## AC

### Framework

#### I affirm the resolution Resolved: A just government ought to recognize an unconditional right of workers to strike.

#### As implied by the resolution, my value is justice, defined as giving each their due.

#### OBS: A just govenrment is an indefinite singular so debaters should affirm and negate by showing what just government should do, individual govenrment plans and counterplans don’t prove or disprove the resolution

#### Humans have an innate right to independence, which controls access to all other values. A person is sovereign because no one else gets to tell them what ends to pursue. Freedom in political contexts is best conceived not as non-interference but non-domination.

Waltman 2 Jerry Waltman (taught political science at the University of Southern Mississippi for 25 years; in 15 of those he participated in the British Studies Program.  He currently holds an endowed professorship in political science at Baylor University, where he teaches British politics and comparative public law.  He received his Ph.D. from Indiana University, and is the author of eight books and numerous articles in academic journals on both British and American politics.  In addition to his years spent on the British Studies Program, he has traveled and taught in the UK on many occasions). “Civic Republicanism, The Basic Income Guarantee, and the Living Wage.” USBIG Discussion Paper. No. 25, March 2002.

Civic republicanism's origins lie in the ancient world, in the political theory undergirding several notable Greek city-states and the Roman republic. (2) Thereafter, it lay dormant until resurrected in the Italian city-states of the Renaissance, and then by the "Commonwealth men" of seventeenth century England. From the latter, it was transported to the American colonies and flowered during the Revolutionary era and immediately afterward. While republican thinkers from these various periods parted company on several matters, their unifying focus was that the polity is a self-governing community of citizens. The aim of the civic republican polity is maintaining the liberty of its citizens. Since liberty cannot be achieved outside a community-a wild animal can be "free" but it cannot be said to have "liberty"-the individual citizen must be intimately connected to the community. He must believe that his **[their] interests are inseparable from** those of **the community**, and that the role of citizen is a natural part of life. The state can rely on its citizens, who after all are the state, to exercise civic virtue and to consider the needs of the community along with their own. The citizenry governs itself by the process of deliberation, a deliberation devoted to finding and pursuing the public interest. To this end, political institutions in a republic should evidence a certain balance and be rather slow acting, at least under ordinary circumstances. Representative democracy, which allows republics to be larger than city-states, is a method for the further protection of liberty. It is not, pointedly, an end in itself. Unlike liberal individualism, which posits no overriding end for the polity, civic republicanism stands emphatically on liberty as its central value. Liberty is taken to mean being free from domination. More formally, according to Richard Petit, a leading contemporary republican theorist, "One agent dominates another if and only if they have a certain power over that other, in particular a power of interference on an arbitrary basis." (3) Domination can therefore take either of two forms. In the first, one private individual holds power over another (dominium); in the second, it is the state which exercises the domination (imperium). Both are equally odious to republicanism. If I am dominated, I am not free, no matter what the source of the domination. To be a citizen is to be at all times and all places free of domination, since citizenship is synonymous with the enjoyment of liberty. Prohibiting dominium presupposes that no citizen can be the servant of another, for servanthood brings domination with it by its very nature. If you are my servant and I order you around, you are quite clearly being dominated. Nevertheless, it is important to note that **you are dominated even if I chose not to order you around** (for whatever reason). You still cannot look me in the eye as an equal, for we both know that "The Remains of the Day" is more realistic than Wooster and Jeeves. Not only may I alter my reserved role at any time without consulting you, but you will also be ever mindful of my ability to do so, and that cannot help but affect how you think, feel, and act. You and I are both aware that there may come a time when you will have to tread gingerly. Citizens of a republic simply cannot have such a relationship. As Petit said of civic republicans: The heights that they identified held out the prospect of a way of life within which none of them had to bow and scrape to others; they would each be capable of standing on their own two feet; they would each be able to look others squarely in the eye. (4) Or, as Walt Whitman succinctly described a citizen, "Neither a servant nor a master am I." (5) Governmental power can of course be a source of domination also, for the enormous power of the state is ever pregnant with the potential for domination. **There is, however, a critical difference** here. Whereas interference, real or potential, by one individual over another's choices is by its nature domination, governmental interference in one's affairs may or may not be. This is because liberty can only be made meaningful in a community, and the needs of the community will necessarily at times come into conflict with one or more individuals' autonomy, or at least with individuals' autonomy as they would define it. It is the community that makes liberty possible, and a citizen's freedom is inseparable from the interests and health of the community. As Blackstone noted, "**laws, when prudently framed, are** by no means subversive but rather **introductive of liberty**." (6)

#### Therefore, my criterion is non-domination, defined as minimizing the government’s capacity for arbitrary interference. Government interference in our lives is inevitable, what is important is to ensure that any interference is justified instead of arbitrary.

