### 1

#### CP Text – In a Just Government, prisons ought to not crack-down on pre-existing worker strikes.

#### Legally recognizing the right to strike renders it ineffective by de-radicalizing movements, decks solvency and turns case.

White 18 (, A., 2018. Its Own Dubious Battle: The Impossible Defense of an Effective Right to Strike. [online] Colorado Law Scholarly Commons. Available at: <https://scholar.law.colorado.edu/articles/1261/> [Accessed 7 November 2021] Ahmed White is the Nicholas Rosenbaum Professor of Law. Before arriving at the University of Colorado, he was a visitor at Northwestern University in 1999. He has also taught at Villanova Law School. Earlier in his career, Professor White's research focused heavily on the fate of rule of law norms and the rule of law concept in capitalist society, and on the role of criminal law and punishment as mechanisms of social control of the working class. More recently, Professor White's scholarship has taken a more definite historical turn. Much of his work concerns the history of law and labor relations from the early Twentieth Century through the New Deal period, as well as the viability of a functional system of labor rights in liberal society. The subjects of many of his articles over the last decade or so, these themes are central to his recent, acclaimed book, The Last Great Strike: Little Steel, the CIO, and the Struggle for Labor Rights in New Deal America (Oakland: University of California, 2016). They also feature in his second book, tentatively titled The Romance and the Suffering: Law, Violence, and the Tragic Fate of Radical Industrial Unionism in Twentieth Century America, which will be published by the University of California Press in 2021.)-rahulpenu

The Wagner Act purported, for the first time in American history, to extend a definite, readily enforceable right to strike to most American workers. Not coincidentally, the years surrounding its enactment featured the most intense wave of labor conflict in the country’s history. When the statute became effective in 1937 (having been widely ignored by employers and blocked by hostile courts), the violence of strikes began to diminish, though not so much their frequency. For much of the period after the Second World War, strikes remained common even as they also became less ambitious in their aims and less militant in their conduct. Beginning about forty years ago, things changed again. Strikes suddenly became rare as well, to the point that workers today basically do not strike at all. From 1947 through 1976, the government documented an average of just over 300 “major work stoppages” (strikes and lockouts involving at least 1000 workers) every year; over the last decade, the annual average was only 14.10 Even the much-ballyhooed mini-strike wave of 2018 appears to be largely an illusion built on a combination of wishful thinking and a convenient misconstruction of a string of well-reported, and sometimes impressive, strikes, as a trend.11 In any event, militancy of the sort that was commonplace when Steinbeck wrote his book, along with the open strife and bloodshed that made the novel a work of undeniable realism, are nearly unheard of today. The waning of bloody battles may be a good thing. But there is not much to celebrate about the overall demise of strikes—not if you are a worker or care about the working class. For strikes are the most important mode of working class protest, the best way, it seems, for workers to directly challenge capitalist hegemony by their own hand, to alter the terms of exploitation if not to build a new world. As they have declined, so has the strength of the labor movement and, with this, the ability of workers to contest the power that employers wield over their work lives and economic fortunes. And so it is that with the demise of strikes, union representation has plummeted, wages have stagnated, economic inequality skyrocketed, and the everyday caprices and tyrannies of capitalist management have been entwined in the web of demeaning indignities, patronizing indulgences, and suffocating bureaucratic rules that define the contemporary workplace. Nevertheless, in most quarters the decline in strikes has been taken in stride, if noticed at all. For most people, **strikes** are hardly more than **historical** **relics** or quaint curiosities that seldom affect their daily lives or command much of their attention. Ironically, this is probably one reason the very modest labor conflict of the last year has been so **overcharacterized**. Once a preoccupation of newspaper editorialists, lawyers, and other commentators, a concern of government, and the subject of numerous hearings and reports, abundant litigation, and seemingly endless attempts at legislation, strikes are now **rarely** **of** **any** **interest** in any of these quarters. Where judges, politicians, and editorialists once worried greatly over how to deal with strikes of the kind that Steinbeck fictionalized, how to protect the economy (not to mention the interests of individual capitalists) from the disruptive effects of labor unrest, and sometimes how to preserve the ability of workers to strike in meaningful ways, their successors stand mute in the context of the near extinction of this form of protest. It has been two decades since Congress, which once grappled with these issues on a regular basis, has seriously confronted the question of strikes.12 Its last engagement with the right to strike attempts, in the early 1990s, to enact modest changes in the law relative to employers’ use of replacement workers during strikes. And even this effort, which collapsed in the mid 1990s, hardly seemed possessed of the kind of urgency that characterized earlier forays on these issues.13 Among the few Americans who well remember what strikes are and why they are important are labor scholars. For them, at least, strikes remain a preoccupation. Prominent students of labor like James Atleson, Julius Getman, Karl Klare, and James Pope—to name the most notable of this group—have expended much effort over the past few decades identifying and critiquing **legal** **doctrines** which have **undermined** the **right** **to** **strike**. Important to them in this regard are doctrines that give employers the prerogative to easily replace striking workers; that allow employers to enjoin and even fire strikers on the ground that they have engaged in coercive “misconduct,” or because they have protested the wrong issue or in the wrong way; that prohibit sympathy strikes and general strikes, and spontaneous “wildcat” strikes; and that funnel labor disputes off of picket lines and into legal proceedings and arbitrations.14 These doctrines have eviscerated a once-vital right to strike, these scholars tell us, subverting a prerogative that earlier in the century was central to improving conditions for workers and lending legitimacy to the very idea that workers have rights to claim in the first place. Indeed, in the 1930s and 1940s, especially, a massive and sustained campaign of strikes proved crucial to the formation of the modern labor movement, the political and legal validation of the Wagner Act, and ultimately the survival of the New Deal itself. This was true even as the Wagner Act itself seemed to play a crucial role in conveying to workers, for the first time, an effective right to strike. But the problem as far as the right to strike goes, we are told, is that the statute was later weakened and corrupted by the connivances of judges and Congress, urged on by a business community relentless in its contempt for organized labor, and abetted at times by inept or corrupt union leaders and a weak and politically diffident National Labor Relations Board (NLRB, the entity with primary authority for enforcing the labor law). And so the Wagner Act is said to have had a great potential, only to have been tragically “deradicalized,” as Klare puts it; and workers are said to have “lost” the right to strike, in Pope’s words, with devastating consequences for workers today and ominous portents for generations ahead.15 Critically, these authors argue, an effective **right** **to** **strike** must be **restored** **at** the **expense** **of** these **unjustified** **impositions**.16 Only then will the labor law regain its relevance and the labor movement its ability to improve the lives of workers. Early on, this attempt to defend an effective right to strike was the object of mean-spirited criticism by more conventional scholars who, in the guise of unmasking its interpretative shortcomings, rejected its radicalism and recoiled at its underlying supposition that law is not only malleable and untethered to its formal, elite iterations, but within the province of workers to reshape around their own interests and visions.17 Despite these efforts, which focused on the work of Klare and Katherine Stone, whose critique of post-war “industrial pluralism” shared a similar reasoning—or maybe, to some extent, anyway, because of them—**support for** this campaign to restore **the right to strike seems like a mandate** among scholars and commentators who purport to take seriously the interests of workers.18 And yet **for all its appeal**, **this project** nevertheless **suffers from** a remarkably negligent oversight, one that has nothing to do with morality of its pretense that the law is malleable and that workers can remake it—a proposition that is broadly true and eminently defensible. Instead, it has to do with its **practical feasibility**. In fact, as this Article argues, a critical reflection on this question suggests that the effort to realize **an effective right to strike is** actually quite **impossible** **and** that **attempts to do so**, however earnest and thoughtful they may be, **represent** as **dubious a battle** as the hopeless walkout dramatized in Steinbeck’s book. This doleful conclusion rests on a frank understanding of the legal and political realities in which strikes necessarily play out. There are many kinds of strikes, but those that are apt to be successful in challenging employers’ power and interests entail a level of militancy that sets them against well-entrenched notion of property and public order. This was true in the 1930s and 1940s when these values **contradicted**, at once, **strike** **militancy** and whatever radical potential the Wagner Act may have had. Ironically, it is perhaps even truer today, now that workers do in fact enjoy the right to strike, albeit only in more conventional ways. Seen in this light, those doctrines that have undermined the right to strike are not aberrations or jurisprudential failings—not mistakes in any sense, in fact, nor a retreat from some earlier, truer iteration of the labor law. Rather, they represent a **settling of the labor law** on bedrock precepts of the American life. However **illegitimate** those **precepts** may be from a vantage that **questions capitalism’s essential legitimacy** and **takes the rights of workers seriously**, they reign supreme, **foreclosing** an **effective right to strike**. All of this, as I argue in this Article, is made plainly evident by a critical review of the history of strikes and striking. To anticipate a bit more of the argument that follows, **the strikes most crucial** to the building of the labor movement in the 1930s and 1940s **were not** **built** only **around** **peaceful picketing** **and a withholding of labor**. Rather, they were sit-down strikes and strikes built on mass picketing, as well as, to some extent, secondary boycotts. And **strikes** of this kind were **never considered lawful or politically appropriate**. Ironically, it was these strikes that legitimated the Wagner Act itself and the New Deal. But they could not legitimate themselves. Those who call for resurrecting the right to strike contend that the flourishing of strike militancy reflected, if not the inherent politics of the original Wagner Act before it was “de-radicalized,” then at least its potential. To be sure, it is clear that the Wagner Act was a remarkable document which did more to advance workers’ rights than any statute in American history; and it was at least ambiguous on the question of the legal status of strike militancy. But what seemed like its support for worker militancy was not a product of any particular potential. Rather, it was a reflection of the difficulty that judges, legislators, and other authorities, who dedicated themselves to restraining these strikes even as they flourished, encountered in prosecuting these values amid the unique economic and political conditions of the 1930s and 1940s. These obstructive conditions were quite temporary, though, and the authorities’ efforts culminated soon enough in the near-categorical prohibition of the tactics that had made strikes so effective. It is in this way that the history of strikes shows less in the way of **de-radicalization** than an encounter with the unyielding outer boundaries of what labor protest and labor rights can be in liberal society. As this all played out, it **left** in its wake **a right to strike**, but one **whose power** **consists** almost **entirely of the ability of workers to pressure employers** by withholding labor, while also maybe publicizing the workers’ issues and bolstering their morale. But while publicity and morale are not irrelevant, in the end they are **not effective weapons** in their own right. **Nor are they** generally **advanced when strikes are broken**. Moreover, the withholding of labor, unless it could be managed on a very large scale—something the law also tends to prohibit by its restrictions on secondary boycotts, by barring sympathy strikes and general strikes—is inherently ineffective in all but a small number of cases where workers remain irreplaceable. Of course, **striking in such a conventional way** accords with liberal notions of property and social order; but precisely because of this it **is** simply **not coercive enough to be effective**. And it is bound to remain ineffective, particularly in a context where workers far outnumber decent jobs, where mechanization and automation have steadily eaten away at the centrality of skill, where the perils that employers face in the course of labor disputes are as impersonal as the risks to workers are not, where employers wield overwhelming advantages in wealth and power over workers, where the state’s machinery for enforcing property rights and social order have never been more potent—where, in fact, capital is capital and workers are workers. From this perspective, **the quest for an effective right to strike emerges as a fantasy**—an appealing fantasy for many, but a fantasy no less, steeped in a **misplaced** and exaggerated **faith in the law** and a misreading of the class politics of modern liberalism. The **campaign to resurrect** such **a right appears**, too, not only as a dead-end and **a distraction**, but an undertaking that **risks blinding** those who support viable **unionism** and the interests of the working class **to** the more important and fundamental fact that **liberalism and the legal system** are, in the end, **antithetical to a meaningful system of labor rights**. It is for this reason that **the call for** an effective **right to strike should be set aside** **in favor of more direct endorsement of militancy and** a **turn away from the law** and instead towards a political program that might advance the interests of the working class regardless of what the law might hold. The argument that follows further elaborates these main contentions about the history of striking and the nature of strikes in liberal society, augmented by a discussion of the legal terrain on which all of this has played out. It unfolds in three main parts. Part I describes how the concept of a right to strike developed in concert with the history of striking itself, how both were influenced by the evolving condition of labor, and how this history created the circumstances under which it became possible to conceive of an effective right to strike without making this possible in fact. Part II consists of a critical review of the fate of coercive and disorderly strikes, especially those featuring sit-down tactics and mass picketing. It considers how the courts, the NLRB, and Congress confronted these strikes, and how they moved with increasing vigor to proscribe them as soon as these strikes emerged as effective forms of labor protest. Part III looks more carefully at the underpinnings of this repudiation of strike militancy, finding in court rulings and other pronouncements against the strikes an opposition to coercion and disorder that, even if sometimes invoked disingenuously, is nonetheless firmly anchored in modern liberalism and its conception of the appropriate boundaries of class protest and labor conflict. On this rests the argument that an effective right to strike is impossible and the pursuit of it, problematic. The final part is a brief conclusion that sums up some of the implications of this argument.

