# 1NC

### – OFF

#### CP – Governments should mandate companies

#### raise wages for minority workers substantially

#### raise wages for female workers to equal to that of male workers

### 2 - OFF

#### A just government, except for the United States, ought to recognize an unconditional right of workers to strike.

### 3 - OFF

#### The “right to strike” is a tactic of neoliberal legalism and gets circumvented. The state is thus able to decide legitimate parameters for violence and insulate itself from anticapitalist action.

Crépon 19 – Marc Crépon is a professor of philosophy at the École Normale Supérieure, Paris. (“The Right to Strike and Legal War in Walter Benjamin’s “Toward the Critique of Violence”,” August 2019, pg. 252-253)

If we wish to understand how the question of the right to strike arises for Walter Benjamin in the seventh paragraph of his essay “Zur Kritik der Gewalt,” it is important to first analyze the previous paragraph, which concerns the state’s monopoly on violence. It is here that Benjamin questions the argument that such a monopoly derives from the impossibility of a system of legal ends to preserve itself as long as the pursuit of natural ends through violent means remains. Benjamin responds to this dogmatic thesis with the following hypothesis, arguably one of his most important reflections: “To counter it, one would perhaps have to consider the surprising possibility that law’s interest in monopolizing violence vis-à-vis the individual is explained by the intention not of preserving legal ends, but rather of preserving law itself. [This is the possibility] that violence, when it does not lie in the hands of law, poses a danger to law, not by virtue of the ends that it may pursue but by virtue of its mere existence outside of law.”1

In other words, nothing would endanger the law more than the possibility of its authority being contested by a violence over which it has no control. The function of the law would therefore be, first and foremost, to contain violence within its own boundaries. It is in this context that, to demonstrate this surprising hypothesis, Benjamin invokes two examples: the right to strike guaranteed by the state and the law of war.

Let us return to the place that the right to strike occupies within class struggle. To begin with, the very idea of such a struggle implies certain forms of violence. The strike could then be understood as one of the recognizable forms that this violence can take. However, this analytical framework is undermined as soon as this form of violence becomes regulated by a “right to strike,” such as the one recognized by law in France in 1864. What this recognition engages is, in fact, the will of the state to control the possible “violence” of the strike. Thus, the “right” of the right to strike appears as the best, if not the only, way for the state to circumscribe within (and via) the law the relative violence of class struggles. We might consider this to be the perfect illustration of the aforementioned hypothesis. Yet, there are two lines of questioning that destabilize this hypothesis that we would do well to consider.

First, is it legitimate to present the strike as a form of violence? Who has a vested interest in such a representation? In other words, how can we trace a clear and unequivocal demarcation between violence and nonviolence? Are we not always bound to find residues of violence, even in those actions that we would be tempted to consider nonviolent? The second line of questioning is just as important and is rooted in the distinction established by Georges Sorel, in his Reflections on Violence, between the “political strike” and the “proletarian general strike,” to which Benjamin dedicates a set of complementary analyses in §13 of his essay. Here, again, we are faced with a question of limits. What is at stake is the possibility for a certain type of strike (the proletarian general strike) to exceed the limits of the right to strike— turning, in other words, the right to strike against the law itself. The phenomenon is that of an autoimmune process, in which the right to strike that is meant to protect the law against the possible violence of class struggles is transformed into a means for the destruction of the law. The difference between the two types of strikes is nevertheless introduced with a condition: “The validity of this statement, however, is not unrestricted because it is not unconditional,” notes Benjamin in §7. We would be mistaken in believing that the right to strike is granted and guaranteed unconditionally. Rather, it is structurally subjected to a conflict of interpretations, those of the workers, on the one hand, and of the state on the other. From the point of view of the state, the partial strike cannot under any circumstance be understood as a right to exercise violence, but rather as the right to extract oneself from a preexisting (and verifiable) violence: that of the employer. In this sense, the partial strike should be considered a nonviolent action, what Benjamin named a “pure means.”

#### Neoliberalism is unsustainable and causes extinction.

von Weizsäcker and Wijkman 17 – Ernest Ulrich von Weizsäcker, Professor and Director of the United Nation Centre for Science and Technology for Development, Founder and President of the Wuppertal Institute, Member of the German Bundestag, chairing the Committees on Globalization and the Environment, Dean of the graduate School of Environmental Science and Management at the University of California, appointed Co-Chair of UNEP’s International Resource Panel, Anders Wijkman, chairman of the Swedish Association of Recycling Industries, member of the Board of the Swedish Development Authority (SIDA), appointed chair of the Swedish Cross-Party Committee on Environmental Objectives, member of the European Parliament, Assistant Secretary-General of the United Nations and Policy Director of UNDP, Secretary General of the Swedish Red Cross and Director General of the Swedish Agency for Research Cooperation with Developing Countries, Member of the Swedish Royal Academy of Sciences, the World Future Council and the International Resource Panel, 2017 (“Come On! Capitalism, Short-termism, Population and the Destruction of the Planet – A Report to the Club”, November 11th, Available Online via Subscription to Springer, Accessed 03-20-2018)

