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## Recreating the Regulatory State - Internationally

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## ARTICLE

# RECREATING THE REGULATORY STATE— INTERNATIONALLY

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Since the 1970s, the global economy has been transformed by the modern history of globalization, the outsourcing of work, the impact of deindustrialization upon American (and increasingly Global South) industrial areas, and the environmental and labor exploitation of the communities where modern capitalism chooses to site labor.<sup>2</sup> This has altered American

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1. Part of this essay is drawn from ERIK LOOMIS, *OUT OF SIGHT: THE LONG AND DISTURBING STORY OF CORPORATIONS OUTSOURCING CATASTROPHE* (2015).

2. Some of the work influencing these claims include JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002); NORMAN CAULFIELD, *NAFTA AND LABOR IN NORTH AMERICA* (2010); JAMES A. PIAZZA, *GOING GLOBAL: UNIONS AND GLOBALIZATION IN THE UNITED STATES, SWEDEN, AND GERMANY* (2002); KATHRYN KOPINAK, *DESERT CAPITALISM: MAQUILADORAS IN NORTH AMERICA'S WESTERN INDUSTRIAL CORRIDOR* (1996); ROKSANA BAHRAMITASH, *LIBERATION FROM LIBERALIZATION: GENDER AND GLOBALIZATION IN SOUTHEAST ASIA* (2005); MARÍA PATRICIA FERNÁNDEZ-KELLY, *FOR WE ARE SOLD, I AND MY PEOPLE: WOMEN AND INDUSTRY IN MEXICO'S FRONTIER* (1983); NORMA IGLESIAS PRIETO, *BEAUTIFUL FLOWERS OF THE MAQUILADORA: LIFE HISTORIES OF WOMEN WORKERS IN TIJUANA* (1997); MARK S. ANNER, *SOLIDARITY TRANSFORMED: LABOR RESPONSES TO GLOBALIZATION AND CRISIS IN LATIN AMERICA* (2011); JENNIFER CLAPP, *TOXIC EXPORTS: THE TRANSFER OF HAZARDOUS WASTES FROM RICH TO POOR COUNTRIES* (2001); Mary E. Kelly, *Free Trade and the Politics of Toxic Waste*, 26 *NACLA REP. ON AMS.* 4–7 (Sept. 1992); PETER NEWELL, *GLOBALIZATION AND THE ENVIRONMENT: CAPITALISM, ECOLOGY AND POWER* (2012); RACHEL LOUISE SNYDER, *FUGITIVE DENIM: A MOVING STORY OF PEOPLE AND PANTS IN THE BORDERLESS WORLD OF GLOBAL TRADE* (2008); KATHLEEN C. SCHWARTZMAN, *THE CHICKEN TRAIL: FOLLOWING WORKERS, MIGRANTS, AND CORPORATIONS ACROSS THE AMERICAS* (2013); PAUL ADLER, *NO GLOBALIZATION WITHOUT REPRESENTATION: U.S. ACTIVISTS AND WORLD INEQUALITY* (2021); WANDA RUSHING, *MEMPHIS AND THE PARADOX OF PLACE: GLOBALIZATION IN THE AMERICAN SOUTH* (2009); DEAN BAKER, *RIGGED: HOW GLOBALIZATION AND THE RULES OF THE MODERN ECONOMY WERE STRUCTURED TO MAKE THE RICH RICHER* (2016); ANNELESE ORLECK, “WE ARE ALL FAST-FOOD WORKERS NOW”: *THE GLOBAL UPRISING AGAINST POVERTY WAGES* (2018); TIM BARTLEY, *RULES WITHOUT RIGHTS: LAND, LABOR, AND PRIVATE AUTHORITY IN THE GLOBAL ECONOMY* (2018); *WALMART IN THE GLOBAL SOUTH: WORKPLACE CULTURE, LABOR POLITICS, AND SUPPLY CHAINS* (Carolina Bank

life through reshaping the nation's economic geography. Scholars usually articulate this through discussion of the nation's deindustrialized cities such as Detroit, Flint, Cleveland, and Youngstown, victims of the lower wage costs and lack of environmental restrictions in Global South nations.<sup>3</sup> Free trade has helped some industries and regions, with the West Coast being a particular beneficiary due to its Asian facing coast and the growth of multinational corporations based in cities such as Seattle and regions such as the Silicon Valley, to take advantage of the cosmopolitan atmosphere and proximity to global commercial hubs, as well as lifestyle reasons.<sup>4</sup> But other regions have suffered tremendously, and American politics pays surprisingly little attention to this, especially because the most affected states are also the most important swing states in presidential elections.<sup>5</sup>

In fact, our politics almost completely lack a critique of international trade, despite a rather sophisticated critique that briefly had sway in the 1990s and early 2000s.<sup>6</sup> Even among our most progressive politicians in positions of power, such as Bernie Sanders, Sherrod Brown, and Elizabeth Warren, there is little to no attempt to create comprehensive solutions to trade inequalities that recognize the realities of globalization. At best, we call for more industrial jobs for American workers and bemoan the treatment of foreign workers by American corporations, but we lack even the most rudimentary plans to fix the system. This has shifted slightly during the pandemic due to supply chain issues, but discussion of these issues has focused significantly more on the consumption side of the equation than the problems with production. While Americans have expressed a great deal of concern about the availability of products due to disruptions from Chinese suppliers, there has been effectively no conversation around rethinking the

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Muñoz, Bridget Kenny & Antonio Stecher eds., 2018) [hereinafter *WALMART IN THE GLOBAL SOUTH*].

3. See generally THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (1996); JUDITH STEIN, *PIVOTAL DECADE: HOW THE UNITED STATES TRADED FACTORIES FOR FINANCE IN THE SEVENTIES* (2010); JEFFERSON COWIE, *STAYIN' ALIVE: THE 1970S AND THE LAST DAYS OF THE WORKING CLASS* (2010); John Russo & Sherry Lee Linkon, *Collateral Damage: Deindustrialization and the Uses of Youngstown*, in *BEYOND THE RUINS: THE MEANINGS OF DEINDUSTRIALIZATION* 201, 201–18, (Jefferson Cowie & Joseph Heathcott eds., 2003); STEVEN HIGH & DAVID W. LEWIS, *CORPORATE WASTELAND: THE LANDSCAPE AND MEMORY OF DEINDUSTRIALIZATION* (2007); ROBERT BRUNO, *STEELWORKER ALLEY: HOW CLASS WORKS IN YOUNGSTOWN* (1999).

4. See, e.g., Hyunok Lee & Daniel A. Sumner, *South Korea-U.S. Free Trade Agreement Will Lower Export Barriers for California Products*, 2 *CAL. AGRIC.* 65, 66–72 (2011); Judy S. Davis, Arthur C. Nelson & Kenneth J. Dueker, *The New 'Burbs: The Exurbs and Their Implications for Planning Policy*, 60 *J. AM. PLAN. ASS'N* 45, 45–59 (1994).

5. See generally JEFFERSON COWIE, *CAPITAL MOVES: RCA'S 70-YEAR QUEST FOR CHEAP LABOR* (1999); Russo & Linkon, *supra* note 3.

6. LIZA FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *STUDENTS AGAINST SWEATSHOPS* (2002).

entire structure of a system of production that both exploits workers and threatens consumers.<sup>7</sup>

Meanwhile, the global system of production oppresses people around the world at least as much as it helps. Workplace disasters, poverty, pollution, and early mortality are far too common. While supporters of the current system of globalized capitalism correctly note rising living standards in some developing world nations, they ignore how nations such as Mexico, Argentina, and even China are beginning to suffer from deindustrialization before its citizens have reached northern standards of living because of the hypermobility of global capitalism.<sup>8</sup> In addition, such broad statements ignore the many ways in which production could happen through more just and fair methods that treat both workers and nature with at least a modicum of respect. What connects these issues, both domestically and internationally, is capital mobility. This mobility works in two primary ways. First, is the physical ability of corporations to move sites of production anywhere around the globe.<sup>9</sup> If costs rise due to successful union campaigns or new environmental laws, they can easily close shop and move to another nation. This has stripped national autonomy away from the everyday people of the world because they cannot win a better life without risking their jobs. Second, capital can move to avoid social responsibility while workers are trapped in the same physical location.<sup>10</sup> In other words, the supply chains, created largely through the outsourcing phenomena of neoliberal capitalism over the past century, have allowed corporations to escape responsibility for their behavior by obscuring employment and responsibility, allowing capital to exist on a spatial plane above accountability.<sup>11</sup> Much of this is en-

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7. Erik Loomis, *The Democrats' Yawning Silence on Trade*, BOS. REV. (Aug. 7, 2018), <https://bostonreview.net/articles/erik-loomis-the-democrats-trade-deficit>.

8. See generally ANDY SUMNER, DEINDUSTRIALIZATION, DISTRIBUTION, AND DEVELOPMENT: STRUCTURAL CHANGE IN THE GLOBAL SOUTH (2021); Rhys Jenkins, *Is Chinese Competition Causing Deindustrialization in Brazil*, 42 LATIN AM. PERSPS. 42, 42–63 (2015); Chong-Sup Kim & Seungho Lee, *Different Paths of Deindustrialization: Latin American and Southeast Asian Countries from a Comparative Perspective*, 21 J. INT'L & AREA STUD., 65, 65–81 (2014).

9. See generally Russo & Linkon, *supra* note 3; RALPH ARMBRUSTER-SANDOVAL, GLOBALIZATION AND CROSS-BORDER LABOR SOLIDARITY IN THE AMERICAS: THE ANTI-SWEATSHOP MOVEMENT AND THE STRUGGLE FOR SOCIAL JUSTICE (2005); Inst. for Glob. Lab. & Hum. Rts., *Gap and Old Navy in Bangladesh: Cheating the Poorest Workers in the World*, ISSUU (Oct. 2, 2013), <https://issuu.com/iglhdocs/1310-iglh-gapoldnavyinbangladesh>.

10. COWIE, *supra* note 3; FIONA HAINES, GLOBALIZATION AND REGULATORY CHARACTER: REGULATORY REFORM AFTER THE KADER TOY FACTORY FIRE (2005); Pamela Engel, *Here Are Some of the Biggest Brands that Make Clothes in Bangladesh*, BUS. INSIDER (May 13, 2013, 3:38 PM), <http://www.businessinsider.com/big-brands-in-bangladesh-factories-2013-5>.

11. See generally TOM JURAVICH, AT THE ALTAR OF THE BOTTOM LINE: THE DEGRADATION OF WORK IN THE 21ST CENTURY (2009); William J. Kelly, *U.S. Trade Deals from the 90's Set Up China as a Pollution Haven*, INSIDE CLIMATE NEWS (Mar. 6, 2014), <https://insideclimatenews.org/news/06032014/us-trade-deals-90s-set-china-pollution-haven/>; The Guardian, *Rich Nations Outsourcing Pollution to China, Says UN Report*, S. CHINA MORNING POST (Jan. 21, 2014, 4:45 AM), <https://www.scmp.com/news/china/article/1409983/rich-nations-outsourcing-pollution-china-says-un-report>.

forced through the new international courts that everyday people cannot access, allowing corporations to effectively supersede national laws when they feel it violates a trade agreement.<sup>12</sup>

In short, the global migration of capital has created a situation with a fluid corporate environment overwhelming local and even national attempts to control its impacts, ensure environmental sustainability, and fight for dignified labor conditions. That situation can exacerbate global inequalities, create greater political instability, and place the world's citizens in a permanent race to the bottom to attract what crumbs capitalists want to provide. It's not an acceptable situation for those of us concerned about either environmental or labor sustainability.

In order to tame the crimes of contemporary capitalism, we need to articulate new ideas to help protect workers at home and abroad. We must avoid nationalist exclusion while reinforcing the ability of nations to set standards of work, environmental protection, and consumer protection. We must have both a national and international strategy to create and enforce corporate accountability. We must move beyond the limits of our contemporary politics to at least articulate a better future so that we will be in a position to move to a concrete program when the politics have more space for liberal reforms. We have a number of needles to thread.