#### We flip U/Q and the Aff Offense – 1AC Harvard Law Review is a negative card – status quo strikes work - the radical nature of Prison Strikes lies in it’s illegality to generate disorder – risk of offense on de-radicalization flips the Case – here’s your Card.

Harvard Law Review, 19 - ("Striking the Right Balance: Toward a Better Understanding of Prison Strikes," Harvard Law Review 03/8/2019, accessed 10-28-2021, <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/)//ML>

But in order to ensure that the Constitution truly does not stop at the prison walls, courts cannot simply accept prison administrators’ fears regarding strikes at face value and instead should rigorously test their credibility and basis in fact.143 And more importantly, by over-deferring and failing to engage in any analysis of the merits of prison strikes, courts miss an important opportunity. As this Note has argued, prison strikes represent an underappreciated aspect of prison life — the means by which prisoners have, throughout the course of American history, surfaced pressing problems of our carceral state and initiated important transformations in our prison system. Therefore, it is imperative to meaningfully consider why and how such strikes merit legal protection — even if such protection appears to fly in the face of the current state of the law and to defy conventional wisdom. To that end, this Part first explores the First Amendment as one potential avenue for considering the merits of prison strikes, by presenting three critical First Amendment values contained within prison strikes,144 and it then briefly discusses other potential legal avenues for courts and scholars to consider. A. Considering the First Amendment Values of Prison Strikes The right to strike within prisons may be conceptually viewed as a composite of three separate fundamental First Amendment freedoms: the freedom to peacefully associate, the freedom of speech, and the freedom to assemble and petition for redress of grievances.145 Each is considered in turn. 1. Association. — The right to peaceful association is one that captures the right of individuals to commune with others for the expression of ideas and for effective advocacy.146 Strikes, like prison unions, represent an important means of association for prisoners — allowing them to “lay claim to a social identity as ‘workers’ . . . and in doing so generate claims to respect and solidarity.”147 This identity and solidarity can, in turn, enable inmates to engage in productive and peaceful bargains with prison officials for better conditions, higher pay, and other reform desires. Bargaining is, in many respects, already very common in prisons, “for the simple reason that [prison] administrators rarely have sufficient resources to gain complete conformity to all the rules.”148 However, such bargaining typically happens in an informal, ongoing, private process;149 in their recurrent, day-to-day contact with inmates, prison administrators use their arsenal of tools150 to “negotiate” only with select inmate leaders,151 with the central goal of maintaining “short term surface order.”152 This informal bargaining is “dysfunctional” to the long-term stability of prison institutions and “the real needs of those incarcerated within” them153 — creating hierarchical relationships154 that breed mistrust155 and leave many inmates powerless and feeling aggrieved.156 As a result, inmates often feel that they have to resort to violence to protect themselves from exploitation, express their dissatisfaction, and obtain redress.157 Alternatively, peaceful, collective prison strikes avoid these harmful consequences by allowing for “open” and “formal” negotiations between all inmates and prison staff.158 Such transparent and legitimated bargaining benefits both inmates and prisons as a whole. By initiating peaceful protests such as work stoppages, all inmates are able “to solve problems, maximize gains, articulate goals, develop alternative strategies, and deal with [administrators] without resorting to force or violence.”159 And by permitting peaceful strikes, prison administrators “provide inmates with a channel for airing grievances and gaining official response . . . giv[ing] the institution a kind of safety-valve for peaceful, rather than violent, change”160 — avoiding potentially expensive and time-consuming litigation and even helping rehabilitate inmates,161 all while deemphasizing hierarchical structures in prisons that harm institutional order.162 2. Speech. — A prison strike also represents a critical way by which inmates can express themselves.163 First, as alluded to above, a strike allows inmates to claim and communicate an identity — as more than just marginalized, ignored convicts with little to no self-determination, but instead as workers and human beings entitled to basic dignity. Such collective actions represent the “performative declaration and affirmation of rights that one does not (yet) have.”164 And, as Professor Jocelyn Simonson discusses, these strikes are collective contestations to “demand dignity, calling attention to the ways in which [prisoners] are treated as less than human and in the process reclaiming their own agency.”165 Such dignitary considerations, which courts have sought to protect under First Amendment principles, should therefore naturally extend to prisoners attempting to, through strikes, express their basic selfworth.166 Beyond representing a form of inherent, individual expression for inmates, prison strikes also represent a broader form of expression, allowing inmates to be visible to and heard by the public at large. Over the course of American history, inmates — by virtue of being locked up in isolated, impregnable penitentiaries — have largely been a silent and ignored segment of the American population.167 Through peaceful protests like the 2018 national prison strike, however, their suffering, their calls for reform, and their voices are, for the first time, directly expressed on a large scale, ringing out loudly beyond the prison walls and jumpstarting important conversations of criminal justice reform. It is critical to protect such expression; “[i]ndeed, it is from the voices of those who have been most harmed by the punitive nature of our criminal justice system that we can hear the most profound reimaginings of how the system might be truly responsive to local demands for justice and equality.”168 3. Petition for Redress. Inmates’ strikes can be seen not only as expressions of their dignity and general efforts to express their voices beyond prison walls but also as significant methods of assembly to call attention to specific grievances and seek redress from the government.169 While in theory “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,”170 in practice, “prisons often escape the daily microscope focused on other American institutions such as schools, churches, and government.”171 Courts grant prison administrators wide deference not only in running day-to-day life within prisons but also in restricting press access to prisons.172 Therefore, much of the American public — already closed off from and largely indifferent to the lives of prisoners — is kept even more in the dark about prison conditions and the state of our carceral system as a whole. Prison conditions, from what has been documented, are horrendous across states. Many prisons are severely overcrowded and seriously understaffed;173 inmates routinely experience physical abuse and even death at the hands of prison guards,174 receive inadequate protection from guards, are deprived of basic necessities,175 are given substandard medical care,176 and are forced to live in squalor and tolerate extreme circumstances;177 most prisoners have minimal, if any, access, to rehabilitative or mental health services;178 and prisoners have little legal recourse, as internal prison grievance procedures are often stacked against inmates,179 and judicial deference and federal legislation have effectively shut the courthouse doors on prisoners’ civil rights claims.180 And across prisons, criminal sentencing laws not only have contributed to an unprecedented era of mass incarceration, but also have forced African Americans and people of color broadly to bear much of this burden.181 As the Marshall Project states, “[s]ociety won’t fix a prison system it can’t see”;182 **peaceful prison strikes** like the 2018 strike, however, draw back the “iron curtain” of prison walls, **bringing to light many of the pressing** issues described above. Through these strikes, inmates are able not only to express their grievances to their prison administrators, but also to “publicize their on-the-ground realities to the larger world”183 and, in turn, gain attention from and access to the political branches able to implement policy reforms.184 As recent history has shown, inmates have experienced some success by pressing their claims against the government through publicized strikes. For example, as described above, the **California strikes** in 2011 and 2013 **generated public outcry that** eventually **resulted in transfor- mations to the** California prison system’s **solitary confinement policies**.185 In **Alabama**, **inmates’ participation** in the 2016 nationwide prison strike helped **prompt** the **D**epartment **o**f **J**ustice **to open an investigation into the state’s prison conditions**.186 And more broadly speaking, **strikes** like the 2018 strike have **begun** **to “remedy power imbalances**, bring aggregate structural harms into view, and **shift** deeply entrenched legal and constitutional” **barriers to critical prison reforms**.187 B. Considering Additional Legal Avenues for Protecting Prison Strikes The foregoing analysis suggests that the First Amendment is a critical, worthwhile vehicle for considering the merits of a right to strike for prisoners. As Justice Black recognized, the importance of such analysis likely transcends prisoners themselves. He wrote: “I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”188 But this Note acknowledges that judicial recognition of prison strikes’ First Amendment values requires significant doctrinal change. Convincing the Supreme Court to overturn its Jones and Turner precedents, and instead to adopt a test with less deference than is currently afforded to prison administrators, is unlikely. As a result, future research is necessary to identify other potential avenues to consider the legal status and merits of prison strikes. As alluded to above, labor law presents one such promising avenue, as does state constitutional and statutory law. Drawing from the broader j

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#### 1] Interpretation: The affirmative must defend an unconditional right to strike. This means that the Affirmative must defend that anyone regardless of job or occupation has a fundamental right to strike.