1.1 Introduction: The World in Disarray We all know that the world is in crisis. Science tells us that almost half of the top soils on earth have been depleted in the last 150 years1 ; nearly 90% of fish stocks are either overfished or fully fished.2 Climate stability is in real danger (Sects. 1.5 and 3.7); and the earth is now in the sixth mass extinction period in history.3 Perhaps the most accurate account of the ecological situation is the 2012 ‘Imperative to act’,4 launched by all the 18 recipients (till 2012) of the Blue Planet Prize, including Gro Harlem Brundtland, James Hansen, Amory Lovins, James Lovelock and Susan Solomon. Its key message reads, ‘The human ability to do has vastly outstripped the ability to understand. As a result, civilization is faced with a perfect storm of problems, driven by overpopulation, overconsumption by the rich, the use of environmentally malign technologies and gross inequalities’. And further, ‘The rapidly deteriorating biophysical situation is barely recognized by a global society infected by the irrational belief that physical economies can grow forever’. 1.1.1 Different Types of Crisis and a Feeling of Helplessness The crisis is not cyclical but growing. And it is not limited to the nature around us. There are also a social crisis, a political and a cultural crisis, a moral crisis, as well as a crisis of democracy, of ideologies and of the capitalist system. The crisis also consists of deepened poverty in many countries and the loss of jobs for a considerable part of the population worldwide. Billions of people have reached a state of mind where they don’t trust their government anymore.5 Seen from a geographic point of view, symptoms of crisis are found nearly everywhere. The ‘Arab Spring’ was followed by a series of wars and civil wars, serious human rights violations and many millions of refugees. The internal situation is not better in Eritrea, South Sudan, Somalia, Yemen or Honduras. Venezuela and Argentina, once among the richer states of the world, face huge economic challenges, and neighbouring Brazil has gone through many years of recession and political turmoil. Russia and several East European countries are struggling with major economic and political problems in their post-communist phase. Japan finds it difficult to overcome decadelong stagnation, and to deal with the 2011 tsunami and ensuing nuclear disaster. And the temporary economic upswing several African countries have enjoyed lost its dynamism as soon as the prices of mineral resources collapsed, and partly due to very unusual droughts. Land grabbing is plaguing much of Africa, but also other parts of the world, leading to involuntary dislocations of millions of people and the related problems with refugees both within countries and abroad.6 The response of governments has been concentrated, at worst, on managing their own political image, and at best to treat the symptoms of the crisis, not the cause. The problem is that the political class in the whole world is strongly influenced by investors and by powerful private companies. This indicates that the current crisis is also a crisis of global capitalism. Since the 1980s, capitalism has moved from furthering the economic development of countries, regions and the world towards maximizing profits, and then to a large extent profits from speculation. In addition, the capitalism unleashed since 1980 in the Anglo-Saxon world, and since 1990 worldwide, is mainly financial. This trend was supported by excessive deregulation and liberalization of the economy (see Sect. 2.4). The term ‘shareholder value’ popped up in the business pages of the media worldwide, as if that was now the new epiphany and guardrail for all economic action. In reality, it served to narrow business down to short-term gains, often at the expense of social and ecological values. The myth of shareholder value has been effectively debunked in a recent book by Lynn Stout.7 A different, if related, feature of ‘disarray’ is the rise of aggressive, mostly rightwing movements against globalization in OECD countries, often referred to as populism. These have become overt through Brexit and the Trump victory in the United States. As Fareed Zakaria observes, ‘Trump is part of a broad populist

