20. ("Police Unions and Police Misconduct: What the Research Says About the Connection," Washington Post, 6-10-2020, 10-27-2021 https://www.washingtonpost.com/business/2020/06/10/police-unions-violence-research-george-floyd/)//AW

Some of the most shocking images to emerge from the demonstrations that have dominated recent headlines stem from violent interactions between law enforcement officers and peaceful protesters. They’ve also escalated calls for police reform. But police unions tend to be resistant to such efforts, as their mandate is to protect the interests of their members — even in cases when those interests may be counter to democratic norms and values. Though an understudied topic of criminology, what research that does exist is unequivocal: “Virtually **all** of the **published items** that express an opinion **on the impact of police unions regard them as having a negative effect**, particularly **on innovation, accountability, and police — community relations**,” as a review in the journal Police Practice and Research put it. Researchers say unionized officers draw more excessive-force complaints and are more likely to kill civilians, particularly nonwhite ones. Here are some key findings: Unionization emboldens violent officers A recent University of Chicago working paper found violent misconduct among sheriff’s officers increased about 40 percent after a state supreme court ruling allowing the officers to unionize. The incidents examined in this paper are among the most serious types of violent misconduct, including sexual assault and excessive force. It’s worth noting the baseline numbers of these types of incidents are very low, such that the 40 percent increase translates into roughly one additional violent incident per sheriff’s office every five years. Certain union-negotiated contract provisions — including time limits on misconduct investigations, expungement of misconduct records, and mechanisms allowing officers to challenge disciplinary findings — make it more difficult to detect and punish officers who abuse their position, the researchers say. Additionally, the authors write, unionization “may increase solidarity among officers and thereby strengthen a code of silence that impedes the detection of misconduct.” Use-of-force complaints more likely among unionized officers A 2006 report from the federal Bureau of Justice Statistics found unionized police agencies garnered 9.9 use-of-force complaints for every 100 officers, compared with 7.3 for non-unionized agencies. During the disciplinary process, about 7 percent of those complaints were sustained, or found to have merit, in unionized agencies. In nonunion agencies, the sustain rate was more than double, at 15 percent. In effect, officers in unionized police forces are more likely to be the subjects of an excessive-force complaint, but more likely to beat the allegations in disciplinary hearings. Lengthy appeals processes make it more difficult to fire ‘bad apples’ Writing in the University of Pennsylvania Law Review, Stephen Rushin analyzed 656 police union contracts to examine the role of the disciplinary appeals process in misconduct cases. “The median police department in the data set offers police officers as many as four layers of appellate review in disciplinary cases,” he found. Some provided six or seven layers of review. After those levels are exhausted, most departments then allow officers accused of misconduct to appeal to a third-party arbitrator. More than half gave the offending officers some control over the selection of the arbitrator. The result, as detailed in a 2017 Washington Post investigation, is that a stunningly high percentage of officers fired for misconduct are eventually rehired after a lengthy appeals process. In Washington, D.C., for instance, 45 percent of the officers fired for misconduct from 2006 to 2017 were rehired on appeal. In Philadelphia, the share is 62 percent. In San Antonio, it’s 70 percent. Other contract provisions also shield police from accountability In a separate paper in the Duke Law Journal, Rushin analyzed 178 police union contracts and found a number of provisions that played a role in shielding police from the consequences of misconduct, including provisions that “limit officer interrogations after alleged misconduct, mandate the destruction of disciplinary records, ban civilian oversight, prevent anonymous civilian complaints, indemnify officers in the event of civil suits, and limit the length of internal investigations.” He found that “overall, 156 of the 178 police union contracts examined in this study — around 88 percent — contained at least one provision that could thwart legitimate disciplinary actions against officers engaged in misconduct.” Police unions advocate shielding disciplinary records from public view Writing in the Stanford Law & Policy Review, Katherine Bies notes that “police disciplinary records are public in only 12 states,” due in no small part to lobbying efforts by police unions. The article deals specifically with the efforts of police unions to pass laws in two states — New York’s notorious Section 50-a and a similar law in California — that shield disciplinary records from public scrutiny. “Police unions often strategically frame any opposition to their agenda of secrecy as endangering public safety and harming the public interest,” Bies writes. “However, police unions often conflate ‘the public interest’ with the private interests of police officers.” Unionized police may be more likely to kill civilians, particularly nonwhite ones Economist Rob Gillezeau recently previewed his research examining the relationship between unionization and police killings of U.S. citizens. While provisional, his initial results suggest the police unionization happening in the 1950s through the 1980s led to “about 60 to 70″ additional civilians killed by police each year. The “overwhelming majority” of those civilians were nonwhite. “With the caveat that this is very early work, it looks like collective bargaining rights are being used to protect the ability of officers to discriminate in the disproportionate use of force against the nonwhite population,” he recently said on Twitter.