This article attempts to move beyond our limited political vision of the impact of global trade and what we can do to tame its most exploitative aspects. It argues that labor, environmental, and trade advocates should advocate for the reconstruction of the regulatory state on an international level. It suggests a two-pronged approach to this, using the American political and legal systems as tools to empower workers abroad while creating accountability in the corporate supply chain. This is a sketchy layout of these ideas. I am a historian, not a legal expert. But I do think that we can think about our labor history, our environmental history, our political history, and our legal history as an inspiration for reconceptualizing how to control supply chains and other pieces of international trade. Moreover, at its core, this article does not attempt to answer all questions. What it does do is urge us as scholars, activists, and people of the world to get creative in thinking of ways to tame corporate behavior.

To begin our exploration of these issues, we need to review the history of American capitalism. Scholars of different nations could provide useful insights by reviewing those nations' histories, but as an Americanist, this is my contribution to this discussion. What this story tells is one of an unregulated capitalism of the nineteenth century, spawning multiple reform movements through the twentieth century. But by the late twentieth century, the

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12. Austl. Fair Trade & Inv. Network, *Veolia Loses ISDS Case Against Egypt – After Six Years and Millions in Costs*, ISDS PLATFORM (June 4, 2018), <https://www.isds.bilaterals.org/?veolia-loses-isds-case-against>.

ability to move around the globe, in combination with other structural changes to the economy, undermined the United States' class-based politics, helped usher in a new conservative era controlled by corporate interests, and set into motion the capital mobility that plagues the globe today.

### I. TAMING AMERICAN CAPITALISM

As industrial capitalism appeared in the United States in the late eighteenth century, the nation's nascent legal and political entities largely sought to serve its needs. It is easy to forget today just how unregulated nineteenth century American capitalism was. The law overwhelmingly sided with business, based around ideological predilections of "progress." Massachusetts jurist Lemuel Shaw's 1842 decision in *Farwell v. Boston and Worcester Rail Road Corporation* posited that employers had no responsibility for worker safety because the worker agreed to take on the risk when he took the job.<sup>13</sup> This stance largely held in the courts for the next seventy-five years. The Fuller Court's infamous *Lochner v. New York* decision in 1905 more reiterated decades of legal ideas about corporate freedom of contract than it did break new legal ground.<sup>14</sup> *Muller v. Oregon* in 1908 did carve out some exceptions for women workers.<sup>15</sup> But the larger fight for regulation of workplace hours and conditions continued to face sharp intransigence from the federal courts. When the Supreme Court threw out the 1918 minimum wage law passed by Congress for the District of Columbia in *Adkins v. Children's Hospital* in 1923, it felt to reformers that their life work would lead to no meaningful victories.<sup>16</sup>

The early twentieth century had seen gains at the state and federal level when the public interest seemed to transcend corporate rights or when people took it into their own hands to provide compensation. With some exceptions, juries had followed the courts in the aftermath of *Farwell* and rarely ruled in favor of significant compensation for injury or death on the job.<sup>17</sup> But after 1900, this began to change. Juries began to award sizable payments for workplace injury.<sup>18</sup> This concerned industry enough that it

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13. Alfred S. Konefsky, "As Best to Subserve Their Own Interests": *Lemuel Shaw, Labor Conspiracy, and Fellow Servants*, 7 L. & HIST. REV. 219, 222–25 (1989).

14. See generally PAUL KENS, *LOCHNER V. NEW YORK: ECONOMIC REGULATION ON TRIAL* (1998).

15. See generally NANCY WOLOCH, *A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890S–1990S* (2015) [hereinafter WOLOCH, *A CLASS BY HERSELF*]; NANCY WOLOCH, *MULLER V. OREGON: A BRIEF HISTORY WITH DOCUMENTS* (1996) [hereinafter WOLOCH, *MULLER V. OREGON*].

16. See generally Joan G. Zimmerman, *The Jurisprudence of Equality: The Women's Minimum Wage, the First Equal Rights Amendment, and Adkins v. Children's Hospital, 1905-1923*, 78 J. AM. HIST. 188, 188–225 (1991).

17. JONATHAN LEVY, *FREAKS OF FORTUNE: THE EMERGING WORLD OF CAPITALISM AND RISK IN AMERICA* (2012).

18. DONALD WAYNE ROGERS, *MAKING CAPITALISM SAFE: WORK SAFETY AND HEALTH REGULATION IN AMERICA, 1880-1940* (2009).

sought to rationalize its expenses.<sup>19</sup> Out of this came workers' compensation programs that began in 1911, first in Wisconsin and then spreading around the nation rapidly, ensuring that the states controlled compensation instead of juries and making sure that compensation would rarely equal lost salary.<sup>20</sup> Significant state level regulation developed where progressives had a strong presence, such as New York and Oregon.<sup>21</sup> The aftermath of the 1911 Triangle Shirtwaist Fire, which killed 146 workers in a fashionable New York neighborhood, led to pioneering new laws around workplace safety and fire codes.<sup>22</sup> But the coal mine disasters and frequent fires that did not take place where Frances Perkins could witness them, as she did Triangle, often led to no reforms, or if they did, such as the case of several coal mine disasters, they were poorly enforced, and workers continued to die.<sup>23</sup>

Through the Hoover administration, the state remained generally hostile to workplace regulation. State military forces—police, the National Guard, the U.S. Military—were routinely used to repress labor uprisings and if not, companies could hire private military forces such as the Pinkerton and Baldwin-Felts Detective Agencies instead.<sup>24</sup> It was only after Americans rejected Republican governance during the Great Depression, the ushering in of Franklin Delano Roosevelt and enormous Democratic majorities in the House and Senate in 1932, and years of struggle against recalcitrant courts that the shift for workplace regulation took place. Although the National Industrial Recovery Act's flaws made it a largely useless piece of legislation by the time the Supreme Court ruled it

19. *Id.*

20. PRICE V. FISHBACK & SHAWN EVERETT KANTOR, *A PRELUDE TO THE WELFARE STATE: THE ORIGINS OF WORKERS' COMPENSATION* (2000).

21. *See generally* WOLOCH, *A CLASS BY HERSELF*, *supra* note 15; WOLOCH, *MULLER V. OREGON*, *supra* note 15.

22. *See generally* RICHARD A. GREENWALD, *THE TRIANGLE FIRE, THE PROTOCOLS OF PEACE, AND INDUSTRIAL DEMOCRACY IN PROGRESSIVE ERA NEW YORK* (2005); JOHN F. MCCLYMER, *THE TRIANGLE STRIKE AND FIRE* (1998); DAVID VON DREHLE, *TRIANGLE: THE FIRE THAT CHANGED AMERICA* (2003); JO ANN E. ARGERSINGER, *THE TRIANGLE FIRE: A BRIEF HISTORY WITH DOCUMENTS* (2009).

23. *See generally* LOOMIS, *supra* note 1; ANDREW MASON PROUTY, *MORE DEADLY THAN WAR! PACIFIC COAST LOGGING, 1827-1981* (Garland 1985) (1982); THOMAS ANDREWS, *KILLING FOR COAL: AMERICA'S DEADLIEST LABOR WAR* (2008); CHRISTOPHER C. SELLERS, *HAZARDS OF THE JOB: FROM INDUSTRIAL DISEASE TO ENVIRONMENTAL HEALTH SCIENCE* (1997); ALAN DERICKSON, *BLACK LUNG: ANATOMY OF A PUBLIC HEALTH DISASTER* (1998); DAVID ROSNER & GERALD MARKOWITZ, *DEADLY DUST: SILICOSIS AND THE POLITICS OF OCCUPATIONAL DISEASE IN TWENTIETH-CENTURY AMERICA* (1991); CHRISTIAN WARREN, *BRUSH WITH DEATH: A SOCIAL HISTORY OF LEAD POISONING* (2000); CLAUDIA CLARK, *RADIUM GIRLS: WOMEN AND INDUSTRIAL HEALTH REFORM, 1910-1935* (1997).

24. ROBERT MICHAEL SMITH, *FROM BLACKJACKS TO BRIEFCASES: A HISTORY OF COMMERCIALIZED STRIKEBREAKING AND UNIONBUSTING IN THE UNITED STATES* (2003); STEPHEN NORWOOD, *STRIKEBREAKING AND INTIMIDATION: MERCENARIES AND MASCULINITY IN TWENTIETH-CENTURY AMERICA* (2002); Stephen R. Ortiz, *Rethinking the Bonus March: Federal Bonus Policy, the Veterans of Foreign Wars, and the Origins of a Protest Movement*, 18 J. POL'Y HIST. 275, 275-303 (2006).

unconstitutional in 1935, fears that the Supreme Court would reject the entire New Deal remained quite viable.<sup>25</sup> Roosevelt's controversial court packing scheme in 1937 may have cost him allies among conservative Democrats, but it also convinced the Court's moderates to become responsive to the nation's politics. When they upheld the National Labor Relations Act in 1937, the era of workplace regulation opened.<sup>26</sup> While the Supreme Court did not consistently rule in favor of workers, even at the peak of American liberalism, the principle of a regulatory state had formed.<sup>27</sup> The Fair Labor Standards Act followed in 1938, providing for the minimum wage, overtime pay, and the banning of most child labor.<sup>28</sup> For the next four decades, an activist federal government would expand into all parts of American life—labor, consumer protections, housing, higher education, and eventually for civil rights. Workers never did have the upper hand over employers in the United States, and the 1947 Taft-Hartley Act demonstrated just how tenuous labor's mid-twentieth century power really was, but nevertheless, the conditions of work and politics had changed enough that companies had to sign lucrative union contracts and the living standards of the working class rose to unprecedented heights.<sup>29</sup>

If anything, the fight for environmental regulation was an even higher bar than workplace protections. Well after the New Deal, courts and the labor movement had transformed the conditions of work; employers and the government could pollute with impunity.<sup>30</sup> This only began to change with the massive growth in a popular environmentalism that originated with the

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25. COLIN GORDON, *NEW DEALS: BUSINESS, LABOR, AND POLITICS IN AMERICA, 1920-1935* (1994).

26. IRA KATZNELSON, *FEAR ITSELF: THE NEW DEAL AND THE ORIGINS OF OUR TIME* (2013).

27. *Id.*

28. *See generally id.*; NEIL M. MAHER, *NATURE'S NEW DEAL: THE CIVILIAN CONSERVATION CORPS AND THE ROOTS OF THE AMERICAN ENVIRONMENTAL MOVEMENT* (2008); ROY LUBOVE, *THE STRUGGLE FOR SOCIAL SECURITY, 1900-1935* (1968); JENNIFER KLEIN, *FOR ALL THESE RIGHTS: BUSINESS, LABOR, AND THE SHAPING OF AMERICA'S PUBLIC-PRIVATE WELFARE STATE* (2003); DAVID M. KENNEDY, *FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929-1945* (2001); WILLIAM LEUCHTENBURG, *FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932-1940* (1963); BRUCE NELSON, *WORKERS ON THE WATERFRONT: SEAMEN, LONGSHOREMEN, AND UNIONISM IN THE 1930S* (1988); JANET CHRISTINE IRONS, *TESTING THE NEW DEAL: THE GENERAL TEXTILE STRIKE OF 1934 IN THE AMERICAN SOUTH* (2000); G. C. WALDREP III, *SOUTHERN WORKERS AND THE SEARCH FOR COMMUNITY: SPARTANBURG COUNTY, SOUTH CAROLINA* (2000); DAVID F. SELVIN, *A TERRIBLE ANGER: THE 1934 WATERFRONT AND GENERAL STRIKES IN SAN FRANCISCO* (1996); ROBERT H. ZIEGER, *THE CIO, 1935-1955* (1995); LIZABETH COHEN, *MAKING A NEW DEAL: INDUSTRIAL WORKERS IN CHICAGO, 1919-1939* (1990); IRVING BERNSTEIN, *THE TURBULENT YEARS: A HISTORY OF THE AMERICAN WORKER, 1933-1941* (1969).

29. *See generally* AHMED WHITE, *THE LAST GREAT STRIKE: LITTLE STEEL, THE CIO, AND THE STRUGGLE FOR LABOR RIGHTS IN NEW DEAL AMERICA 275-80* (2016); MAEVA MARCUS, *TRUMAN AND THE STEEL SEIZURE CASE: THE LIMITS OF PRESIDENTIAL POWER* (Duke University Press 1994) (1977); NELSON LICHTENSTEIN, *THE MOST DANGEROUS MAN IN DETROIT: WALTER REUTHER AND THE FATE OF AMERICAN LABOR* (1995).

