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

## FW

**My value is justice,**

**The basis of right and wrong is hinged on mutual agreement around the basic principles that no one could reasonably reject**

**Scanlon, 1998. *What We Owe to Each Other*, Cambridge, MA: Harvard University Press.**

**According to the version of contractualism that I am advancing here our thinking about right and wrong is structured by a different kind of motivation, namely the aim of finding principles that others, insofar as they too have this aim, could not reasonably reject. This gives us a direct reason to be concerned with other people’s points of view: not because we might, for all we know, actually be them, or because we might occupy their position in some other possible world, but in order to find principles that they, as well as we, have reason to accept**

**Reasonability is used here to characterized a thought process in which we agree on the suitability of principles rather than the interests of individuals/ groups**

**Scanlon, 1998. *What We Owe to Each Other*, Cambridge, MA: Harvard University Press.**

**According to my version of contractualism, deciding whether an action is right or wrong requires a substantive judgment on our part about whether certain objections to possible moral principles would be reasonable. In the argument over water rights, for example, our judgment that it would not be unreasonable for the neighbors to demand better terms than the large landowner is offering rejects a substantive judgment about the merits of their claims. It is not a judgment about what would be most likely to advance their interests or to produce agreement in their actual circumstances or in any more idealized situation, but rather a judgment about the suitability of certain principles to serve as the basis of mutual recognition and accommodation.**

**This concept of justifiability as a measure of right and wrong is taken into account in other moral theories but best executed here as justifiability is put at the basis of the theory**

**Scanlon, 1998. *What We Owe to Each Other*, Cambridge, MA: Harvard University Press.**

**The idea that an act is right if and only if it can be justified to others is one that even a non contractualist might accept. 1 Utilitarians, for example, who hold that an act is right only if it would produce a greater balance of happiness than any alternative available to the agent at the time, presumably also believe that an act is justifiable to others just incase it satisfies this utilitarian formula, so they too will hold that an act is right if and only if it is justifiable to others on terms they could not reasonably reject. For utilitarians, however, what makes an action right is having the best consequences; justifiability is merely a conse-quence of this. What is distinctive about my version of contractualism is that it takes the idea of justifiability to be basic in two ways: this idea pro-vides both the normative basis of the morality of right and wrong and the most general characterization of its content. According to contrac-tualism, when we address our minds to a question of right and wrong, what we are trying to decide is, first and foremost, whether certain principles are ones that no one, if suitably motivated, could reasonably reject. In order to make the content of my view clearer I need to say more about the ideas of justifiability and reasonable rejection on which it rests. This is the aim of the present chapter.**

#### Contractualism finds the right to justification, to be a moral process in which coercive forces are limited and human dignity is valued.