## Impacts

### Turn Unions

#### Police unions are anti-labor- means the aff can never solve without getting rid of them AND turns case. Modak 20.

Ria Modak [Student Coordinator, Muslim American Studies Working Group, Harvard Student Labor Action Movement and the Harvard Graduate Students Union] 20 - ("Police Unions Are Anti-Labor," Ria Modak, Harvard Political Review, 9-9-2020, 10-27-2021 https://harvardpolitics.com/police-unions-are-anti-labor/)//AW

My own experiences with HUPD are reflective of a long history fraught with violence. For two centuries, **the police have been used to suppress labor action** and promote corporate interests. **The police**, the National Guard and the U.S. Army **played an integral role in suppressing the Great Strike of 1877**, the Homestead Strike of 1892 **and** the **Lawrence Strike** of 1912, to name a few examples. **In** each of **these incidents,** the **police resorted to extreme violence**, acquiring new legal powers and protections as they terrorized working class communities. By the middle of the 20th century, **the police had become** **a**n autocratic, **militarized force whose** primary **role was to challenge organized labor through union-busting and strike-breaking.** They continue to occupy this role. For evidence, we have to look no further than the ongoing protests for racial justice in which the police have been called to attend to instances of rioting. Their brutal treatment of protesters, including the use of teargas and rubber bullets, is further proof of their commitment to property over people. It is no coincidence that cops interfere with labor action; the fundamental objective of the police is to protect property. Modern day police forces in urban cities like Boston were founded to safeguard trade and protect commercial property, and in the South, policing evolved from slave patrols tasked with chasing down runaway slaves. **Policing** was, and **continues to** be, a way to protect and **serve capitalism, not people**. By attending to private property, which itself depends on the extraction of labor from the working class, the police align themselves with capitalists, rather than with workers**. The** material **interests of** the **police are antithetical to the very ethos of organized labor, which seeks to protect workers from capitalist exploitation.** It is impossible to build a working class movement while supporting an institution that was founded to oppress working class and Black communities. Police unions are also complicit in anti-labor action in the federal political arena. The Fraternal Order of Police and **the International Union of Police Associations**, the two largest police unions in the country, endorsed President Trump in 2016 and recently endorsed his reelection campaign. By funneling money into President Trump’s campaign, **the IUPA is** directly **responsible for** hisblatantly **anti-labor policies, which have restricted the freedom to join unions, silenced workers, and gutted health and safety protections.** Furthermore, much of the power **of** policing lies in **police unions,** which **enable racist, anti-labor action by making it** nearly **impossible for** police **officers to be held accountable** for their actions. Collective bargaining agreements allow officers to evade the consequences of innumerable wrongs — including the violent killing of Black people, sexual assault, lying to investigators and falsifying documents — by limiting independent oversight and expunging misconduct records. In addition, unions spend millions of dollars lobbying against police reform on the local, state and federal levels. By shielding officers from consequences and blocking reform, **police unions embolden violence against the Black and Brown communities** that are the most vulnerable to police brutality. One way to put an end to racialized police violence is to put an end to police unions. **Dismantling police unions is a** crucial **step in taking power away from the police and giving it back to** working class communities and **communities of color.** Although not all police departments are unionized or affiliated with a larger labor federation like the AFL-CIO, those that are must be expelled. However, disaffiliation must be only the first step in a broader struggle to dismantle the police in its entirety. Police abolition means building a world that does not rely on capitalism and racism to structure society. Although some critics of abolition argue that disaffiliating police unions would threaten other public sector unions, many trade unionists disagree with this position, indicating support from public sector workers themselves. Union members represented by the Service Employees International Union and United Auto Workers have demanded the disaffiliation of police unions from the larger labor movement. In addition, a coalition of labor organizers called “No Cop Unions” have called on the AFL-CIO to expel IUPA and urged AFL-CIO affiliates with partial law enforcement membership to terminate their relationships with unionized police and correctional officers. Ultimately, the call to separate **police unions** from the labor movement is a recognition that they **have no role in a society that truly values workers**. The **goals of the police**, which are maintained and facilitated by police unions, **are incompatible with pro-labor ideology**. The labor movement must take a firm stance against police unions and work to develop an anti-racist praxis. There can be no labor justice while police unions continue to protect anti-worker interests.

# Case

**Turn: More strikes lead to backlash bills that weaken unions – empirically proven. Partelow ‘19**

Lisette Partelow [Lisette Partelow is the director of K-12 Strategic Initiatives at American Progress. Her previous experience includes teaching first grade in Washington, D.C., working as a senior legislative assistant for Rep. Dave Loebsack (D-IA), and working as a legislative associate at the Alliance for Excellent Education. She has also worked at the U.S. House of Representatives Committee on Education and Labor and the American Institutes for Research. “Analysis: A Looming Legislative Backlash Against Teacher Strikes? Why Walkouts Could Become Illegal in Some States, With Strikers Facing Fines, Jail, or Loss of Their License”. 02-18-2019. The 74. https://www.the74million.org/article/analysis-a-looming-legislative-backlash-against-teacher-strikes-why-walkouts-could-become-illegal-in-some-states-with-strikers-facing-fines-jail-or-loss-of-their-license/. Accessed 11-3-2021; MJen]