30. *See generally* SCOTT HAMILTON DEWEY, *DON'T BREATHE THE AIR: AIR POLLUTION AND U.S. ENVIRONMENTAL POLITICS, 1945-1970* (2000); SAMUEL P. HAYS, *A HISTORY OF ENVIRONMENTAL POLITICS SINCE 1945* (2000).



growing middle class, an increasing market for recreation due to the nation's greater expendable income due to the rise of union contracts, and greater impatience with the filthy air, water, and soil that defined American urban life.<sup>31</sup> As for environmental restraints on corporate action, the courts have played an even greater role, arguably more important than mass organizing.<sup>32</sup> Now that we are in the New Gilded Age, to use a somewhat facile term to describe the present, it seems increasingly amazing that we spent the first seven decades of the twentieth century passing such widespread legislation to regulate corporate and government actions, even as we have seen five decades of that slowly disappearing. Nevertheless, the story of building a regulatory state, from the New Deal and Great Society to OSHA and the EPA, is one that we should fight to replicate today on an international scale.<sup>33</sup>

Since the early 1980s, the nation has slowly dismantled its already limited regulatory state. The election of Ronald Reagan in 1980 was the political turning point. To that point, even through the economic difficulties of the 1970s, the political atmosphere was one of continued expansion of the regulatory state. Massachusetts Senator Ted Kennedy's rejection of Richard Nixon's health care plan that would have moved the nation closer to universal coverage due to its flaws and conservative nature was a great example of this.<sup>34</sup> Kennedy assumed the near future would see another bite at the health care apple.<sup>35</sup> It turned out to be another twenty years before another serious attempt to create national health care and another forty years before any real health care reform passed, and even this is only a piecemeal reform that left Americans far short of what most of the developed world has.<sup>36</sup> Liberals, such as Minnesota Senator Hubert Humphrey and California Congressman Augustus Hawkins, fought for full employment that would have given workers the right to sue the government if they

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31. See generally ADAM ROME, *THE GENIUS OF EARTH DAY: HOW A 1970 TEACH-IN UNEXPECTEDLY MADE THE FIRST GREEN GENERATION* (2013); ROBERT GOTTLIEB, *FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT* (rev. ed. 2005); KIRKPATRICK SALE, *THE GREEN REVOLUTION: THE AMERICAN ENVIRONMENTAL MOVEMENT, 1962-1992* (1993); PHILIP SHABECOFF, *A FIERCE GREEN FIRE: THE AMERICAN ENVIRONMENTAL MOVEMENT* (rev. ed., Island Press 2003) (1992).

32. See generally HAYS, *supra* note 30.

33. See generally CHARLES NOBLE, *LIBERALISM AT WORK: THE RISE AND FALL OF OSHA* (1986).

34. JOHN ROY PRICE, *THE LAST LIBERAL REPUBLICAN: AN INSIDER'S PERSPECTIVE ON NIXON'S SURPRISING SOCIAL POLICY* 316–31 (2021); Steffie Woolhandler & David U. Himmelstein, *The Affordable Care Act: How Nixon's Health Reform Proposal Became Democrats' Albatross*, 47 INT'L J. HEALTH SERVS. 612, 612–20 (2017).

35. PRICE, *supra* note 34; Woolhandler & Himmelstein, *supra* note 34.

36. See, e.g., ERIC C. SCHNEIDER, ARNAV SHAH, MICHELLE M. DOTY, ROOSA TIKKANEN, KATHARINE FIELDS, ET AL., *COMMONWEALTH FUND, MIRROR, MIRROR 2021: REFLECTING POORLY: HEALTH CARE IN THE U.S. COMPARED TO OTHER HIGH-INCOME COUNTRIES* (Aug. 4, 2021), <https://www.commonwealthfund.org/publications/fund-reports/2021/aug/mirror-mirror-2021-reflecting-poorly>.

could not get a job; the Carter administration weakened the bill so much that the final version passed in 1978 did more to fight inflation than ensure full employment.<sup>37</sup> Nevertheless, these seemed like short-term setbacks until Reagan rose to power.<sup>38</sup>

When Reagan fired the striking air traffic controllers in 1981, it was a turning point in the history of American labor.<sup>39</sup> Although the controllers' strike was illegal, no president had openly opposed unions with such fervor since Calvin Coolidge, who had risen to the vice-presidency due to his busting of the Boston police strike of 1919.<sup>40</sup> Strikes declined almost overnight, and a decade of labor militancy came shrieking to a halt.<sup>41</sup> Corporations already were moving operations overseas to avoid unions.<sup>42</sup> That process rapidly increased, and the textile and electronics industries in the U.S. virtually disappeared.<sup>43</sup> Private companies saw the actions of Reagan and began to shed themselves of their own unions, with epic and brutal events at the Phelps-Dodge copper mines and the Hormel P-9 meatpacking plant in Arizona becoming the classic events of the new unionbusting.<sup>44</sup> Reagan routinely named industry flacks to regulatory roles, and the government turned sharply against the labor movement.<sup>45</sup> Union membership declined precipitously. When Layne Kirkland became AFL-CIO president in 1979, 21% of the U.S. workforce was in a union.<sup>46</sup> By the time John Sweeney defeated him for the presidency in 1995, that number had shrunk to 13%.<sup>47</sup> It continues to decline to the present.<sup>48</sup> Complacent labor leadership that was used for decades of collective bargaining had no answer.<sup>49</sup>

37. COWIE, *supra* note 3.

38. *See generally* COWIE, *supra* note 3.

39. JOSEPH A. McCARTIN, COLLISION COURSE: RONALD REAGAN, THE AIR TRAFFIC CONTROLLERS, AND THE STRIKE THAT CHANGED AMERICA (2011).

40. *Id.*; JOSEPH E. SLATER, PUBLIC WORKERS: GOVERNMENT EMPLOYEE UNIONS, THE LAW, AND THE STATE, 1900-1962 (2004); FRANCIS RUSSELL, A CITY IN TERROR: CALVIN COOLIDGE AND THE 1919 BOSTON POLICE STRIKE (1975); WILLIS J. NORDLUND, SILENT SKIES: THE AIR TRAFFIC CONTROLLERS' STRIKE (1998).

41. *See generally* McCARTIN, *supra* note 39.

42. *See generally* COWIE, *supra* note 3.

43. *See generally* COWIE, *supra* note 3.

44. *See generally* BARBARA KINGSOLVER, HOLDING THE LINE: WOMEN IN THE GREAT ARIZONA MINE STRIKE OF 1983 (1996); JONATHAN D. ROSENBLUM, COPPER CRUCIBLE: HOW THE ARIZONA MINERS' STRIKE OF 1983 RECAST LABOR-MANAGEMENT RELATIONS IN AMERICA (1995); PETER RACHLEFF, HARD-PRESSED IN THE HEARTLAND: THE HORMEL STRIKE AND THE FUTURE OF THE LABOR MOVEMENT (1993); NEALA SCHLEUNING, WOMEN, COMMUNITY, AND THE HORMEL STRIKE OF 1985-86 (1994).

45. *See generally* ERIC LOOMIS, EMPIRE OF TIMBER: LABOR UNIONS AND THE PACIFIC NORTHWEST FORESTS (2016).

46. GERALD MAYER, CONG. RSCH. SERV., RL32553, UNION MEMBERSHIP TRENDS IN THE UNITED STATES 11 (2004).

47. *Id.*

48. Steven Greenhouse, *Share of the Work Force Drops to a 97-Year Low, 11.3%*, N.Y. TIMES (Jan. 23, 2013), <https://www.nytimes.com/2013/01/24/business/union-membership-drops-despite-job-growth.html>.

49. *See generally* MAYER, *supra* note 46.

The environmental movement, being younger and with more grass-roots activism, held up better against the Reagan onslaught due to more popular public support and a raft of laws passed in the previous two decades that gave it strong legal standing.<sup>50</sup> But the conservative revolution of the 1980s dismantled the bipartisan support environmentalists had through the 1970s.<sup>51</sup> Reagan appointed openly hostile people to lead environmental agencies, particularly Secretary of the Interior James Watt and Environmental Protection Agency Chief Anne Gorsuch, mother of current Supreme Court Justice Neil Gorsuch. With working class stability and the economy wobbling due to automation and capital mobility, American workers began to turn against environmentalism, fearing for their jobs.<sup>52</sup> This allowed industries such as timber to shunt away blame for already existing job losses in the industry onto environmentalists for attempting to place the northern spotted owl on the Endangered Species List and protecting the region's last ancient forests from logging.<sup>53</sup> By the 1990s, environmentalism had become a starkly partisan issue, and each Republican presidential administration saw more intensive efforts to roll back the nation's environmental regulatory state at the same time that climate changes threatened to overwhelm civilization and the planet.<sup>54</sup>

The period since Bill Clinton's election to the White House in 1992 has seen the growing power of conservatives to repeal the regulatory state. Although a Democrat, Clinton rose to power in a state almost completely without unions.<sup>55</sup> He owed unions little, and he offered them little.<sup>56</sup> His signing of the North American Free Trade Agreement in 1993 was the sign of a radically changed Democratic Party to many liberals.<sup>57</sup> His elimination of Aid to Families with Dependent Children through so-called "welfare reform" was another example of the abandonment of the working class by centrist Democrats.<sup>58</sup> The election of George W. Bush in 2000 only made the government turn against the regulatory state even more. Even though Bush's signature policy of privatizing Social Security failed in 2005, he continued to name hostile nominees to regulatory agencies and use Orwellian language such as the Healthy Forests Plan to disguise his corporate-

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50. See generally HAYS, *supra* note 30.

51. See generally HAYS, *supra* note 30.

52. RICHARD KAZIS & RICHARD L. GROSSMAN, *FEAR AT WORK: JOB BLACKMAIL, LABOR, AND THE ENVIRONMENT* (1982).

53. LOOMIS, *supra* note 45.

54. See generally HAYS, *supra* note 30.

55. Michael Pierce, *How Bill Clinton Remade the Democratic Party by Abandoning Unions: An Arkansas Story*, LAB. & WORKING-CLASS HIST. ASS'N (Nov. 23, 2016), <https://www.lawcha.org/2016/11/23/bill-clinton-remade-democratic-party-abandoning-unions-working-class-whites/>.

56. *Id.*

57. CAULFIELD, *supra* note 2.

58. PETER B. EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (2017).

dominated environmental policies.<sup>59</sup> The Obama years witnessed a slight turn back toward working-class politics, especially during the second term, when Tom Perez proved an unusually effective Secretary of Labor.<sup>60</sup> Obama routinely gave sops to environmentalists as well, including preserving large amounts of land under the Antiquities Act of 1906.<sup>61</sup> But the failure of Democrats to pass either labor's (Employee Free Choice Act) or environmentalists' (Cap and Trade) top legislative desires when they had a supermajority in Congress demonstrated the continued weakness of these movements.<sup>62</sup>

## II. CAPITAL MOBILITY AND THE RETURN OF UNFETTERED CAPITALISM

What politicians of both parties have done since the mid-1960s is support the export of American jobs overseas while showing indifference toward the fate of workers left behind. While companies had long moved around the nation to avoid unions, the creation of the Border Industrialization Program in 1965, when Mexico created a manufacturing zone just across the Rio Grande that promised lower wages and fewer environmental restrictions than American sited factories, is the moment in which the global race to the bottom began.<sup>63</sup> This happened with the support of the Democratic President Lyndon Johnson.<sup>64</sup> Bipartisanship would define much of the exportation of American jobs. As the labor scholar Judith Stein has shown, presidents of both parties consistently prioritized promoting the economies of Cold War allies over jobs for American workers.<sup>65</sup> For Democrats, this undermined their own coalition. By the 1990s, much of the Democratic Party became indifferent to the labor movement, even as Democrats accepted union money and get-out-the-vote efforts.<sup>66</sup> No one personified this more than President Bill Clinton, an Arkansas centrist who

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59. JACQUELINE VAUGHN & HANNA J. CORTNER, *GEORGE W. BUSH'S HEALTHY FORESTS: REFRAMING THE ENVIRONMENTAL DEBATE* (2005).