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Since I have proposed a specifically contractualist approach to justifying the right to strike here, and since I mean something quite particular by that, it will help prevent misunderstandings to begin with an outline of the general contractualist account of moral right. First of all, then, although I have been and will continue to write of a right to strike, I do so as a shorthand for acts and entitlements that can be justified legitimate moral principles; I do not wish to put any special weight on the proposal to derive rights, specifically. Scanlon has been criticized for failing to sufficiently explain **the connection between justified moral principles—what we owe to each** **other—and rights as entitlements** (see Wenar 2013), and, in response, he has maintained that the question of which justified principles are best captured in the language of rights is not one which goes to the heart of the matter of justification (Scanlon 2013, p. 404). I follow him in thinking that the interesting question is, **in** **this case,[is] whether or not** strike **action is morally justified as a matter of principle,** not whether and how this justification may be best captured in Hohfeldian language. Justified principles are those that satisfy the following negative test: in Scanlon’s version, **an act is morally wrong ‘if its performance** under the circumstance**s would** **be disallowed by any** system of rules for the general **regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement’** (Scanlon 1997, p. 272). That **the agreement** should be ‘unforced’ **excludes not just** **ordinary coercion and threats of coercion, but also compulsions which arise from inferior bargaining positions.** In other words, **the agreement relies on,** as Haberma puts it, **a sincere orientation toward consensus regarding what is right.** Contractualists like Scanlon regard the relevant agreements as hypothetical—as individual moral agents, we are to imagine such discourses and anticipate their outcomes chiefly in light of a degree of pessimism about the empirical prevalence of such a commitment to moral justification (Scanlon 1997, p. 273; also Scanlon 1998, p. 393n5, 395n18; Borman 2015a). Habermas, Forst, and Benhabib, by contrast, all **Insist[ing] on the need for actual discourses as the ground of legitimate norms,** and they each invoke transcendental features of argumentation as such to distinguish genuine and legitimate consensus from cases o manipulation and imposition. Forst’s version centres on the nature of ‘good reasons’, as invoked by Scanlon, which Forst insists must be characterized by generality and reciprocity: in justifying or challenging a moral norm (or a mode of action), no one can make specific claims that she or he denies to others (reciprocity of contents); moreover no one can simply assume that others share his or her perspective, evaluations, convictions, interests, or needs (reciprocity of reasons), such that one would claim, for instance, to speak in the ‘real’ interest of others or in the name of an absolutely indubitable truth beyond the reach of justification. And, finally, it follows that no affected person may be prevented from raising objections and that the reasons that are supposed to legitimate a norm must be such that they can be shared by all persons (generality) (Forst 2011a, pp. 969; also Forst 2011b).Benhabib’s version, like Habermas’, is more strictly proceduralist and is oriented around the formal features of discourse itself, eschewing any attempt to antecedently specify what will be found to be a good reason. The relevant formal features include: the equality of each conversation partner to partake in as well as initiate communication, their symmetrical entitlement t speech acts, and reciprocity of communicative roles: each can question and answer, bring new items to the agenda, and initiate reflection about the rules of discourse itself. These formal preconditions, which themselves require reinterpretation within the discursive

process, impose certain necessary constraints upon the kinds of reasons that will prove acceptable within discourses, but they never can nor should they be required to, provide sufficient grounds for what constitutes ‘good reasons’. (Benhabib 2007, p. 17) The latter must be left to the determination of actual participants engaged in actual discourses. This is in fact an important difference dividing otherwise similar contractualist views from one another, and its roots go down into the question of the nature or purpose of morality itself: while Scanlon regards morality as a question of articulating the standards for legitimate decision-making on the part of the individual agent, Benhabib like Habermas insists that moral discourses play a fundamentally practical, social role in resolving the conflicts, disagreements, misunderstandings, and lack of solidarity that arise when shared norms are lacking or break down. (Benhabib 2007, p. 17; also, Borman 2015a) An intermediate position in this debate is conceivable: although his instrumen- talist view of reason distinguishes his position from those I am interested in her (Nielsen 1989, p. 125), Kai Nielsen’s ‘good reasons’ approach represents such a middle ground. It is worth describing briefl since its apparently paradoxical nature might be thought to characterize non-ideal contractualism as well. Nielsen describes the function of morality as the adjudication and harmonization of conflicts of interest and desire, with the aim of giving all parties as much as possible of whatever it is that each one will want when he is being rational, when he would still want what he wants were he to reflect carefully and when his own wants are constrained by a willingness to treat the rational wants of other human beings in the same way (Nielsen 1989, p. 124). This is more compromise than agreement, as I have mentioned, and reflects an instrumental view of reason. But, in response to objections raised by Michael Lerner, according to whom any advocacy for the reconciliation of conflicting interests in a class society could only be ideological, Nielsen clarifies that the good- reasons approach must be taken as elucidating the normative structure of moral reasoning rather than its operation at present. Indeed, Nielsen admits that, insofar a a fair balancing of interests could only come about between mutually self-interested partners who are roughly equal in power, ‘the conditions which make it possible for morality to function, as I describe it functioning, do not obtain’ (Nielsen 1989, p. 128). Thus, on the one hand, like Scanlon, and at least at present, moral discourses for Nielsen could only be hypothetical; on the other hand, with Habermas, Nielsen believes that moral discourses are supposed to be action-coordinating. Despite my differences with Nielsen, it will be worth bearing this outcome in mind in what follows—that is, the possibility that the function of contractualist morality is impossible to fulfill under current conditions. One final and important point: **Contractualists agree that persons have a right to justification,** as Forst oputs it. **That is, we have a right to demand and be given good reasons when deliberating over matters that affect us in important ways.** But Forst and Benhabib in particular call special attention to the structure of such a right. In Forst’s formulation, **the right to justification** is logically prior to and **entails a right to participate** in those discourses in which substantive rights are ‘constructed’ by determining—as persons in the case of moral rights, or as a specific community in the case of political rights—what entitlements and protections ‘could not be denied to others without violating reciprocity and generality’ (Forst 2011a, p. 969). Inversely, **when individuals** **or groups are treated as though they are ‘invisible’ for the purposes of justification, so that they are subjected to rules or relations ‘without adequate justification’,** they are ‘dominated’ **and their human dignity is violated** (Forst 2011a, p. 967). In a still more extreme case, Forst describes as ‘violence’ not the simple rejection of claims to justification, but the circumvention of the process of justification as a whole which is unilaterally replaced by other means for the coordination of action. **Such violence is** **often concealed by ideological restrictions of the space of reason-giving, which present certain institutions or relations as natural or unalterable** (Forst 2011a, p. 970). What for Forst is a right to justification is for Benhabib—modifying a phrase from Hannah Arendt—a right to have rights. This is, in Benhabib’s account,**[Therefore, it is] a right of every** **human being to be recognized by others as a person entitled to moral respect and legal inclusion.** But she specifies these entitlements as protections for the communicative freedom of individuals (Benhabib 2007, p. 9). Rights-claims, she argues, therefore take the following form: ‘I can justify to you with good reasons that you and I should respect each other’s reciprocal claim to act in certain ways and not to act in others, and to enjoy certain resources and services’ (Benhabib 2007, p. 13). Given this constructivist form, I cannot enjoy rights except insofar as I can justify my rights-claims to you; but that means I must acknowledge your communicative freedom, your right to have rights, which is to say, your right ‘to accept as legitimate only those rules of action of whose validity [you have] been convinced with reasons’ (Benhabib 2007, p. 13). **And this holds reciprocally:** **you cannot enjoy any rights except insofar as you recognize my right to have rights.** second-order or logically prior right to justification or right to have rights will be especially important in the argument that follows.