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upsurge running through the Western world. … In most (countries), populism remains an opposition movement, although one that is growing in strength; in others, such as Hungary, it is now the reigning ideology’.8 This phenomenon of right-wing populism can be explained to an extent by the ‘trunk valley of the elephant curve’ (Fig. 1.1) 9 showing the decline of developed world middle classes, during a 20-year period. While more than half of the world’s population was enjoying over 60% income rises, OECD’s middle classes suffered losses caused mainly by the deindustrialization and job losses in major parts of the United States, Britain and other countries. In the United States, the median income increased by a meagre 1.2% since 1979. The stunning income growth on the left-hand side of the curve, the ‘back of the elephant’, lifting some two billion people out of poverty, was caused mainly by China’s and some other countries’ economic success. What remains invisible on the picture is the far end of ‘the trunk of the elephant’: The richest 1% of the world and, more revolting, the richest eight persons of the world now own as much wealth as the poorest half of the world population combined, a figure publicized by Oxfam during the 2017 World Economic Forum.10 The ‘elephant curve’ gives an incomplete picture for a second reason. The Oxford Poverty and Human Development Initiative (OPHI) has proposed a Multidimensional Poverty Index (MPI) going beyond just income and including ten indicators around health, education and living standards. Using that MPI, OPHI counts 1.6 billion people living in ‘multidimensional poverty’ in 2016 – nearly twice as many as the number of people living in extreme poverty measured by income alone.11 Thirdly, the interpretation of the curve requires an analysis of the people in each percentile group. In fact, they tend to move. And the curve does not distinguish those in Russia and East European countries who lost much of their income after 1990 from those in Detroit or middle England who, for very different reasons, also were among the losers.12 Another fact cannot be seen in the picture: the massive shift of money and income from the manufacturing and trade sectors to the financial sector.13 Bruce Bartlett, a senior policy advisor to both the Reagan and Bush administrations, argues that this ‘financialization’ of the economy is the cause of income inequality, falling wages and the poor performance. David Stockman, Reagan’s director of the Office of Management and Budget, agrees, describing our current situation as ‘corrosive financialization that has turned the economy into a giant casino since the 1970s’.14 Populist politicians in the OECD countries see themselves as speaking for the forgotten ‘ordinary’ people and for genuine patriotism, but they tend to fight and antagonize the people representing democratic institutions – what an irony! For the European Union (EU), the strongest trigger for populism has been the millions of refugees who came or would like to come to Europe from the Near East, from Afghanistan and from Africa. Even the most generous European countries have reached their own assumed limits for receiving these masses of refugees. The EU institutions were too weak (not too powerful, as they are depicted by the new nationalists) to deal with the ‘refugee crisis’, resulting eventually in an identity crisis in the EU. Once a success story of an entity ensuring peace and economic development, the EU has lost some of its unifying narrative. The populist right-wing movements or parties see and criticize the EU as the culprit for all kinds of undesired events. The irony is that continuing the success story would require more, not less, powers for the Union. The Union should be entrusted with border protection, a well-funded common asylum and refugee policy to deal with the refugee crisis and maintain the advantages of the Schengen agreement. And for the re-stabilization of the Euro, the EU or at least the Euro zone needs a common fiscal policy, as the new French President Emmanuel Macron is proposing. But it is these very measures of which nationalist populists are most afraid. The EU in its present form is not without shortcomings. Free market principles have come to dominate EU policymaking, leading to a subordination of other policies, like environment. Notably the UK wanted that priority, as it preferred to see the EU chiefly as a union for mutual trade. And the austerity policies pursued have blocked many benign investments and led to unnecessary suffering among tens of millions of Europeans. Such shortcomings, however, should never be used to put in question the overall objectives of the EU – a union of peace, the rule of law, human rights, cultural understanding and sustainability. Addressing the global crisis of democracy, the German Bertelsmann Foundation has published a 3000-page empirical report on progress (or lack thereof) on democracy and a social market economy, as measured by the Bertelsmann Transformation Index (BTI).15 Over the last few years, the report sees a consistent decay of such parameters as civil rights, free and fair elections, freedom of opinion and of press, freedom of assembly and separation of powers. Within the same time frame, the number of countries in which authoritarian, mostly religious, dogmas influence political decision making rose from 22% to 33%. That report was published before the assaults on democracy and civil rights that occurred in summer 2016 in Turkey or the Philippines. Symptoms of tyranny are spreading, including in some of the countries with a solid tradition of freedom and democracy.16 Let us briefly turn to a different kind of crisis. Well, not exactly a crisis but an unpleasant feature in an otherwise fruitful communication tool, the ‘social media’. Aside from being practical and useful for everyday arrangements and exchange of news and reasonable opinions, social media also have become vehicles for enhancing conflicts and vilification of mostly innocent individuals, and for spreading ‘post truth’ nonsense. Much of the contents of social media political conversation is selfenhancing political rubbish, as those media serve as ‘echo chambers’ for networks of like-minded frustrated citizens.17 An empirical study from China found that anger and indignation are the emotions that are most likely to get viral in the social media, meaning they are multiplied faster and stronger than other emotions.18 The Internet and the social media are also vehicles for ‘bots’ (short for robots) that can disrupt or destroy messages, multiply nonsense and create all kinds of mischief. There are dozens of types of malicious bots (and botnets) to harvest email addresses, to grab content of websites and reuse it without permission, to spread viruses and worms, to buy up good seats for entertainment events, to increase views for YouTube videos or to increase traffic counts in order to extract money from advertisers. A more frightening cause of disarray relates to terrorism. In earlier times, humanity’s violent conflicts occurred mostly between different countries. In recent times, systemic and at least partly religious conflicts prevail, using terror attacks with the explicit intention of making people feel insecure. During much of the twentieth century, religions remained quiet, non-aggressive and geographically confined to rather stable territories. This no longer is true. Partly because of globalized populations moving or being forced to leave their home territories, some factions of Islam have expanded geographically and are claiming strong influence over national states, for example, attacking countries like France with its tradition of laicism that does not permit religion to dominate politics. What tends to be underrepresented in the media is the positive role of religions. In Christian-dominated Europe, liberal and tolerant religion became part of the European identity a century after the Enlightenment successfully discredited the earlier doctrinaire, authoritarian and colonialist-missionary manifestations of the faith. During the Cold War, Christian goals of social cohesion helped build the system of ‘Western values’, often described as the social welfare state, or the ‘social market economy’ (for its partial demise, see Sect. 2.4). With a view towards leading Islam into an equally benign and co-operative social role, some Islamic scholars, such as Syrian born Bassam Tibi, call on Muslims in Europe to integrate into democratic society.19 Tibi, however, is not popular among radical Muslims, to put it mildly. But to understand the radicalization of Islam, one must not underestimate the role played by the West, in particular the United States, in interfering with Near Eastern states. Some would say that the troublesome situations mentioned so far, the recurring topics of media headlines, are only the surface of our world’s ‘disarray’. Deeper and more systemic problems include the breath-taking speed of technological development that may very easily run out of control. One trend is digitization that potentially threatens millions of jobs (see Sect. 1.11.4). Another trend or development can be observed in the biological sciences and technologies. The enormous acceleration of genetic engineering through the CRISPR-Cas9 technology20 is causing fears of monster creation or the extinction of species or varieties not seen as valuable under human utilitarian criteria. Generally, a non-specific feeling is spreading that ‘progress’ has scary sides and that the genie may already have left the bottle (see Sect. 1.11.3). No doubt there is a need to analyse and understand the symptoms and roots of the variety of crises, political, economic, social, technological and environmental. It is also important to recognize the extent to which people perceive the various phenomena of disarray and feel disoriented, and to recognize that the reality and the feelings of disarray have a moral and even religious dimension. 1.1.2 Financialization: A Phenomenon of Disarray An important part of the disorientation relates to financial markets. Historians will look back at the last 30 years with concern, when looking at the explosion in bank balance sheets, backed up by declining levels of equity and massive borrowing. One of the results was a temporary private-sector-led boom. The other was a massive increase in the world’s financial sector (finance, insurance, real estate – FIRE), often called financialization, and subsequently the financial crisis of 2008–2009. Excessive risk-taking developed into a crisis that was close to bringing the whole financial system to a halt. When the bubble burst, many governments were forced to step in with broad support programmes. Governments caught by the new mind-set (see Sect. 2.4) were intimately involved in all of this. True, there are many examples of serious malpractices within the private financial sector. But had it not been for the systematic deregulation of the banks by governments, with the purpose of stimulating economic growth by issuing more debt, the situation would have been radically different. The causes behind the crisis were many and varied: – Excessive lending by the banking industry – Lack of action on the part of regulators and central banks to stop (i) excessive lending, (ii) the spread of exotic financial instruments (synthetic assets and bonds, collateralized mortgage obligations/CMOs, structured debt issues, etc.) and (iii) pure speculative transactions – Opaque tax havens, and the absence of a binding legal framework that is accepted and implemented by the international community, in general, and the major jurisdictions and financial centres – Securitization and distribution by investment banks and other financial actors of mortgage-related assets and investment vehicles transferring the credit risk from the original lender to the ultimate bondholders – Failure by some rating agencies and auditing firms to properly assess and report the inherent risks posed by many of the financial products A deeper analysis is presented by economists Anat Admati and Martin Hellwig21 about the main causes behind the financial crisis. Western banks borrowed far too much with far too little equity in their balance sheets to act as a buffer if things went wrong in their business – from trading in the multitrillion-dollar derivatives markets to often reckless lending on real estate. In the decades following the Second World War, banks operated with between 20% and 30% of their liabilities as equity. By 2008, that had shrunk to just 3%. Banks obviously believed that they had invented instruments that removed the risk, allowing them to run their banks with a tenth of the buffer they had before. It proved to be very unrealistic. But they counted with the state to underwrite their risks. Bankers have enriched themselves spectacularly in the process. They made themselves ‘too big to fail’ – and too big to jail. The 2008 financial crisis was mostly caused by that irresponsible greed.22 Yet, in 2009, not only did bankers avoid criminal prosecutions and receive hundreds of billions in government bailouts, but some still paid themselves record bonuses. At the same time, almost nine million households in the United States had to abandon their homes when the value of their houses plummeted and they could no longer service the adjustable-rate mortgages – the so-called foreclosure crisis.23 Financialization refers to the dominance of the financial sector in the global economy and the tendency for accumulated profits (and leverage) to flow into real estate and other speculative investment. Debt is an intrinsic element in this process. In the United States, for example, both household debt and private sector debt more than doubled relative to GDP between 1980 and 2007.24 The same is true for most OECD countries. At the same time, ‘the value of financial assets grew from four times GDP in 1980 to ten times GDP in 2007 and the finance sector’s share of corporate profits grew from about 10% in the early 1980s to almost 40% by 2006’.25 Adair Turner, chair of the UK’s Financial Services Authority in the years following the 2007–2008 crisis, regards unchecked private credit creation as the key system fault that led to that crisis with its devastating consequences.26 From this follows that the financial sector constitutes a significant and increasing risk factor in the economy. The degree of financialization varies from country to country but the increase in the power of finance is general. The current finance sector evolved in the context of the deregulation that gathered pace from the late 1970s and expanded dramatically after the 1999 removal of the separation between commercial and investment banking in the United States.27 This barrier had been put in place in 1933 by the Roosevelt administration in response to the Wall Street Crash of 1929, when a period of rampant credit creation and financial speculation collapsed. Similar speculation preceded the crisis of 2007–2008: The face value of financial products reached US$640 trillion in September 2008, 14 times the GDP of all the countries on earth.28 Lietaer et al.29 compare speculation with ordinary money transfers paying for goods and services: ‘In 2010, the volume of foreign exchange transactions reached $4 trillion per day’, which does not even include derivatives. In comparison, ‘one day’s exports or imports of all goods and services in the world amount to about 2% of those $4 trillion’. Transactions not paying for goods and services, almost by definition are speculative. Such financial products and transactions, the authors continue, lead regularly to monetary crashes, sovereign debt crises and systemic crashes with an average of more than ten countries in crisis every year. One of the consequences of this development is that a significant part of economic growth has been distributed to the wealthy, as mentioned with the new Oxfam figures in the previous subchapter. Practices within the financial sector demonstrate a disregard for the impact they have on both people and the planet. That includes a distinct short-termism, the ratio of banks’ reserves to their loans, the ratio of banks’ lending that support the real economy versus speculation in property and derivatives, unchecked credit creation – in fact money creation – and the failure to account for long-term climate and environmental risks. In the words of Otto Scharmer at MIT,30 ‘We have a system that accumulates oversupply of money in areas that produce high financial and low environmental and social returns, while at the same an undersupply of money in areas that serve important societal investment needs’. The failure to account for environmental risks means that the pressure on already scarce natural resources accelerates – trees are felled, waterways polluted, wetlands drained and the exploitation of oil, gas and coal accelerating, as long as there is demand. It also means that huge savings, among them pension funds, are locked into investments in fossil-based assets. Such assets are increasingly looked upon as high-risk assets (see Sect. 3.4).