60. Mary Jordan, *If Clinton Wins, Thomas Perez Does Too. Only Question: What Job Does He Get?* WASH. POST (July 5, 2016), [https://www.washingtonpost.com/national/if-clinton-wins-thomas-perez-does-too-only-question-what-job-does-he-get/2016/07/05/d7e38480-4184-11e6-88d0-6adee48be8bc\\_story.html](https://www.washingtonpost.com/national/if-clinton-wins-thomas-perez-does-too-only-question-what-job-does-he-get/2016/07/05/d7e38480-4184-11e6-88d0-6adee48be8bc_story.html).

61. Robinson Meyer, *Obama's Environmental Legacy, in Two Buttes*, ATLANTIC (Dec. 30, 2016), <https://www.theatlantic.com/science/archive/2016/12/obamas-environmental-legacy-in-two-butttes/511889/>.

62. William A. Galston, *President Barack Obama's First Two Years: Policy Accomplishments, Political Difficulties*, BROOKINGS INST. (Nov. 4, 2010), <https://www.brookings.edu/research/president-barack-obamas-first-two-years-policy-accomplishments-political-difficulties/>.

63. See generally RONALD L. MIZE & ALICIA C. S. SWORDS, *CONSUMING MEXICAN LABOR: FROM THE BRACERO PROGRAM TO NAFTA* (2010).

64. See generally *id.*; DEBORAH COHEN, *BRACEROS: MIGRANT CITIZENS AND TRANSNATIONAL SUBJECTS IN THE POSTWAR UNITED STATES AND MEXICO* (2011).

65. JUDITH STEIN, *RUNNING STEEL, RUNNING AMERICA: RACE, ECONOMIC POLICY, AND THE DECLINE OF LIBERALISM* (2000).

66. *Id.*

embraced corporations and who owed nothing to organized labor.<sup>67</sup> Clinton's push to pass the North American Free Trade Agreement (NAFTA) in 1993 was a catastrophic blow to American workers. NAFTA is a tri-partite trade agreement between Canada, the U.S., and Mexico that eliminated most trade barriers between those nations.<sup>68</sup> It incentivized American and Canadian employers to move their factories overseas to Mexico by eliminating the tariffs that previously made products from Mexico more expensive.<sup>69</sup>

What this did on the domestic front was devastating to workers. Growing alliances between labor and environmentalists were shredded in the face of fears that environmental regulations would cause job losses.<sup>70</sup> The 1960s and early 1970s saw growing alliances between the two movements; as workers, feeling comfortable that American capitalism would continue to provide them stable work with union contracts and growing purchasing power, began making new demands of employers to clean up the environment.<sup>71</sup> The United Mine Workers' internal rebellion around Black Lung Associations led to the Federal Coal Mine Health and Safety Act in 1969.<sup>72</sup> The Occupational Safety and Health Administration was created the following year.<sup>73</sup> The Oil, Chemical and Atomic Workers International Union had so many alliances among green groups that when it went on strike in 1973, it convinced groups such as the Sierra Club to act in solidarity, asking its members to tear up their gas cards for the company.<sup>74</sup> The United Auto Workers hosted groundbreaking environmental justice conferences, and the International Woodworkers of America worked with environmentalists on both keeping workers safe from chemical exposure on the job and protecting wilderness for its members' recreation off the job.<sup>75</sup>

Capital mobility made such alliances increasingly difficult and had become a real threat to jobs. The United Paperworkers International Union

67. *Id.*

68. See generally CAULFIELD, *supra* note 2.

69. Erik Loomis, *Democrats and Labor: Frenemies Forever?* BOS. REV. (Apr. 18, 2017), <https://www.bostonreview.net/articles/erik-loomis-frenemies-labor-and-democratic-party/>.

70. See generally BRIAN K. OBACH, *LABOR AND THE ENVIRONMENTAL MOVEMENT: THE QUEST FOR COMMON GROUND* (2004).

71. See generally Robert Gordon, "Shell No!": *OCAW and the Labor-Environmental Alliance*, 3 ENV'T HIST. 460, 460-87 (1998); LES LEOPOLD, *THE MAN WHO HATED WORK AND LOVED LABOR: THE LIFE AND TIMES OF TONY MAZZOCCHI* (2007).

72. See generally Daniel M. Fox & Judith F. Stone, *Black Lung: Miners' Militancy and Medical Uncertainty, 1968-1972*, in *SICKNESS AND HEALTH IN AMERICA: READINGS IN THE HISTORY OF MEDICINE AND PUBLIC HEALTH*, 32, 32-44 (Judith Walzer Leavitt & Ronald L. Numbers eds., rev. 3d ed. 1997).

73. See generally DANIEL M. BERMAN, *DEATH ON THE JOB: OCCUPATIONAL HEALTH AND SAFETY STRUGGLES IN THE UNITED STATES* (1978).

74. See generally Gordon, *supra* note 71; BRIAN MAYER, *BLUE-GREEN COALITIONS: FIGHTING FOR SAFE WORKPLACES AND HEALTHY COMMUNITIES* 31 (2009); LEOPOLD, *supra* note 71.

75. See generally JOSIAH RECTOR, *TOXIC DEBT: AN ENVIRONMENTAL JUSTICE HISTORY OF DETROIT* (2022); LOOMIS, *supra* note 45.

refused to fight against asbestos in a Johns Manville paper mill it represented.<sup>76</sup> Workers knew that asbestos was dangerous, but they feared the factory would move if they united with environmentalists to clean up the factory.<sup>77</sup> Like the Paperworkers, other unions concluded that pressing employers to provide healthy working environments could lead to factories moving abroad, mass layoffs, and community instability.<sup>78</sup> Gary, Indiana steelworkers had struck in the 1950s to protect themselves from smoke.<sup>79</sup> By the mid-1970s, they feared that enforcing OSHA regulations and pollution standards would cause their aging and inefficient plant to close.<sup>80</sup> The International Woodworkers of America's half-century of environmentalism came to a screeching halt in 1987 when new leadership, responding to worker belief that environmentalists cost workers their jobs, reoriented the remainder of a declining union to support employer mandates on forest policy.<sup>81</sup>

Companies took advantage of these fears. Westinghouse warned workers at its Bloomington, Indiana plant not to speak out about PCB exposure when environmentalists and city residents sought to make the company clean up its waste in the 1980s or the factory would have to leave town.<sup>82</sup> Even if they did not plan to close factories, companies found threatening to do so a great way to fight reforms.<sup>83</sup> In 1974, workers in a B.F. Goodrich factory in Louisville had unusually high rates of liver cancer because of vinyl chloride exposure in making PVC.<sup>84</sup> The petrochemical companies that made PVC such as Shell, Dow, and Goodrich claimed better workplace standards would drive up the price, imperiling the economy.<sup>85</sup> General Motors claimed protecting workers from vinyl chloride would lead to 450,000 GM workers laid off.<sup>86</sup> In fact, when the EPA did raise the standards, not a single plant closed, and the companies admitted they could pay for the improvements.<sup>87</sup> Union and EPA studies in the 1980s showed that most American factories that closed because of workplace protections were obsolete facilities usually already on the chopping block.<sup>88</sup>

76. NOBLE, *supra* note 33.

77. NOBLE, *supra* note 33.

78. *See generally* NOBLE, *supra* note 33.

79. *See generally* ANDREW HURLEY, ENVIRONMENTAL INEQUALITIES: CLASS, RACE, AND INDUSTRIAL POLLUTION IN GARY, INDIANA, 1945-1980 (1995).

80. *Id.*

81. *See generally* LOOMIS, *supra* note 45.

82. Phaedra C. Pezzullo, *What Gets Buried in a Small Town: Toxic E-Waste and Democratic Frictions in the Crossroads of the United States*, in HISTORIES OF THE DUSTHEAP: WASTE, MATERIAL CULTURES, SOCIAL JUSTICE, 119, 131 (Stephanie Foote & Elizabeth Mazzolini eds., 2012).

83. *See generally* KAZIS & GROSSMAN, *supra* note 52.

84. KAZIS & GROSSMAN, *supra* note 52.

85. KAZIS & GROSSMAN, *supra* note 52.

86. KAZIS & GROSSMAN, *supra* note 52.

87. KAZIS & GROSSMAN, *supra* note 52.

88. KAZIS & GROSSMAN, *supra* note 52.

But while environmental regulation might not directly force factories to move, corporations did begin moving to avoid workplace safety regulations. In 1969, General Telephone and Electric Corporation moved its electronic components manufacturing plant from the Silicon Valley to Albuquerque, New Mexico because of the “good business climate.”<sup>89</sup> With few unions, New Mexico was the kind of state many companies moved to during the 1960s and 1970s.<sup>90</sup> GTE hired a predominantly female and Latina labor force for the repetitive tasks of assembling transformers.<sup>91</sup> It also wantonly exposed workers to solvents, acids, and other toxic chemicals.<sup>92</sup> The women suffered from skin conditions, memory loss, mental illness, hallucinations, and cancer.<sup>93</sup> Workers repeatedly struck beginning in 1978, and by 1988, over 250 workers filed suit against GTE for their illnesses.<sup>94</sup> GTE’s response was to escape once more, moving the factory to Juárez, Mexico in 1983 and recreating the same poisonous workplace outside of the American regulatory framework.<sup>95</sup>

By 1993, when Clinton signed NAFTA, most of the industrial jobs that could be outsourced had already been lost, but there remained a continued indifference toward the fate of deindustrialized communities shared by both political parties.<sup>96</sup> These communities continued to decline, even as coastal regions with trade connections flourished.<sup>97</sup> America increasingly became two economies.<sup>98</sup>

Finally, people started to push back in the mid-1990s. However, we must remember that mass organizing also has made a difference in fighting the exploitation of globalization. The United Students Against Sweatshops (USAS) campaigns of the late 1990s and early 2000s really did put pressure on suppliers and multinational corporations that forced behavior changes, at least so long as the global left paid attention to the issue.<sup>99</sup> Dozens of colleges and universities signed on to pledges to produce university gear through ethical practices.<sup>100</sup> The issue was all over progressive publications, and even the mainstream media, particularly after the report that tele-

89. STEVE FOX, *TOXIC WORK: WOMEN WORKERS AT GTE LENKURT* (1991).

90. *See generally id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. JOHN R. MACARTHUR, *THE SELLING OF “FREE TRADE”: NAFTA, WASHINGTON, AND THE SUBVERSION OF AMERICAN DEMOCRACY* (2000).

97. *See generally* NAFTA’s *Broken Promises 1994-2013: Outcomes of the North American Free Trade Agreement*, PUB. CITIZEN (Mar. 15, 2013), <https://www.citizen.org/article/naftas-broken-promises-1994-2013-outcomes-of-the-north-american-free-trade-agreement/>.

98. *See generally* AMY GOLDSTEIN, *JANESVILLE: AN AMERICAN STORY* (2017) (an example of a work detailing the continued decline of America’s industrial cities).

99. *See generally* FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *supra* note 6.

100. *See generally* FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *supra* note 6.

vision host Kathie Lee Gifford's products were made in a Honduran sweatshop.<sup>101</sup> The Battle of Seattle in 1999 around the World Trade Organization meeting in that city seemed like the first of many real battles in the streets between those who supported the global capitalist order and those who wanted a fair system of globalization.<sup>102</sup>

### III. GLOBAL CAPITALISM AND ITS AMERICAN DISCONTENTS IN THE TWENTY-FIRST CENTURY

However, this long-term political movement turned out to be just a moment. After September 11, 2001, the attention of the world shifted to the Middle East and President George Bush's wars in Afghanistan and Iraq, leaving the still nascent work of USAS withering on the vine.<sup>103</sup> Moreover, the best the anti-sweatshop movement could do in terms of solidifying gains was voluntary codes of corporate conduct that ultimately have proven ineffective.<sup>104</sup> Even if Nike agreed to monitor its supply chains, for instance, there was no real enforcement mechanism or consequences if those supply chains did not follow the new rules. Kudos for these activists for all their hard work. It does mean a lot, and it is not their fault that their victories were limited. But what this demonstrates is that social movements must have a legal strategy to place their wins in the legal code. Otherwise, their gains will disappear when public attention inevitably moves to some other issue. Twenty years later, the issue of globalized capital and the labor conditions that ensue still have not returned to western domestic politics, except for nationalistic discussions of bringing jobs back to the United States without any underlying critique of why they left in the first place.