In 2018 and 2019, after a decade of disinvestment in education that led to stagnant teacher salaries, policymakers have introduced [proposals in states](https://thehill.com/homenews/state-watch/426030-states-race-to-prevent-teacher-strikes-by-boosting-pay) across the country to begin reinvesting, spurred in part by teacher walkouts and activism nationwide. While it is wonderful to finally see broad support for raising teacher salaries and investing in public schools, a predictable backlash has also emerged. Legislators in some states that were hotbeds of teacher activism are [introducing bills](http://nymag.com/intelligencer/2019/01/teacher-walkouts-gop-lawmakers-push-retaliatory-bills.html) to explicitly prohibit walkouts or punish teachers who participate, often with a sprinkling of additional anti-union provisions. **Weakening unions and refusing to invest in education** are long-standing conservative tenets, and these bills are evidence that we should expect conservative policymakers to return to them as soon as they believe them to be politically viable. The consequences of a decade of education funding cuts came into sharp relief last spring, after teachers staged walkouts in [half a dozen states](https://www.nytimes.com/2018/05/16/us/teacher-walkout-north-carolina.html). The [decade of disinvestment](https://www.americanprogress.org/issues/education-k-12/reports/2018/09/20/457750/fixing-chronic-disinvestment-k-12-schools/) in education had its roots in the Great Recession, when many states were forced to drastically cut their K-12 education funding. But as the recovery got underway, many governors — particularly in red states — made intentional policy choices to cut taxes for wealthy residents and corporations rather than allow education funding to rebound to pre-recession levels as revenue increased. As a [result](https://www.americanprogress.org/issues/education-k-12/reports/2018/09/20/457750/fixing-chronic-disinvestment-k-12-schools/%5b), teacher wages stagnated, school budgets were strapped, and expenses such as building repairs and learning materials were deferred year after year. By 2018, reports of [crumbling schools](https://www.motherjones.com/politics/2018/01/its-not-just-freezing-classrooms-in-baltimore-americas-schools-are-physically-falling-apart/), students learning from [decades-old textbooks](https://www.cnn.com/2018/04/03/us/oklahoma-teachers-textbooks-trnd/index.html), high teacher turnover, and staff [shortages](https://tucson.com/news/local/we-continue-to-worsen-nearly-arizona-teaching-jobs-remain-vacant/article_1c8d665a-a422-5c7b-95b9-98afe0cb0c6f.html) in these states became common. Teachers had reached their [boiling point](https://morningconsult.com/opinions/americas-teachers-are-at-their-boiling-point/). The teacher walkouts have been very effective. Though they were a last resort, they finally got lawmakers’ attention in states that had seen the most chronic and severe cuts to education. In the states where teachers walked out, governors who hadn’t historically supported [education funding](https://www.americanprogressaction.org/issues/education/news/2018/10/09/171813/little-late-many-gubernatorial-candidates-education-funding/) agreed to enact significant [pay raises](https://www.latimes.com/nation/la-na-teacher-funding-20180306-story.html) and increases in education funding. For example, in Arizona, Republican Gov. Doug Ducey was forced to sign off on a teacher pay bill he had [previously opposed](https://tucson.com/news/local/gov-ducey-teachers-aren-t-going-to-get-percent-pay/article_75a9b7dc-930b-5374-be12-61fb840e4ced.html) that provided a [20 percent raise](https://www.reuters.com/article/us-usa-education-arizona/arizona-governor-signs-bill-to-boost-teachers-wages-amid-strike-idUSKBN1I40N8) to the state’s teachers — some of the lowest-paid in the nation — and invested an additional $100 million in schools in the state. And now, in several states with low teacher pay that have so far avoided major protests, some governors have proposed salary increases. Remarkably, much of this movement is happening in [deep-red states](https://thehill.com/homenews/state-watch/426030-states-race-to-prevent-teacher-strikes-by-boosting-pay) with historically low education spending. In South Carolina, Gov. Henry McMaster wants to give teachers a 5 percent pay raise; in Texas, Lt. Gov. Dan Patrick has proposed a $5,000 increase; and in Georgia, Gov. Brian Kemp has proposed a $3,000 increase. In all three of these states, teachers are [paid less](http://www.nea.org/assets/docs/180413-Rankings_And_Estimates_Report_2018.pdf) than the national average. It’s likely that last year’s walkouts nudged these governors to consider teacher pay in a way that they wouldn’t have otherwise. Though it goes against traditional conservative principles, supporting these raises is smart politics for these governors. There is widespread public [support for increasing teacher pay](https://www.apnews.com/883e9d387709112a11ee8901c223294e), particularly in the states where walkouts occurred. But even as some conservative policymakers agree to raise teacher salaries, as the 2019 legislative sessions have begun, others in Arizona, Oklahoma, and West Virginia have introduced bills that would [make walkouts illegal](http://nymag.com/intelligencer/2019/01/teacher-walkouts-gop-lawmakers-push-retaliatory-bills.html) and penalize teachers with fines, loss of their teaching licenses, or even [jail time](https://www.vox.com/policy-and-politics/2018/4/23/17270422/colorado-teachers-strike-jail-bill). Some of the bills also contain provisions designed specifically to weaken teachers unions, such as a requirement that teachers must [opt in to dues each year](https://www.nytimes.com/aponline/2019/01/28/us/ap-us-education-bill-west-virginia.html), which sponsors hope will reduce membership by adding an extra step to the process. Legislators in walkout states have also introduced stand-alone proposals designed to **make union membership more difficult** and, therefore, less likely, such as a prohibition on districts [withholding union dues](https://newsok.com/article/5593286/bill-is-revenge-for-teacher-walkout-unions-say) from teachers’ paychecks. These backlash bills hint at a much more familiar conservative education agenda of slashing funding and working to weaken teachers unions. After all, it is this agenda that led to stagnant teacher salaries, deplorable conditions in many school buildings, and consequences for students whose schools were chronically underfunded in the first place. Supporting increases to teacher pay and greater investment in schools is the right thing to do for America’s students. Unfortunately, this wave of backlash makes clear that for some policymakers, it’s all about politics — and as soon as they have the chance, they’ll once again slash education funding and attack hardworking teachers.

