# AC

#### I affirm the Resolved: A just government ought to recognize an unconditional right of workers to strike. First, some definitions to clarify the round:

#### Unconditional is defined by Merriam-Webster as:

“Unconditional.” Merriam-Webster Dictionary. No Date. URL: https://www.merriam-webster.com/dictionary/unconditional

un·​con·​di·​tion·​al | \ ˌən-kən-ˈdish-nəl  , -ˈdi-shə-nᵊl \ Definition of unconditional: 1: not conditional or limited : ABSOLUTE, UNQUALIFIED unconditional surrender unconditional love; 2: UNCONDITIONED sense 2

#### A workers’ right to strike is defined by Guedes 18 as:

Guedes, Coralie. October 2018. “The right to strike in the private sector – Belgium.” *European Public Service Union.* URL: <https://www.epsu.org/sites/default/files/article/files/Belgium%20-%20Right%20to%20strike%20in%20the%20public%20sector.pdf> accessed on 11.5.21 by bwskat.

General The right to strike in Belgium is not enshrined in the Constitution nor regulated by law. It forms part of positive law by virtue of article 6§4 of the European Social Charter and has been mainly developed through case law. In 1981, the Belgian Supreme Court ruled that, in the event of a strike, an employee has the right not to perform the work as stipulated in the employment contract. 3 Therefore, participation in a strike is not in itself an unlawful act. A worker who goes on strike is exercising his or her freedom of association, and this action is therefore considered to be a justified suspension of the labour contract. The Belgian Supreme Court has founded the recognition of the strike intended is a collective and voluntary stoppage of work on the ‘Loi sur les Prestations d’intérêt public en temps de paix (1948)’, since at that time the ratification of the ESC was not yet completed. It fully recognised the right to strike, irrespective of whether it was recognised by trade union or whether it was “spontaneous”. The right to strike is accepted as a fundamental right, as the consequences are set out in the relevant legislation. In the public sector The civil service in Belgium is a career system, with guaranteed tenure but is to be noted that every more public servants are employed under a normal employment contract . Employees in the public sector are divided into two categories: public servants employed on the principle of statutory public employment (this is the rule), and contractual employees under private law whose relationship with the public employer is governed by an employment contract. Article 1 of the 1937 Decree defines a public servant as ‘any person who is permanently employed’ in the administration. Under Belgian public law, the principle of statutory public employment is the rule, while contractual employment is the exception. This principle is demonstrated by both the Royal Decree on the regulations governing public servants and case law. The distinction between an employee subject to private law and a public servant governed by public law depends on the nature of the document creating the employment relationship: a contract or a unilateral administrative order. Several judicial practices restrict the exercise of the right to strike, as they rule on the strike itself and its unlawful consequences, and may prohibit a strike. It is the general courts and not the labour court who judge in that respect.

## Framing

#### I value justice, as the resolution is a question of what a just government ought to do. Justice is explained by Christman 20:

Christman, John, "Autonomy in Moral and Political Philosophy", The Stanford Encyclopedia of Philosophy (Fall 2020 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2020/entries/autonomy-moral/>.

Some thinkers have made the connection between individual or “private” autonomy and collective or “public” legitimacy — prominent, most notably Habermas (Habermas 1994). On this view, legitimacy and justice cannot be established in advance through philosophical construction and argument, as was thought to be the case in natural law traditions in which classical social contract theory flourished and which is inherited (in different form) in contemporary perfectionist liberal views. Rather, justice amounts to that set of principles that are established in practice and rendered legitimate by the actual support of affected citizens (and their representatives) in a process of collective discourse and deliberation (see e.g., Fraser 1997, 11–40 and Young 2000). Systems of rights and protections (private, individual autonomy) will necessarily be protected in order to institutionalize frameworks of public deliberation (and, more specifically, legislation and constitutional interpretation) that render principles of social justice acceptable to all affected (in consultation with others) (Habermas 1994, 111). This view of justice, if at all acceptable, provides an indirect defense of the protection of autonomy and, in particular, conceptualizing autonomy in a way that assumes reflective self- evaluation. For only if citizen participants in the public discourse that underlies justice are assumed to have (and provided the basic resources for having) capacities for competent self- reflection, can the public defense and discussion of competing conceptions of justice take place (cf. Gaus 1996, Parts II and III, Gaus 2011). Insofar as autonomy is necessary for a functioning democracy (considered very broadly), and the latter is a constitutive element of just political institutions, then autonomy must be seen as reflective self-appraisal (and, I would add, non-alienation from central aspects of one’s person) (see Cohen 2002, Richardson 2003, Christman 2015).