**The principle of self determination in labor is one that it is not reasonable to object and so is justified by the moral logic**

**The value criterion is consistency with the principle of self determination**

**Prefer it for 3 reasons:**

1. **Contractualism captures a wide range of considerations that are relevant to moral deliberation.**
2. **Contractualism believes the moral importance of promoting well being is always mediated.**
3. **Contractualism does not minimize what is undesirable, instead it considers what principles no-one could reasonably reject.**

**Prefer Contract over util because**

1. **Contractualism does not claim that there is only one rational attitude to have towards value, and contractualism avoids the instability which often plagues rule util**
2. **prefer Contractualism as it can accommodate consequentialist aspects without being a completely consequentialist theory.**
3. **Unlike util, rejecting a principle is not limiting well-being.**

## Util Prempt

#### 1 - Utilitarianism justifies the endless sacrifice of freedom in the name of the “greater good”.

#### Mitchell 15:

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**Extinction is almost always understood against the horizon of survival and the imperative to sustain it – at least for life forms deemed to be of value to humans.** In many cases, this imperative takes the form of deliberate strategies for enforcing existence. Donna Haraway’s influential book When Species Meet devotes considerable attention to the logics, practices and politics of Species Survival Plans. These plans monitor and enforce reproduction amongst ‘endangered’ species, not least by collecting data on populations, genetic profiles and genetic materials to enable selective breeding. **This strategy assumes that all organisms can, should, and can be made to exercise their reproductive capacities in order to resist extinction, and it actively mobilizes members of ‘endangered species’ into this project. In so doing, it helps to entrench norms regarding gender, sexuality and reproductive labour that are deeply entrenched in modern, Western human cultures. Attention to these programmes highlights an important way in which extinction is gendered in dominant scientific and policy frameworks.** Specifically, strategic breeding programmes share in the belief that reproduction is an imperative for those capable of reproducing if ‘the species’ is at risk’. **This belief is directly related to Western norms of the reproductive imperative for women. Indeed, Haraway points out that it is precisely “‘woman’s’ putative self-defining responsibility to ‘the species’ as this singular and typological female is reduced to her reproductive function”.** In a similar sense, within SSPs and other strategies of enforced

#### 2. Util says there’s no act-omission distinction – this means it can’t tell the difference between the murderer and the bystander – it also means that everyone who doesn’t give every bit of their money to charity also has the same moral standing as a murder.