#### It turns the case. The current juridical-political order makes strikes ineffective.

White 18 – Ahmed White is Nicholas Rosenbaum Professor of Law, University of Colorado-Boulder. (“ITS OWN DUBIOUS BATTLE: THE IMPOSSIBLE DEFENSE OF AN EFFECTIVE RIGHT TO STRIKE,” 2018, pg. 1127–1129) julian

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

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

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

Perhaps more significant in putting these strikes in proper context is a reflection on their character. None have been organizing strikes. All of these strikes have been over contracts and working conditions, with many driven by workers' opposition to concessions and ended with less than spectacular gains by the strikers.3 12 Moreover, the strikes which comprise this supposed wave have been disproportionately mounted by government workers-teachers, mainly-who are not covered by the National Labor Relations Act. For this reason, several of the strikes have been unlawful, as state law typically denies such workers the right to strike anyway. But at the same time-and this may be the most crucial point-none of these strikes has unfolded in an especially militant way, at least by historical standards. There have been no big sit-down strikes, no threatening episodes of mass picketing, no routing of "scabs," no destruction of property. Which is all to say that the kinds of strikes that built the labor movement eighty or more years ago remain thoroughly in check.

#### Vote neg to refuse the aff’s neoliberal legalism and endorse a democratic approach to law. This is a prerequisite to effective reform.