The distinction between arb and justified interference is consent and contestation as illustrated by the principle of the consent of the governed

#### Prefer my criterion since nondomination is the primary moral good and turns other frameworks, as it is a prerequisite to any other value. Arbitrary interference undermines the ability of people to plan and pursue their own ends as it causes them to live in constant fear of interference. Nondomination serves the most basic duty of the state to ensure that people may more easily attain their own ends.

### Contention 1

#### Contention 1: The workplace is a site of Unfreedom

#### Employers have tremendous arbitrary power over the lives of their employees, on and off the job, making the workplace the site of unfreedom. Professors Gourevitch and Robin explain in 2020:

Gourevitch & Robin 20 (Alex Gourevitch is a professor of political science at Brown University. He is the author of From Slavery to the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century (Cambridge University Press, 2015) and is currently working on a book on the political ethics of striking. He can be reached at alexander\_gourevitch@brown.edu. Corey Robin is a professor of political science at Brooklyn College and the City University of New York Graduate Center. He is the author of Fear: The History of a Political Idea (Oxford University Press, 2004), The Reactionary Mind: Conservatism from Edmund Burke to Donald Trump (Oxford University Press, 2018), and The Enigma of Clarence Thomas (Henry Holt and Company, 2019). He can be reached at [crobin@brooklyn.cuny.ed](mailto:crobin@brooklyn.cuny.ed)) “Freedom Now” Symposium on the Challenges Facing Democrats, DOA 10/22/2020, 5/13/20 Published online May 13, 2020. https://doi.org/10.1086/708919 Polity, volume 52, number 3 (July 2020), pp. 000–000. 0032-3497/2020/5203-00XX NCS

Yet in nearly every capitalist country, one of the leading elements of the legal definition of employment is subordination to the will of a superior.8 In exchange for remuneration, employees agree to perform a job under the authority of another. That authority is extensive, because what constitutes “the job” is not—cannot—be stipulated in advance, even by contract, with any specificity.9 It is the employer who determines, on the job, what the job is.10 The first obligation of the employee is to abide by the rule or obey the command of their employer. That can mean that they must urinate—or are forbidden to urinate.11 It can mean that they should be sexually appealing—or must not be sexually appealing.12 They may be told how to speak, what to say, whom to say it to, where to be, where to go, how to dress, when to eat, and what to read—all in the name of the job.13 Skeptics may reply that because it is temporally and spatially limited, workplace authority is less onerous than it seems. But the authority of any institution—be it the family, the prison, or the state—does not become less authority-like because it is limited in time and space. The authority of employers, moreover, does not begin and end with the workday or the workplace. It often extends, by law, beyond the workday and the workplace. According to a recent unanimous decision of the Supreme Court, an employer may require its employees to wait in line, without pay, after the workday ends (the Court put no restriction on the amount of time) while the employer searches the effects of those employees.14 Even after the workday ends and employees leave the workplace, employers may instruct them how to vote, enjoin them to donate money to candidates, require them to attend rallies for those candidates, hold signs at those rallies, and lobby those candidates if and when they are elected.15 Off the job, employees may be forbidden to drink. Or ski. They may be compelled to post statements on social media—or prohibited from posting statements. They may be forbidden to participate in group sex at home or cross-dress outside the home. They may be prohibited from challenging government officials.16 This is just a smattering of the off-the-job activities that an employer may compel or forbid—on pain of being disciplined or fired—as an exercise of employer authority. Whether these activities have any relationship to the work the employee performs on the job makes little difference. Given the indeterminacy of work contracts and the rules of at-will employment that are operative in many states—where employees can be fired for good reasons, bad reasons, or no reason at all—employers have tremendous power to direct their employees’ behavior off the job.17 But isn’t the worker free to leave a bad boss? Formally speaking, yes, but even if they are free to exit this workplace, they are not free to exit the workplace. Roughly eighty percent of American adults have no reasonable alternative to entering and staying in the labor market; they need employment to meet their living expenses. Only the top 10 to 20% of the population, who are disproportionately white, can live for any time on their savings.18 Because employment provides for so many of our necessities, and because it is a provision the employer has the power to deny, workers often have no choice but to do whatever their employer asks of them. The employer’s control over the workforce is an instrument of productivity and profits. At Amazon warehouses, an automated surveillance system tracks the workflow. Any break in the workflow—“TOT” or “time off task”—is noted, and the worker receives a warning. Too many warnings, and the worker is fired. In one warehouse, the annual firing rate for such infractions was about 10%; extended across North America, such a rate would mean “thousands lose their jobs with the company annually for failing to move packages quickly enough.” To avoid even the perception of TOT, workers forgo their bathroom breaks.19