**Turn again: The right to strike just leads businesses to take stronger steps to stop unionization.**

Gordon **Lafer, 20** - ("Fear at work: An inside account of how employers threaten, intimidate, and harass workers to stop them from exercising their right to collective bargaining," Economic Policy Institute, 7-23-2020, https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/)//va

NLRB elections are fundamentally framed by one-sided control over communication, with no free-speech rights for workers. Under current law, employers may require workers to attend mass anti-union meetings as often as once a day (mandatory meetings at which the employer delivers anti-union messaging are dubbed “captive audience meetings” in labor law). Not only is the union not granted equal time, but pro-union employees may be required to attend on condition that they not ask questions; those who speak up despite this condition can be legally fired on the spot.[19](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note19) The most recent data show that nearly 90% of employers force employees to attend such anti-union campaign rallies, with the average employer holding 10 such mandatory meetings during the course of an election campaign.[20](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note20) ¶ In addition to group meetings, employers typically have supervisors talk one-on-one with each of their direct subordinates.[21](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note21) In these conversations, the same person who controls one’s schedule, assigns job duties, approves vacation requests, grants raises, and has the power to terminate employees “at will” conveys how important it is that their underlings oppose unionization. As one longtime consultant explained, a supervisor’s message is especially powerful because “the warnings…come from…the people counted on for that good review and that weekly paycheck.”[22](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note22) ¶ Within this lopsided campaign environment, the employer’s message typically focuses on a few key themes: unions will drive employers out of business, unions only care about extorting dues payments from workers, and unionization is futile because employees can’t make management do something it doesn’t want to do.[23](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note23) Many of these arguments are highly deceptive or even mutually contradictory. For instance, the dues message stands in direct contradiction to management’s warnings that unions inevitably lead to strikes and unemployment. If a union were primarily interested in extracting dues money from workers, it would never risk a strike or bankruptcy, because no one pays dues when they are on strike or out of work. But in an atmosphere in which pro-union employees have little effective right of reply, these messages may prove extremely powerful. ¶ It is common for unionization drives to start with two-thirds of employees supporting unionization and still end in a “no” vote. This reversal points to the anti-democratic dynamics of NLRB elections: voters are not being convinced of the merits of remaining without representation—they are being intimidated into the belief that unionization is at best futile and at worst dangerous. When a large national survey asked workers who had been through an election **to name “the most important reason people voted against union representation,” the single most common response was management pressure, including fear of job loss**.[24](https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/#_note24) Those who vote on this basis are not expressing a preferenceto remain unrepresented. Indeed, many might still prefer unionization if they believed it could work. Where fear is the motivator, what is captured in the snapshot of the ballot is not preference but despair. ¶To understand what union elections look like in reality, we have profiled two cases in which workers sought to create a union and met with a harsh (and typical) employer backlash. In both cases—a tire plant in Georgia and a satellite TV company in Texas—the employer response ranges from illegally firing union activists to engaging in acts of coercion and intimidation that are illegal in any normal election to public office but are allowed under the NLRA. ¶

**The turns outweigh the Aff. Their solvency is all about how *unionization* is key, not a stronger right to strike. Whatever marginal increase in bargaining power they achieve is drowned out by the fact that there will be much lower union density in the first place.**

## No Solvency (US Democracy)

#### Either democracy is doomed no matter what or its resilient, and the courts have nothing to do with it

Freedom House 21 – Freedom House is a non-profit non-governmental organization that conducts research and advocacy on democracy, political freedom, and human rights. Freedom House was founded in October 1941, and Wendell Willkie and Eleanor Roosevelt served as its first honorary chairpersons.

Freedom House, March 3 2021, “New Report: The global decline in democracy has accelerated,” https://freedomhouse.org/article/new-report-global-decline-democracy-has-accelerated

A need for reform in the United States

While still considered Free, the United States experienced further democratic decline during the final year of the Trump presidency. The US score in [Freedom in the World](https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege) has dropped by 11 points over the past decade, and fell by three points in 2020 alone. The changes have moved the country out of a cohort that included other leading democracies, such as France and Germany, and brought it into the company of states with weaker democratic institutions, such as Romania and Panama.