Grewal and Purdy 17 – David Grewal, Associate Professor at Yale Law School, Jedediah Purdy, Robinson O. Everett Professor at Duke Law School, November 6th ("Law & Neoliberalism," Law and Political Economy, Available online at <https://lpeblog.org/2017/11/06/law-neoliberalism/>, Accessed 04-20-2019)

What do neoliberal arguments look like in practice? Broadly speaking, they treat market-modeled transactions as normative – natural, obviously desirable, self-evidently the sort of thing the Constitution protects, etc. – and abstract away from considerations of distribution and attention to competing values, especially democratic ones. So, you might notice that you are invited to consider the Coase theorem throughout law school, but not an equally utopian image of egalitarianism. You might observe the ease with which the Supreme Court extends protection of free speech to spending money, first in political campaigns, then in advertising and even transfers of marketing data with no evident relation to public debate, let alone to any clear conception of what role democratic decisions ought to play in balancing and controlling, rather than channeling, concentrations of private wealth. You might notice how little attention the abortion-rights portion of your constitutional law class pays to cases permitting Congress to prohibit public spending on abortions, or to the larger question (to which these policies are central) of how meaningful the right can be in the absence of a medical infrastructure in which to exercise it. You might ask how the field of antitrust came to be dominated by wealth-maximizing efficiency analysis when it was historically rooted in a conception of the way that productive capital and other economic power and roles should be distributed among members of a democracy. Neoliberal arguments are not necessarily coded in legal culture as right-wing or as “about the economy.” Sometimes, instead, they carry forward “public-law” values of freedom and equality in ways that are indifferent to the context of political economy. An urgent and genuine defense of abortion rights may be desperately incomplete if it takes the Supreme Court’s cues and ignores the dimension of medical infrastructure. A poetic invocation of the principle of Brown v. Board of Education may translate into a constitutional ban on the government’s taking account of structural inequality in formulating race-conscious policies. A poetic account of the dignity of democracy may conclude by insisting that unlimited campaign spending confirms that the people rule. (These examples are not invented.) Neoliberalism doesn’t replace public-law or even “progressive” commitments with economic reductionism, but instead bolsters versions of these commitments that tend to neglect the deeper logic of law’s involvement in political economy. There are often powerful, elegant, or simply very interesting arguments for neoliberal positions, from Hayek’s account of law as a kind of information-processing system for economic life to the doctrinal steps involved in extending free-speech protection to campaign spending. Nothing here is intended to suggest that calling these examples “neoliberalism” could be an excuse for not paying them close attention and trying to learn from them. But these forms of argument and habits of thought have been extremely powerful in legal practice, scholarship, and teaching. Identifying neoliberalism as a form of legal reasoning is a way of getting to grips with the law’s under-engagement with themes of political economy: the ways that economic and political life are mutually shaped by the medium of law, and always involve competing ways of balancing or integrating competing conceptions of efficiency, democracy, liberty, equality, and so forth. The family of arguments that we are calling neoliberal should be understood as interested participants in this inevitable contest, not as rising above it or providing the only possible terms in which to conduct it. Stepping outside neoliberal arguments can be an essential first step in imagining the law and political economy of a democratic society of equals.

### 4 – OFF

#### Infrastructure passes soon and solves climate

Collinson 10/25 [Stephen Collinson is a reporter for CNN Politics covering the White House, and politics across the United States and around the world. October 25, 2021. “A week that could transform Joe Biden's presidency” [https://www.cnn.com/2021/10/25/politics/joe-biden-presidency-this-week-social-spending-and-infrastructure/index.html Accessed 10/25](https://www.cnn.com/2021/10/25/politics/joe-biden-presidency-this-week-social-spending-and-infrastructure/index.html%20Accessed%2010/25) //gord0]

[Joe Biden](https://www.cnn.com/specials/politics/joe-biden-news) is tantalizingly close to fulfilling what supporters see as the historic promise of his presidency in the coming days, at a critical moment for his [social policy transformation](https://www.cnn.com/2021/09/12/politics/house-reconciliation-package-explainer/index.html) at home and his hopes of reclaiming US leadership overseas.

After weeks of feuding between moderate and progressive Democrats and his agenda's several brushes with extinction, the President's double play of [social spending](http://www.cnn.com/2021/10/24/politics/spending-bill-benefits-what-matters/index.html) and [a bipartisan infrastructure program](https://www.cnn.com/2021/07/28/politics/infrastructure-bill-explained/index.html) may finally come to fruition this week. Democrats hope to agree on a framework on a trimmed down package of social, health care and education programs in order to lift a House progressive blockade on a vote on the bipartisan bill fixing roads, bridges and railroads.

"I think we're pretty much there now," [House Speaker Nancy Pelosi](https://www.cnn.com/2021/10/24/politics/nancy-pelosi-spending-bill-cnntv/index.html) told CNN's Jake Tapper on "State of the Union" on Sunday. A Democratic source told CNN's Manu Raju the goal is now for the House to have a vote on the infrastructure package on Wednesday or Thursday and send it to Biden's desk. The exact content of the final social spending bill is not yet known, since negotiations on [paring back](https://www.cnn.com/2021/10/24/politics/pell-grant-free-community-college-biden/index.html) a more ambitious program to win moderate votes have been taking place behind closed doors. But Democrats still appear to be determined to provide free pre-kindergarten education, an extension of Medicare, home care for seniors and more affordable child care. Another uncertainty is the way the final package will play with the most progressive members of the House who had wanted a much larger spending blueprint and had held up the infrastructure bill as a result in prolonged standoffs within the Democratic Party.

If Democrats finally agree on the makeup of the bills, and Biden manages to include billions of dollars in funding to slow global warming, he will get a huge boost on a foreign trip beginning Thursday that includes the G20 summit in Rome and the United Nations climate summit in Scotland. A strong environmental component of the bill is crucial to Biden's credibility as he seeks to put the US back at the front of the global campaign to save the planet -- one of his top foreign policy goals -- and would put pressure on other top polluting nations to follow suit.