### Contention 2

#### Contention 2: Only strikes are able to effectively contest this workplace domination. There are 3 warrants.

#### The right to strike is intrinsically valuable – it expresses the right to nondomination. Any limitation undermines worker freedom. Gourevitch 18 futhers:

Gourevitch 18 (Alex Gourevitch is an associate professor of political science at Brown University and the author of From Slavery To the Cooperative Commonwealth: Labor and Republican Liberty in the Nineteenth Century.), “A Radical Defense of the Right to Strike”, Jacobin, 7/12/18, NCS, <https://jacobinmag.com/2018/07/right-to-strike-freedom-civil-liberties-oppression>

Second, strikes don’t just aim at winning more freedom — they are themselves expressions of freedom. When workers walk out, they’re using their own individual and collective agency to win the liberties they deserve. The same capacity for self-determination that workers invoke to demand more freedom is the capacity they exercise when winning their demands. Freedom, not industrial stability or simply higher living standards, is the name of their desire.

Put differently, the right to strike has both an intrinsic and instrumental relation to freedom. It has intrinsic value as an (at least implicit) demand for self-emancipation. And it has instrumental value insofar as the strike is an effective means for resisting the oppressiveness of a class society and achieving new freedoms.

But if all this is correct, and the right to strike is something that we should defend, then it also has to be meaningful. The right loses its connection to workers’ freedom if they have little chance of exercising it effectively. Otherwise they’re simply engaging in a symbolic act of defiance — laudable, perhaps, but not a tangible means of fighting oppression. The right to strike must therefore cover at least some of the coercive tactics that make strikes potent, like sit-downs and mass pickets. It is therefore often perfectly justified for strikers to exercise their right to strike by using these tactics, even when these tactics are illegal.

#### B. Empirics – the track record of strikes is beyond dispute – it has created key labor reforms like the 8-hour workday, modern labor law, and carved out space in the public consciousness to care about the conditions and needs of the working class. Dianna Reddy, writing in the Yale Law Journal, corroborates in 2021:

Reddy 21 (Diana Reddy is a Doctoral Fellow at the Law, Economics, and Politics Center at UC Berkeley Law, and a PhD candidate in UCB's Jurisprudence and Social Policy Program. Her research interests lie at the intersection of work law, law and political economy, law and social movements, and social stratification and inequality. You can find her recent scholarship and commentary in Yale Law Journal Forum and Emory Law Journal, as well as in less formal outlets, like the Law and Political Economy blog. ​ Diana graduated Order of the Coif from New York University School of Law, where she was a Root-Tilden-Kern Public Interest Scholar. She has an MA in Sociology and a BA in Cultural and Social Anthropology, magna cum laude, from Stanford University. After law school, Diana clerked for the Hon. Theodore McKee of the U.S. Court of Appeals for the Third Circuit and for the Hon. Kimba Wood of the U.S. District Court for the Southern District of New York. Before her return to academia, Diana practiced labor and employment law. Diana served as in-house counsel for the California Teachers Association, a labor union representing over 325,000 educators in the state of California. Prior to that, she was an associate with Altshuler Berzon LLP in San Francisco, CA, where she litigated labor, environmental, class action, and voting rights cases. She was also a Fellow in the General Counsel's Office of the AFL-CIO in Washington, DC. ​ Diana is a member of the state bars of California and Texas.), "“There Is No Such Thing as an Illegal Strike”: Reconceptualizing the Strike in Law and Political Economy", The Yale Law Journal, 1/6/21, NCS, <https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#_ftnref46>