Merriam Webster ND, <https://www.merriam-webster.com/dictionary/unconditional> //sid

not conditional or limited : [ABSOLUTE](https://www.merriam-webster.com/dictionary/absolute), [UNQUALIFIED](https://www.merriam-webster.com/dictionary/unqualified)

#### 2] Violation – They only grant the Right to Strike to incarcerated workers. That by definition is a condition since they condition the right to strike on a particular occupation.

Jensen ’18 (Eric; co-director of the Stanford Rule of Law Program, in collaboration with USAID, The Asia Foundation, and Stanford Law School; April 2018; “Introduction to the Laws of Timor-Leste”; Stanford Law School; <https://law.stanford.edu/wp-content/uploads/2018/04/Timor-Leste-Constitutional-Rights.pdf>; Accessed: 10-30-2021; AU)

If individuals want to defend their rights at work, the Constitution gives them the right form trade unions and to strike. Individuals are free to join and participate in professional associations that are peaceful. This includes trade unions. Individuals in trade unions have a right to organize their unions independent of the government or their employers. Trade unions should be free and independent, and individuals have the right to set the unions’ internal structure freely. Independent trade unions are important to allow individuals to organize with other workers to collectively defend their interests and their rights. It is important that they are independent so that they reflect the individuals’ interests and not the employer’s or the government’s interests. Individuals have the right to strike. If they feel that their employer is not respecting their rights or interests, employees can refuse to work in protest. The Constitution creates a duty that during a strike, the employer still has to maintain equipment and provide for safety. Individuals’ right to strike is **limited by the law**. The Constitution states that the right to strike is **conditional** on the strike being **compliant** with legal regulations that the government creates. This means that the **government can pass laws** that limit **when and how** individuals can exercise their right to strike. The right to strike is important to give individuals the power to defend their labor rights.

#### 3] Standards –

#### a] Limits – there are endless conditions the aff can place on the right to strike – i.e based on occupation, national holidays, location of strike, etc. That makes the topic untenable since the Aff can just infinitely specify any condition or permutation of conditions which makes predictable preparation and in-depth clash impossible.

#### b] Neg Ground – specifying scenarios lets affs spike out of core, reduction-based disads like Bizcon and Small Businesses. Links are already non-existent on this topic – letting affs impose restrictions on RTS makes it even narrower.

#### 4] TVA – establish a right to strike and read Teacher Unions as an Advantage.

#### 5] Paradigm Issues –

#### a] Topicality is Drop the Debater – it’s a fundamental baseline for debate-ability.

#### b] Use Competing Interps – 1] Topicality is a yes/no question, you can’t be reasonably topical and 2] Reasonability invites arbitrary judge intervention and a race to the bottom of questionable argumentation.

#### c] No RVI’s - 1] Forces the 1NC to go all-in on Theory which kills substance education, 2] Encourages Baiting since the 1AC will purposely be abusive, and 3] Illogical – you shouldn’t win for not being abusive.

### 3

#### SCOTUS’s decision on *Roe v. Wade* hinges on Roberts’ political capital.

Robinson ’21 (Kimberly; reporter for Bloomberg Law; 6-18-2021; “Barrett Channels Roberts’ ‘Go-Slow’ Approach in Landmark Cases”; Bloomberg Law; https://news.bloomberglaw.com/us-law-week/barrett-channels-roberts-go-slow-approach-in-landmark-cases; Accessed: 10-1-2021; AU)

The U.S. Supreme **Court’s** newest justice is showing signs that she’s more **aligned with** John **Roberts** and Brett Kavanaugh **in the center** than she is with her other conservative colleagues, **refusing to support** broad **rulings that** could **shake** the **court’s credibility**. Amy Coney Barrett is “starting to show her stripes” as a moderate who prefers small movements in the law, not huge shifts, South Texas College of Law Houston professor Josh Blackman said. The justices handed down victories to both liberals and conservatives on Thursday saving the Affordable Care Act again but siding with a religious group in the latest battle over LGBT protections. **Roberts**, the chief justice, is viewed as an **institutionalist** **who wants to conserve** the public’s **confidence** in the court. So far, he **favors incremental shifts** in the law. “That’s been one of the Chief’s primary goals all along,” said Case Western Reserve law professor Jonathan Adler. He recently gained an **ally in Kavanaugh** in this pursuit, **and** it appears **Barrett** may join their ranks. The court as a whole has has largely agreed in cases this year. The unanimous decision in the LGBT case was the 25th time the justices were unanimous in 41 rulings so far this term. There are 15 to go in coming days. But the **big test** for Barrett **will be** next term starting in October when the justices will tackle hot-button issues like guns, **abortion**, and possibly affirmative action. “It is a very conservative Court, even if we will only get glimpses of it this year,” said UC Berkeley law school Dean Erwin Chemerinsky. Kicking the Can Both the **A**ffordable **C**are **A**ct **and LGBT** rulings **were** “very, very **narrow**,” Georgia State law professor EricSegall said. In the Obamacare case, California v. Texas, the 7-2 majority handed down a procedural ruling to avoid undoing the landmark 2010 law. The justices said red states led by Texas didn’t have a legal basis—or standing—to challenge it. Only Justices Samuel Alito and Neil Gorsuch would have voted to gut the act, long a priority of Republicans. The LGBT ruling, while unanimous in its outcome, was splintered in its reasoning. Hiding under the 9-0 breakdown was a dispute about whether to overturn the court’s divisive ruling in Employment Division v. Smith, which sparked the passage of the bipartisan Religious Freedom Protection Act and mini state versions across the country. The court in Smith refused to require an exception from Oregon’s prohibition on peyote, saying religious objectors don’t get a free pass on “generally applicable” laws. On opposite ends in the court’s LGBT ruling were the liberal justices—Stephen Breyer, Sonia Sotomayor, and Elena Kagan—along with Roberts, who wanted to uphold the court’s precedent in Smith, and the court’s most conservative members—Clarence Thomas, Alito, and Gorsuch—who wanted it overruled once and for all. In **the middle** was Barrett, joined by Kavanaugh, who acknowledged Smith‘s shortcomings but was **concerned with** the **fallout** should the court overrule it. “Yet what should replace Smith?” Barrett asked in a short concurrence. Both cases were a punt, Blackman said, with the issues likely to return to the court at some point in the future. End of the World But the ACA and LGBT cases, along with the extraordinary agreement all term, suggests a **majority** of the justices **don’t think** **it’s** the right **time to make major changes** in the law. “In the throes of everything"—the pandemic, Barrett’s first term, Kavanaugh’s biting confirmation, calls for Breyer to retire, and the caustic 2020 presidential election—"they didn’t want to shock the world this year,” Segall said. “**Preserving** the **court’s** own political **capital** **is** incredibly **important** to the justices because they know their only capital is the confidence of the American people,” he added. **Adler said the court has developed a sort of 3-3-3 split**—that is, three liberals, three conservative justices willing to chuck precedents they don’t agree with, and three conservative justices hesitant to overturn cases they may disagree with. **Roberts, Kavanaugh, and now, apparently, Barrett make up that last group.** Adler said that split will create some interesting pressures for the three justices in the middle next term, when—as Segall said—"the world will end.” **The end of the world was a reference—in part—to the court’s abortion case, which could call into question the landmark ruling in Roe v. Wade and later cases**.

#### **The court’s center is skeptical of overturning precedent in Roe, but the path’s narrow.**

Feldman ‘9/2 (Noah; Bloomberg Opinion columnist and host of the podcast “Deep Background.” He is a professor of law at Harvard University and was a clerk to U.S. Supreme Court Justice David Souter.; “Is the Supreme Court Ready to Overturn Roe? We Don’t Know”; 9/2/21; Bloomberg; https://www.bloomberg.com/opinion/articles/2021-09-02/supreme-court-ruling-on-texas-abortion-law-isn-t-death-knell-for-roe; Accessed 9/17/21]

Every nonlawyer on the planet — and no doubt a few lawyers, too — is likely to read this outcome as prefiguring a 5-to-4 vote to overturn Roe v. Wade, the 1973 precedent that made abortion a constitutional right. Later this year, **the court will address** a Mississippi anti-**abortion law** that lacks the cleverly diabolical enforcement mechanism of the Texas law but is equally unconstitutional. Indeed, the day after the law went into effect and before the Supreme Court ruled, many non-lawyers who were so unfamiliar with court procedures that they didn’t know it would eventually issue a ruling on the Texas law had already concluded that they knew how the upcoming Mississippi case would come out. That’s a possible interpretation of the latest opinion, to be sure. But the **opinion** for the five conservatives **explicitly denied** it. “We stress,” said the justices, “that we do not purport **to resolve** definitively any jurisdictional or **substantive claim** in the applicants’ lawsuit.” That’s lawyer-speak for **saying** both that the **law could** still **be unconstitutional** and that there might still be some procedural way to block its operation. For good measure, the opinion said the challengers “have raised serious questions regarding the constitutionality of the Texas law.” These **formulations indicate** that at least **some** of the five **conservatives** who joined it wanted to take pains **not to** **send** the **message** **that Roe** v. Wade **is sure to be overturned**. What is less clear is whether anyone on the political battlefield wants to hear that message. The pro-choice camp will doubtless spend the months until the court term ends in June whipping up public sentiment, either in the hopes of changing the outcome or turning any decision overturning Roe into the impetus for packing the court or producing a heavy Democratic turnout in the 2022 midterm elections. The pro-life camp has an equal interest in making the overturning of Roe seem inevitable. Consequently, neither side cares much for dispassionate analysis. But the fact remains that the majority in the Texas ruling did not address the underlying issues, so it would be premature to predict the outcome in the Mississippi case based on it. Taken strictly on its own terms, the **opinion** made a point that **is incorrect** in my view, **but** that is **legally plausible**. That is that there’s no clear precedent for courts to block in advance the operation of a law that creates a civil penalty — not a criminal violation — to be applied by the courts after private lawsuits by private parties. Ordinarily, when a criminal law is obviously unconstitutional, the courts issue an order to the state attorney general not to enforce it. Such an order would not have any effect in this case, since the Texas attorney general isn’t empowered to enforce the law.