Several developments in 2020 contributed to the United States’ current score. The Trump administration undermined government transparency by dismissing inspectors general, punishing or firing whistleblowers, and attempting to control or manipulate information on COVID-19. The year also featured mass protests that, while mostly peaceful, were accompanied by high-profile cases of violence, police brutality, and deadly confrontations with counterprotesters or armed vigilantes. There was a significant increase in the number of journalists arrested and physically assaulted, most often as they covered demonstrations. Finally, the outgoing president’s shocking attempts to overturn his election loss—culminating in his incitement of rioters who stormed the Capitol as Congress met to confirm the results in January 2021—put electoral institutions under severe pressure. In addition, the crisis further damaged the United States’ credibility abroad and underscored the menace of political polarization and extremism in the country.

”January 6 should be a wake-up call for many Americans about the fragility of American democracy,” said Michael J. Abramowitz, president of Freedom House. “Authoritarian powers, especially China, are advancing their interests around the world, while democracies have been divided and consumed by internal problems. For freedom to prevail on a global scale, the United States and its partners must band together and work harder to strengthen democracy at home and abroad. President Biden has pledged to restore America’s international role as a leading supporter of democracy and human rights, but to rebuild its leadership credentials, the country must simultaneously address the weaknesses within its own political system.”

“Americans should feel gratified that the courts and other important institutions held firm during the postelection crisis, and that the country escaped the worst possible outcomes,” said Abramowitz. “But the Biden administration, the new Congress, and American civil society must fortify US democracy by strengthening and expanding political rights and civil liberties for all. People everywhere benefit when the United States serves as a positive model, and the country itself reaps ample returns from a more democratic world.”

The effects of COVID-19

Government responses to the COVID-19 pandemic exacerbated the global democratic decline. Repressive regimes and populist leaders worked to reduce transparency, promote false or misleading information, and crack down on the sharing of unfavorable data or critical views. Many of those who voiced objections to their government’s handling of the pandemic faced harassment or criminal charges. Lockdowns were sometimes excessive, politicized, or brutally enforced by security agencies. And antidemocratic leaders worldwide used the pandemic as cover to weaken the political opposition and consolidate power.

In fact, many of the year’s negative developments will likely have lasting effects, meaning the eventual end of the pandemic will not necessarily trigger an immediate revitalization of democracy. In Hungary, for example, the government of Prime Minister Viktor Orbán took on emergency powers during the health crisis and misused them to withdraw financial assistance from municipalities led by opposition parties. In Sri Lanka, President Gotabaya Rajapaksa dissolved Parliament in early March and, with new elections repeatedly delayed due to COVID-19, ruled without a legislature for several months. Later in the year, both Hungary and Sri Lanka passed constitutional amendments that further strengthened executive power.

The resilience of democracy

Despite the many losses for freedom recorded by [Freedom in the World](https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege) during 2020, people around the globe remained committed to fighting for their rights, and democracy continued to demonstrate its remarkable resilience. A number of countries held successful elections, independent courts provided checks on executive overreach, journalists in even the most repressive environments investigated government transgressions, and activists persisted in calling out undemocratic practices.

Following a marred election in Malawi in mid-2019, for instance, judges withstood bribery attempts and pressure from the incumbent administration and called for new elections. Opposition presidential candidate Lazarus Chakwera then won the 2020 rerun vote by a comfortable margin. The incident represented a critical win for Malawi’s democratic institutions and set a positive example of judicial independence for other African states.

In Taiwan, one of the highest-performing democracies in Asia, the government effectively suppressed the coronavirus without resorting to abusive methods, setting a sharp contrast with authoritarian China, where the regime has touted its draconian response as a model for the world. Even before the virus struck, Taiwanese voters defied a multipronged, politicized disinformation campaign from China and overwhelmingly reelected a president who opposes moves toward unification with the mainland.

“Our report concludes that democracy today is beleaguered but not defeated,” said Abramowitz. “Its adversaries have grown more powerful, making the world a more hostile environment for self-government, but its enduring appeal among ordinary people—which we’ve already seen this year in places like Russia and Myanmar—bode well for the future of freedom.”