#### Strengthening unions requires Biden’s political capital – PRO act proves

Birenbaum 21 [Charles S. Birenbaum serves as the firm’s Chair of Northern California and Co-Chair of the firm’s Labor & Employment Practice’s Labor-Management Relations group. Chuck is an experienced labor and employment attorney who focuses his practice on traditional labor and employment law matters, and has wide-ranging experience litigating in state and federal courts as well as various administrative agencies. March 12, 2021. “The New New Deal? U.S. House Of Representatives Passes Sweeping Labor Reform With Significant but Uncertain Future” [https://www.natlawreview.com/article/new-new-deal-us-house-representatives-passes-sweeping-labor-reform-significant Accessed 10/27](https://www.natlawreview.com/article/new-new-deal-us-house-representatives-passes-sweeping-labor-reform-significant%20Accessed%2010/27) //gord0]

Unions are back in the news. On March 9, 2021, the U.S. House of Representatives successfully passed the Protect the Right to Organize Act (the PRO Act), legislation designed to overhaul the current labor relations framework—touching on issues including independent contractors, joint employers, employee arbitration agreements, and new union organizing rules. While Senate passage may not happen, President Biden’s insistence on being the “most pro-union president” could make the PRO Act a legislative priority later in his term.

**I.  Expanding the Class of Covered Employees**

The PRO Act contains a host of laws and definitional revisions that significantly expand the class of employees covered by the National Labor Relations Act (NLRA).

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| a. |  | Independent Contractor Classifications |

The PRO Act redefines “employees” under the NLRA, by codifying the “ABC Test” for independent contractors used by certain states (such as California and Massachusetts). In practice, this new definition will significantly expand the class of eligible “employees” entitled to unionization and collective bargaining rights by making it more difficult for employers to categorize workers as independent contractors.

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| b. |  | Joint-Employer Classifications |

The PRO Act redefines “employers” under the NLRA, by codifying the liberal joint-employer standard announced in Browning-Ferris Industries, (2015) 362 NLRB No. 186. The new standard looks to the “right-to-control” any terms and conditions of employment of a workforce, even if indirectly and even if never exercised in fact. This test will create labor liability for businesses that traditionally have not had that liability.

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| c. |  | State Right-To-Work Laws |

The PRO Act overturns all state “right-to-work” laws. States would no longer be able to prohibit union security and dues check-off clauses if placed in collective bargaining agreements. Mandatory union dues deduction for virtually all employees covered by a collective bargaining agreement could provide unions with financial incentives to bolster their efforts in the 27 states currently with right-to-work laws.

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| d. |  | Employee Arbitration Agreements |

The PRO Act outlaws class, collective, and joint-action employment arbitration agreements—rending them illegal. The change would circumvent the recent U.S. Supreme Court decision, Epic Systems Corp v. Lewis (2018) 138 S. Ct. 1612, upholding the use of these types of agreements under the Federal Arbitration Act.

**II.  Employer and Union Economic Pressure Tactics**

Hard bargaining is often an inescapable reality of unions relations, and one that has been finely tuned through legislation, litigation, and judicial precedent over the last 90 years. The PRO Act disrupts that balance by changing the rules of engagement for unions and employers alike—with preferential treatment of union rights. For unions, the PRO Act lifts the ban on previously prohibited tactics like recurrent and intermittent strikes, as well as secondary boycotts and related pressure tactics against neutral third parties, like the protest or picketing of an employer’s clients, customers, or vendors. For employers, the PRO Act goes the other direction by imposing new bans on previously common and currently lawful tactics, such as pre-strike lockouts and the hiring of permanent replacement workers for striking employees—a significant blow to employers’ bargaining leverage and ability to operate during a strike.

**III.  Employer, Union, and Employee Communication Rights**

Communication during election campaigns and collective bargaining is integral for all sides—providing a platform to air grievances and novel perspectives on the relative pros and cons of unionization or contracted terms. The PRO Act alters these rights in several ways. For employers, the PRO Act prohibits the holding of mandatory employment meetings where they can educate employees on the employer’s historic experiences and perspectives. In contrast, the bill forces employers to allow employees to use company devices and email systems for any union organizing or concerted, protected activity—even though not work-related. And in advance of the elections themselves, employers are obligated to turn over employees’ personal contact information to unions.

**IV.  Union Election and Collective Bargaining Practices**

Elections and collective bargaining lie at the heart of modern labor law. The PRO Act disrupts longstanding practices in these critical areas. On the elections side, the Act gives unions substantial control of the appropriate bargaining unit, as well as the method and location of elections, while depriving employers of standing to intervene in the decision-making process regarding those issues. When determining the results of an election, the Act imposes harsh penalties for the commission of unfair labor practices by the employer, including bargaining orders irrespective of employee votes against unionization. And once bargaining begins, in certain cases the parties are required to reach agreement within 90 days or become subject to mandatory mediation and interest arbitration—all of which stands as an overhaul to current practices.

**V.  Increase in Employer Exposure**

Employer exposure for NLRA violations is also increased under the PRO Act. Liability would include: (a) backpay; (b) front pay; (c) consequential damages; (d) liquidated damages; (e) civil penalties; and (f) punitive damages. Depending on the violation and circumstances, civil penalties can range as high as $100,000 per violation and be imposed against employers, officers, and directors. The Act also gives employees a private right of action to pursue certain remedies in federal court—a break from the National Labor Relations Board (NLRB) prior jurisdictional exclusivity.