#### Expanding Rights Protection is perceived as judicial activism – it strays from the Constitution and forces Roberts to expend court capital.

Tribe et al. ‘10 [Laurence; January 2010; Carl M. Loeb University Professor at Harvard Law School, et al.; "TOO HOT FOR COURTS TO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE," https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/012910Tribe\_WP.pdf/]

We can stipulate that the **Constitution’s** framers were **not driven by** the **relationships** among chemistry, temperature, combustion engines, and global climate when they **assigned** **to** the **judicial process** the task of **interpreting** and applying **rules of law**, and to the political process the mission of making the basic policy choices underlying those rules. Yet the framework established by the Constitution they promulgated, refined over time but admirably constant in this fundamental respect, wisely embodied the recognition that enacting the ground rules for the conduct of commerce in all of its manifestations—including designing incentives for innovation and creative production (through regimes of intellectual property), establishing the metrics and units for commercial transactions (through regimes of weights and measures), and coping with the cross-boundary effects of economic activity (through the regulation of interstate and foreign commerce)—was a task quintessentially political rather than judicial in character. Yet the litigious **character of** American **society**, observed early in the republic’s history by deTocqueville, has ineluctably **drawn** American **courts**, federal as well as state, into problems within these spheres more properly and productively addressed by the legislative and executive branches. This has occurred in part because **political solutions** to complex problems of policy choice inevitably **leave some** citizens and consumers **dissatisfied** and inclined to seek judicial redress for their woes, real or imagined. And it has occurred in part because the toughest **political problems** appear on the horizon long before solutions can be identified, much less agreed upon, **leaving courts** to **fill the vacuum** that social forces abhor no less than nature itself. One can believe strongly in access to courts for the protection of judicially enforceable rights and the preservation of legal boundaries—as the authors of this WORKING PAPER do— while still deploring the perversion of the judicial process to meddle in matters of policy formation far removed from those judicially manageable realms. Indeed, the two concerns are mutually reinforcing rather than contradictory, for **courts squander** the **social and cultural capital** they need **in order to do** what may be **politically unpopular in preserving rights and protecting boundaries** when they yield to the temptation to treat lawsuits as ubiquitously useful devices for making the world a better place.

#### RTS is treated as an issue of corporate free speech - Robert’s legacy is built on its rejection - ensures sustained backlash.

Thomson-DeVeaux 18 (, A., 2018. Chief Justice Roberts Is Reshaping The First Amendment. [online] FiveThirtyEight. Available at: <https://fivethirtyeight.com/features/chief-justice-roberts-is-reshaping-the-first-amendment/> [Accessed 5 November 2021] Amelia Thomson-DeVeaux is a senior writer at FiveThirtyEight. Before joining FiveThirtyEight’s staff, she was a regular contributor to the site and a freelance writer and editor with a wide portfolio of work. Her writing has been published in a variety of outlets, including CNN, Cosmopolitan, National Journal, and New York Magazine. She is a graduate of Princeton University and holds a master's degree in religious studies from The University of Chicago. Between degrees, she was on the staff of The American Prospect and worked as a writer and editor for PRRI, a public opinion research organization in Washington, DC.)-rahulpenu

It’s been a big year for free speech at the Supreme Court. Two of the most high-profile cases argued before the court so far have revolved around free speech rights, four other cases on the docket this term involve free speech questions, and yet another case where the issue is paramount greets the court on Tuesday.

The court today is hearing arguments on whether the state of California is trampling on the free speech rights of crisis pregnancy centers — nonprofit organizations that do not perform abortions and encourage women to seek alternatives to the procedure — by requiring them to post notices explaining patients’ ability to access abortion and other medical services. In December, attorneys for a baker at Masterpiece Cakeshop in Colorado argued that a state anti-discrimination law violates his free speech rights as a self-described cake artist by requiring him to make a wedding cake for a gay couple. Last month, the justices heard oral arguments in a case about whether state laws allowing unions to require nonmembers to pay fees violate those employees’ right to free speech.

Whichever way the rulings come down this spring and summer, it’s almost certain that the winning side will include Chief Justice John Roberts, who has spent his 12-plus years at the helm of the high court quietly carving out a space as a prolific and decisive arbiter of free speech law. Supporters and critics both agree that during his tenure, the court has dramatically expanded the reach of the First Amendment by striking down a wide range of statutes for encroaching on free speech rights. And **Roberts** has **authored** more **majority** **opinions** **on** **free** **speech** than any other justice during his tenure, signaling that this is an area where he **wants** **to** **create** a **legacy**.

But just what that legacy will be is **highly** **contested**. Roberts’s admirers argue that his commitment to the First Amendment transcends ideological boundaries. But others contend that his decisions don’t protect speech across the board. Instead, they say that **Roberts** is more than willing to **allow** the government to restrict speech when it’s speech he disagrees with — meaning **free** **speech** is becoming **a** legal **tool** **that** **favors** **corporations** **over** **individuals**.

The chief justice gets to decide who writes the majority opinion in any case where he’s on the winning side, which means that Roberts is able to stake a claim over a particular area of law if he so chooses. And that seems to be what’s happening with free speech: As of the end of the 2016 term, Roberts had written 34 percent of the free speech decisions the court has handed down since he joined its ranks, and 14 percent of his majority opinions were devoted to the topic.1 Even when he’s not writing for the majority, Roberts is rarely on the losing side: Out of the 38 free speech cases we counted,2 he voted with the minority only once.

The First Amendment appears to be a topic of deep personal interest for Roberts, and he’s not commanding the majority opinion in these cases simply to reinforce earlier decisions. Roberts has presided over — and participated in — a deliberate and systematic expansion of free speech rights in the realm of campaign finance and commercial speech. The court’s determination that campaign spending limits on corporations violated free speech in the 2010 case Citizens United v. FEC was just one in a series that struck down a range of campaign finance laws on First Amendment grounds and expanded corporations’ right to speech in other venues, like drug advertising and trademark regulations.

According to legal experts, these rulings represent a clear and unprecedented reversal of previous Supreme Court interpretations of the First Amendment, particularly with regard to corporations. Those interpretations began taking shape early in the last century, as the court only began to strike down federal statutes for abridging free speech after World War I. As it did so, it at first explicitly rejected the idea that commercial speech was constitutionally protected. In the 1970s and ’80s, the justices walked this decision back somewhat as it related to certain types of ads, but they continued to maintain that advertising remained categorically different from other kinds of speech, especially when it was presenting inaccurate information.

At the same time, the justices issued groundbreaking rulings that protected the speech of unpopular individuals and groups against government censorship. It was these cases, which involved government attempts to quash union picketing, student protests of the Vietnam war, flag-burning and Nazi protests, that established free speech as an essential protection for people with minority opinions who were in danger of being silenced by the majority.

This is decidedly not the principle that the Roberts court has embraced with its rulings on campaign finance and commercial speech. Starting in the 1970s, campaign finance laws restricting the flow of money into politicians’ coffers aimed to make space for more voices in the political sphere by preventing the wealthy from buying influence. But in the Citizens United case, the court ruled that the government couldn’t restrict the free speech rights of corporations simply because they were corporations — even if citizens with fewer financial resources were less able to command the attention of their elected officials as a result.

Although the Roberts court seems to be interpreting free speech in a new way with these decisions, some historians say that free speech has always been ideologically flexible. According to Laura Weinrib, a historian and professor of law at the University of Chicago, corporate titans like the Ford Motor Company were part of the early push for broader **free** **speech** **protections** precisely because they recognized the power of the First Amendment for **advancing** **their** **own** **causes**, while organizations like the ACLU strategically accepted a “neutral” vision of free speech that **protected** the strong (**companies** like Ford) as well as the weak (union **workers** **seeking** the **right to strike**) in order to secure early victories for **labor** **rights**. Those twin forces helped **pave** the **way** **for** **today’s** understanding of **free** **speech** **under** the **Roberts** court.

It’s that question of what free speech protections should do — and whether it’s acceptable to muzzle stronger voices if they’re drowning out weak or unpopular opponents — that may help explain the Roberts court’s **rightward** **turn** **on** **corporate** **speech**.

Burt Neuborne, a law professor at New York University and a former legal director of the ACLU, said that the liberal justices are willing to tolerate some restrictions on speech because they see them as necessary to build a fair society. “In this view, you can, for example, limit free speech when it threatens our democracy,” Neuborne said. The **conservative** **justices**, on the other hand, tend to **view** **free** **speech** **itself** **as** the **goal**. “They don’t care what happens afterward or who they’re affecting — they just **want** **to** **get** the **gov**ernment **out** **of** the business of **meddling** with speech,” he said.

This explanation is complicated, though, by the fact the Roberts court — and Roberts himself — has painted a muddier picture of other speech limits. Roberts authored opinions striking down a civil judgment holding the Westboro Baptist Church liable for damages resulting from church members picketing outside a soldier’s funeral, and a law prohibiting the distribution of videos showing animal cruelty. Those rulings are clearly in line with previous ones permitting flag-burning and Nazi protests. But Roberts also issued decisions or signed onto rulings that allowed the government to restrict the speech of students, even when they’re off school property, and limit the expression of public employees in a variety of contexts.

There’s disagreement about whether the Roberts court, by upholding these government restrictions on speech, is undermining its reputation as a court dedicated to a broad view of free speech. “It’s very much to Roberts’s credit that his Supreme Court has a genuinely expansive view of free speech that can’t be explained by political favoritism,” said Michael McConnell, a professor at Stanford Law School. He acknowledged that there are a few exceptions but said they aren’t significant or frequent enough to undermine his broader characterization of Roberts’s record.

But Genevieve Lakier, another University of Chicago law professor, disagreed. “The court does make judgments about when the government needs to restrict speech,” she said. “And in contexts like schools, or when the government says there are national security needs, it’s shockingly willing to allow those restrictions.”

Whether or not it’s fair to say that the Roberts court has been broadly protective of free speech, there’s little question that the court is reshaping it in ways that will resonate for years to come. And the cases this term could play a pivotal role in defining and clarifying that legacy — especially Masterpiece Cakeshop.