#### 3. Can’t aggregate everyone’s pleasure/pain because it’s all subjective, you can’t make an objective norm out of that, which means it’s incoherent to aggregate.

#### 4. Util type policies are what justified slavery in the first place, four men could enslave rights.

#### 5. Util calc is infinitely regressive, when choosing between policies A and B, the act of calculating itself is a new act C, this means that util acts can never be reduced.

#### 6.We can’t measure the infinite consequences, because any action has a probability of leading to extinction. Can’t measure the consequences which means that we can’t calc util.

#### 7.Rationality isn’t aggregative—

#### A) Whenever we make a decision, we try to step back and make the right one—this is an attempt to satisfy our rational nature, to make the right decision—it wouldn’t make sense, then, to try to maximize rationality. Instead of rationality being something like food that we want, it’s something like hunger that we want to satisfy—you wouldn’t try to maximize hunger just so you could eat more.

#### B) Freedom and rationality aren’t things that can be aggregated. Rationality is just the ability to make decisions, but that doesn’t give it some intrinsic good in the aggregate sense—it just means that we have to respect it on face.

## Contention

#### The right to strike is based on mutual agreement that legitimizes under a contractualist framework unless non-ideal conditions come to justify the means before agreement. Strikes represent the right to self-determination

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My aim in this paper is to explore possible contractualist justifications for the right to strike, a right which has lately come under aggressive assault, from Wisconsin to Ottawa. This is intended as an exercise in non-ideal theory: it explores what justification may be had for the right to strike in our actual social world, the social world of advanced capitalist, formally democratic class societies. By ‘contractu alist,’ I refer to the use of the term in moral theory, as I will explain in the first section below, and neither to the classical social contract tradition in political theory, nor to the various ways ‘contractualism’ is used in the labour relations literature. I intend to take this moral ‘contractualism’ quite broadly so as to include, without much attention to their differences, T.M. Scanlon’s contractualism, Ju¨rgen Habermas’ discourse ethics, Rainer Forst’s ‘right’ to justification, and Seyla Benhabib’s ‘right to have rights’. These authors agree upon the central claim that **legitimate norms are the product of deliberation under some description, and that the subject matter for which agreement is sought is what is right, not what is mutually advantageous (except in those special cases where there is prior agreement that what is right is to maximize mutual advantage).** Insofar as I am looking to explore the justifications available for the strike within this broad approach, I will also make no effort to defend such contractualist arguments against alternatives (either for or against the strike); this would require another paper entirely and, in any case, we need to formulate the relevant contractualist arguments first. The forms of contractualism I have in mind are also and importantly forms of metaethical constructivism: that is, they view norms as arising from agreement among those affected, and so deny the existence of antecedent normative facts. Thus, **if there is a right to strike, it would be because affected parties grant it to one another** (caveats to follow), **and so ‘construct it’ through some rational procedure**. The attempt to combine contractualism with constructivism in this way has been criticised for emptiness or circularity. It is not my aim here to pursue these metaethical questions (see Borman 2015b). But there is an analogous worry about applying contractualist-constructivism (which I will hereafter simply call ‘contractualism’) to **the sorts of non-ideal conditions of which labour relations in class societies are an example: namely that, in point of fact, the affected parties do not reciprocally recognize a right to strike.** One is tempted to say, ‘Well, they should!’ and so to beat a hasty retreat into ideal theory. But the critics may seem to have a point here: **under existing conditions, it appears to be difficult to answer why affected parties should so agree without violating the contractualist-constructivist premise that all norms are the product of agreement.** That is, it looks as though we will need to draw on some antecedent norms which do not originate from or within agreement. This worry plays out somewhat differently, as I will show, depending on whether the relevant agreements are taken to be actual or hypothetical. But in either case, it is one of the central aims of this paper to argue that **this worry is a false one**: **contractualism**, in the constructivist sense I am defending, **can provide a defence of the right to strike precisely in the non-ideal conditions of a class society, and without appeal to anything other than the procedures for rational agreement.** This defence will rest on two interrelated points: **first, that for contractualists** of whatever stripe, **the question raised by the strike is not** so much one of **the case for or against a particular right,** as it at first seems, b**ut of the scope of morality or of reason-giving itself;** **second**, that t**he strike represents the assertion of a second-order moral right to self-determination**, which is to say **a right to justification regarding the conditions of one’s labour.** If I am correct in this, then the historical and contemporary controversy surrounding the strike is best seen as concerning not the plausibility or merit of this assertion taken on its own terms, but the salience in the first place of moral assertion in this particular area of human life. Taking together the two points mentioned above, I will argue that **within a properly understood contractualist framework, the right to strike enjoys** pro tanto or presumptive **legitimacy**.