#### Thus, my criterion is maximizing individual autonomy. Christman 20:

Christman, John, "Autonomy in Moral and Political Philosophy", The Stanford Encyclopedia of Philosophy (Fall 2020 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2020/entries/autonomy-moral/>.

In the western tradition, the view that individual autonomy is a basic moral and political value is very much a modern development. Putting moral weight on an individual’s ability to govern herself, independent of her place in a metaphysical order or her role in social structures and political institutions is very much the product of the modernist humanism of which much contemporary moral and political philosophy is an offshoot. (For historical discussions of autonomy, see Schneewind 1988, Swain 2016 and Rosich 2019). As such, it bears the weight of the controversies that this legacy has attracted. The idea that moral principles and obligations, as well as the legitimacy of political authority, should be grounded in the self-governing individual, considered apart from various contingencies of place, culture, and social relations, invites skeptics from several quarters. Autonomy, then, is very much at the vortex of the complex (re)consideration of modernity. Put most simply, to be autonomous is to govern oneself, to be directed by considerations, desires, conditions, and characteristics that are not simply imposed externally upon one, but are part of what can somehow be considered one’s authentic self. Autonomy in this sense seems an irrefutable value, especially since its opposite — being guided by forces external to the self and which one cannot authentically embrace — seems to mark the height of oppression. But specifying more precisely the conditions of autonomy inevitably sparks controversy and invites skepticism about the claim that autonomy is an unqualified value for all people.

#### Prefer for 2 reasons:

#### Actor Specificity – since the resolution is a question of what a just government ought to do, the criterion that best measures the obligations of a just government should be used to weigh the round. Just governments have an obligation to first and foremost preserve autonomy:

#### Prerequisite to all other governmental obligations - Autonomy is the only way to ensure that a shared conception of justice exists in the first place.

#### Consequentialism fails to respect autonomy for two reasons

#### Consequentialism treats people differently based on their capacity to experience happiness, which can result in violations of some people’s autonomy. Peters 7:

Peter. “Utilitarianism Is Unjust.” On Philosophy, N.P, 8 Sept. 2007, onphilosophy.wordpress.com/2007/09/08/utilitarianism-is-unjust/. //Massa // recut bws kat 11.4.21

According to this principle utilitarianism is unjust because it treats people differently based on their capacity for happiness**;** although utilitarians can appeal to their principles to justify this different treatment, so can racists, and like the racist the utilitarian arguments are not based on objective facts. But before we get into the details allow me to give examples of some groups of people who would be treated unfairly in a purely utilitarian system. The first are those who have no capacity for happiness or unhappiness.There are rare people born without this ability, and we can easily imagine possible species (such as the Vulcans from Star Trek) or conscious computers (such as Data, also from Star Trek) who lack it as well. Utilitarianism cares only about maximizing happiness or pleasure, and so these people effectively wouldn’t count; their treatment would be invisible to the system. Since we can’t make the Vulcans unhappy we would be free to exploit them, turn them into slaves, or whatever else would make us happy. And since we can’t make them happy there is no reason for the system to give them any of the rights or privileges that make us happy. Since they aren’t made unhappy by this treatment the total amount of happiness may be increased, and hence utilitarianism as a system would endorse it. Also treated unfairly are people who are in a permanent state of unhappiness. It isn’t inconceivable that someone might have a condition that prevents them from being happy, and, although many such people might choose to end their lives, there would probably be some who would still choose life. A utilitarian system would take that choice away from them, and to execute them immediately, since they will always be unhappy (negative happiness) eliminating them would increase the total amount of happiness. If such actions could be considered just it would only be if we could somehow convince these people that abusing them on the basis of their capacity for happiness is reasonable, which means convincing them of the validity of utilitarianism. This may be impossible, and not just because utilitarianism advocates acting against their interests. Consider an alien species who is rational, and has emotions, but whose emotions don’t correspond to human emotions. While we are naturally motivated to try to be as happy as possible these aliens are naturally motivated to bring the strength of their Zeb and Geb emotions into balance. Could we convince these aliens that maximizing happiness is reason for them to be treated differently? I am sure that we could make them understand that we are motivated by happiness, and that we wish to maximize it. But they won’t see that as a good reason to let themselves be abused, just as we don’t see another’s desire to steal as good reason to let them steal. No, we will reply that we have interests of our own that stealing from us hurts, and there is no good reason to favor the desire to steal over the desire to be stolen from, and every reason to do the opposite. Similarly, the aliens will reply to us that maximizing total happiness is also against their interests, and that they can’t see a reason to systematically favor happiness over a balance of Zeb and Geb.