Neuborne predicted that the wedding cake case would be challenging for Roberts, but that either way, it would further illuminate his stance on free speech. “This case could have serious ramifications for nondiscrimination law,” Neuborne said. “But there is a free speech claim involved, so we’ll see how much of an absolutist Roberts is willing to be.”

#### Legal Abortion key to Fetal Tissue research that creates treatments and vaccines for disease

LRM 19 Medicine, The Lancet Respiratory. "Fetal tissue research: focus on the science and not the politics." (2019): 639. (ranked as the number one journal in the fields of critical care and respiratory medicine)//Found by JM + BUBU//Re-cut by Elmer

**Stem cell** therapy **research** in lung disease is still at early stages, but the research output is **increasing** and the area is a **promising** one. However, there are **limits** to the use of MSC and other adult multipotent stem cells, because **substantial numbers** are **required for therapeutic effects**. The cells also have a shorter replicative lifespan and can only make a restricted number of specialised cell types that are specific for their organ of origin. **Fetal tissue**, by contrast, provides cell lines that grow rapidly, are able to **easily differentiate** into multiple cell types, and are **less likely to be rejected** by the body. In the future, fetal tissue might be replaced in certain areas of research with the use of induced pluripotent stem cells and organoids, which are human-cell cultures that can be crafted to replicate an organ. However, in areas such as fetal development, a suitable replacement to fetal tissue is unlikely to be found. Although research into fetal tissue alternatives is worthwhile, it will take time and until then, the use of fetal tissue is **essential** so that **research efforts**, which are crucial for the development of new therapeutic treatments in often difficult-to-treat lung diseases, are not severely hampered. And those in the field need to ensure their voices are heard. Indeed, the American Thoracic Society released a statement the day after the Trump administration announcement saying that “Scientific research with fetal tissue is **vital for** the **development of new treatments for** many **deadly** **diseases** and conditions, such as cystic fibrosis and acute lung injury. **There are no alternative research models that can replace all fetal tissue research”.** Fetal tissue has been a **key** **part of** the development of multiple **vaccines**, **treatments** for cystic fibrosis, and ongoing research into cancer immunotherapy. The major objection to fetal tissue research is that the **source of** the **fetal tissue is** **mainly from** **elective abortions**. However, there is no suggestion that the number of abortions will decrease as a result of removing funding for fetal tissue research. **Abortion is still legal** in all 50 states in the USA and fetal tissue would otherwise be discarded. **Fetal tissue research**, in fact, holds the **potential to save lives** through the development of new treatments and vaccines. Politicising scientific research in this way means denying hope to millions of patients with life-limiting diseases.

#### Diseases cause Extinction

Bar-Yam 16 Yaneer Bar-Yam 7-3-2016 “Transition to extinction: Pandemics in a connected world” <http://necsi.edu/research/social/pandemics/transition> (Professor and President, New England Complex System Institute; PhD in Physics, MIT)//Elmer

Watch as one of the more aggressive—brighter red — strains rapidly expands. After a time it goes extinct leaving a black region. Why does it go extinct? The answer is that it spreads so rapidly that it kills the hosts around it. Without new hosts to infect it then dies out itself. That the rapidly spreading pathogens die out has important implications for evolutionary research which we have talked about elsewhere [1–7]. In the research I want to discuss here, what we were interested in is the effect of adding long range transportation [8]. This includes natural means of dispersal as well as unintentional dispersal by humans, like adding airplane routes, which is being done by real world airlines (Figure 2). When we introduce long range transportation into the model, the success of more aggressive strains changes. They can use the long range transportation to find new hosts and escape local extinction. Figure 3 shows that the more transportation routes introduced into the model, the more higher aggressive pathogens are able to survive and spread. As we add more long range transportation, there is a critical point at which pathogens become so aggressive that the entire host population dies. The pathogens die at the same time, but that is not exactly a consolation to the hosts. We call this the phase transition to extinction (Figure 4). With increasing levels of global transportation, human civilization may be approaching such a critical threshold. In the paper we wrote in 2006 about the dangers of global transportation for pathogen evolution and pandemics [8], we mentioned the risk from Ebola. Ebola is a horrendous disease that was present only in isolated villages in Africa. It was far away from the rest of the world only because of that isolation. Since Africa was developing, it was only a matter of time before it reached population centers and airports. While the model is about evolution, it is really about which pathogens will be found in a system that is highly connected, and Ebola can spread in a highly connected world. The traditional approach to public health uses historical evidence analyzed statistically to assess the potential impacts of a disease. As a result, many were surprised by the spread of Ebola through West Africa in 2014. As the connectivity of the world increases, past experience is not a good guide to future events. A key point about the phase transition to extinction is its suddenness. Even a system that seems stable, can be destabilized by a few more long-range connections, and connectivity is continuing to increase. So how close are we to the tipping point? We don’t know but it would be good to find out before it happens. While Ebola ravaged three countries in West Africa, it only resulted in a handful of cases outside that region. One possible reason is that many of the airlines that fly to west Africa stopped or reduced flights during the epidemic [9]. In the absence of a clear connection, public health authorities who downplayed the dangers of the epidemic spreading to the West might seem to be vindicated. As with the choice of airlines to stop flying to west Africa, our analysis didn’t take into consideration how people respond to epidemics. It does tell us what the outcome will be unless we respond fast enough and well enough to stop the spread of future diseases, which may not be the same as the ones we saw in the past. As the world becomes more connected, the dangers increase. Are people in western countries safe because of higher quality health systems? Countries like the U.S. have highly skewed networks of social interactions with some very highly connected individuals that can be “superspreaders.” The chances of such an individual becoming infected may be low but events like a mass outbreak pose a much greater risk if they do happen. If a sick food service worker in an airport infects 100 passengers, or a contagion event happens in mass transportation, an outbreak could very well prove unstoppable.

### 4

#### [The United States] ought to request the International Court of Justice issue an advisory opinion over whether they ought to [establish an unconditional right of incarcerated workers to strike]. [The United States] ought to abide by the outcome of the advisory opinion.

#### Solves the Aff – every card in the 1AC is about aligning the Aff with international labor standards which the ICJ does best - the ICJ will rule in favor of an unconditional right to strike.

Seifert ’18 (Achim; Professor of Law at the University of Jena, and adjunct professor at the University of Luxembourg; December 2018; “The protection of the right to strike in the ILO: some introductory remarks”; CIELO Laboral; http://www.cielolaboral.com/wp-content/uploads/2018/12/seifert\_noticias\_cielo\_n11\_2018.pdf; Accessed: 11-3-2021; AU)

The **recognition of a right to strike** in the legal order of the **International Labour Organization** (ILO) is probably one of the most controversial questions in international labor law. Since the foundation of the ILO in the aftermath of World War I, the recognition of the right to strike as a **core element** of the principle of freedom of association has been discussed in the International Labour Conference (ILC) as well as in the Governing Body and the International Labour Office. As is well known, the ILO, in its long history spanning almost one century, has not explicitly recognized a right to strike: neither Article 427 of the Peace Treaty of Versailles (1919), the Constitution of the ILO, including the Declaration of Philadelphia (1944), nor the Conventions and Recommendations in the field of freedom of association - namely Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) - have explicitly enshrined this right. However, the Committee on Freedom of Association (CFA), established in 1951 by the Governing Body, recognized in 1952 that Convention No. 87 guarantees also the **right to strike** as an **essential element of trade** union rights enabling workers to collectively defend their economic and social interests1. It is worthwhile to note that it was a complaint of the World Federation of Trade Unions (WFTU), at that time the Communist Union Federation on international level and front organization of the Soviet Union2, against the United Kingdom for having dissolved a strike in Jamaica by a police operation; since that time the controversy on the right to strike in the legal order of the ILO was also embedded in the wider context of the Cold War. In the complaint procedure initiated by the WFTU, the CFA **recognized** a **right to strike** under Convention No. 87 but considered that the police operation in question was lawful. In the more than six following decades, the CFA has elaborated a **very detailed case law** on the right to strike dealing with many concrete questions of this right and its limits (e.g. in essential services) and manifesting an even more complex structure than the national rules on industrial action in many a Member State. This case law of the CFA has been compiled in the “Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO”3. In 1959, i.e. seven years after case No. 28 of the CFA, the Committee of Experts for the Application of Conventions and Recommendations (CEACR) also recognized the right to strike as **a core element of freedom** of association under Article 3 of Convention No. 874. Since then, the CEACR has **reconfirmed** its view on many occasions. Both CFA and CEACR coordinate their interpretation of Article 3 of Convention No. 875. Hence there is one single corpus of rules on the right to strike developed by both supervisory Committees of the Governing Body. Moreover, the ILC also has made clear in various Resolutions adopted since the 1950s that it considers the **right to strike** as an **essential element of freedom of association6**. On the whole, the recognition of the right to strike resulted therefore from the interpretative work of CFA and CEACR as well as of the understanding of the principle of freedom of association the ILC has expressed on various occasions. It should not be underestimated the wider political context of the Cold War had in this constant recognition of a right to strike under ILO Law. Although the very first recognition of the right to strike -as mentioned above- went back to a complaint procedure before the CFA, initiated by the Communist dominated WFTU, it was the Western world that particularly emphasized on the right to strike in order to blame the Communist Regimes of the Warsaw Pact that did not explicitly recognize a right to strike in their national law or, if they legally recognized it, made its exercise factually impossible; to this end, unions, employers’ associations but also Governments of the Western World built up an alliance in the bodies of the ILO7. In accomplishing their functions, CFA and CEACR necessarily have to interpret the Conventions and Recommendations of the ILO whose application in the Member States they shall control. In so doing, they need to concretize the principle of freedom of association that is only in general terms guaranteed by the ILO Conventions and Recommendations on freedom of association. But as supervisory bodies, which the Governing Body has established and which are not foreseen in the ILO Constitution, both probably do not have the power to interpret ILO law with binding effect8. This is also the opinion that the CEACR expresses itself in its yearly reports to the ILC when explaining that, “its opinions and recommendations are non-binding”9. As a matter of fact, the Governing Body, when establishing both Committees, could not delegate to them a power that it has never possessed itself: nemo plus iuris ad alium transferre potest quam ipse haberet10. According to Article 37(1) of the ILO Constitution, it is within the **competence of the International Court of Justice** to decide upon “any question or dispute relating to the **interpretation of this Constitution** or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution.” Furthermore, the ILC has not established yet under Article 37(2) of the ILO Constitution an ILO Tribunal, competent for an authentic interpretation of Conventions11. However, it **cannot be denied** that this constant interpretative work of CFA and CEACR possesses an **authoritative character** given the high esteem the twenty members of the CEACR -they are all internationally renowned experts in the field of labor law and social security law- and the nine members of the CFA with their specific expertise have. As the CEACR reiterates in its Reports, “[the opinions and recommendations of the Committee] derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise”12. Already this interpretative authority of both Committees justifies that **national legislators or courts take into consideration** the views of these supervisory bodies of the ILO when implementing ILO law. Furthermore, the long-standing and uncontradicted interpretation of the principle of freedom of association by CFA and CEACR as well as its recognition by the Member States may be considered as a **subsequent practice** in the application of the ILO Constitution under Article 31(3)(b) of the Vienna Convention on the Law of Treaties (1968): such subsequent practices shall be taken into account when interpreting the Agreement. Their constant supervisory practice probably reflects a volonté ultérieure, since other bodies of the ILO also have **recognized a right to strike** as the two above-mentioned Resolutions of the ILC of 1957 and 1970 as well as the constant practice of the Conference Committee on the Application of Standards to examine **cases of violation** of the right to strike as **examples for breaches of the principle of freedom of association** demonstrate. As this constant practice of the organs of the ILO has not been contradicted by Member States, there is a **strong presumption** for recognition of a right to strike as a subsequent practice of the ILO under Article 31(3)(b) of the **Vienna Convention** on the Law of Treaties.