These strikes were part of a new strategic repertoire45 for the incipient labor movement, a form of protest made possible by the unique circumstances of industrial waged labor.46 Striking was risky, and not all labor unions were initially sanguine about the tool. The Knights of Labor, for instance, originally insisted that striking was counter-productive, too prone to backlash.47 Strikes were largely deemed illegal at the time, as criminal conspiracies and then as antitrust violations, and subject to court injunction.48 But workers kept striking, anyway. In the 1880s, workers struck throughout the country for the eight-hour day, the ability to share in the improved quality of life rapid growth had enabled. They proclaimed, “Eight hours for work, eight hours for sleep, eight hours for what we will.”49 In 1902, mine workers in eastern Pennsylvania struck, seeking shorter hours, higher pay, and recognition of their union.50 In 1912, the well-known “Bread and Roses” strike took place, in reaction to a pay cut. Female textile workers in Lawrence, Massachusetts walked out en masse, proclaiming “Hearts starve as well as bodies; give us bread, but give us roses!”51 The immediate outcomes of these strikes were mixed. With the help of government intervention, the 1902 coal strike was a relative victory; workers secured a nine-hour day and a pay raise, albeit no union recognition.52 But government intervention was usually not neutral. Strikes were deemed unlawful conspiracies, or anti-competitive cartel action. They were subject to massive legal repression by state police, federal military power, and federal courts.53 In contrast to the Progressive hope for state power, it was employers, not workers, who tended to benefit from state intervention during on-the-ground disputes between capital and labor. In the face of employer resistance, facilitated by law, workers often lost. The “Great Steel Strike” of 1919-20—the last large strike of the Progressive Era—illustrates all that seemed possible, yet turned out not to be, in this Era. In the fall of 1919, more than 350,000 steel workers across the Northeast and Midwest walked off the job, bringing half of American steel production to a halt.54 But the Russian Revolution of 1917 had turned public opinion against labor, and the federal government opted not to intervene on behalf of the striking workers.55 State militias and local police imprisoned strikers, and employers brought in strike-breakers, weakening worker solidarity. In some areas, local police rounded up striking workers from their homes and forced them back to work.56After this loss, virtually no union organizing occurred in the steel industry for fifteen years.57 But these immediate losses were not the end of the story. These strikes grew the labor movement, creating the material (organized workers) and ideological (something must be done about the “labor problem”) infrastructure for the legal reforms to come.58Importantly, they changed public consciousness. By ensuring that workers’ experience of the new economy was a part of public discourse, strikes contributed to the Progressive challenge to laissez faire. As Louis Brandeis proclaimed following the 1902 coal strike, “The growth in membership has been large, but the change in the attitude toward unions both on the part of the employer and of the community marks even greater progress. . . . That struggle compelled public attention to the trades union problem in a degree unprecedented in this country.”59 The path was not linear. During the 1920s, a host of factors—including pandemic fatigue60—prompted the country to revert to its Gilded Age habits. But when the Great Depression hit, both the ideas and the on-the-ground power built in the decades prior allowed for rapid deployment of pro-labor legislation at just the moment when it was politically possible to implement it. The Norris-LaGuardia Act became law in 1932. The National Labor Relations Act (NLRA) followed in 1935. The Great Steel Strike’s legacy extended beyond its immediate aftermath. When the Supreme Court upheld the NLRA against constitutional challenge in 1937, it cited the strike—that great failure—as evidence of the constitutional propriety of the Act.61 This “illegal strike” became part of the legitimating narrative for why government intervention in support of unionization was appropriate. “The Government aptly refers to the steel strike of 1919-1920, with its far-reaching consequence,” read the opinion; the “[r]efusal to confer and negotiate has been one of the most prolific causes of strife.”62 Industrial unrest disrupted the stream of commerce; government regulation to prevent such disruption was constitutional.

#### Social pressure – strikes develop the “moral economy” necessary to combat growing inequality and exploitation. Reddy 21

(Diana Reddy is a Doctoral Fellow at the Law, Economics, and Politics Center at UC Berkeley Law, and a PhD candidate in UCB's Jurisprudence and Social Policy Program. Her research interests lie at the intersection of work law, law and political economy, law and social movements, and social stratification and inequality. You can find her recent scholarship and commentary in Yale Law Journal Forum and Emory Law Journal, as well as in less formal outlets, like the Law and Political Economy blog. ​ Diana graduated Order of the Coif from New York University School of Law, where she was a Root-Tilden-Kern Public Interest Scholar. She has an MA in Sociology and a BA in Cultural and Social Anthropology, magna cum laude, from Stanford University. After law school, Diana clerked for the Hon. Theodore McKee of the U.S. Court of Appeals for the Third Circuit and for the Hon. Kimba Wood of the U.S. District Court for the Southern District of New York. Before her return to academia, Diana practiced labor and employment law. Diana served as in-house counsel for the California Teachers Association, a labor union representing over 325,000 educators in the state of California. Prior to that, she was an associate with Altshuler Berzon LLP in San Francisco, CA, where she litigated labor, environmental, class action, and voting rights cases. She was also a Fellow in the General Counsel's Office of the AFL-CIO in Washington, DC. ​ Diana is a member of the state bars of California and Texas.), "“There Is No Such Thing as an Illegal Strike”: Reconceptualizing the Strike in Law and Political Economy", The Yale Law Journal, 1/6/21, NCS, https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy#\_ftnref46