fully realized in a good will, take on the status of objective goods. They are not intrinsically valuable, but they are objectively valuable in the sense that every rational being has a reason to promote or realize them. For this reason it is our duty to promote the happiness of others-the ends that they choose-and, in general, to make the highest good our end.

#### Consequentialism collapses to autonomy – there is no way to achieve good ends without the ability to choose what ends are good and worth pursuing. Korsgaard 83:

Korsgaard ’83 (Christine M., “Two Distinctions in Goodness,” The Philosophical Review Vol. 92, No. 2 (Apr., 1983), pp. 169-195, JSTOR) OS/Recut Lex AKu \*brackets for gendered language // recut: bws kat 11.4.21

The argument shows how Kant's idea of justification works. It can be read as a kind of regress upon the conditions, starting from an important assumption. The assumption is that when a rational being makes a choice or undertakes an action,[they] he or she supposes the object to be good, and its pursuit to be justified. At least, if there is a categorical imperative there must be objectively good ends, for then there are necessary actions and so necessary ends (G 45-46/427-428 and Doctrine of Virtue 43-44/384-385). In order for there to be any objectively good ends, however, there must be something that is unconditionally good and so can serve as a sufficient condition of their goodness. Kant considers what this might be: it cannot be an object of inclination, for those have only a conditional worth, "for if the inclinations and the needs founded on them did not exist, their object would be without worth" (G 46/428). It cannot be the inclinations themselves because a rational being would rather be free from them. Nor can it be external things, which serve only as means. So, Kant asserts, the unconditionally valuable thing must be "humanity" or "rational nature," which he defines as "the power set to an end" (G 56/437 and DV 51/392). Kant explains that regarding your existence as a rational being as an end in itself is a "subjective principle of human action." By this I understand him to mean that we must regard ourselves as capable of conferring value upon the objects of our choice, the ends that we set, because we must regard our ends as good. But since "every other rational being thinks of his existence by the same rational ground which holds also for myself' (G 47/429), we must regard others as capable of conferring value by reason of their rational choices and so also as ends in themselves. Treating another as an end in itself thus involves making that person's ends as far as possible your own (G 49/430). The ends that are chosen by any rational being, possessed of the humanity or rational nature that is

## Contention 1 – Workers’ Choices

### Subpoint A – Workers are required to have a say in their working conditions

#### Workers have a right to protest bad working conditions – this is the right to strike. All workers are entitled to protest working conditions that they disagree with or did not consent to, because if they weren’t, then employers could simply change the terms and conditions of employment without the say of the worker, thus justifying the enslavement of workers. Independently, this is a reason as to why an unconditional right to strike is necessary to ensure the autonomy of all workers.