#### The unilateral control employers impose is contractually illegitimate, justifying the right to strike on the notion to “de-class” employment

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**By striking, workers declare their right to self-determination within economic life, the right to cooperatively determine the rules and conditions of labour which affect them in essential ways, materially and psychologically.** This assertion of a right to justification is activated when normative conflict of some kind arises (as reflected in the list of common demands given earlier). As Don Locke argues in his non contractualist defence of the right to strike, strikers—irrespective of the particular, first-order claims involved (better pay, better hours, etc.)—are thus making, in effect, a certain sort of moral, or quasi-moral, claim: **a strike is not simply a refusal to continue working on the terms currently on offer; it is also, in effect, a claim that those terms are unacceptable** [i.e., unjustified or unjustifiable], **and it is because they are unacceptable that the strikers refuse to accept them.** (Locke 1984, p. 192)6 This is a normative claim: **if it were simply descriptive (‘these terms are unacceptable’), strikers could not legitimately prevent others from coming into take these jobs on those terms** (which would constitute an empirical refutation of the descriptive claim) and, **if that were the case, there would be no right to strike at all but only a right to quit.** **The claim, then, is that no one should perform these jobs under those conditions, even if there are many who for reasons of comparative desperation might consent to do so. The actual act of striking is, therefore, not a punitive boycott aimed strategically at forcing the hand of employers[rather] (and therefore a strategy for reaching a compromise between conflicting interests); it is, according to Locke, an ‘exculpatory boycott,’ in which we refuse to perform an act because it would be wrong (for anyone) to do so** (Locke 1984, p. 193). The strike is therefore one salvo in a process aimed at reaching an agreement regarding justified conditions (and this, whether or not it is pursued in tandem with organized collective bargaining). Of course, **workers can be unjustified in their particular or first-order assertions and demands; this i[n] no way alters the fact that, whatever the content of those demands,** the making-of-them implies a second-order claim to a right to self determination which, **like the right to freedom of expression, protects even its wrong-headed use.** This second-order claim can be taken both as a targeted complaint against a particular employer and, as it has been historically, as a protest against the structural domination of the capitalist labour market. From the point of view of the law within liberal states and of (the relevant sort of) large employers, on the other hand, there is no right on the part of workers to self determination in labour (for an excellent defence of this position, see Anderson 2015). Consequently, strikes are seen as assertions of interest, to be evaluated along strategic lines: as the political economists taught, and as employers historically argued, the strike is simply a strategic attempt ‘to test the state of the market for labour’ (Marfarlane 1981, p. 46). The employers’ lockout and the employees’ strike are thus not symmetrical: the former is not an attempt to insist that employees be receptive to good reasons understood in contractualist terms; it is an assertion of power, a reminder of the employers’ legally enshrined unilateral control over the conditions of labour and access to the means of production (for agreement on the asymmetry, see Macfarlane 1981, pp. 46, 76–77). I suspect that this judgment will strike many readers as polemical and perhaps idealizing, so let me say a little more about why I think it justified. First of all, it is a judgment about the structural position of large employers and of the government as shaped by existing law and by political- and economic-class relationships. **No doubt there may still be some** Frederick Engels or Robert Owen **out there who voluntarily attempt**s **to hold** his **structural privilege in abeyance (just as some fictional union might voluntarily accept a contract that included unilateral determination of conditions by their employer); but not only are such cases obviously exceptional, to insist upon their relevance is either to deny the significance of the legal and economic structuring of employment relations** (for instance, investor and share holder agreements that make prioritizing profit legally binding), or simply to miss the forest for the trees. Secondly, **it is** admittedly **easy to imagine an employer** attempting to defend his position in apparently moral terms and so **denying the asymmetry I have claimed: ‘I have a moral right to dispose over my private property as I deem fit’ he might say** (and he did say, historically), ‘**and so also to impose terms upon those who seek access to it**.’ Such an argument is demonstrably without merit: **the employer cannot reasonably claim a unilateral right to determine the working conditions of other people as a consequence of his or her own self determination.**7 But that is not the real point here, in any case: the point is that **even attempting to legitimize this argument would, according to contractualism, require the employer to concede that it is only justified if it is agreed to by all those affected on the basis of generally acceptable reasons. And that concession is fundamentally incompatible with the unilateral nature of the declared right: he might as well say, ‘I’ll command you, if you’ll agree’. To put the same point differently: for the contractualist, there can be no unilaterally declared rights; and so the employer here is abusing the language of rights and is not, after all, making a rights claim which is symmetrical to the claim made by the striking worker.