President Barack Obama continued the Democratic Party's move toward pushing free trade as a panacea for the nation's economy without seriously considering its impact upon local communities. For Obama, it was the Trans-Pacific Partnership (TPP) that became one of his top foreign policy goals.<sup>105</sup> Many commenters noted that the TPP had minimal but perhaps real labor standards.<sup>106</sup> However, the enforcement mechanisms for these were nearly nonexistent.<sup>107</sup> Moreover, it did not solve the major problem with the contemporary system of global trade.<sup>108</sup> The key problem with the

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101. FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *supra* note 6.

102. FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *supra* note 6.

103. FEATHERSTONE & UNITED STUDENTS AGAINST SWEATSHOPS, *supra* note 6.

104. See generally Don Wells, *Too Weak for the Job: Corporate Codes of Conduct, Non-Governmental Organizations and the Regulation of International Labour Standards*, 7 GLOB. SOC. POL'Y 51 (2007).

105. Jackie Calmes, *Obama Readies One Last Push for Trans-Pacific Partnership*, N.Y. TIMES (Aug. 21, 2016), <https://www.nytimes.com/2016/08/22/business/international/trans-pacific-partnership-obama.html>.

106. *Id.*

107. *Id.*

108. *Id.*



TPP was the way it supported capital mobility by allowing corporations to move around the globe in a never-ending search for cheaper labor.<sup>109</sup>

Moreover, the TPP did precisely the opposite of what the global force needs in terms of raising international labor standards. Although some commenters noted mild language in the bill that moved the conversation on global standards forward, for both American labor and environmental groups as well as many labor and environmental groups in other nations included in the proposed pact, the real-world standards were effectively nonexistent. For labor unions, the TPP promised more good-paying jobs moved abroad to workplaces where labor had no recourse to fight for better conditions, while neither the plan nor the Obama administration articulated meaningful solutions for deindustrialized cities.<sup>110</sup> For environmental groups, the TPP engaged in “greenwashing” of the environmental impact of globalization while allowing companies to escape accountability through the use of the Investor State Dispute Settlement courts that allowed for trans-national governance everyday citizens could not access.<sup>111</sup> Both groups agreed that this agreement would be the latest in a long line of trade agreements that enriched corporations at the cost of workers and the planet.<sup>112</sup>

Greens and Labors did convince Congress to hold off on passing the TPP. But in the meantime, Donald Trump was elected president in 2016. For Republicans, the undermining of the Democratic political coalition proved electoral gold. Donald Trump was a disaster; in this historian’s opinion, he was by far the worst president in American history. But part of his appeal was based upon an “American First” message that appealed to many working-class voters. He had even less interest in helping unions, environmentalists, or consumers than any other Republican. But as a self-proclaimed outsider, he did speak to the discontent people had with the established political system. Part of what Trump represented was frustration from many Americans over not only the increased racial and gender liberalism that has driven the far-right, but also anger over a bipartisan indiffer-

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109. *Id.*

110. See *Why Labor Unions Oppose the Trans-Pacific Partnership*, PUB. BROAD. SERV. NEWS HOUR (May 12, 2015, 7:56 PM), <https://www.pbs.org/newshour/show/labor-unions-oppose-trans-pacific-partnership>.

111. See Michael Brune, *Congress Should Oppose TPP on Environmental Grounds*, N.Y. TIMES: ROOM FOR DEBATE (Oct. 7, 2015, 7:58 AM), <https://www.nytimes.com/roomfordebate/2015/10/06/the-future-of-trans-pacific-trade/congress-should-oppose-tpp-on-environmental-grounds>.

112. See Catherine Ho, *Industry, Labor, and Environmental Groups Gear Up to Oppose TPP Trade Deal*, WASH. POST (Oct. 6, 2015, 11:28 AM), <https://www.washingtonpost.com/news/powerpost/wp/2015/10/06/industry-labor-and-environmental-groups-gear-up-to-oppose-tpp-trade-deal/>.

ence to the impact of free trade upon American workers.<sup>113</sup> This is why Trump's 2016 campaign appearance at the Carrier air conditioning plant in Indiana, which was threatening to close and send jobs overseas, resonated so strongly.<sup>114</sup> Again, Trump in fact did nothing about this plant once he became president, but at least he pretended to hear these workers.<sup>115</sup> Nothing Trump offered in his nationalistic rhetoric did anything for American workers. But it should have demonstrated to politicians that a new system of trade is necessary for domestic political reasons, even outside the moral necessity to reorient our economy to worker justice.<sup>116</sup>

What really hurt was Trump's appeal to union members. Union members did side with Hillary Clinton, but she did worse among them than any Democrat since Walter Mondale in 1984.<sup>117</sup> The reasons for this are complex and include issues of sexism and misogyny, but part of the problem for Clinton was her long-time support for neoliberal policies, the same ones that her husband had so strongly championed during his presidency.<sup>118</sup> In the end, for at least some workers, Trump at least spoke their language, even if he did not have their background. They had lived through a Clinton, and they did not want to live through another. Moreover, while the vast majority of Trump voters were the usual Republican voters, it was in key deindustrialized communities where voters shifted sharply toward Trump.<sup>119</sup> Erie County, Pennsylvania voted for Obama by seventeen points over Mitt Romney in 2012; four years later, it went for Trump by nearly two points, a nineteen-point swing.<sup>120</sup> Sandusky County, Ohio, swung toward Trump by twenty-three points.<sup>121</sup> Marquette County, Wisconsin swung toward Trump by twenty-four points.<sup>122</sup> Given that these counties had voted for a Black president twice, it wasn't only Trump's unhinged racism that led such a large swath of voters to vote for him.<sup>123</sup> The Demo-

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113. Dave Johnson, *Exposing Trump's Trade Appeal to Working-Class Voters for What It Is*, UNITED STEELWORKERS: BLOG (July 8, 2016), <https://m.usw.org/blog/2016/exposing-trumps-trade-appeal-to-working-class-voters-for-what-it-is>.

114. See Nelson D. Schwartz, *Carrier Plant Is Bustling, but Workers Are Wary as Trump Exits*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/business/economy/carrier-trump.html>.

115. *Id.*

116. See *id.*; Robert E. Scott, *We Can Reshore Manufacturing Jobs, but Trump Hasn't Done It*, ECON. POL'Y INST. (Aug. 10, 2020), <https://www.epi.org/publication/reshoring-manufacturing-jobs/>.

117. Ted Hesson & Marianne Levine, *Unions Investigate Their Poor Showing for Clinton*, POLITICO (Nov. 10, 2016, 10:48 PM), <https://www.politico.com/story/2016/11/labor-unions-hillary-clinton-mobilization-231223>.

118. See *id.*

119. *Pivot Counties: The Counties that Voted Obama-Obama-Trump from 2008-2016*, BALLOTPEdia, [https://ballotpedia.org/Pivot\\_Counties:\\_The\\_counties\\_that\\_voted\\_Obama-Obama-Trump\\_from\\_2008-2016](https://ballotpedia.org/Pivot_Counties:_The_counties_that_voted_Obama-Obama-Trump_from_2008-2016) (last visited Sept. 6, 2022).

120. *Id.*

121. *Id.*

122. *Id.*

123. See Hesson & Levine, *supra* note 117.

cratic Party's indifference toward the economic conditions of these communities finally came back to bite them.

Even this brief history brings forward many complications in terms of domestic politics. Trade alone is not the only reason for the Democratic Party's electoral decline, nor will bringing back industrial jobs, even if we could return to the economy of 1965, return us to those politics. However, since globalization is a reality that needs managing and is an issue in our contemporary politics, action is required. Moreover, said actions cannot prioritize American workers over foreign workers. All workers need jobs. They need well-paying jobs that provide dignity. The fight for labor rights must be global in a globalized economy, not national. Therefore, in this essay I call for an international regulatory state that both recognizes the reality of the globalized economy and seeks to promote ideas of equity and justice to the workers supplying the American economy, whether they are sited in Chicago or Dhaka. At its core is disincentivizing capital mobility by creating a legal regime where standard rules of work follow companies no matter where they go and also include supply chains. The decline of industrial jobs in the U.S. is not going to be reversed; the first goal here is to keep those that still exist where they are and stop companies from moving them. This must be combined with policies ensuring economic stability for working-class Americans. Solving these problems requires taming corporations' ability to move at will. That's true in both the domestic and foreign spheres. This article will next move to the international side of the globalized economy.

#### IV. CREATING THE INTERNATIONAL REGULATORY STATE

The promise of globalization is that it would help other nations, even if it hurt Americans. This was often sold to Americans as a net good. Yes, we would have problems in our deindustrialized cities, but at least workers in Mexico, Guatemala, Sri Lanka, and Cambodia would have jobs. Plus, we would have cheap clothing and electronics thanks to this. But this is not quite what has happened. Nations such as Mexico that brought the first major factories out of the United States have already undergone a premature deindustrialization as capital moves out of middle-income nations to open new plants in nations with ever cheaper labor.<sup>124</sup> This was probably inevitable, and in the smaller Asian nations such as South Korea, Singapore, and Taiwan, which moved quickly through their industrial period into being leaders of global capital, this made sense. But in larger, more geographically and ethnically diverse nations, such as Mexico or Malaysia, premature deindustrialization can also roil their domestic politics. Moreover, such a

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124. See generally Mario Castillo & Antonio Martins, *Premature Deindustrialization in Latin America*, in *ECON. COMM'N. FOR LAT. AM. & THE CARIBBEAN – PROD. DEV.* (June 2016), <http://hdl.handle.net/11362/40241>.

phenomenon puts the lie to the promises of the promoters of contemporary globalization—that the present exploitation of labor is required to build the middle class in the years ahead. If no middle class gets built before the companies just move on again, this system is just exploitative, with no social benefit at all. That is unacceptable. If corporations can move as soon as the working class of a nation makes even the first move toward dignity and power, then the moral suppositions behind contemporary globalization rest on an even more questionable foundation than we thought.

The biggest problem is that corporations have largely superseded the nation-state while regular people are bound by the nation-state. This is not to deify the state. Depending on the government of a given nation, there are advantages to national law and advantages to multi-national law. The problem is the disparate power involved in how this system works today. We need to use a variety of tools in order to tame corporate power.

The starting point for such efforts should be a simple principle: basic conditions of work and environmental sustainability must follow corporations wherever they move. A living wage, the right to a union, the banning of forced pregnancy tests at work, the end of unsafe workplaces—all of these are not obscure demands. They are human rights. But they have become rights increasingly impossible to achieve. The second critical starting point is that our strategies must avoid a nostalgic protectionism that ignores the lived conditions on the ground for global workers and engages in a belief that we can bring back industrial jobs and make our nation into 1955 again. That will likely never happen, and it cedes much of the moral and political ground to corporations.

However we accomplish it, we must create a new international regulatory state on four principles. First, there cannot be courts or other legal systems that corporations can access and everyday people cannot. That system alone makes meaningful regulation of corporate behavior effectively impossible. Second, we must create regulations that disincentivize the movement of production by establishing legal requirements around wages, workplace safety, and environmental management that apply wherever they go. Third, we must provide people wherever they are the ability to organize without the possibility of their employer taking their jobs away if they succeed. Fourth, we have to balance the need to create jobs in the global north with those in the global south. In other words, we cannot engage in an old-school protectionism that we know does not work politically and that turns workers against each other instead of against the corporations that have caused this misery. In an era where many scholars of globalization have made broad-based claims about the increasing irrelevance of the state, in fact the state matters more than ever, at the very least because it is through the state that far-right racist and nationalist outrage gets articulated, as we have seen in nations such as Poland, Hungary, Turkey, and even the

United States under Trump.<sup>125</sup> What we need is a left-leaning critique of globalization that eschews nationalism for pan-nationalism and hatred for solidarity. Easier said than done, but also not impossible.

At the heart of the issue is that corporations already have international regulations to fight for their “rights” while nations remain bound by national law. Here I am primarily talking about the Investor State Dispute Settlement Courts (ISDS) that adjudicate international agreements when corporations believe their ability to operate has been abrogated by a given state. Courts that regulate international trade agreements make sense, but they are extremely dangerous when regular people do not have access to them. Moreover, the damage from these courts has been quite real. For example, under NAFTA, one of these courts ordered Canada to pay the U.S. toxic waste company S.D. Myers over \$6 million because the nation banned the export of toxic waste.<sup>126</sup> The French company Veolia sued Egypt for lost profits after the nation raised its minimum wage; the company lost, but it took six years of Egypt defending its law.<sup>127</sup> Philip Morris sued Uruguay in 2010 after the nation passed legislation requiring graphic depictions of tobacco-caused diseases on cigarette packaging.<sup>128</sup> Such undemocratic attacks on national sovereignty certainly figure in the left’s understandable distrust of trade deals.<sup>129</sup> There are many such cases.