For those who believe that a stronger labor movement is needed to counterbalance the concentrations of economic and political power in this new Gilded Age, the question is not just whether the law is bad (it is), but whether strikes can be effective nonetheless. If labor activists are correct that there is “no such thing” as an illegal strike, just an unsuccessful strike, the question follows: what makes a strike successful enough, under current conditions, to transcend legal constraints?154 To some extent this is an empirical question, and one on which there are many opportunities for generative research. Beginning with the theoretical, however, I suggest that the success of strikes must be measured in more than economic wins in the private sphere. Like their Progressive Era progenitors, their success must be in raising political consciousness in the public sphere—in making the stakes of the twenty-first century labor question apparent.155 As noted above, under current labor law, strikes are conceptualized as “economic weapons,” as hard bargaining.156 And while legal terminology is distinct from on-the-ground understandings, unions have often emphasized the economic nature of the strike as well. Strikes are “[t]he power to stop production, distribution and exchange, whether of goods or services.”157 A strike works because “we withhold something that the employer needs.”158 At the same time, there has been a corresponding tendency to dismiss the more symbolic aspects of the strike. To quote White again, “while publicity and morale are not irrelevant, in the end, they are not effective weapons in their own right.”159 These arguments are important. A strike is not simply protest; it is direct action, material pressure. But with union density lower than ever, ongoing automation of work tasks that renders employees increasingly replaceable, and decades of neoliberal cultural tropes celebrating capital as the driver of all economic growth and innovation, it is a mistake to think of publicity and morale as nice-to-haves, rather than necessities. Instead, striking must be part of building what sociologists have described as the “moral economy,” cultural beliefs about fair distribution untethered to technocratic arguments about what is most efficient.160 And in that way, striking is and must be understood as political.

### Contention 3

#### Contention 3: The right to strike must be unconditional. There are 3 warrants.

#### A. Acknowledgement of a conditional right to strike gives the government means to circumscribe labor resistance Crépon 19

Marc Crépon (Professor of Philosophy at the Ecole Normale Superieure and director of research at the Archives Husserl, National Center for Scientific Research). “The Right to Strike and Legal War in Walter Benjamin’s ‘Toward the Critique of Violence’.” Translation by Micol Bez. Critical Times (2019) 2 (2): 252–260. JDN. https://read.dukeupress.edu/critical‐times/article/2/2/252/141479/The‐Right‐to‐Strike‐ and‐Legal‐War‐in‐Walter

Let us return to the place that the right to strike occupies within class struggle. To begin with, the very idea of such a struggle implies certain forms of violence. The strike could then be understood as [is] one of the recognizable forms that this violence can take. However, this analytical framework is undermined as soon as this form of violence becomes regulated by a “right to strike,” such as the one recognized by law in France in 1864. What this recognition engages is, in fact, the will of the state to control the possible “violence” of the strike. Thus, the “right” of the right to strike appears as the best, if not the only, way for the state to circumscribe within (and via) the law the relative violence of class struggles. We might consider this to be the perfect illustration of the aforementioned hypothesis. Yet, there are two lines of questioning that destabilize this hypothesis that we would do well to consider. First, is it legitimate to present the strike as a form of violence? Who has a vested inter‐ est in such a representation? In other words, how can we trace a clear and unequivo‐ cal demarcation between violence and nonviolence? Are we not always bound to find residues of violence, even in those actions that we would be tempted to consider non‐ violent? The second line of questioning is just as important and is rooted in the distinc‐ tion established by Georges Sorel, in his Reflections on Violence, between the “political strike” and the “proletarian general strike,” to which Benjamin dedicates a set of com‐ plementary analyses in §13 of his essay. Here, again, we are faced with a question of imits. What is at stake is the possibility for a certain type of strike (the proletarian gen‐ eral strike) to exceed the limits of the right to strike— turning, in other words, the right to strike against the law itself. The phenomenon is that of an autoimmune process, in which the right to strike that is meant to protect the law against the possible violence of class struggles is transformed into a means for the destruction of the law. The difference between the two types of strikes is nevertheless introduced with a condition: “The valid‐ ity of this statement, however, is not unrestricted because it is not unconditional,” notes Benjamin in §7. We would be mistaken in believing that the right to strike is granted and guaranteed unconditionally. Rather, it is structurally subjected to a conflict of in‐ terpretations, those of the workers, on the one hand, and of the state on the other. From the point of view of the state, the partial strike cannot under any circumstance be un‐ derstood as a right to exercise violence, but rather as the right to extract oneself from a preexisting (and verifiable) violence: that of the employer. In this sense, the partial strike should be considered a nonviolent action, what Benjamin named a “pure means.” The interpretations diverge on two main points. The first clearly depends on the alleged “violence of the employer,” a predicate that begs the question: Who might have the authority to recognize such violence? Evidently it is not the employer. The danger is that the state would similarly lack the incentive to make such a judgment call. It is nearly impossible, in fact, to find a single instance of a strike in which this recognition of violence was not subject to considerable controversy. The political game is thus the following: the state legislated the right to strike in order to contain class struggles, with the condition that workers must have “good reason” to strike. However, it is unlikely that a state systematically allied with (and accomplice to) employers will ever recog‐ nize reasons as good, and, as a consequence, it will deem any invocation of the right to strike as illegitimate. Workers will therefore be seen as abusing a right granted by the state, and in so doing transforming it into a violent means. On this point, Benjamin’s analyses remain extremely pertinent and profoundly contemporary. They unveil the enduring strategy of governments confronted with a strike (in education, transporta‐ tion, or healthcare, for example) who, after claiming to understand the reasons for the protest and the grievances of the workers, deny that the arguments constitute sufficient reason for a strike that will likely paralyze this or that sector of the economy. They deny, in other words, that the conditions denounced by the workers display an intrinsic vio‐ lence that justifies the strike. Let us note here a point that Benjamin does not mention, but that is part of Sorel’s reflections: this denial inevitably contaminates the (socialist) left once it gains power. What might previously have seemed a good reason to strike when it was the opposition is deemed an insufficient one once it is the ruling party. In the face of popular protest, it always invokes a lack of sufficient rationale, allowing it to avoid recognizing the intrinsic violence of a given social or economic situation, or of a new policy. And it is because it refuses to see this violence and to take responsibility for it that the left regularly loses workers’ support.