** Finally, one might object that nothing in contractualism stipulates that the relevant normative agreement must take place at the level of the individual firm: we might instead have a contractualist justification for a system of self-interested bargaining under which our employer might indeed enjoy the entitlements to which he lays claim. The employer’s lockout would in that case remain an act of power, but so too would the worker’s strike be. It is quite true that we can imagine such a possibility consistent with some kind of contractualism. There are even some indications that Habermas, in his later work, is attracted to a similar view. But so much the worse for Habermas: neither is it the case that the current organization of labour relations is the product of any such agreement—to the contrary, it is transparently the result of force—nor is it even conceivable that workers could have hypothetically and reasonably agreed to a system of self-interested bargaining which is premised on such unequal power. This possibility, then, is pure ideal theory, in the worst possible sense. To summarize: **the conflict between labour and capital and government** which is made manifest in a strike is not located at the first-order level where a specific schedule of putative rights is to be justified or constrained; instead, it **takes place at the more fundamental level where the right to have rights** (in this domain), or the salience of normative justification, **is itself contested.** In the strike, a demand for justification is confronted with (often, is inspired by) a refusal to justify: implicit or explicit (second-order) moral claims collide with (unjustified) norm-excluding assertions of interest. If this characterization is correct, then non-instrumental contractualism might appear to have advanced no farther than Nielsen, when he awkwardly concludes that the conditions are not yet right for morality. **Although agreements here concern what is right, contractualists** do not exclude consideration of existing interest positions: to the contrary, they **argue in one form or another that a norm is to be judged legitimate if it can be reasonably accepted from the point of view of all affected,** taking into account the effects the general observance of the norm could be anticipated to have on their interests (Habermas 1990, p. 65). But if this is so, then the present prospects for justifying a right to strike might be thought bleak indeed. As Nielsen observed, **the recognition of such a right** is very much in contradiction to the existing interests of employers, so that a consensus on this point ‘**would only be possible if the capitalists** generally—and not just in isolated instances [ala` Engels and Owen, above]—would **in the interests of fairness and humaneness de-class themselves voluntarily.** But,’ Nielsen sagely concludes, ‘it is an idle dream to expect this to happen’ (Nielsen 1989, p. 127). Prima facie, given the difficulty just described, hypothetical-agreement-**contractualism might seem to have an important advantage over** its rival: namely, **its willingness to declare that some interests—such as** the interest in **maintaining positions of asymmetrical power—are not legitimate** (Scanlon 1997, p. 278). But for the actual-agreement contractualist, there are two problems with this response. First, it is not clear that there is a defensible point of view from which we are able to distinguish unilaterally and conclusively between legitimate and illegitimate interests on someone else’s behalf—hence Forst’s prohibition of such claims or, better, ‘diagnoses’. Second, even if I am able to carry through the argument that the interests standing in the way of justifying a right to strike—which do so by blocking the communicative orientation or a presupposed right to self-determination in the first place—are such that they may be ‘reasonably rejected’, it is not clear to the actual-agreement contractualist (a position influenced by pragmatism) what the good would be of such a unilateral defence. Typically, the motivational significance of deontological justification is to deprive the would-be violator of rights of all legitimate reasons for their actions (for instance, by proving that there can be no good reason for cheating). But in the case at hand, depriving opponents of their ability to justify their refusal to recognize rights is pointless, since that refusal takes the form of a refusal of justification itself. Put differently: we cannot leap to the question of whether employers would be unreasonable to reject the right to strike, since we must first deal with the question of what types of reasons or considerations are relevant and it is here that the disagreement is stalled. Because the conflict occurs at the fundamental level where the types of reasons that are salient is itself in dispute, the actual-agreement approach seems to fare hardly better: the project of justification as it is described by Forst and Benhabib cannot get off the ground. **Workers, by making some purportedly legitimate first order demand, simultaneously assert their right to have rights in the domain of labour; the law and employers refuse to take up that claim in a communicative attitude and insist instead on a compromise-orientation framed by considerations of relative power. Because existing relations of power are so asymmetrical, employers are able today—and at the level of the development of law, have historically been able—to force the orientation toward compromise upon their interlocutors**. Of course, the first-order move on the part of employers implies a second-order commitment that the economy operates as a ‘norm-free’ or ‘justification-free’ sphere of the play of interests, money, and power, a commitment which itself calls for justification. But the impasse is simply repeated at the second-order level: as I’ve already argued, **there is no genuine effort (nor was there historically) to normatively justify this view in terms acceptable to workers, an effort which would require taking up communicatively, even if critically, the moral-normative claims of workers and so accepting (by presupposition) their right to have rights**. Instead, as the dissenting Justices in Saskatchewan continued to argue, the economy is to be regarded as a ‘delicate’, technical system in which competing interest are in a complex balance; the state must have the ‘flexibility’ to intervene as the system requires and because of this the Court, even when faced with a Charter challenge, must ‘demonstrate deference in the field of labour relations’ apparently irrespective of the force of reason (Saskatchewan 2015, paras. 107 and 114).