ISDS courts have value, in theory anyway. We need multinational governance in a globalized world. There will naturally be disputes, and this is what legal systems are for. But legal systems that exclude citizen interest and abrogate democratic law in favor of corporate demands are, quite simply, unacceptable in a world that claims to value human rights. We also need access to those courts—all of us. We need accountability in them. They cannot simply serve corporate interests to override state decisions.

Second, each nation must articulate a way to create greater control over corporate power, including in supply chains. Yet we seem far away from even conceptualizing this kind of change. There absolutely are many people working on international labor law, and they are doing great work. But within the domestic politics of the United States, these issues have zero political salience. There are several reasons for this. Some of the problem is a too often bifurcated sense of how to create political change. Often when we think about making change, we may fall into one of two camps. The

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125. See generally Ziya Onis, *Globalization, Democratization and the Far Right: Turkey’s Nationalist Action Party in Critical Perspective*, 10 DEMOCRATIZATION 27 (2003).

126. Glob. Affs. Can., *Cases Filed Against the Government of Canada: S.D. Myers Inc. v. Government of Canada*, GOV’T. OF CAN. (Dec. 19, 2017), <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/SDM.aspx?lang=eng>.

127. Austl. Fair Trade & Inv. Network, *supra* note 12.

128. Glob. Legal Ctr., *Litigation Spotlight: Philip Morris v. Uruguay*, CAMPAIGN FOR TOBACCO-FREE KIDS, <https://www.tobaccofreekids.org/what-we-do/global/legal/trade-and-invest-ment/philip-morris-v-uruguay> (last visited Sept. 3, 2022).

129. *Id.*

first focuses perhaps overly on elections, while the other tends to overemphasize mass organizing as a means in itself and eschews participation in the electoral system or wastes time on building third parties that have little traction in American political life. Neither of these positions are particularly helpful.

From my perspective, as a historian of the United States, what makes the most sense is to empower both the U.S. legal code and courts as tools to create standards of corporate behavior and provide real consequences for companies who break the rules or allow exploitation in their supply chains. We can build governance and organization in regulating the era of capital mobility, supply chains, and corporate dominance.

Unfortunately, we do not often take a long game view of politics that would focus heavily on policy changes. This is understandable in a nation where the headlines change daily. Our constant focus on the next campaign obscures the questions of how to build power in government, how to build the legislative strength for bold moves on capital mobility, or using courts to level the global playing field between corporations and everyone else. While the contemporary politics of a revitalized regulatory state today are unlikely, just given the ideological predilections of the Republican Party and their dominance over the courts, especially the Supreme Court, without creating a substantive progressive critique of capital mobility, globalization, and supply chains, we cede the entire debate to those who have stripped millions of jobs from Americans. Nothing I propose is conceptually impossible. This is not a call for a revolution. Rather, it is a call to recreate the regulatory state to monitor and prosecute American corporations wherever they operate, creating standards of production for importing products into the nation, forcing accountability for supply chains, ensuring international standards of sustainability with punishable standards for pollution and toxic waste, and discouraging future capital mobility by having the standards follow the companies wherever they go. This may not be a comprehensive solution for the problems of labor and environmental exploitation that we face, but it is a step forward in terms of conceptualizing the struggle in a way that avoids a politically defunct nationalism and takes the permanence of globalization seriously.

## V. TOOLS FOR THE FIGHT

It is not as if we do not already have tools to use in this fight. To get a sense of the possible and the completed, a quick return to American history is in order. In fact, the U.S. has a long history of regulating the imports that enter its nation and of creating a standard of working conditions that gives international workers a fair shake, a history nearly completely forgotten today. For example, in 1915, President Woodrow Wilson signed the Sea-

man's Act.<sup>130</sup> Globally, the conditions of seamen had declined rapidly during the late nineteenth century as a globalized economy gave companies incentives to move their flag to whichever nation would provide them the greatest benefits.<sup>131</sup> Workers were flogged for minor violations of ship rules.<sup>132</sup> They wanted the right to walk away from their contracts because of the near slavery of shipboard life.<sup>133</sup> They were presently bound to their one- to three-year contracts with penalty of imprisonment and forfeiture of all wages if they deserted.<sup>134</sup> Effectively, they lacked the ability to quit their jobs.

As a response, International Seaman's Union secretary Andrew Furuseth fought for a law that would improve conditions on all ships.<sup>135</sup> What became the Seaman's Act when Woodrow Wilson signed the bill in 1915, established the 9-hour day and 54-hour week on ships.<sup>136</sup> It guaranteed minimum standards of safety and cleanliness.<sup>137</sup> It recognized the right of seamen to organize.<sup>138</sup> It allowed them to get out of their contracts with a relatively minimal penalty—half their salary earned to that point in the contract.<sup>139</sup> Most importantly, it applied to all sailors—regardless of national origin or citizenship status—if they landed in an American port.<sup>140</sup> This law created a “race to the top” in working conditions around the globe.<sup>141</sup> If you were a French sailor and you landed in New York, you could desert, and the U.S. government would protect your rights.<sup>142</sup>

Moreover, in its initial years, the Supreme Court ruled for the constitutionality of the Seaman's Act's principle.<sup>143</sup> After a 1918 decision ruled against seamen who used the Act to desert in Mobile, Alabama while demanding half their wages, Louis Brandeis moved the Court to a unanimous decision in a similar 1920 case by explicitly arguing that the point of the law was to enforce nationalist conceptions of labor standards, stating “foreign vessels engaged in the American trade would be compelled to raise wages and working conditions to practically the standard prevailing in our

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130. LEON FINK, *SWEATSHOPS AT SEA: MERCHANT SEAMEN IN THE WORLD'S FIRST GLOBALIZED INDUSTRY, FROM 1812 TO THE PRESENT* 93 (2011).

131. *See generally id.*

132. *See id.* at 45–50.

133. *See id.* at 54–63.

134. *Id.* at 59–60.

135. *Id.* at 61, 94–103.

136. *Id.* at 93–94.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 101–02.

142. *See id.*

143. *Id.* at 111–12.

coastwise trade.”<sup>144</sup> It was only in the 1950s that the Supreme Court declared the international provisions of the law unconstitutional.<sup>145</sup>

The U.S. has created other tools to fight for a new international regulatory framework. The U.S. Trade Act of 1974 gave the president the authority to eliminate unfair foreign trade practices that violate “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”<sup>146</sup> But foreign policy aims typically supersede concern for labor standards, and enforcement is poor.

The U.S. Marine Mammal Protection Act prohibits the importation of tuna into the U.S. from nations that allow the killing of dolphins in nets that harvest the fish.<sup>147</sup> The law led to a significant decrease in dolphin deaths, from 12,000 in 1989 to 1,000 in 1991.<sup>148</sup> Unfortunately, the same free trade agreements that the U.S. signed to export jobs can also stop environmental law; in the case of dolphin-free tuna, a General Agreement on Tariffs and Trade (GATT) panel of three unelected appointees of a pro-corporate international institution overruled American law, declaring that banning the import of tuna from Mexico violated trade agreements.<sup>149</sup> Because of the public outcry and the threat this caused to NAFTA’s passages, a compromise ensued, although the issue still raises tensions between the two nations.<sup>150</sup> But the power for international trade bodies to overturn a nation’s labor or environmental law remains real and will remain so until powerful nations like the U.S. reject its control over labor and environmental standards, allowing nations to hold other nations accountable for the production of trade goods.<sup>151</sup>

The Clinton administration rules for Cambodia under the Multi-Fibre Arrangement (MFA) showed that the U.S. government could improve global labor conditions if it chose to.<sup>152</sup> In 1997, when the House of Representatives initially rejected Bill Clinton’s request for renewed fast-track authority to negotiate new trade deals, the president had to show he took labor concerns seriously.<sup>153</sup> So, Clinton agreed to a proposal developed by American unions to provide the Cambodian government with incentives to im-

144. *Id.* at 112.

145. *Id.* at 114–15.

146. Zahra Yusufli & Colin Fenwick, *Workers’ Rights and Human Rights: Toward a New Fundamental Principle?*, in HANDBOOK ON GLOBALISATION AND LABOUR STANDARDS, 107, 122 n.8 (Kimberly Ann Elliot ed., 2022) (quoting Philip Alston, *Labour Rights Provisions in US Trade Law: “Aggressive Unilateralism”?*, 15 HUM. RTS. Q. 1, 6 (1993).

147. David Phillips, *Dolphins and GATT*, in THE CASE AGAINST “FREE TRADE”: GATT, NAFTA, AND THE GLOBALIZATION OF CORPORATE POWER, 133, 133–38 (Ralph Nader et al. eds., 1993).

148. *Id.* at 135.

149. *Id.* at 135–37.

150. *See id.* at 136–38.

151. *See generally id.*

152. *See generally* SNYDER, *supra* note 2.

153. SNYDER, *supra* note 2.



prove conditions for garment workers.<sup>154</sup> The final compromise between the Clinton administration and American labor allowed Cambodian workers to unionize in return for an increased export quota under the MFA, the 1974 international agreement regulating garment export quotas from nations around the world.<sup>155</sup> They received fifty dollars per month for a forty-eight-hour week, a significant increase in a nation with a per capita annual income at the time of \$350 a year.<sup>156</sup> Workers also received a dozen federal holidays, vacation days, sick leave, and maternity leave.<sup>157</sup> This became the only free-trade agreement with an enforceable labor provision for foreign workers enacted to date.<sup>158</sup>

For a time, the plan worked reasonably well. Overseen by the International Labour Organization (ILO), Cambodian clothing exports and union density grew together.<sup>159</sup> Apparel makers signed union contracts with workers.<sup>160</sup> It was not a perfect system. Factory owners tried to avoid the regulations and coached workers on what to say to ILO inspectors.<sup>161</sup> But it led to significant improvements and showed how government could improve workers' lives.

The U.S.-Cambodian trade pact ended with the MFA's demise in 2005.<sup>162</sup> Cambodia now had to compete with the rest of the world without inspections or union contracts. Within weeks of the quota ending in 2005, underground sweatshops emerged with terrible working conditions.<sup>163</sup> Cambodian labor saw its union pacts quickly scuttled and its wages plummet to some of the lowest in the industry.<sup>164</sup> Wages fell by 17% for Cambodian garment workers between 2001 and 2011.<sup>165</sup> This story starkly demonstrates the differences between a global labor system with and without regulation. But the lesson we should learn is not that such agreements are doomed to failure. Rather, the Cambodian story shows just how much the U.S. government can do to improve labor conditions if we demand it.

Even the threat of U.S. legislation regulating labor on imported products can move industry to action. In 1992, Iowa Senator Tom Harkin introduced the Child Labor Deterrence Act that would have prohibited importing goods made with child labor to the U.S. and called for both civil and crimi-

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154. SNYDER, *supra* note 2.