#### Democratic erosion is occurring because the Supreme Court is a lawless, partisan institution, not because of a lack of strikes

Keck 20 – Thomas Keck, Michael O. Sawyer Chair of Constitutional Law and Politics and Professor of Political Science at Syracuse University, “Court-Packing and Democratic Erosion,” 12/17/20, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3476889

Scholars of democratic erosion have noticed the GOP’s partisan capture of the federal courts and flagged it as a potential warning sign, but may well have understated the severity of the danger to democratic norms and institutions. For example, remarking on the Supreme Court twenty months into Trump’s pvresidency, Kaufman and Haggard diagnosed “a serious threat that a constitutionally-created branch of the government—one that is already deeply divided along partisan lines—will become even more politicized and delegitimated.” On their reading, “[t]he most direct threat to American democracy would be judicial acquiescence to restrictions on voting rights” (2019: 426). Ginsburg and Huq have likewise noted that partisan judges, like legislators, “may be willing to allow a president to dismantle democratic governance so long as their own policy preferences are furthered” (2018a: 219). Such judicial acquiescence in the face of legislative restrictions on voting rights is indeed a significant threat, but the bigger danger to American democracy is judicial evisceration of legislative expansions of voting rights. Consider David Landau and Rosalind Dixon’s account of “abusive judicial review,” by which they mean the use of judicial power to undermine the “minimum core of electoral democracy.” Drawing on comparative evidence from a range of states experiencing democratic erosion, Landau and Dixon identify two variants of the phenomenon. In its weak form, abusive judicial review involves courts “stand[ing] by passively as democracy is dismantled”; in its strong form, it involves courts actively undermining key democratic norms and institutions (2020: 1316-17). The Roberts Court has engaged in both versions of the practice.¶ In this section, I briefly review two instances in which the contemporary Court has declined to check legislative infringements on fair democratic procedures, and two others in which it has reached out to actively thwart legislative enhancements of democratic procedures. In Crawford v. Marion County Election Board (2008), the Court upheld Indiana’s strict voter ID law, despite clear evidence that the photo identification requirement would “impose nontrivial burdens on the voting rights of tens of thousands of the state’s citizens . . . [, with] a significant percentage of those individuals . . . likely to be deterred from voting.”11 The law had been enacted on a party-line vote in Indiana’s Republican-controlled legislature, and Seventh Circuit Judge Terence Evans characterized it as “a not-too-thinly-veiled attempt to discourage electionday turnout by certain folks believed to skew Democratic.”12 In subsequent litigation regarding an even stricter law from Wisconsin, Circuit Judge Richard Posner noted that roughly nine percent of registered voters in the state lacked the required state-issued identification. Posner also reviewed sworn testimony from multiple registered voters who had attempted to obtain such identification, but had been unable to do so. 13 Relying on Crawford, Posner’s colleagues nonetheless upheld the Wisconsin law as well. ¶ A decade after Crawford, the Court held in Rucho v. Common Cause (2019) that claims of intentional and excessive partisan gerrymandering are not subject to judicial resolution under the U.S. Constitution. The case featured uncontroverted evidence that following the 2010 census, the Republican-controlled North Carolina legislature had “instructed their mapmaker to use political data to draw a map that would produce a congressional delegation of ten Republicans and three Democrats.” In all recent election cycles, votes for statewide offices and aggregate votes for House candidates have evinced a state split nearly 50-50, with Democrats winning the aggregate House vote in 2012 and the Governor’s race in 2016. But the Republican gerrymander successfully maintained a 10-3 GOP majority in the House delegation across three consecutive election cycles. Despite this context, Chief Justice Roberts declined to impose any constitutional limits on the drawing of district lines to “subordinate adherents of one political party and entrench a rival party in power,” even where that desire represents the “predominant purpose” of the line-drawing.14¶ The central premise of Roberts’s argument for allowing such partisan gerrymandering is that the Constitution grants such authority to state legislatures in the first instance (and to Congress secondarily), and hence that the American people should bring their complaints about existing districting practices to their elected representatives, not to the Court. But relying on selfinterested legislators to reform the procedures under which they themselves have been elected has the same shortcomings that it had in Baker v. Carr (1962), which authorized courts to weigh in when district maps featured massive departures from the principle of “one person, one vote.” With the Court declining to serve as democratic guardrail, Crawford and Rucho are paradigmatic examples of weak-form abusive judicial review. ¶ Contrast the Court’s broad posture of judicial restraint in those cases with its aggressive interference with the 2002 McCain-Feingold Act and the 1965 Voting Rights Act. In Citizens United v. FEC (2010), the Court held that for-profit corporations have a First Amendment right to spend unlimited sums advocating the election or defeat of political candidates, thereby invalidating a central provision of the most significant federal campaign finance law since the Watergate era. Citizens United is the most notable in a long string of Roberts Court decisions invalidating campaign finance regulations, with the Court’s most conservative justices repeatedly holding that state and federal legislative institutions lack authority to limit election spending.15 In Shelby County v. Holder (2013), the Court gutted a central provision of the Voting Rights Act, holding that Congress had unconstitutionally required certain state and local jurisdictions to get federal approval for all changes to their election laws. Technically, Roberts’s opinion for the Court only invalidated the formula that determined which state and local jurisdictions were required to seek such federal “pre-clearance,” but both his majority opinion and a concurrence from Justice