#### Unlike the unique rights claims of worker demands the act of striking should be examined as a right to self determination, one that should be viewed as legitimate in the workplace

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**The demands** which have in fact been **at the heart of labour struggles are,** of course, **various** and depend to some extent on context. But the most common include not just a ‘living’ wage (originally, a ‘family’ wage), but a fair wage structure, ‘decent’ or ‘human’ treatment, some say in the implementation and uses of labour-replacing technology and in the distribution of burdens that arise when cuts are unavoidable, worker participation in grievance resolution, and some responsibility for determining safe working conditions.4 **If workers indeed have a rights-claim to any of these things, it is neither a right of association nor is it clearly derivable from such a right. Instead, rights to collective bargaining, to strike in response to unjust conditions, and (distinctly) to strike as a means of making bargaining effective—if there are indeed such rights, they are rights to self determination, rights to be subjected only to those regulations of which one can regard oneself as author and which one can obey because—**from the perspective of-3 For a sophisticated attempt to ‘derive’ the right to strike from the right to freedom of association, see Leader (2010) and Leader (1992). Leader’s derivation justifies only a ‘qualified’ version of the right to strike: because strike activity has a coercive element that intrudes on the freedom of others, he believes that strikes can only be justified when they are undertaken for ‘appropriate reasons.’ But that means that what really justifies the right in such cases is not, after all, the right to freedom of association, but whatever are the reasons that identify the particular strike as appropriately motivated.4 On the German Workers’ Movement see Moore (1978); see also Thompson (1966), Montgomery (1987), and Lambert (2005). Lambert notes that unsuccessful efforts were made early in the American labour movement to defend the right to strike as a First Amendment right (of expression), and also as protected by the Thirteenth Amendment’s prohibition of involuntary labour. Indeed, Lambert himself defends the proposal to constitutionalize the right to strike through an expanded understanding of the Thirteenth Amendment and the connection between citizenship and free labour. He roots the relevant conception of citizenship in a substantive view of civic republicanism according to which rights to strike are ‘collective rights’ (2005, p. 192), a move I think unnecessary and, for reasons I cannot go into here (but which involve familiar criticisms of the idea of group rights), unattractive. -their impact on the interests of those affected and from the perspective of consistency with important normative convictions—they are right.5 As an interpretation of the history of labour rights-claims, this does not stand in need of philosophical defence: the interesting philosophical questions concern how such claims might be grounded. But allow me to note how, beyond doing greater justice to the actual history and demands of labour, such an interpretation easily resolves some of the difficulties of the associational approach, described above. **Assuming** for the moment **that I have a right to self-determination within economic life, such a right would** clearly **be violated should an employer replace me with another worker in the event that I attempt to actually exercise my self-determination rights. This would be analogous to a government deporting or at least unilaterally removing some citizens from their own electoral district, should those citizens attempt to exercise their voting rights in ways or in support of causes of which the government does not approve. More interestingly, we could then say without embarrassment that, although one has a right to self-determination, one is not obligated to exercise that right. On the other hand, one would no more have the right to opt out of union participation in a unionized workplace, or to opt out of the regulations that result from the participation of one’s union compatriots, than one presently has the right to opt out of obeying the laws passed by a democratically elected government for whom one did not oneself vote. In both cases, the caveat is that the decision-procedures must themselves be democratically open and legitimate.**