#### US compliance ensures faith in global democratic institutions – solves nuclear war.

Hawksley ’16 [Humphrey; formerly the BBC’s Beijing Bureau Chief and author of The Third World War: A Novel of Global Conflict and Asian Waters: American, China, and the Global Paradox; 11-19-2016; "Trump makes International Law Crucial for Peace"; Humphrey Hawksley; https://www.humphreyhawksley.com/trump-makes-international-law-crucial-for-peace/; Accessed 4-1-2020; AH]

Major powers tend to reject international law when rulings run counter to their interests insisting that the distant courts carry no jurisdiction. China rejected a Permanent Court of Arbitration’s ruling in July and clings to expansive claims in the South China Sea, including Scarborough Shoal near the Philippines. China’s response mirrored US rejection of a 1986 International Court of Justice ruling against US support for rebels in Nicaragua. “With these stands, both China and the United States weakened a crucial element of international law – consent and recognition by all parties,” writes journalist Humphrey Hawksley for YaleGlobal Online. Disregard for the rule of law weakens the legal system for all. Hawksley offers two recommendations for renewing respect for international law: intuitional overhaul so that the all parties recognize the courts, rejecting decisions only as last resort, and governments accepting the concept, taking a long-term view on balance of power even when rulings go against short-term strategic interests. Reforms may be too late as China organizes its own parallel systems for legal reviews and global governance, Hawksley notes, but international law, if respected, remains a mechanism for ensuring peace. – YaleGlobal LONDON: Flutter over the surprise visit to China by Philippines President Rodrigo Duterte may soon fade. But his abrupt and public dismissal of the United States in favor of China has weakened the argument that international rule of law could underpin a changing world order. The issue in question was the long-running dispute between China and the Philippines over sovereignty of Scarborough Shoal, situated 800 kilometers southeast of China and 160 kilometers west of the Philippines mainland, well inside the United Nations–defined Philippines Exclusive Economic Zone. Despite a court ruling and Duterte’s cap in hand during his October mission to Beijing, Philippine fishing vessels still only enter the waters around Scarborough Shoal at China’s mercy. The dispute erupted in April 2012, when China sent ships to expel Filipino fishing crews and took control of the area. The standoff became a symbol of Beijing’s policy to lay claim to 90 percent of the South China Sea where where it continues to build military outposts on remote reefs and artificially created islands in waters claimed by other nations. Lacking military, diplomatic or economic muscle, the Philippines turned to the rule of law and the Permanent Court of Arbitration in the Hague. A panel of maritime judges ruled China’s claim to Scarborough Shoal invalid in July this year. China refused to recognize the tribunal from the start and declared the decision “null and void,” highlighting the complex balance in the current world order between national power and the rule of law. Beijing’s response mirrored a 1986 US response to Nicaragua’s challenge in the International Court of Justice. The court ruled against the United States for mining Nicaragua’s harbors and supporting right-wing Contra rebels. The United States claimed the court had no jurisdiction. China’s response on the South China Sea ruling mirrors a 1986 US response.With these stands, both China and the United States weakened a crucial element of international law – consent and recognition by all parties. The Western liberal democratic system is being challenged, and confrontations in Asia and Europe, as in Crimea and Ukraine, replicate the lead-up to the global conflicts of last century’s Cold War. As Nicaragua and Central America were a flashpoint in the 1980s, so Scarborough Shoal and South China Sea are one now. Other flashpoints are likely to emerge as China and Russia push to expand influence. Western democracies being challenged by rising powers have a troubled history. The 1930s rise of Germany and Japan; the Cold War’s proxy theaters in Vietnam, Nicaragua and elsewhere; and the current US-Russian deadlock over Syria are evidence that far more thought must be given in the deployment of international law as a mechanism for keeping the peace The view is supported, on the surface at least, by Russia and China who issued a joint statement in June arguing that the concept of “strategic stability” being assured through nuclear weapons was outdated and that all countries should abide by principles stipulated in the “UN Charter and international law.” Emerging power India, with its mixed loyalties, shares that view. “The structures for international peace and security are being tested as never before,” says former Indian ambassador to the UN, Hardeep Singh Puri, author of Perilous Interventions: The Security Council and the Politics of Chaos. “It is everyone’s interest to re-establish the authority of the Security Council and reassert the primacy of law.”

### 5

#### The standard is act hedonistic util. Prefer –

#### 1 – Pleasure and pain *are* intrinsic value and disvalue – everything else *regresses* – robust neuroscience.

Blum et al. 18

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**Pleasure** is not only one of the three primary reward functions but it also **defines reward.** As homeostasis explains the functions of only a limited number of rewards, the principal reason why particular stimuli, objects, events, situations, and activities are rewarding may be due to pleasure. This applies first of all to sex and to the primary homeostatic rewards of food and liquid and extends to money, taste, beauty, social encounters and nonmaterial, internally set, and intrinsic rewards. Pleasure, as the primary effect of rewards, drives the prime reward functions of learning, approach behavior, and decision making and provides the **basis for hedonic theories** of reward function. We are attracted by most rewards and exert intense efforts to obtain them, just because they are enjoyable [10].

Pleasure is a passive reaction that derives from the experience or prediction of reward and may lead to a long-lasting state of happiness. The word happiness is difficult to define. In fact, just obtaining physical pleasure may not be enough. One key to happiness involves a network of good friends. However, it is not obvious how the higher forms of satisfaction and pleasure are related to an ice cream cone, or to your team winning a sporting event. Recent multidisciplinary research, using both humans and detailed invasive brain analysis of animals has discovered some critical ways that the brain processes pleasure [14].

Pleasure as a hallmark of reward is sufficient for defining a reward, but it may not be necessary. A reward may generate positive learning and approach behavior simply because it contains substances that are essential for body function. When we are hungry, we may eat bad and unpleasant meals. A monkey who receives hundreds of small drops of water every morning in the laboratory is unlikely to feel a rush of pleasure every time it gets the 0.1 ml. Nevertheless, with these precautions in mind, we may define any stimulus, object, event, activity, or situation that has the potential to produce pleasure as a reward. In the context of reward deficiency or for disorders of addiction, homeostasis pursues pharmacological treatments: drugs to treat drug addiction, obesity, and other compulsive behaviors. The theory of allostasis suggests broader approaches - such as re-expanding the range of possible pleasures and providing opportunities to expend effort in their pursuit. [15]. It is noteworthy, the first animal studies eliciting approach behavior by electrical brain stimulation interpreted their findings as a discovery of the brain’s pleasure centers [16] which were later partly associated with midbrain dopamine neurons [17–19] despite the notorious difficulties of identifying emotions in animals.

Evolutionary theories of pleasure: The love connection BO:D

Charles Darwin and other biological scientists that have examined the biological evolution and its basic principles found various mechanisms that steer behavior and biological development. Besides their theory on natural selection, it was particularly the sexual selection process that gained significance in the latter context over the last century, especially when it comes to the question of what makes us “what we are,” i.e., human. However, the capacity to sexually select and evolve is not at all a human accomplishment alone or a sign of our uniqueness; yet, we humans, as it seems, are ingenious in fooling ourselves and others–when we are in love or desperately search for it.

It is well established that modern biological theory conjectures that **organisms are** the **result of evolutionary competition.** In fact, Richard Dawkins stresses gene survival and propagation as the basic mechanism of life [20]. Only genes that lead to the fittest phenotype will make it. It is noteworthy that the phenotype is selected based on behavior that maximizes gene propagation. To do so, the phenotype must survive and generate offspring, and be better at it than its competitors. Thus, the ultimate, distal function of rewards is to increase evolutionary fitness by ensuring the survival of the organism and reproduction. It is agreed that learning, approach, economic decisions, and positive emotions are the proximal functions through which phenotypes obtain other necessary nutrients for survival, mating, and care for offspring.

Behavioral reward functions have evolved to help individuals to survive and propagate their genes. Apparently, people need to live well and long enough to reproduce. Most would agree that homo-sapiens do so by ingesting the substances that make their bodies function properly. For this reason, foods and drinks are rewards. Additional rewards, including those used for economic exchanges, ensure sufficient palatable food and drink supply. Mating and gene propagation is supported by powerful sexual attraction. Additional properties, like body form, augment the chance to mate and nourish and defend offspring and are therefore also rewards. Care for offspring until they can reproduce themselves helps gene propagation and is rewarding; otherwise, many believe mating is useless. According to David E Comings, as any small edge will ultimately result in evolutionary advantage [21], additional reward mechanisms like novelty seeking and exploration widen the spectrum of available rewards and thus enhance the chance for survival, reproduction, and ultimate gene propagation. These functions may help us to obtain the benefits of distant rewards that are determined by our own interests and not immediately available in the environment. Thus the distal reward function in gene propagation and evolutionary fitness defines the proximal reward functions that we see in everyday behavior. That is why foods, drinks, mates, and offspring are rewarding.