#### Conditions on the right to strike allow employers to use those conditions and justification for cruel and unwarranted punishment on strikers, Willie Farah proves. The San Francisco Bay Area Farah Strike Support Committee 74

**The San Francisco Bay Area Farah Strike Support Committee (1974). Chicanos Strike at Farah. United Front Press. 6**

Willie Farah was shocked at the strikes being held at multiple Farah factories, mainly El Paso- his hometown. He used several tactics to stop the strike, such as, outdated Texas laws, denial of loans to strikers, and Fortress Farah. A couple of weeks after the Farah Strike broke out, Willie Farah obtained a court injunction that stated, "people picketing had to be 50 feet apart." This injunction was based on the 1880 Texas law. Picketers were being arrested for protesting Farah's company and being fined $4, which was a substantial amount of money to be forced to pay while not receiving wages. The 1880 Texas law did not hold-up in court and was later ruled as unconstitutional due to the United States’ first amendment's protection of peaceful assembly. Willie Farah was on the board of directors at the First National Bank of El Paso and utilized his power to "cut off all loans to strikers," which was another strategy to stop protesters. Fortress Farah was the name given to another Farah-scheme to end the strike, the plants were surrounded with barbed wire and telescopic cameras. Plant guards were issued guns and unmuzzled attack dogs.”

#### B. Limits on the right to strike impede its effectiveness. Reddy 21 continues:

Diana S. Reddy (Doctoral Fellow at the Law, Economics, and Politics Center at UC Berkeley Law). “‘There Is No Such Thing as an Illegal Strike’: Reconceptualizing the Strike in Law and Political Economy.” Yale Law Journal. 6 January 2021. JDN. https://www.yalelawjournal.org/forum/there‐is‐no‐such‐thing‐as‐an‐illegal‐strike‐ reconceptualizing‐the‐strike‐in‐law‐and‐political‐economy

The National Labor Relations Board—the institution charged with enforcing the policies of the Act—summarizes these “qualifications and limitations” on the right to strike on its website in the following way: The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.93 The “right” to strike, it seems, is filled with uncertainty and peril. Collectively, these rules prohibit many of the strikes which helped build the labor move‐ ment in its current form. Ahmed White accordingly argues that law prohibits effective strikes, strikes which could actually change employer behavior: “Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities.”94

#### C. Restrictions on the right to strike have reduced it to meaninglessness Pope et al. 17 explain:

James Gray Pope (Professor of Law and Sidney Reitman Scholar at Rutgers Univer‐ sity), Ed Bruno (former director of the United Electrical Radio and Machine Workers of America, and past southern director for the National Nurses Union), and Peter Kell‐ man (past president of the Southern Maine Labor Council and is currently working with he Movement Building/Education Committee of the Maine AFL‐CIO). “The Right to Strike.” Boston Review, Spring 2017. JDN. https://bostonreview.net/forum/james‐gray‐ pope‐ed‐bruno‐peter‐kellman‐right‐strike