Thomas suggested that even with a revised coverage formula, the Court’s conservative majority would view such a requirement as an unconstitutional intrusion on state sovereignty. The decision unleashed a wave of new state restrictions on voting rights—with Republican legislatures and executives enacting voter ID laws, purging voter rolls, and closing polling sites—that previously would have required federal pre-clearance (Rocco in this volume). ¶ As these examples make clear, the current Court’s relevance for democratic erosion is twofold. First, it has significantly scaled back its role as an institutional check against partisan attempts to undermine fair democratic procedures. It is not yet clear that it has abandoned this role altogether, but it is fair to say that its performance is not currently reliable. Indeed, early reports from the Bright Lines Project have shown that “Judiciary can limit executive” and “Judicial independence” are among the democratic norms and institutions on which both expert and mass public confidence dropped most sharply during the Trump era (Carey, et al. 2019). Consider the Court’s response to legal disputes regarding vote counting in the 2020 presidential election. Once it was clear that Joe Biden had won a decisive victory, the Court dismissed multiple frivolous lawsuits seeking to reverse the results.16 But in the weeks leading up to the election, four conservative justices had signaled that they were prepared to give a sympathetic ear to Trump campaign arguments that could have reversed an election defeat if the outcome were close.17 Justice Barrett was not yet on the Court when those disputes were heard, and there is good reason to worry that she would have provided a fifth vote in such a scenario.18¶ Second, the Court has proven willing on key occasions to thwart legislative attempts to enhance fair democratic procedures.19 A variety of signs indicate that this latter effort has not yet run its course. In the campaign finance context, for example, Justices Thomas and Alito have set their sights on disclosure requirements, and Senate Majority Leader McConnell echoed their arguments in a January 2019 op-ed.20 On the gerrymandering front, reform advocates have used the ballot initiative process in several states to transfer redistricting authority from partisan state legislatures to non-partisan commissions. The Supreme Court upheld such an initiative from Arizona in 2015, but it did so by a vote of 5-4, with Roberts, Thomas, and Alito (along with Scalia) in dissent. 21 If any two of Trump’s three nominees agree with them, they now have the votes to hold that neither judges nor voters may take districting authority away from partisan legislators. Roberts’s dissenting opinion in the Arizona case suggests that this same judicial coalition may invalidate any congressional attempt to mandate non-partisan redistricting as well (Keck 2019b). ¶ In sum, even before the Trump era, the Roberts Court was sometimes willing to actively deploy judicial power to undermine core features of electoral democracy. President Trump’s three appointments have shifted the Court’s median justice substantially to the right—both in general and on voting rights in particular. As such, Democratic advocates of democracy reform have reason for concern that when they next recapture Congress and the White House, their Republican opponents will have retired into the judiciary as a stronghold. In this context, any comprehensive program of democratic preservation and renewal in the 2020s will need to grapple with the issue of court reform (Jones 2020). ¶ Conclusion: Reestablishing the Court’s Role as Democratic Guardrail¶ Calls for Court reform are a recurring feature of U.S. history. They have repeatedly been prompted by controversial actions taken by the justices themselves and by the partisan coalitions with which they are allied. Remarkably, contemporary Republican elites—acting across all three branches of the federal government—seem poised to provoke such calls in nearly every way that they have been provoked in the past. When Biden is sworn in as President in January 2021, he will find himself facing a Court that has been illegitimately packed by the opposition party on its way out of power; that stands opposed to majoritarian, multi-racial democracy; and that is committed to a constitutional vision under which much of the platform on which Biden was elected is constitutionally suspect. If history is any guide, Court reform will remain on the table until President Biden’s political coalition collapses or Chief Justice Roberts steers a non-obstructionist path. If neither of those paths unfold, serious discussion of Court reform is virtually inevitable. ¶ In this concluding section, then, I highlight some key lessons from our constitutional history regarding how to pursue such reforms in ways that are most beneficial for—and least risky to—democratic health. On my reading of the relevant history, some instances of attempted Court-packing contributed to democratic erosion in the United States, while others operated, on balance, to promote democratic preservation and renewal. Indeed, it seems to me incontrovertible that court-packing can be undertaken in ways that both hinder and foster democratic governance. If and when small-d democrats regain control of Hungary, Turkey, or Venezuela, would any decisions on their part to alter the size or structure of their judicial institutions be best understood as undue assaults on democratic norms? Surely we would need to know additional contextual details before reaching that judgment. As Joseph Fishkin and David Pozen have noted, “all acts of constitutional hardball create systemic risks, . . . [but] specific acts may be justified for a variety of contextual normative reasons; sound political judgment might even require that certain types of hardball be played in certain situations” (2018: 925; see also Bateman in this volume; Tushnet 2020). ¶ In the ongoing debates about how best to respond to processes of democratic erosion once they have been diagnosed, Levitsky and Ziblatt have famously called on opposition party elites to exercise forbearance, resisting the urge to respond to the authoritarian leader's normbreaking with more norm-breaking of their own. But such forbearance strategies may not be viable when facing incumbents—including judicial incumbents—who are deliberately tilting the playing field. In such circumstances, some sort of hardball opposition may be more effective at protecting and renewing democracy, particularly if small-d democracy advocates deploy such tactics in pursuit not just of their own narrow partisan