155. SNYDER, *supra* note 2.

156. SNYDER, *supra* note 2.

157. SNYDER, *supra* note 2.

158. SNYDER, *supra* note 2.

159. SNYDER, *supra* note 2.

160. SNYDER, *supra* note 2.

161. SNYDER, *supra* note 2.

162. SNYDER, *supra* note 2.

163. SNYDER, *supra* note 2.

164. SNYDER, *supra* note 2.

165. SNYDER, *supra* note 2.

nal penalties for violators.<sup>166</sup> Indian carpet makers, reliant upon child labor, began moving toward an independent monitoring system working with German unions; although when it became clear that Harkin's bill would not pass, the Indian carpet industry resisted meaningful monitoring, and therefore the system was weakened and easily avoided by carpet makers.<sup>167</sup> The case of the Indian carpet makers suggests suppliers and importers are watching American labor law and will react positively to mandates.<sup>168</sup>

Activists should argue for the use of the Alien Tort Claims Act (ATCA) of 1789, which would allow corporations who violate the human rights of their workers abroad to be tried in U.S. courts.<sup>169</sup> Under the provisions of this law, U.S. district courts have the right to hear claims from foreign citizens if they have suffered from actions “in violation of the law of nations or a treaty of the United States.”<sup>170</sup> Two more recent court cases suggest possibilities as well. In *Filártiga v. Peña-Irala* in 1980, a U.S. court ruled that a Paraguayan national could use the ATCA to sue another Paraguayan living in the United States for torturing him during that Nation's dictatorship.<sup>171</sup> This opened the door to a series of cases being tried in U.S. courts for crimes committed abroad.<sup>172</sup> In 2013 in *Kiobel v. Royal Dutch Petroleum Co.*, when Nigerians sued foreign oil companies for aiding their government in torturing and killing civilians protesting oil exploration, the U.S. Supreme Court sided with the oil companies, claiming the suit did not involve U.S. companies and therefore had no place in U.S. courts.<sup>173</sup> But there is nothing in that decision closing the door to suits against American companies operating overseas, although legally it remains unclear whether this would also enable suing companies within supply chains.<sup>174</sup> There are significant possibilities here for using this law to shape a global regulatory regime for companies who want to sell their goods in the United States.<sup>175</sup>

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166. GAY W. SEIDMAN, *Social Labels, Child Labor, and Monitoring in the Indian Carpet Industry*, in *BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM* 72, 88–90, 99 (2007).

167. *Id.* at 88–101.

168. *See id.*

169. NEWELL, *supra* note 2.

170. BETH STEPHENS, *INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS* 1 (2008) (quoting 28 U.S.C. § 1350).

171. NEWELL, *supra* note 2.

172. *See generally* NEWELL, *supra* note 2.

173. Kali Borkoski, *Kiobel v. Royal Dutch Petroleum: What's at Stake, and for Whom*, SCOTUSBLOG (Sept. 30, 2012, 9:36 PM), <http://www.scotusblog.com/2012/09/kiobel-v-royal-dutch-petroleum-whats-at-stake-and-for-whom/>; Kristin Linsley Myles & James Rutten, *Kiobel Commentary: Answers. . . and More Questions*, SCOTUSBLOG (Apr. 18, 2013, 2:07 PM), <https://www.scotusblog.com/2013/04/commentary-kiobel-answers-and-more-questions/>.

174. Borkoski, *supra* note 173; Myles & Rutten, *supra* note 173.

175. *See generally* NEWELL, *supra* note 2; Borkoski, *supra* note 173; Myles & Rutten, *supra* note 173.

Moreover, the U.S. has recently acted in a quite striking way to control imports of goods produced in unjust conditions. The U.S. has long acted to ban goods made by slave labor, even if the enforcement of such provisions has been inconsistent. Perhaps the most important precedent in creating these regulations is that the U.S. has just done so. American labor has long feared competition from prison or slave labor being used to promote imports. Congress has been receptive to this. The Smoot-Hawley Tariff Act of 1930 bars products made with prison labor from entering the nation.<sup>176</sup> In 1997, the Treasury-Postal Appropriations Bill added goods from forced or indentured child labor to the banned list.<sup>177</sup> Today, we attempt to use this law against Chinese imports made by prison labor.<sup>178</sup> It is not always easy for American customs inspectors to know for sure if a product came from prison labor and because they are prisoners in a totalitarian state, the workers have no ability to reach out for help.<sup>179</sup> Chinese workers have become so desperate that a few have slipped notes into the products they know are exported to the United States.<sup>180</sup> Over the last decade, Congress has periodically enforced this with regards to the massive numbers of products made in slave labor conditions in China.<sup>181</sup> This has hardly stopped Chinese production in its massive prison systems. But it has spurred more action, especially considering the recent Chinese use of mass imprisonment in its northwestern province of Xinjiang.<sup>182</sup> In July 2021, the Senate passed with unanimous consent the Uyghur Forced Labor Prevention Act, despite opposition from companies such as Nike and Coca-Cola.<sup>183</sup>

It is true enough that the courts have not interpreted these laws favorably in recent years. We know that the present makeup of the Supreme Court and many of the appellate courts will not support any meaningful international regulations. They do not support national regulations either. But there

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176. GEORGE TSOOGAS, *Unilateral Application of Labor Standards in Trade Relations*, in *LABOR REGULATION IN A GLOBAL ECONOMY* 86, 86–93 (2001).

177. *Id.*

178. *Id.*

179. *See generally id.*

180. Leonard Greene, *Saks Shoe Shopper Finds Plea from China Factory 'Slave,'* N.Y. POST (Apr. 30, 2014, 4:56 AM), <http://nypost.com/2014/04/30/boots-bought-at-saks-contain-plea-from-slave-in-china-shoe-factory/>.

181. Gary Feuerberg, *China's Prison Labor System Criticized in 2008 U.S.-China Commission Annual Report*, EPOCH TIMES, (Oct. 1, 2015), [https://www.theepochtimes.com/china-prison-labor-us-china-commission-report\\_1528110.html](https://www.theepochtimes.com/china-prison-labor-us-china-commission-report_1528110.html).

182. Richard Vanderford, *U.S. Lawmakers Press Customs on Enforcement of Uyghur Forced Labor Law*, WALL ST. J. (Sept. 1, 2022, 8:23 PM), <https://www.wsj.com/articles/u-s-lawmakers-press-customs-on-enforcement-of-uyghur-forced-labor-law-11662078197>.

183. *See generally* Frank Langfitt, *U.S. Teacher: I Did 7 Months of Forced Labor in a Chinese Jail*, NAT'L PUB. RADIO: ALL THINGS CONSIDERED (May 29, 2014, 1:30 PM), <http://www.npr.org/blogs/parallels/2014/05/29/314597050/u-s-teacher-i-did-seven-months-of-forced-labor-in-a-chinese-jail>; Feuerberg, *supra* note 181; Greene, *supra* note 180; Victoria Cavaliere, *Oregon Woman Finds Letter in Sealed Toy Box, Purportedly from Chinese Worker in a Labor Camp Pleading for Help*, N.Y. DAILY NEWS (Dec. 27, 2012, 2:49 PM), <http://www.nydailynews.com/news/national/toy-box-letter-china-labor-camp-article-1.1228302>.

also seems to be a limited legal vision on much of the left that lacks a long-term strategy. Much as the right has recast the courts after a decades-long project through the Federalist Society with increasingly radicalized decisions that seek to overturn the twentieth century, the left needs a similar strategy.<sup>184</sup> We do not even need radical new ideas. The twentieth century is full of lost gems of legal thought and political ideas that we could revive today. Just as one example, in the 1930s and 1940s, the United Auto Workers and other labor activists articulated the idea that you have a property right to your job.<sup>185</sup> These ideas are forgotten today.<sup>186</sup> If we determine the ends of our activism over the political limits of a right-wing Supreme Court, then we are both missing the kind of long-term political strategy we need for structural change, and we had better hope that other social movements do not take their cue from us.

Another critical issue is the lack of support for International Labour Organization mandates, other pro-labor global agreements, and the possibility of real regulation that already exists. The biggest problem here is the United States. For example, the Basel Convention of 1989 provided regulatory control over hazardous waste trading between the Global North and South and prohibited the export of hazardous waste to many countries.<sup>187</sup> But the United States is one of only a handful of nations, including Myanmar and Haiti, to refuse to ratify the treaty.<sup>188</sup> Instead, the U.S. has explicitly exempted e-wastes from the very limited laws the nation does have to protect countries from toxic waste.<sup>189</sup> With the U.S. undermining it through its active role in the toxic waste trade, the entire treaty becomes almost impossible to enforce, with illegal imports and bribery a major part of the international toxicity trade.<sup>190</sup>

The U.S. has combined remnant isolationism stemming back to the post-World War I resistance to the League of Nations with a corporate fear of the lawsuits that would lead to accountability, causing us to be enormously resistant to any meaningful action, especially when compared to Europe. The Nation's pathetic record of even ratifying the weakest International Labour Organization resolutions is just one piece of evidence as to our stunted foreign policy around international agreements.<sup>191</sup> The fear of

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184. See generally SHELDON WHITEHOUSE & JENNIFER MUELLER, *THE SCHEME: HOW THE RIGHT WING USED DARK MONEY TO CAPTURE THE SUPREME COURT* (2022).

185. See generally SIDNEY FINE, *SIT-DOWN: THE GENERAL MOTORS STRIKE OF 1936-1937* (1969).

186. See generally *id.*

187. CLAPP, *supra* note 2.

188. DAVID NAGUIB PELLOW, *RESISTING GLOBAL TOXICS: TRANSNATIONAL MOVEMENTS FOR ENVIRONMENTAL JUSTICE* 216–18 (2007).

189. See generally *id.*

190. See *id.* at 218.

191. *Up-to-Date Conventions and Protocols Not Ratified by United States of America*, INT'L LABOUR ORG., [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210\\_COUNTRY\\_ID:102871](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:102871) (last visited Nov. 5, 2022).

international control over American policy that has long motivated conservatives continues to rear its isolationist and chauvinist head today.<sup>192</sup> This opens space for corporations to ignore any responsibility. So, in the aftermath of the Rana Plaza collapse in Bangladesh in 2013, which killed 1,138 workers making clothing for the international markets, U.S. companies contracting there refused to sign any agreement for safety reforms that tied them to legal responsibility.<sup>193</sup> This was a stark contrast to at least some European companies. While European nations have not done enough to create accountability in their supply chains, their response to Rana Plaza did at least point a tentative way forward. The Accord on Fire and Building Safety in Bangladesh, providing minimal but real standards for safety, certainly has not transformed the industry into a global model, but it at least created some pressure to improve the safety in the factories.<sup>194</sup> Moreover, the precedent that such things can happen should provide a starting point for us going forward.

## VI. THE CORPORATE ACCOUNTABILITY ACT

One way to overcome all of this would be to create what I call the Corporate Accountability Act.

In short, this law would bind U.S. companies wherever they operate, whether at home or abroad. Such a law would need to include a regulatory function to monitor and punish recalcitrant corporations, set basic pollution and workplace standards, mandate living wages based upon the location of the factory, and ban the physical punishment of workers and violence against union organizers. Perhaps most importantly, it would seek to make corporations legally responsible for their supply chains, forcing companies like Walmart and Target to be accountable for conditions in their factories, wherever they are located. The law would need to give foreign workers producing goods for the U.S. market the right to bring suit in American courts for redress. It would need to allow for lawsuits both for affected people overseas and citizen groups within the U.S. to file suit, since Chinese slave laborers cannot.

Another key tenet of the Corporate Accountability Act could include mandating citizen access within the Investor State Dispute Settlement Courts. Once again, it will require state action for everyday people to access

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192. See Michael R. Lehnert & Richard L. Kelly, *Trump's Dangerous Isolationism Weakens USA and Strengthens Our Adversaries: Retired Generals*, USA TODAY (Oct. 26, 2020, 5:00 AM), <https://www.usatoday.com/story/opinion/2020/10/26/trump-international-relations-danger-isolation-policies-column/3726323001/>.

193. Jaakko Salminen, *The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?*, 66 AM. J. COMPAR. L., 411, 414, 416 (2018); Laurence Beierlein, *Development Aid and the Governance of Global Value Chains: The Case of the Bangladesh Accord on Fire and Building Safety*, 15 SOC'Y & BUS. REV. 95 (2020).

194. See generally Beierlein, *supra* note 193.

them. The rules are set in the trade agreements that serve corporations instead of regular people. It is in the agreements that both Democratic and Republican politicians have negotiated and signed that created these undemocratic processes that prioritize corporate power over that of everyday people. The lack of attention to how these trade agreements has undermined labor, environmental, and consumer protections globally has given our economic elites a nearly free hand to do what they want under corporate lobbying. The only way this changes is for us to renegotiate these agreements to ensure access to the courts by everyday people. That is hardly unprecedented as Donald Trump renegotiated NAFTA into something called the “U.S.-Mexico-Canada Agreement” that does little to fix NAFTA’s problems.<sup>195</sup> But the point is that we can reopen these agreements for new policies. Making it American law to allow Americans, at the very least, access to these courts should be at the top of the progressive economic agenda.