#### Further, a right to strike ensures that workers are not subject to the authoritarian rule of their employers. Bahn 19:

Bahn, Kate. August 29, 2019. “The once and future role of strikes in ensuring U.S. worker power.” *Washington Center for Equitable Growth.* Url: <https://equitablegrowth.org/the-once-and-future-role-of-strikes-in-ensuring-u-s-worker-power/> accessed on 11.5.21 by bws kat

The role of monopsony power in the U.S. labor market Monopsony power is a situation in the labor market where individual employers exercise effective control over wage setting rather than wages being set by competitive forces (akin to monopoly power, where a limited number of firms exercise pricing power over their customers.) In a new Equitable Growth working paper by Mark Paul of New College of Florida and Mark Stelzner of Connecticut College, the role of collective action in offsetting employer monopsony power is examined in the context of institutional support for labor. Paul and Stelzner construct an abstract model with the assumption of monopsonistic markets and follow the originator of monopsony theory Joan Robinson’s insight that unions can serve as a countervailing power against employer power. Their model shows that institutional support for unions, such as legislation protecting the right to organize, is necessary for this dynamic process of balancing employers’ monopsony power. In an accompanying column, the two researchers write that they “find that a lack of institutional support will devastate unions’ ability to function as a balance to firms’ monopsony power, potentially with major consequences … In turn, labor market outcomes will be less socially efficient.” In short, policies and enforcement that support collective action such as strikes not only creates benefits for workers directly but also addresses a larger problem of concentrated market power.

#### Even if strikes are not perfect solutions to worker exploitation, an unconditional right to strike is essential first step – it affirms the autonomy of all workers, which is crucial to further radical resistance. Gourevitch 18:

Alex Gourevitch (Assistant Professor of Political Science at Brown University). “The Right to Strike: A Radical View.” American Political Science Review, Volume 112, Issue 4, November 2018, pp. 905 – 917. JDN. https://www.cambridge.org/core/journals/american-political-science-review/article/abs/right-to-strike-a-radical-view/8B521F67E28D4FAE1967B17959620424

There is more than one way to justify the right to strike and, in so doing, to explain the shape that right ought to have. As we shall see, there is the liberal, the social-democratic, and the radical account. Any justification of a right must give an account not just of the interest it protects but of how that right is shaped to protect that interest. In the case of the radical argument for the right to strike, which I will defend against the other two conceptions, the relevant human interest is liberty. Workers have an interest in resisting the oppression of class society by using their collective power to reduce that oppression. Their interest is a liberty interest in a double sense. First, it is an interest in not being oppressed, or in not facing certain kinds of forcing, coercion, and subjection to authority that they shouldn’t have to. Any resistance to those kinds of unjustified limitations of freedom carries with it, at least implicitly, a demand for liberties not yet enjoyed. That is a demand for a control over portions of one’s life that one does not yet enjoy. Second, and consequently, the right to strike is grounded in an interest in using one’s own individual and collective agency to resist—or even overcome— that oppression. The interest in using one’s own agency to resist oppression flows naturally from the demand for liberties not yet enjoyed. After all, that demand for control is in the name of giving proper space to workers’ capacity for self-determination, which is the same capacity that expresses itself in the activity of striking for greater freedom. On this radical view, the right to strike has both an intrinsic and instrumental relation to liberty. It has intrinsic value as an (at least implicit) demand for self-emancipation or the winning of greater liberty through one’s own efforts. It has instrumental value insofar as the strike is on the whole an effective means for resisting the oppressiveness of a class society. For the right to strike to enjoy its proper connection to liberty, workers must have a reasonable chance of carrying out an effective strike, otherwise it would lose its instrumental value as a way of resisting oppression. If prevented from using a reasonable array of effective means, exercising the right to strike would not be a means of reducing oppression and, therefore, strikes would also be of very limited value as acts of self-emancipation. It would not be an instance of workers attempting to use their own capacity for self-determination to increase the control they ought to have over the terms of their daily activity.

#### Recent strikes demonstrate the effectiveness of strikes for protecting workers rights.

**McNicholas and Poydock 20** (Celine McNicholas (Director of Policy and Government Affairs for EPI) and Margaret Poydock (Policy Analyst for EPI). “Workers are striking during the coronavirus: Labor law must be reformed to strengthen this fundamental right.” Economic Policy Institute. 22 June 2020. JDN. https://www.epi.org/blog/thousands‐of‐workers‐have‐ gone‐on‐strike‐during‐the‐coronavirus‐labor‐law‐must‐be‐reformed‐to‐strengthen‐ this‐fundamental‐right/ )

The BLS’s monthly data on work stoppages do not capture any strikes directly related to the coronavirus pandemic. However, it is evident essential workers are going on strike as seen in the recent walkouts organized by Amazon, Instacart, and Target workers as well as the dozens of strikes organized by fast food and delivery workers. Consequently, there is a large gap in knowledge about the true extent of strikes that occur during the coronavirus pandemic and beyond.