The prospects for union revival may seem bleaker than ever during the Trump admin‐ istration, even as the triumph of right‐wing populism makes more urgent what was already apparent: the need to build a labor movement that can fight for the interests of the working class in the face of corporate power. But prospects are not as grim as they appear. Over the past decade, there has been an undeniable shift toward class politics, most visibly evidenced by Occupy Wall Street, the Bernie Sanders campaign, the Fight for Fifteen, and the rise of a Black Lives Matter movement that supports economic justice demands, including the right to organize. Building the labor movement in this period of danger and opportunity will require not only heeding Lerner’s call for a strategic shift and extralegal action; labor must also re‐ claim the right to strike and confront the deep structural disabilities that impede unions from challenging corporate power. As Lerner diagnosed twenty years ago, U.S. labor law blocks unions and workers from effective organizing and striking. Then as now, the law’s protections for workers’ rights amount to little more than paper guarantees, while its restrictions are downright deadly. Indeed the Committee on Freedom of Association of the International Labor Organiza‐ tion (ILO) has held that the United States is violating international standards by failing to protect the right to organize, by banning secondary strikes and boycotts across the board, and by allowing employers to permanently replace workers who strike. The ban on secondary strikes is especially debilitating, because it prevents workers who have economic power, such as organized grocery workers, from aiding workers who do not, for example unorganized packing house workers. If the grocery workers support strik‐ ing packers by refusing to handle food packed by strikebreakers, they are said to be engaging in an illegal secondary strike. But the law cuts even deeper, deforming workers’ organizations at their inception. As amended by the Taft‐Hartley Act of 1947 (tagged by unionists as the “Slave Labor Law”), the National Labor Relations Act (NLRA) confronts workers with a choice between two inadequate forms of organization: statutory “labor organizations,” popularly known as unions, and “others,” for example workers’ centers that organize outside the statutory framework. At first glance, the choice seems obvious. Only unions can demand and engage in collective bargaining. But unions are subject to so many restrictions that some workers’ organizations (such as the Restaurant Opportunities Centers United) are willing to forego collective bargaining in order to avoid them, while others (including the Coalition of Immokalee Workers) consider themselves lucky to be excluded from the NLRA altogether. In the 1960s Cesar Chavez of the United Farm Workers rejected NLRA coverage for farm workers on the ground that it would inscribe “a glowing epitaph on our tombstone.”

## Underview

#### Judges should change how they evaluate risk. DAs with multiple internal links should be assigned vanishingly low probability because they rely on many assumptions that are false until proven true. When each step is multiplied together, it exponentially decreases the chance of occurrence. Even full weight of their author’s arguments are a series of hedged statements that without refutation reduce the risk of nuclear war or extinction to near zero.

Cohn 13 [Nate Cohn is a domestic correspondent for The Upshot at The New York Times, previously worked as a staff writer for The New Republic, as a research associate at The Henry L. Stimson Center and a debate coach at Whitman college, 12-12-2013, <http://www.cedadebate.org/forum/index.php?topic=5416.0;wap2>]

That’s not to say there hasn’t been any effort to challenge modern policy debate on its own terms—just that they’ve mainly come from the middle of the bracket and weren’t very successful, focusing on morality arguments and various “predictions bad” claims to outweigh.

Judges were receptive to the sentiment that disads were unrealistic, but negative claims to specificity always triumphed over generic epistemological questions or arguments about why “predictions fail.” The affirmative rarely introduced substantive responses to the disadvantage, rarely read impact defense. All considered, the negative generally won a significant risk that the plan resulted in nuclear war. Once that was true, it was basically impossible to win that some moral obligation outweighed the (dare I say?) obligation to avoid a meaningful risk of extinction.

There were other problems. Many of the small affirmatives were unstrategic—teams rarely had solvency deficits to generic counterplans. It was already basically impossible to win that some morality argument outweighed extinction; it was totally untenable to win that a moral obligation outweighed a meaningful risk of extinction; it made even less sense if the counterplan solved most of the morality argument. The combined effect was devastating: As these debates are currently argued and judged, I suspect that the negative would win my ballot more than 95 percent of the time in a debate between two teams of equal ability.

But even if a “soft left” team did better—especially by making solvency deficits and responding to the specifics of the disadvantage—I still think they would struggle. They could compete at the highest levels, but, in most debates, judges would still assess a small, but meaningful risk of a large scale conflict, including nuclear war and extinction. The risk would be small, but the “magnitude” of the impact would often be enough to outweigh a higher probability, smaller impact. Or put differently: policy debate still wouldn’t be replicating a real world policy assessment, teams reading small affirmatives would still be at a real disadvantage with respect to reality. .

Why? Oddly, this is the unreasonable result of a reasonable part of debate: the burden of refutation or rejoinder, the responsibility of debaters to “beat” arguments. If I introduce an argument, it starts out at 100 percent—you then have to disprove it. That sounds like a pretty good idea in principle, right? Well, I think so too. But it’s really tough to refute something down to “zero” percent—a team would need to completely and totally refute an argument. That’s obviously tough to do, especially since the other team is usually going to have some decent arguments and pretty good cards defending each component of their disadvantage—even the ridiculous parts. So one of the most fundamental assumptions about debate all but ensures a meaningful risk of nearly any argument—even extremely low-probability, high magnitude impacts, sufficient to outweigh systemic impacts.