**VI.  Moving Forward**

The PRO Act’s passage in the Senate appears a challenge. Despite sweeping approval by the House and even modest bipartisan support, Senate passage remains a significant hurdle. Under current Senate rules, to avoid filibuster, the Act would require all 50 Democratic votes and 10 Republican votes—neither of which appears likely based on recent history. And legislative alternatives to gridlock, such as budget reconciliation or abolishing the filibuster, may also encounter significant resistance. Given President Biden’s public and oft-repeated support for labor unions, it remains to be seen whether the PRO Act, and political capital necessary for its passage, ultimately become a larger priority for President Biden further into his term.

#### Bidens PC is what got infrastructure through the senate, and its key now.

Smith and Gambino 10/1 [David Smith is the Guardian's Washington DC bureau chief. Lauren Gambino is political correspondent for Guardian US, based in Washington DC. October 1, 2021. “Biden upbeat on rare Capitol Hill visit but domestic agenda hangs in jeopardy” [https://www.theguardian.com/us-news/2021/oct/01/democrats-congress-biden-infrastructure-talks Accessed 10/25](https://www.theguardian.com/us-news/2021/oct/01/democrats-congress-biden-infrastructure-talks%20Accessed%2010/25) //gord0]

Democrats returned to the Capitol on Friday deeply divided but determined to make progress on Joe Biden’s ambitious economic vision, after an embarrassing setback delayed a planned vote on a related $1tn measure to improve the nation’s infrastructure.

Biden on Friday made a rare visit to Capitol Hill to meet privately with House Democrats amid a stalemate that has put his sprawling domestic agenda in jeopardy. The visit comes after after the House speaker, Nancy Pelosi, [delayed a vote on part of his economic agenda,](https://www.theguardian.com/us-news/2021/sep/30/biden-nancy-pelosi-infrastructure-bill) a bipartisan $1tn public works measure, on Thursday night after a frantic day of negotiations failed to produce a deal.

“We’re going to get this thing done,” Biden said, as he exited the caucus room. “It doesn’t matter when – it doesn’t matter whether it’s in six minutes, six days, or six weeks – we’re going to get it done.”

Earlier in the day, Pelosi promised that there would be a “vote today” on the measure, an ambitious timeline that would require Democrats first reaching a compromise on the broader piece of Biden’s agenda that virtually every member of the party in both the House and Senate could support. But a resolution before the weekend appeared unlikely as Democrats remained deeply at odds over the scale and structure of a more expansive package containing containing a host of progressive priorities, provisions to expand health care access, establish paid leave, combat climate change and reduce poverty – all underwritten by tax increases on wealthy Americans and corporations.

Democrats are trying to score a major legislative victory with razor-thin majorities in both chambers. Failure would deny Biden much of his domestic agenda, leaving the party with little to show for their time controlling the White House, the Senate and House – a governing trifecta they last enjoyed in 2010.

Senator Joe Manchin of West Virginia has proposed a spending package of about $1.5tn – less than half the size of the proposal put forward by the president and Democratic leaders. Another Democratic centrist, Senator Kyrsten Sinema, declined to say whether she agreed with Manchin’s proposal.

The wrangling resumed in the House on Friday morning, which, due to a quirk of process, [remained](https://twitter.com/HouseDailyPress/status/1443770307903475712) in the legislative day of 30 September even as the calendar turned to October.

Huddled together in an hours-long caucus meeting, Pelosi tried to steer the feuding factions within her party toward common ground after Thursday’s marathon negotiating session generated deepening acrimony and no deal.

Congresswoman Pramila Jayapal, chair of the Congressional Progressive Caucus, emerged from the morning gathering optimistic that Democrats would eventually pass both bills. But she remained firm in her position – and confident in her members – that there the infrastructure bill would not move forward without assurances that the Senate would pass Biden’s larger bill.

“We’ve seen more progress in the last 48 hours than we’ve seen in a long time on reconciliation,” she said, crediting progressives’ infrastructure revolt for forcing Manchin and Sinema to the negotiating table.

The decision to postpone the infrastructure vote was seen as a victory for progressives who were unwavering in their resolve to “hold the line” and vote against the bill unless they received “ironclad” commitments that Biden’s proposed $3.5tn social and environmental package would also pass.

Many progressives also say they will withhold support for the infrastructure bill until the Senate passes the second piece of Biden’s economic agenda, legislation that has yet to be written. Jayapal made clear this was her preference, but later left the door open to the possibility that the party could reach an agreement without a vote.

“If there’s something else that’s short of a vote … that gives me those same assurances, I want to listen to that,” she told reporters.

The stalemate also laid bare deep ideological fractures within the party. Unlike the debate over Barack Obama’s healthcare legislation a decade ago, progressives appear to be more closely aligned with the president and able to flex their political muscles. On Thursday they were united in making the case that centrists are now in the minority.

Varshini Prakash, executive director of Sunrise Movement, a youth group fighting the climate crisis, [said:](https://mailchi.mp/sunrisemovement/sunrise-movement-responds-to-delay-of-bif-sinema-and-manchin-are-to-blame?e=18cba0fd52) “Tonight, we are so proud of progressives for holding the line. But let’s be clear, progressives are not the ones delaying the vote – Joe Manchin and Kyrsten Sinema are.”

Thursday’s delay could anger moderates and cause further infighting that puts Biden’s agenda at risk. Earlier this week Stephanie Murphy, a congresswoman from Florida, warned: “If the vote were to fail or be delayed, there would be a significant breach of trust.”

Republicans who had supported the infrastructure bill in the Senate also acknowledged the setback. Senators Rob Portman, Bill Cassidy, Susan Collins, Lisa Murkowski and Mitt Romney said in a joint statement: “While we are disappointed the [House of Representatives](https://www.theguardian.com/us-news/house-of-representatives) did not meet its deadline to vote on the bipartisan infrastructure bill, we remain hopeful the House will come together in a spirit of bipartisanship just as the Senate did and pass this important piece of legislation.