There have been theories linking pleasure as a required component of health benefits salutogenesis, (salugenesis). In essence, under these terms, pleasure is described as a state or feeling of happiness and satisfaction resulting from an experience that one enjoys. Regarding pleasure, it is a double-edged sword, on the one hand, it promotes positive feelings (like mindfulness) and even better cognition, possibly through the release of dopamine [22]. But on the other hand, pleasure simultaneously encourages addiction and other negative behaviors, i.e., motivational toxicity. It is a complex neurobiological phenomenon, relying on reward circuitry or limbic activity. It is important to realize that through the “Brain Reward Cascade” (BRC) endorphin and endogenous morphinergic mechanisms may play a role [23]. While natural rewards are essential for survival and appetitive motivation leading to beneficial biological behaviors like eating, sex, and reproduction, crucial social interactions seem to further facilitate the positive effects exerted by pleasurable experiences. Indeed, experimentation with addictive drugs is capable of directly acting on reward pathways and causing deterioration of these systems promoting hypodopaminergia [24]. Most would agree that pleasurable activities can stimulate personal growth and may help to induce healthy behavioral changes, including stress management [25]. The work of Esch and Stefano [26] concerning the link between compassion and love implicate the brain reward system, and pleasure induction suggests that social contact in general, i.e., love, attachment, and compassion, can be highly effective in stress reduction, survival, and overall health.

Understanding the role of neurotransmission and pleasurable states both positive and negative have been adequately studied over many decades [26–37], but comparative anatomical and neurobiological function between animals and homo sapiens appear to be required and seem to be in an infancy stage.

Finding happiness is different between apes and humans

As stated earlier in this expert opinion one key to happiness involves a network of good friends [38]. However, it is not entirely clear exactly how the higher forms of satisfaction and pleasure are related to a sugar rush, winning a sports event or even sky diving, all of which augment dopamine release at the reward brain site. Recent multidisciplinary research, using both humans and detailed invasive brain analysis of animals has discovered some critical ways that the brain processes pleasure.

Remarkably, there are pathways for ordinary liking and pleasure, which are limited in scope as described above in this commentary. However, there are **many brain regions**, often termed hot and cold spots, that significantly **modulate** (increase or decrease) our **pleasure or** even produce **the opposite** of pleasure— that is disgust and fear [39]. One specific region of the nucleus accumbens is organized like a computer keyboard, with particular stimulus triggers in rows— producing an increase and decrease of pleasure and disgust. Moreover, the cortex has unique roles in the cognitive evaluation of our feelings of pleasure [40]. Importantly, the interplay of these multiple triggers and the higher brain centers in the prefrontal cortex are very intricate and are just being uncovered.

Desire and reward centers

It is surprising that many different sources of pleasure activate the same circuits between the mesocorticolimbic regions (Figure 1). Reward and desire are two aspects pleasure induction and have a very widespread, large circuit. Some part of this circuit distinguishes between desire and dread. The so-called pleasure circuitry called “REWARD” involves a well-known dopamine pathway in the mesolimbic system that can influence both pleasure and motivation.

In simplest terms, the well-established mesolimbic system is a dopamine circuit for reward. It starts in the ventral tegmental area (VTA) of the midbrain and travels to the nucleus accumbens (Figure 2). It is the cornerstone target to all addictions. The VTA is encompassed with neurons using glutamate, GABA, and dopamine. The nucleus accumbens (NAc) is located within the ventral striatum and is divided into two sub-regions—the motor and limbic regions associated with its core and shell, respectively. The NAc has spiny neurons that receive dopamine from the VTA and glutamate (a dopamine driver) from the hippocampus, amygdala and medial prefrontal cortex. Subsequently, the NAc projects GABA signals to an area termed the ventral pallidum (VP). The region is a relay station in the limbic loop of the basal ganglia, critical for motivation, behavior, emotions and the “Feel Good” response. This defined system of the brain is involved in all addictions –substance, and non –substance related. In 1995, our laboratory coined the term “Reward Deficiency Syndrome” (RDS) to describe genetic and epigenetic induced hypodopaminergia in the “Brain Reward Cascade” that contribute to addiction and compulsive behaviors [3,6,41].

Furthermore, ordinary “liking” of something, or pure pleasure, is represented by small regions mainly in the limbic system (old reptilian part of the brain). These may be part of larger neural circuits. In Latin, hedus is the term for “sweet”; and in Greek, hodone is the term for “pleasure.” Thus, the word Hedonic is now referring to various subcomponents of pleasure: some associated with purely sensory and others with more complex emotions involving morals, aesthetics, and social interactions. The capacity to have pleasure is part of being healthy and may even extend life, especially if linked to optimism as a dopaminergic response [42].

Psychiatric illness often includes symptoms of an abnormal inability to experience pleasure, referred to as anhedonia. A negative feeling state is called dysphoria, which can consist of many emotions such as pain, depression, anxiety, fear, and disgust. Previously many scientists used animal research to uncover the complex mechanisms of pleasure, liking, motivation and even emotions like panic and fear, as discussed above [43]. However, as a significant amount of related research about the specific brain regions of pleasure/reward circuitry has been derived from invasive studies of animals, these cannot be directly compared with subjective states experienced by humans.

In an attempt to resolve the controversy regarding the causal contributions of mesolimbic dopamine systems to reward, we have previously evaluated the three-main competing explanatory categories: “liking,” “learning,” and “wanting” [3]. That is, dopamine may mediate (a) liking: the hedonic impact of reward, (b) learning: learned predictions about rewarding effects, or (c) wanting: the pursuit of rewards by attributing incentive salience to reward-related stimuli [44]. We have evaluated these hypotheses, especially as they relate to the RDS, and we find that the incentive salience or “wanting” hypothesis of dopaminergic functioning is supported by a majority of the scientific evidence. Various neuroimaging studies have shown that anticipated behaviors such as sex and gaming, delicious foods and drugs of abuse all affect brain regions associated with reward networks, and may not be unidirectional. Drugs of abuse enhance dopamine signaling which sensitizes mesolimbic brain mechanisms that apparently evolved explicitly to attribute incentive salience to various rewards [45].

Addictive substances are voluntarily self-administered, and they enhance (directly or indirectly) dopaminergic synaptic function in the NAc. This activation of the brain reward networks (producing the ecstatic “high” that users seek). Although these circuits were initially thought to encode a set point of hedonic tone, it is now being considered to be far more complicated in function, also encoding attention, reward expectancy, disconfirmation of reward expectancy, and incentive motivation [46]. The argument about addiction as a disease may be confused with a predisposition to substance and nonsubstance rewards relative to the extreme effect of drugs of abuse on brain neurochemistry. The former sets up an individual to be at high risk through both genetic polymorphisms in reward genes as well as harmful epigenetic insult. Some Psychologists, even with all the data, still infer that addiction is not a disease [47]. Elevated stress levels, together with polymorphisms (genetic variations) of various dopaminergic genes and the genes related to other neurotransmitters (and their genetic variants), and may have an additive effect on vulnerability to various addictions [48]. In this regard, Vanyukov, et al. [48] suggested based on review that whereas the gateway hypothesis does not specify mechanistic connections between “stages,” and does not extend to the risks for addictions the concept of common liability to addictions may be more parsimonious. The latter theory is grounded in genetic theory and supported by data identifying common sources of variation in the risk for specific addictions (e.g., RDS). This commonality has identifiable neurobiological substrate and plausible evolutionary explanations.

Over many years the controversy of dopamine involvement in especially “pleasure” has led to confusion concerning separating motivation from actual pleasure (wanting versus liking) [49]. We take the position that animal studies cannot provide real clinical information as described by self-reports in humans. As mentioned earlier and in the abstract, on November 23rd, 2017, evidence for our concerns was discovered [50]

In essence, although nonhuman primate brains are similar to our own, the disparity between other primates and those of human cognitive abilities tells us that surface similarity is not the whole story. Sousa et al. [50] small case found various differentially expressed genes, to associate with pleasure related systems. Furthermore, the dopaminergic interneurons located in the human neocortex were absent from the neocortex of nonhuman African apes. Such differences in neuronal transcriptional programs may underlie a variety of neurodevelopmental disorders.

In simpler terms, the system controls the production of dopamine, a chemical messenger that plays a significant role in pleasure and rewards. The senior author, Dr. Nenad Sestan from Yale, stated: “Humans have evolved a dopamine system that is different than the one in chimpanzees.” This may explain why the behavior of humans is so unique from that of non-human primates, even though our brains are so surprisingly similar, Sestan said: “It might also shed light on why people are vulnerable to mental disorders such as autism (possibly even addiction).” Remarkably, this research finding emerged from an extensive, multicenter collaboration to compare the brains across several species. These researchers examined 247 specimens of neural tissue from six humans, five chimpanzees, and five macaque monkeys. Moreover, these investigators analyzed which genes were turned on or off in 16 regions of the brain. While the differences among species were subtle, **there was** a **remarkable contrast in** the **neocortices**, specifically in an area of the brain that is much more developed in humans than in chimpanzees. In fact, these researchers found that a gene called tyrosine hydroxylase (TH) for the enzyme, responsible for the production of dopamine, was expressed in the neocortex of humans, but not chimpanzees. As discussed earlier, dopamine is best known for its essential role within the brain’s reward system; the very system that responds to everything from sex, to gambling, to food, and to addictive drugs. However, dopamine also assists in regulating emotional responses, memory, and movement. Notably, abnormal dopamine levels have been linked to disorders including Parkinson’s, schizophrenia and spectrum disorders such as autism and addiction or RDS.

Nora Volkow, the director of NIDA, pointed out that one alluring possibility is that the neurotransmitter dopamine plays a substantial role in humans’ ability to pursue various rewards that are perhaps months or even years away in the future. This same idea has been suggested by Dr. Robert Sapolsky, a professor of biology and neurology at Stanford University. Dr. Sapolsky cited evidence that dopamine levels rise dramatically in humans when we anticipate potential rewards that are uncertain and even far off in our futures, such as retirement or even the possible alterlife. This may explain what often motivates people to work for things that have no apparent short-term benefit [51]. In similar work, Volkow and Bale [52] proposed a model in which dopamine can favor NOW processes through phasic signaling in reward circuits or LATER processes through tonic signaling in control circuits. Specifically, they suggest that through its modulation of the orbitofrontal cortex, which processes salience attribution, dopamine also enables shilting from NOW to LATER, while its modulation of the insula, which processes interoceptive information, influences the probability of selecting NOW versus LATER actions based on an individual’s physiological state. This hypothesis further supports the concept that disruptions along these circuits contribute to diverse pathologies, including obesity and addiction or RDS.