There’s another even more subtle element of debate practice at play. Traditionally, the 2AC might introduce 8 or 9 cards against a disadvantage, like “non-unique, no-link, no-impact,” and then go for one and two. Yet in reality, disadvantages are underpinned by dozens or perhaps hundreds of discrete assumptions, each of which could be contested**.** By the end of the 2AR, only a handful are under scrutiny; the majority of the disadvantage is conceded, and it’s tough to bring the one or two scrutinized components down to “zero.”

And then there’s a bad understanding of probability. If the affirmative questions four or five elements of the disadvantage, but the negative was still “clearly ahead” on all five elements, most judges would assess that the negative was “clearly ahead” on the disadvantage. In reality, the risk of the disadvantage has been reduced considerably. If there was, say, an 80 percent chance that immigration reform would pass, an 80 percent chance that political capital was key, an 80 percent chance that the plan drained a sufficient amount of capital, an 80 percent chance that immigration reform was necessary to prevent another recession, and an 80 percent chance that another recession would cause a nuclear war (lol), then there’s a 32 percent chance that the disadvantage caused nuclear war.

I think these issues can be overcome. First, I think teams can deal with the “burden of refutation” by focusing on the “burden of proof,” which allows a team to mitigate an argument before directly contradicting its content.

Here’s how I’d look at it: modern policy debate has assumed that arguments start out at “100 percent” until directly refuted. But few, if any, arguments are supported by evidence consistent with “100 percent.” Most cards don’t make definitive claims. Even when they do, they’re not supported by definitive evidence—and any reasonable person should assume there’s at least some uncertainty on matters other than few true facts, like 2+2=4.

Take Georgetown’s immigration uniqueness evidence from Harvard. It says there “may be a window” for immigration. So, based on the negative’s evidence, what are the odds that immigration reform will pass? Far less than 50 percent, if you ask me. That’s not always true for every card in the 1NC, but sometimes it’s even worse—like the impact card, which is usually a long string of “coulds.” If you apply this very basic level of analysis to each element of a disadvantage, and correctly explain math (.4\*.4\*.4\*.4\*.4=.01024), the risk of the disadvantage starts at a very low level, even before the affirmative offers a direct response.

Debaters should also argue that the negative hasn’t introduced any evidence at all to defend a long list of unmentioned elements in the “internal link chain.” The absence of evidence to defend the argument that, say, “recession causes depression,” may not eliminate the disadvantage, but it does raise uncertainty—and it doesn’t take too many additional sources of uncertainty to reduce the probability of the disadvantage to effectively zero—sort of the static, background noise of prediction.

Now, I do think it would be nice if a good debate team would actually do the work—talk about what the cards say, talk about the unmentioned steps—but I think debaters can **make these** observations at a meta-level (your evidence isn’t certain, lots of undefended elements) and successfully reduce the risk **of a nuclear** war or extinction to something indistinguishable from zero. It would not be a factor in my decision.

Based on my conversations with other policy judges, it may be possible to pull it off with even less work. They might be willing to summarily disregard “absurd” arguments, like politics disadvantages, on the grounds that it’s patently unrealistic, that we know the typical burden of rejoinder yields unrealistic scenarios, and that judges should assess debates in ways that produce realistic assessments. I don’t think this is too different from elements of Jonah Feldman’s old philosophy, where he basically said “when I assessed 40 percent last year, it’s 10 percent now.”

Honestly, I was surprised that the few judges I talked to were so amenable to this argument. For me, just saying “it’s absurd, and you know it” wouldn’t be enough against an argument in which the other team invested considerable time. The more developed argument about accurate risk assessment would be more convincing, but I still think it would be vulnerable to a typical defense of the burden of rejoinder.

To be blunt: I want debaters to learn why a disadvantage is absurd, not just make assertions that conform to their preexisting notions of what’s realistic and what’s not. And perhaps more importantly for this discussion, I could not coach a team to rely exclusively on this argument—I’m not convinced that enough judges are willing to discount a disadvantage on “it’s absurd.” Nonetheless, I think this is a useful “frame” that should preface a following, more robust explanation of why the risk of the disadvantage is basically zero—even before a substantive response is offered.

There are other, broad genres of argument that can contest the substance of the negative’s argument. There are serious methodological indictments of the various forms of knowledge production, from journalistic reporting to think tanks to quantitative social science. Many of our most strongly worded cards come from people giving opinions, for which they offer very little data or evidence. And even when “qualified” people are giving predictions, there’s a great case to be extremely skeptical without real evidence backing it up**.** The world is a complicated place, predictions are hard**, and** most people are wrong. And again, this is before contesting the substance of the negative’s argument(!)—if deemed necessary.