interests but also pro-democratic reforms that promise to break the cycle of tit-for-tat escalation (Bateman in this volume; Pozen 2019). ¶ If systemic threats sometimes justify constitutional hardball, then scholars of democratic erosion and resilience are in good position to help policymakers reflect on how such tactics can be deployed in maximally legitimate fashion. One issue here is timing—i.e., how to know when we have reached the point where hardball tactics are merited. With regard to Court expansion, both its normative legitimacy and its political viability are likely to increase if and when the Roberts Court acts as a partisan roadblock to a Democratic administration. If the conservative justices refrain from doing so, they may be able to forestall Court reform. But the historical pattern suggests that emergence of an obstructionist Court is likely, at which point Democratic Court reformers will be emboldened. I have argued that judicial obstruction of legislative expansions of voting rights (and related democracy reforms) would provide particularly weighty justification for Court reform. In theory, the threat of such judicial contributions to democratic erosion might justify preemptive action—e.g., expanding the Court before it eviscerates a new voting rights act—but in practice, such preemptive action would require substantially greater political investment. Convincing the American public that Court packing is called for would be a tall order on any occasion, but it is more likely to succeed once the Court has begun actively obstructing a broadly popular policy agenda. ¶ In addition to the question of when to resort to hardball tactics, reformers should reflect on how to do so in ways that minimize the threat of tit-for-tat escalation. Here, one’s prescription for reform is likely to depend on one’s diagnosis of the systemic democratic defects in which the Court plays a role. If the chief threat to U.S. democracy is partisan polarization, then the cure is likely to involve institutional changes designed to empower centrists of both parties and to weaken their extremist flanks. If the diagnosis is partisan degradation rather than polarization— i.e., if the key defects facing American democracy are rooted not in a bipartisan refusal to compromise, but in one party’s abandonment of the rules of the game—then the prescription would be different. Rather than promoting bipartisanship, the cure would involve institutional changes that weaken the structural pro-GOP biases in our electoral and policy-making systems, thereby disrupting the party’s playbook for maintaining its hold on power without offering a platform that appeals to popular majorities (Bateman in this volume). ¶ To the extent possible, the goal of Court reform should be reestablishing the Court’s role as democratic guardrail, not reestablishing its role as Democratic agent. Given that the reforms would be enacted by partisan legislators, some consideration of partisan payoffs is inevitable, but scholars of democratic erosion and resilience can help call attention to particular reforms that are most beneficial for (or least risky to) democratic health. On this front, Pozen (2019) has called for greater consideration of “anti-hardball” reforms, by which he means institutional changes that reduce the likelihood of constitutional hardball being played by either side moving forward. For example, when a new state legislative majority comes to power, they could respond to a prior pattern of partisan gerrymandering by creating a non-partisan redistricting commission rather than deploying a new partisan gerrymander of their own. The dilemma is that the existing gerrymandered districts may prevent a new state legislative majority from coming to power, or that a captured court might prevent the new majority from altering the redistricting procedures. ¶ With regard to Court reform, anti-hardball measures might include reducing the length of Supreme Court terms and regularizing the occurrence of Supreme Court vacancies, changes that would lower the stakes of any given nomination fight. Scholars were calling for such reforms long before Trump’s election, and good government reformers have continued to advocate them (Cramton and Carrington 2005; Cramton 2007; Galston, et al. 2019). The dilemma is that most such reforms would have to survive judicial review by the existing Court. ¶ If the key defect ailing American democracy is partisan degradation rather than polarization, then even anti-hardball reforms that have in the past drawn bipartisan support may require hardball tactics to enact (Pozen 2019). In other words, successful Court reform may require combining good government improvements to judicial selection and tenure rules with hardball efforts to wrest judicial institutions away from the anti-system party’s control. The institutional design choices are complex, and I close with one recent proposal that illustrates the challenges. ¶ In September 2020, less than two weeks after Justice Ginsburg’s death, Representative Ro Khanna introduced legislation that would authorize the president to nominate a Supreme Court justice every two years, during the first and third years of each four-year presidential term. Once confirmed by the Senate, each justice would serve an 18-year, non-renewable term, after which she would rotate off of active duty on the Supreme Court. The bill would eventually produce a stable Court membership of nine, but the justices sitting at the time of enactment would be grandfathered, retaining their life terms, thereby producing the possibility of a Court larger than nine until all of those sitting justices have concluded their service. 22 When the basic structure of Rep. Khanna’s reform bill was first floated by advocates in 2019, conservatives held a five-to-four majority on the Court (Schwartz 2019). In that context, the combination of temporary Court expansion with permanent improvements to judicial selection and tenure rules may have seemed a workable marriage of hardball and anti-hardball reforms. With Justice Barrett having expanded the conservative majority to six justices, the horns of the dilemma have sharpened. The Khanna bill is one of a variety of anti-hardball reforms that would ameliorate the partisan degradation of the federal courts, but if those reforms cannot survive judicial review by the current Court, then it will take some form of hardball tactics to achieve them. That this dilemma faces Court reform advocates should not be surprising, as it is the same dilemma facing democracy reform more broadly. Solving it will be the central challenge of the post-Trump era in U.S. politics. ¶