Another first step would include Congress ratifying International Labour Organization (ILO) standards around the right to organize, ending child labor, improving occupational safety, and protections from toxic exposure. Labor unions and companies can cooperate in a system that brings some jobs to developing world nations under safe and dignified standards while keeping some at home. The long refusal of the U.S. to ratify most ILO conventions has demonstrated its hostility to global labor rights; we can repurpose these and build upon them to demand real accountability for those caught violating these conventions.<sup>196</sup>

Ratifying these conventions and enforcing them can have real force. For example, in 2000, Faber-Castell, a pencil manufacturer, signed an agreement with the International Federation of Building and Wood Workers to extend basic rights through its factories, including a large one in Brazil, that would require overtime pay, guarantee decent working conditions, and ensure a workplace free of intimidation or sexual harassment.<sup>197</sup> This Union has signed other international framework agreements with companies in Germany, Sweden, the Netherlands, Italy, and France, helping to export

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195. Celeste Drake, *United States-Mexico-Canada Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, AM. FED’N OF LAB. & CONG. INDUSTRIAL ORGS. (NOV. 15, 2018), <https://aflcio.org/testimonies/united-states-mexico-canada-agreement-likely-impact-us-economy-and-specific-industry>.

196. See *Up-to-Date Conventions and Protocols Not Ratified by United States of America*, *supra* note 191.

197. Eberhard Schmidt, *Sustainability and Unions: International Trade Union Action to Implement Sustainability Norms at Corporate Level*, in *TRADE UNION RESPONSES TO GLOBALIZATION: A REVIEW BY THE GLOBAL UNION RESEARCH NETWORK 11*, 17–18 (Verena Schmidt ed., 2007); Marion F. Hellmann, *Social Partnership at the Global Level: Building and Woodworkers’ International Experiences with International Framework Agreements*, in *TRADE UNION RESPONSES TO GLOBALIZATION: A REVIEW BY THE GLOBAL UNION RESEARCH NETWORK 23*, 24–29 (Verena Schmidt ed., 2007).

workplace rights with capital.<sup>198</sup> Implementing these standards is often difficult with subcontractors and suppliers, but this far surpasses any model to which American companies have agreed. The government mandating ILO conventions be followed by American companies would go far in creating the types of agreements to which Faber-Castell has committed.<sup>199</sup>

Critically, a law such as the Corporate Accountability Act must include accountability in corporate supply chains. Much of the modern economy, pioneered by Walmart, is reliant upon increasingly complex supply chains that push production costs down onto subcontractors, giving them incentive to wring every cent of profit out of workers and protecting large corporations from responsibility.<sup>200</sup> This must end. Companies claim they cannot patrol their supply chains, but this is a choice.<sup>201</sup> They do a great job of controlling for cost and quality, yet when it comes to labor standards, they plead ignorance.<sup>202</sup> This is not acceptable. If a Walmart supplier refuses to pay its workers the minimum wage, then Walmart is responsible for that by choosing that contractor. Holding Walmart financially accountable for its supply chains through U.S. courts would alone raise global workplace standards.

The most famous workplace disaster in American history and the most famous workplace disaster in Bangladesh history have a tremendous amount in common. The Triangle Fire in New York in 1911 killed 146 garment workers when a sweatshop high in a ten-story building caught fire.<sup>203</sup> The Rana Plaza disaster outside Dhaka in 2013 killed 1,138 workers when the factory collapsed.<sup>204</sup> Both factories employed primarily young women, often migrants—Italian and Jewish immigrants at Triangle, rural migrants at Rana Plaza.<sup>205</sup> Both factories had similar problems with bad working conditions: indifference to the structural safety of the workplace, sexual harassment of the female workers, intimidation of workers, locking doors to prevent workers from stealing, limited bathroom breaks, inconsistent work, stolen wages, and other problems.<sup>206</sup> Both existed in an industry

198. See generally Schmidt, *supra* note 197; Hellmann, *supra* note 197.

199. See generally Schmidt, *supra* note 197; Hellmann, *supra* note 197.

200. See generally WALMART IN THE GLOBAL SOUTH, *supra* note 2.

201. See generally RICHARD M. LOCKE, *THE PROMISE AND LIMITS OF PRIVATE POWER: PROMOTING LABOR STANDARDS IN A GLOBAL ECONOMY* (2013).

202. Richard M. Locke, *Can Global Brands Create Just Supply Chains*, BOS. REV. (May 21, 2013), <http://www.bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke>.

203. GREENWALD, *supra* note 22.

204. Engel, *supra* note 10; Victor Luckerson, *Bangladesh Factory Collapse: Is There Blood on Your Shirt?*, TIME: BUSINESS (May 2, 2013), <http://business.time.com/2013/05/02/bangladesh-factory-collapse-is-there-blood-on-your-shirt/>.

205. ARGERSINGER, *supra* note 22; LABOR, GLOBAL SUPPLY CHAINS, AND THE GARMENT INDUSTRY IN SOUTH ASIA: BANGLADESH AFTER RANA PLAZA (Sanchita Banerjee Saxena ed., 2020) [hereinafter *BANGLADESH AFTER RANA PLAZA*].

206. See generally ARGERSINGER, *supra* note 22; *BANGLADESH AFTER RANA PLAZA*, *supra* note 205.

that relied on contracts from department stores that demanded rapid turn-around in a low-cost industry that put pressure on suppliers to provide goods for low prices, which then incentivized both low wages and not investing in stable workplaces.<sup>207</sup> Moreover, the suppliers faced no repercussions when workers died. Whether in New York in 1911 or Bangladesh in 2013, department stores could simply walk away and find new suppliers.<sup>208</sup>

The single biggest difference between Triangle and Rana Plaza is geography. Triangle led to major change in workplace safety and fire safety laws because well-off people saw workers die to make their clothing.<sup>209</sup> After all, Triangle was in a building on the Lower East Side, today owned by New York University.<sup>210</sup> People saw the smoke and rushed to the building to witness the disaster.<sup>211</sup> Among them was Frances Perkins, later Secretary of Labor and the first female Cabinet Member in American history.<sup>212</sup> But Americans, notoriously insulated from the rest of the world, have little idea where Bangladesh even is. They certainly are not motivated to take political action to create change based on what happens in a distant nation. Americans also have little understanding of how global supply chains operate, an intentional obfuscation by industry that makes clothes magically appear on the shelves and meat in nice plastic packages without consumers having to think about it. In other words, there was nearly no domestic pressure to force companies to change their ways. A few days of news coverage, some articles by activists, and it disappeared from the news.

Second, fear of lawsuits has led American companies to resist anything that would provide them legal liability. This is one difference between them and the European companies that have agreed to slight improvements in the supply chains, as European legal systems tend to be less litigious than that of the United States.<sup>213</sup> But while this is perhaps a real threat to American companies, the lawsuit is one of the only tools we have had to bring our corporations to accountability. American companies are never going to do what is necessary for accountability, labor rights, and environmental rights, not unless it is in their business interests to do so. It is in the interests of ourselves, workers around the world, and the planet to make it in their business interests to take this seriously.

This idea is not protectionist. The idea is not to bring industrial jobs back to the United States and recreate the union movement of 1950. That is

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207. ARGERSINGER, *supra* note 22; BANGLADESH AFTER RANA PLAZA, *supra* note 205.

208. ARGERSINGER, *supra* note 22; BANGLADESH AFTER RANA PLAZA, *supra* note 205.

209. *See generally* GREENWALD, *supra* note 22.

210. GREENWALD, *supra* note 22.

211. GREENWALD, *supra* note 22.

212. GREENWALD, *supra* note 22.

213. Brad Plumer, *Most U.S. Clothing Chains Did Not Sign Pact on Bangladesh Factory Reforms*, WASH. POST (May 15, 2013), [https://www.washingtonpost.com/business/economy/most-us-clothing-chains-did-not-sign-pact-on-bangladesh-factory-reforms/2013/05/15/4290133a-bd93-11e2-97d4-a479289a31f9\\_story.html](https://www.washingtonpost.com/business/economy/most-us-clothing-chains-did-not-sign-pact-on-bangladesh-factory-reforms/2013/05/15/4290133a-bd93-11e2-97d4-a479289a31f9_story.html).



never going to happen. Nostalgia is a strictly reactionary sentiment. The labor movement needs to build for the economy of 2050, not 1950. But it is very difficult to build for a future economy if companies can still find ways to move operations or otherwise throw people off their jobs for any reason. Pressing for transformative change in the global economy also requires increased pressure for real economic stimulus and investment in the United States. We have seen this appear on the progressive political agenda. Multiple 2020 Democratic presidential candidates, including Bernie Sanders, Cory Booker, and Kirsten Gillibrand, endorsed the idea of a government job guarantee.<sup>214</sup> The Build Back Better agenda from the Biden administration has moved the ball ahead on real investment in American jobs, though it faces the same political roadblocks that all progressive ideas do, including from conservative Democrats.<sup>215</sup> Still, these are positive developments.

Of course, some industrial job production could come back to the U.S. Given supply chain difficulties during the COVID-19 era, there is the chance that a good bit of industrial production does return to the U.S. But that will be heavily automated and also located in the anti-union South that the labor movement still has not solved in terms of organizing, even after a century of trying, though some recent evidence suggests a broader recovery in manufacturing due to the supply disruptions of the COVID-19 pandemic.<sup>216</sup> However, labor should still get on board with the broader idea of corporate accountability. The idea here is to strip away the incentives for capital mobility so that not only does it make it harder to close American factories and move them abroad, but it also gives workers in Bangladesh, Sri Lanka, Honduras, and the many other Global South nations producing for the American market tools to hold capital in place so their working classes can push toward raising standards and wages to build their own middle class. Again, the idea here is using American tools to promote solidarity across the globe. In the neoliberal age, pundits have praised the decline of the state in a globalized world.<sup>217</sup> But the state still matters. Only through the state can we regulate corporate behavior. Even in the ISDS courts, the only access point will be through state power. Placing trade at the center of the progressive agenda, not for nationalism but for justice in a globalized world, will require state power and we can make steps toward this goal.

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214. Erik Loomis, *The Case for a Federal Jobs Guarantee*, N.Y. TIMES (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/opinion/sanders-booker-gillibrand-humphrey-hawkins.html>.

215. Li Zhou, *Democrats Still Have a Joe Manchin Problem*, VOX (Jan. 4, 2022, 12:40 PM), <https://www.vox.com/22864859/democrats-filibuster-voting-rights-build-back-better>.

216. Jim Tankersley, Alan Rappeport & Ana Swanson, *Factory Jobs Are Booming Like It's the 1970s*, N.Y. TIMES (Sept. 26, 2022), <https://www.nytimes.com/2022/09/26/business/factory-jobs-workers-rebound.html>.

217. See, e.g., THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2005).

This is all doable if we prioritize it. Moreover, even placing these questions into the national conversation has the potential to force changes to the system.

## VII. FINAL THOUGHTS AND ULTIMATE GOALS

In the end, regardless of what one thinks about these specific ideas, I want to get us to three essential principles. First, the use of the state to create an international regulatory regime is not impossible, nor are the challenges that are much greater than the initial creation of the domestic regulatory regime of the twentieth century. The state can still be a useful tool; moreover, it is absolutely a necessary tool for any kind of meaningful and democratic control over capital.

Second, we as labor activists and scholars must accept globalization for what it is and act based on the contemporary realities of capitalism. Nostalgia is a deeply destructive and reactionary emotional state. The anger in deindustrialized communities in the U.S. and in much of Europe over immigration and politics has, at its roots, the feeling of loss and resentment due to the unfair realities of globalization. There is much to be done to bring these communities forward, but that is for another paper. For now, let us just say that what such regulations should do is discourage companies from a global race to the bottom by taking away many of the incentives to constantly seek cheaper and more dangerous shops that recreate the labor and environmental exploitation of a century ago.

Third, we need to take this understanding of both the regulatory state and globalization and make it a centerpiece of contemporary progressive politics. That means articulating plans with concrete solutions, presenting them to political leaders, and keeping these issues at the center of the progressive agenda. These issues merge domestic and foreign policy and can also fill the gap in a foreign policy world that progressives rarely take seriously enough to compete in the marketplace of ideas. I would like to think that we could expand upon my ideas, present them to labor-centric Democrats, and build from there.

In any case, we have seen what doing nothing about globalization and unfair trade has done to our politics and society. Climate change, the rise of fascism, anti-immigrant movements, poverty, opioids, migration, pollution, and collapsing factories such as Rana Plaza in Bangladesh should all suggest that we desperately need alternatives to what capitalism has wrought. Let us figure it out.