**Based on** the very limited **data available**, **the resurgence of strike activity in recent years has given over a million workers an active role in demanding improvements in their pay and working conditions. Essential workers during the coronavirus pandemic are continuing this trend by demanding better pay and safer working conditions from their employers.** However, without comprehensive data, it’s impossible to understand the scope of how many workers are utilizing their fundamental right to strike. This knowl‐ edge gap makes it difficult for policymakers to adequately address the needs for work‐ ers in the United States, and the Bureau of Labor Statistics should be provided funding to gather comprehensive data on worker strikes. But even **with the** limited **knowledge we have, it’s evident that strikes are an effective tool to improve the pay and working conditions of working people**. Therefore, strengthening the right to strike for workers needs to be at the heart of labor law reform going forward.

#### International experts deem the right to strike a human right.

**Garcia 17** (Garcia, Jose. “THE RIGHT TO STRIKE AS A FUNDAMENTAL HUMAN RIGHT: RECOGNITION AND LIMITATIONS IN INTERNATIONAL LAW.” Revista Chilena de Derecho. 2017. Web. October 13, 2021. <https://www.redalyc.org/pdf/1770/177054481008.pdf>.)

**The recognition of the right to strike as a fundamental right in** the context of the ILO **standards** has been the result of the work performed mainly **by** two of its supervisory bodies**: the Committee on Freedom of Association** (a committee of the Governing Body with a tripartite composition) **and the Committee of Experts on the Application of Conventions and Recommendations** (conformed by independent experts appointed by the Governing Body). As Gernigon, Odero and Guido have pointed out4 , both the Committee of Experts and the Committee on Freedom of Association have consistently indicated that there is a fundamental right to strike for workers that emanates from the content of Convention N°87, particularly from its articles 35 and 106. The interpretation given by both Committees is based in the idea, expressed in these articles, that the ILO members are bound to respect and protect the autonomy of employer’s and worker’s organizations whose purpose is to defend and put forward the interests of their members. **The inequality of bargaining power that exists between employers and workers can only be counterbalanced through collective action** and industrial action is the only way in which workers can put pressure on the employers to improve labour conditions. As Bellace points out, **the Committee on Freedom of Association recognized this reality since its earlier days** **and considered that the right to strike was an intrinsic aspect of the principle of Freedom** of Association that **emanated from the ILO’s** Declaration of Philadelphia and **Convention N°87.** In her words, “it is reasonable to conclude that its members believed that a right to strike was implicit in the Convention’s guarantee of freedom of association”7. Hence, this Committee has considered that **the right to strike is “an intrinsic corollary to the right to organize protected by Convention No. 87**” and “one of the **essential means through which workers** and their organizations may **promote** and defend **their** economic and social **interests**”9. A similar conceptualization can be found in the reports of the Committee of Experts. For example, in their 2010 Report on the Application of Conventions and Recommendations10, the Committee referred to the right to strike in the same terms11, remarking the very similar approaches that both bodies have adopted when assessing the position of the right to strike within the ILO standards. **The ILO supervisory system has worked since under the shared understanding that the right to strike is protected by ILO standards**, and there has been a wide consensus about its importance in the context of Freedom of Association and trade union rights. In recent years, however, the ILO forum has been the scenario of a growing polemic regarding the place of the right to strike and the role of the ILO supervisory machinery (particularly the Committee of Experts). The employer’s representatives have questioned in strong terms the very existence of a right to strike and have declared that the Committee of Experts has exceeded its mandate by creating what they see as an overreaching and unlimited right to strike with no warrant in the ILO Conventions. Many of the arguments expressed by the employers are contained in an article written by Alfred Wisskirchen, a former employer spokesperson at the ILO Conference Committee on the Application of Conventions and Recommendations. Most of his article is dedicated to a wider subject: a critique of the state of the ILO’s standard setting and supervisory machinery during the last 30 years of the twentieth century. In the final pages of his piece, however, he mounts a strong and direct critique of the way in which the Committee of Experts has performed its task in recent (and not so recent) years. He claims that the Committee has “formulated a comprehensive corpus of minutely detailed strike law which amounts to a far-reaching, unrestricted freedom to strike”12. This encompasses with one of his general critiques of the ILO’s supervisory machinery: the extent of the mandate of the Committee of Experts. Wisskirchen sees many of the Committee’s actions in recent decades as transgressions of the mandate intended when the ILO Conference created it in 1926.