“This bill is critically important to modernizing and upgrading everything from our roads and bridges to broadband and increasing the resiliency of the nation’s electrical grid.”

Both pieces of legislation are critical to Biden’s economic vision. While he has staked his domestic agenda – and his legacy – on a $3.5tn social policy package, he invested precious political capital in courting Republicans to support the infrastructure bill, part of a campaign promise to usher in a new era of bipartisanship in Congress. The bill passed the Senate in August, with 19 Republican votes and great fanfare.

#### Infrastructure reform solves Climate Change, extinction!

USA Today 7-20 7-20-2021 "Climate change is at 'code red' status for the planet, and inaction is no longer an option" <https://www.usatoday.com/story/opinion/todaysdebate/2021/07/20/climate-change-biden-infrastructure-bill-good-start/7877118002/> //Elmer

**Not long ago**, **climate change** for many Americans **was** like **a distant bell**. News of starving polar bears or melting glaciers was tragic and disturbing, but other worldly. Not any more. **Top climate scientists** from around the world **warned of a "code red for humanity**" in a report issued Monday that says severe, human-caused global warming is become unassailable. Proof of the findings by the United Nations' Intergovernmental Panel on Climate Change is a now a factor of daily life. Due to **intense heat waves and drought**, 107 wildfires – including the largest ever in California – are now raging across the West, consuming 2.3 million acres. Earlier this summer, hundreds of people died in unprecedented triple-digit heat in Oregon, Washington and western Canada, when a "heat dome" of enormous proportions settled over the region for days. Some victims brought by stretcher into crowded hospital wards had body temperatures so high, their nervous systems had shut down. People collapsed trying to make their way to cooling shelters. Heat-trapping greenhouse gases Scientists say the event was almost **certainly made worse and more intransigent by human-caused climate change**. They attribute it to a combination of warming Arctic temperatures and a growing accumulation of heat-trapping greenhouse gases caused by the burning of fossil fuels. The **consequences of** what mankind has done to the atmo**sphere are now inescapable**. Periods of **extreme heat** are projected to **double** in the lower 48 states by 2100. **Heat deaths** are far **outpacing every other form of weather killer** in a 30-year average. A **persistent megadrought** in America's West continues to create tinder-dry conditions that augur another devastating wildfire season. And scientists say **warming oceans** are **fueling** ever **more powerful storms**, evidenced by Elsa and the early arrival of hurricane season this year. Increasingly severe weather is causing an estimated $100 billion in damage to the United States every year. "It is honestly surreal to see your projections manifesting themselves in real time, with all the suffering that accompanies them. It is heartbreaking," said climate scientist Katharine Hayhoe. **Rising seas** from global warming Investigators are still trying to determine what led to the collapse of a Miami-area condominium that left more than 100 dead or missing. But one concerning factor is the corrosive effect on reinforced steel structures of encroaching saltwater, made worse in Florida by a foot of rising seas from global warming since the 1900s. The clock is ticking for planet Earth. While the U.N. report concludes some level of severe climate change is now unavoidable, there is still a window of time when far more catastrophic events can be mitigated. But mankind must act soon to curb the release of heat-trapping gases. Global **temperature** has **risen** nearly **2 degrees** Fahrenheit since the pre-industrial era of the late 19th century. Scientists warn that in a decade, it could surpass a **2.7**-degree increase. That's **enough** warming **to cause catastrophic climate changes**. After a brief decline in global greenhouse gas emissions during the pandemic, pollution is on the rise. Years that could have been devoted to addressing the crisis were wasted during a feckless period of inaction by the Trump administration. Congress must act Joe Biden won the presidency promising broad new policies to cut America's greenhouse gas emissions. But Congress needs to act on those ideas this year. Democrats cannot risk losing narrow control of one or both chambers of Congress in the 2022 elections to a Republican Party too long resistant to meaningful action on the climate. So what's at issue? A trillion dollar **infrastructure bill** negotiated between Biden and a group of centrist senators (including 10 Republicans) is a start. In addition to repairing bridges, roads and rails, it would **improve access** by the nation's power infrastructure **to renewable energy sources,** **cap millions of abandoned oil and gas wells spewing greenhouse gases**, **and harden structures against climate change**. It also **offers tax credits for** the **purchase of electric vehicles** and funds the construction of charging stations. (**The nation's largest source of climate pollution are gas-powered vehicles**.) Senate approval could come very soon. Much **more is needed** if the nation is going to reach Biden's necessary goal of cutting U.S. climate pollution in half from 2005 levels by 2030. His ideas worth considering include a federal clean electricity standard for utilities, federal investments and tax credits to promote renewable energy, and tens of billions of dollars in clean energy research and development, including into ways of extracting greenhouse gases from the skies. Another idea worth considering is a fully refundable carbon tax. **The vehicle** for these additional proposals **would be a second infrastructure bill**. And if Republicans balk at the cost of such vital investment, Biden is rightly proposing to pass this package through a process known as budget reconciliation, which allows bills to clear the Senate with a simple majority vote. These are drastic legislative steps. But drastic times call for them. And when Biden attends a U.N. climate conference in November, he can use American progress on climate change as a mean of persuading others to follow our lead. Further delay is not an option.

### Framing

#### Extinction outweighs -- denies the possibility of future existence

#### 1 – Util is the only metric for impact calc that values each life equally. Any alternative elevates some people others, which is the exact pretext for discrimination.

#### 2 – Nuclear war causes the worst form of global structural violence via starvation and disease

#### 3 -- future generations. They infinitely outweigh the current population. Risking the end of human existence for moral purity is illogical

#### This means your only job is to scour the flow for a way to reduce existential risk

### Case

#### Doesn’t solve mindsets – racial inequality and gender gaps remain

#### No reason why companies would agree post the aff if they don’t in the squo