#### 2 – No intent-foresight distinction – if I foresee a consequence, then it becomes part of my deliberation since its intrinsic to my action

#### No intent foresight distinction for states.

Enoch 07 Enoch, D [The Faculty of Law, The Hebrew Unviersity, Mount Scopus Campus, Jersusalem]. (2007). INTENDING, FORESEEING, AND THE STATE. Legal Theory, 13(02). doi:10.1017/s1352325207070048 https://www.cambridge.org/core/journals/legal-theory/article/intending-foreseeing-and-the-state/76B18896B94D5490ED0512D8E8DC54B2

The general difficulty of the intending-foreseeing distinction here stemmed, you will recall, from the feeling that attempting to pick and choose among the foreseen consequences of one’s actions those one is more and those one is less responsible for looks more like the preparation of a defense than like a genuine attempt to determine what is to be done. Hiding behind the intending-foreseeing distinction seems like an attempt to evade responsibility, and so thinking about the distinction in terms of responsibility serves 39. Anderson & Pildes, supra note 38. I will use this text as my example of an expressive theory here. 40. See id. at 1554, 1564. 41. For a general critique, see Mathew D. Adler, Expressive Theories of Law: A Skeptical Overview, 148 U. PA. L. REV. 1363 (1999–2000). 42. As Adler repeatedly notes, the understanding of expression Anderson & Pildes work with is amazingly broad, so that “To express an attitude through action is to act on the reasons the attitude gives us”; Anderson & Pildes, supra note 38, at 1510. If this is so, it seems that expression drops out of the picture and everything done with it can be done directly in terms of reasons. 43. This may be true of what Anderson and Pildes have in mind when they say that “expressive norms regulate actions by regulating the acceptable justifications for doing them”; id. at 1511. http://journals.cambridge.org Downloaded: 03 Aug 2014 IP address: 134.153.184.170 Intending, Foreseeing, and the State 91 to reduce even further the plausibility of attributing to it intrinsic moral significance. This consideration—however weighty in general—seems to me very weighty when applied to state action and to the decisions of state officials. For perhaps it may be argued that individuals are not required to undertake a global perspective, one that equally takes into account all foreseen consequences of their actions. Perhaps, in other words, individuals are entitled to (roughly) settle for having a good will, and beyond that let chips fall where they may. But this is precisely what stateswomen and statesmen—and certainly states—are not entitled to settle for.44 In making policy decisions, it is precisely the global (or at least statewide, or nationwide, or something of this sort) perspective that must be undertaken. Perhaps, for instance, an individual doctor is entitled to give her patient a scarce drug without thinking about tomorrow’s patients (I say “perhaps” because I am genuinely not sure about this), but surely when a state committee tries to formulate rules for the allocation of scarce medical drugs and treatments, it cannot hide behind the intending-foreseeing distinction, arguing that if it allows45 the doctor to give the drug to today’s patient, the death of tomorrow’s patient is merely foreseen and not intended. When making a policy-decision, this is clearly unacceptable. Or think about it this way (I follow Daryl Levinson here):46 perhaps restrictions on the responsibility of individuals are justified because individuals are autonomous, because much of the value in their lives comes from personal pursuits and relationships that are possible only if their responsibility for what goes on in the (more impersonal) world is restricted. But none of this is true of states and governments. They have no special relationships and pursuits, no personal interests, no autonomous lives to lead in anything like the sense in which these ideas are plausible when applied to individuals persons. So there is no reason to restrict the responsibility of states in anything like the way the responsibility of individuals is arguably restricted.47 States and state officials have much more comprehensive responsibilities than individuals do. Hiding behind the intending-foreseeing distinction thus more clearly constitutes an evasion of responsibility in the case of the former. So the evading-responsibility worry has much more force against the intending-foreseeing distinction when applied to state action than elsewhere.

#### 3 – Actor spec – governments lack wills or intentions and inevitably deals with tradeoffs – outweighs because agents have differing obligations.

### Case Proper

#### Strikes fail and spark countermobilization.

Grant and Wallace 91 [Don Sherman Grant; Ohio State University; Michael Wallace; Indiana University; “Why Do Strikes Turn Violent?” University of Chicago Press; March 1991; <https://www.jstor.org/stable/pdf/2781338.pdf?refreqid=excelsior%3Aca3144a9ae9e4ac65e285f2c67451ffb>] Justin

\*\*RM = Resource-Mobilization, or Strikes

3. Violent tactics.-Violent tactics are viewed by RM theorists exclu- sively as purposeful strategies by challengers for inciting social change with little recognition of how countermobilization strategies of elites also create violence. The role of elite counterstrategies has been virtually ig- nored in research on collective violence. Of course, history is replete with examples of elites' inflicting violence on challenging groups with the full sanction of the state. Typically, elite-sponsored violence occurs when the power resources and legal apparatus are so one-sidedly in the elites' favor that the outcome is never in doubt. In conflicts with weak insiders, elites may not act so openly unless weak insiders flaunt the law. Typically, elite strategies do not overtly promote violence but rather provoke violence by the other side in hopes of eliciting public condemnation or more vigorous state repression of challenger initiatives. This is a critical dynamic in struggles involving weak insiders such as unions. In these cases, worker violence, even when it appears justified, erodes public support for the workers' cause and damages the union's insider status.

4. Homogeneity and similarity.-Many RM theorists incorrectly as- sume that members of aggrieved groups are homogeneous in their inter- ests and share similar positions in the social structure. This (assumed) homogeneity of interests is rare for members of outsider groups and even more suspect for members of weak-insider groups. Indeed, groups are rarely uniform and often include relatively advantaged persons who have other, more peaceful channels in which to pursue their goals. Internal stratification processes mean that different persons have varying invest- ments in current structural arrangements, in addition to their collective interest in affecting social change. Again, these forces are especially prev- alent for weak insiders: even the group's lowest-status members are likely to have a marginal stake in the system; high-status members are likely to have a larger stake and, therefore, less commitment to dramatic change in the status quo.

Internal differences may lead to fragmentation of interests and lack of consensus about tactics, especially tactics suggesting violent confronta- tion. While group members share common grievances, individual mem- bers may be differentially aggrieved by the current state of affairs or differentially exposed to elite repression. White's (1989) research on the violent tactics of the Irish Republican Army shows that working-class members and student activists, when compared with middle-class partici- pants, are more vulnerable to state-sponsored repression, more likely to be available for protest activities, and reap more benefits from political violence. When we apply them to our study of strike violence, we find that differences in skill levels are known to coincide with major intraclass 1120 Strikes divisions in material interests (Form 1985) and are likely to coincide with the tendency for violent action. For instance, skilled-craft workers, who are more socially and politically conservative than unskilled workers, are less likely to view relations with employers as inherently antagonistic and are prone to separate themselves from unskilled workers, factors that should decrease their participation in violence.

#### Aff gets circumvented.

Lanard 17 [Noah Lanard, editorial fellow. Donald Trump just took another swipe at the labor unions that helped elect him, Mother Jones, 7-19-2017, Accessible Online at http://www.motherjones.com/politics/2017/07/trumps-labor-board-appointments-are-another-blow-for-unions/]

Trump’s NLRB nominees are expected to create further challenges for workers seeking to unionize. Emanuel is a shareholder and longtime lawyer at Littler, the world’s largest management-side employment law firm. Sen. Elizabeth Warren (D-Mass.) has called it is one of the nation’s “most ruthless” union-busters. Emanuel’s clients include Uber and other companies accused of violating workers’ rights, according to his ethics disclosure form.

Outside of his legal practice, Emanuel has decried California’s “terrible climate for job creation,” citing the state’s generous overtime and break requirements for employees.

Kaplan was previously an attorney for the House education and labor committee. In that role, he drafted a bill to reverse an NLRB rule, dubbed the “ambush election rule” by conservative critics, that allowed workers to vote on unionization as soon as 11 days after a petition was submitted. The bill, which did not pass, would have also reversed the board’s recognition of micro-unions.

At Emanuel and Kaplan’s nomination hearing last week, Sens. Al Franken (D-Minn.) and Warren were particularly concerned by Emanuel’s record of defending the mandatory arbitration agreements that Carlson and many others have signed. Pressed by Franken, Emanuel declined to criticize arbitration agreements that prevent women who are sexually harassed from suing their employers in court. In theory, the legality of the arbitration agreements is now in the Supreme Court’s hands. But Ronald Meisburg, a former NLRB board member, has said it’s possible the NLRB could revisit the decision before the court decides. Emanuel told Warren he does not expect to recuse himself if the issue comes up.

The committee’s approval of both nominees along party lines on Wednesday follows other moves under Trump that are less than friendly to labor. Trump’s nominee for deputy labor secretary, Patrick Pizzella, was criticized last week for working with disgraced lobbyist Jack Abramoff to advocate for what was compared to sweatshop labor in the Northern Mariana Islands, a US commonwealth, in the early 2000s. The goods, which were often made by Chinese and Filipino workers, had the advantage of being stamped “Made in the USA.”

Neil Gorsuch, whom Trump appointed to the Supreme Court, has a long record of siding with employers in labor disputes. In the court’s upcoming term, Gorsuch will hear arguments in a case that will decide whether mandatory arbitration agreements violate the National Labor Relations Act.

### Framing

#### Extinction first –

#### 1 – Forecloses future improvement – we can never improve society because our impact is irreversible which proves moral uncertainty

#### 2 – Turns suffering – mass death causes suffering because people can’t get access to resources and basic necessities

#### 3 – Objectivity – body count is the most objective way to calculate impacts because comparing suffering is unethical

#### Takes out structural violence because all of us being dead precludes it, and the process of extinction isn’t painless- the minorities are hit hardest by war and disease.

### Underview

#### Don’t reject our DAs if we’re winning them on the flow- anything else leads to judge intervention. Their ethosy arguments don’t scratch our link chains to extinction one bit so you should disregard them.

#### The lbl-

1. **even if the state has done bad things to incarcerated workers, we can still argue that the plan is a bad idea.**
2. **None of our link chains are “long” and even if they are, they need to make arguments on each disad as to why the probability is low.**
3. **This assumes our disads start at a tiny probability but you should start at 100% for all arguments until that is contested.**
4. **Again, this is an argument that should be made on specific disads, but some of our impacts, like disease and nuke war are irreversible.**
5. **Obviously we only consider realistic extinction scenarios but that should be determined on the flow rather than sweeping claims.**