#### Recognizing RTS as a human right helps workers everywhere.

**Garcia 17** (Garcia, Jose. “THE RIGHT TO STRIKE AS A FUNDAMENTAL HUMAN RIGHT: RECOGNITION AND LIMITATIONS IN INTERNATIONAL LAW.” Revista Chilena de Derecho. 2017. Web. October 13, 2021. <https://www.redalyc.org/pdf/1770/177054481008.pdf>.)

In principle, **the recognition of the right to strike as a fundamental human right is a triumph for the aspirations of workers and** trade **unions around the world. It is the culmination of a long process of struggle that began in the midst of the Industrial Revolution and continued throughout the last two centuries. It began in a moment when worker’s organizations were proscribed and it advanced until Freedom of Association was recognized as one of the foundations of a stable and long lasting peace.** In these pages we have engaged in a legal analysis of one of the most important results of that process: **the recognition of the right to strike as a human right and an essential element of Freedom of Association**. We have followed the arguments that led three important international legal systems to recognize this reality and examined some of the characteristics and limitations of the right to strike as a fundamental human right, all in order to understand what this recognition might mean in practical terms for those who engage in strike action. It is of course an incomplete analysis. This work has been focused on some of the hundreds of items that make up a complex and interesting topic. After this, what can be said about the right to strike and its position as a fundamental human right? As it was pointed out in the introduction, the picture that emerges after analysing the scenario with some detail is a very complex one. At first sight, the situation appears to be clear: each of the three legal systems we have reviewed recognizes in some way that there is a right to strike within the catalogue of human rights they protect. However, a closer look shows that there are some problems. **The long consensus regarding the position of the right to strike in ILO standards, which allowed the supervisory bodies to protect and promote trade union rights in very different realities,** has been replaced with a delicate equilibrium after the 2015 tripartite meeting on the subject. This equilibrium has left behind the paralysis that the 2012 standoff caused in the procedures of the Conference Committee on the Application of Standards, but as the employer’s representatives pointed out, it has left the differences on the approach to the right to strike untouched, despite the joint declaration’s phrasing. The situation in the ECHR context is much more complicated. The bold steps taken in Demir and Enerji were received with optimism, as they gave more substance to the guarantee of trade union rights under article 11 of the Convention, and eventually included the right to strike as a part of the elements protected. The situation changed dramatically after the RMT decision. The ECtHR not only questioned the position of the right to strike as an element of Freedom of Association. Its decision narrowed the ambit where the right could be exercised and departed with the position sustained by the ILO. Since Demir the Court had methodically taken into account the principles set by other international systems in the fi eld of labour law, and particularly those developed by the ILO supervisory bodies. After RMT it has taken positions that differ from the ILO’s approach, despite continued reference to the work of the Committee of Experts and the Committee on Freedom of Association. The European Social Charter appears to be only safe haven for the right to strike among these systems, with a textual recognition and a Committee that is generating a consistent set of principles. The challenges are greater, however, for a system that allows for many forms of “opt-outs” and is still looked as a softer companion of the ECHR

### Subpoint B - Right to Strike Must be Unconditional

#### The only way to maintain human dignity for all people in a society is to recognize an unconditional right to strike. A just government has an obligation to EVERY ONE of its citizens to protect their right to protest unfavorable working conditions. A right to strike that is limited in any way ensures that some workers within a society are denied their ability to protest unfavorable working conditions, which denies dignity and autonomy to those excluded and is incompatible with the obligations of a just government.

#### Furthermore, restrictions on the right to strike prevent many strikes from succeeding, regardless of frequency levels.

**Tucker 13** (Tucker, Eric. “Can Worker Voice Strike Back? Law And The Decline And Uncertain Future Of Strikes.” Osgoode Hall Law School, York University, Research Paper Series. 2013. Web. October 12, 2021. <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1300&context= clpe>.)

There are three dimensions of labour law that are most directly involved in this analysis. First, there is the freedom to strike, which refers to whether and in what circumstances strikes are legally permissible. Second, there is the right to strike, which refers to provisions in the law that protect the exercise of the freedom to strike, such as protection against dismissal or a right to reinstatement. Finally, there is the law of industrial action that determines what actions striking workers can take to make their strike effective. In the section that follows, I offer a brief and preliminary assessment of the ways in which the law regulating strikes has operated as a mediating variable in the countries covered by this project. Canada It is important to note that most collective bargaining is governed by provincial law and so there are many collective bargaining statutes, although at least with private sector all legislation is based on the Wagner Act model, which imposes significant restrictions on the freedom to strike. Most notably, recognition and mid-term strikes are prohibited and replaced by an administrative recognition procedure and binding grievance arbitration respectively. Generally, strikes are only legal after recognition when no collective agreement is in force. But even then, there are procedural requirements that must be met, including completion of a conciliation process and the taking of a strike vote. Unlawful strikes can result in serious penalties for both the union and participating members. Apart from restrictions on the freedom to strike, the law also protects striking workers in two ways. First, it provides that strikers retain their status as employees for the purposes of labour statutes and, second, workers have a right to return to their jobs within a certain time (e.g. six months). Only Quebec and British Columbia ban temporary replacement workers. Finally, the law of picketing has become somewhat less restrictive over the last thirty years or so as some provinces have limited the availability of labour injunctions and the Supreme Court of Canada altered the common law so that secondary action is not per se tortious. The major change to private sector collective bargaining legislation has been the abolition of card-count certifications in most provinces, resulting in a near exclusive reliance on certification elections. While this change does not directly affect the freedom to strike, studies have demonstrated that it has contributed to a decline in union density, which would undermine bargaining strength and make unions more reluctant to strike. Dachis and Hebdon found that the introduction of mandatory secret ballots results in a decrease in strike frequency, but that the effect is weakly statistically significant and so at best would explain only a small part of the decline. More generally, it is fair to conclude that changes to private collective bargaining law have not been a significant cause of the decline in private sector strike activity, but that in the context of less favourable structural conditions private sectors workers are less able to successfully use the limited freedom and right to strike and picket that the law provides.

#### The illegality of certain strikes harms workers in the long-run.

**Press 18** (Press, Alex. “It’s Time To Acknowledge That Strikes Work.” The Washington Post. May 31, 2018. Web. October 12, 2021. <https://www.washingtonpost.com/news/posteverything/wp/2018/05/31/its-time-to- acknowledge-that-strikes-work/>.)

In contrast to the view of political action as limited to, in Brooks’ words, “the tired formula of ‘phone bank, rally, march, go home,’?” striking teachers wrung concessions from politicians who would never have willingly handed them over. They did so out of desperation and at great risk: These strikes were illegal and took place in right-to-work states, meaning, states where unions are prevented from automatically collecting fair-share fees from the workers they represent, allowing workers to “free ride” and draining union coffers in the process. Further, some of these states, such as West Virginia, do not grant collective-bargaining rights to public- sector employees. The illegality of such strikes necessitated meticulous organizing at the level of the rank and file. Illegality is “absolutely an obstacle,” said Bill Fletcher Jr., an author and longtime labor organizer over the phone when asked about the legal status of these strikes. In the case of those states that have seen recent educators’ strikes, illegality raised the risks for those workers who first went on strike, increasing the need for “#55united” — the hashtag West Virginia teachers used to emphasize that all 55 of the state’s counties struck together. Without building allies in the community, Fletcher Jr. said, these strikes could’ve been repressed. After all, while strikes can win huge gains, they can also dangerously fail, for reasons that range from repression to a lack of organization to failure to win over the public. But because teachers prepared, and prepared thoroughly, antilabor laws, while an obstacle, weren’t insurmountable.

# Blocks