1. **The assertion that there is a right to self determination implies that alternatives exist but due to the fact that we exist in a non ideal class society the right to strike is justified**

### AT Hostage Holding

Analytics:

AT University workers:

Students benefit most when their teachers are fully present, well-rested, and are excited to work in the environment there is. These factors lay CONTINGENT on teachers demanding fair working conditions, fair hours, and fair pay and ensuring the environment they teach in benefits them and in essence benefits students. Prioritizing HUMANE conditions for teachers including environment, pay, and equality needs to be

**Strikes play a critical role in building a robust economy for *all* and rebuilding a strong middle class**

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**The right of workers to organize and bargain with their employer benefits all Mainers. Collective bargaining leads to better wages, safer workplaces, and a fairer and more robust economy for everyone — not just union members. The right to strike is critical to collective organizing and bargaining. Without it, Maine’s public employees are unable to negotiate on a level playing field.** Maine’s Legislature is considering a bill that would give public-sector workers the right to strike. MECEP supports the legislation, and is urging legislators to enact it. **The right to strike would enable fairer negotiations between public workers and the government. All of us have reason to support that outcome. Research shows that union negotiations set the bar for working conditions with other employers. And as the largest employer in Maine, the state’s treatment of its workers has a big impact on working conditions in the private sector.** **Unions support a fairer economy. Periods of high union membership are associated with lower levels of income inequality, both nationally and in Maine. Strong unions, including public-sector unions, have a critical role to play in rebuilding a strong middle class.**

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#### “1% doctrine” makes us bad policymakers creating a policy freeze

**Meskill 9** (David, professor at Colorado School of Minds and PhD from Harvard, “The "One Percent Doctrine" and Environmental Faith,” Dec 9, http://davidmeskill.blogspot.com/2009/12/one-percent-doctrine-and-environmental.html)

Tom Friedman's piece today in the Times on the environment (http://www.nytimes.com/2009/12/09/opinion/09friedman.html?\_r=1) is one of the flimsiest pieces by a major columnist that I can remember ever reading. He applies Cheney's "one percent doctrine" (which is similar to the environmentalists' "precautionary principle") to the risk of environmental armageddon. But this doctrine is both intellectually **incoherent** and practically irrelevant. It is intellectually incoherent because it cannot be applied consistently in a world with many potential disaster scenarios. In addition to the global-warming risk, there's also the asteroid-hitting-the-earth risk, the terrorists-with-nuclear-weapons risk (Cheney's original scenario), the super-duper-pandemic risk, etc. Since each of these risks, on the "one percent doctrine," would deserve all of our attention, we cannot address all of them simultaneously. That is, **even within the one-percent mentality, we'd have to begin prioritizing**, making choices and trade-offs. But why then should we only make these trade-offs between responses to disaster scenarios? Why not also choose between them and other, much more cotidien, things we value? Why treat the unlikely but cataclysmic event as somehow fundamentally different, something that cannot be integrated into all the other calculations we make? And in fact, this is how we behave all the time.

and the prevention, alleviation, or cure of disease She's interested in a career in medicine. b: the branch of medicine concerned with the nonsurgical treatment of disease 3: a substance (such as a drug or potion) used to treat something other than disease 4: an object held in traditional American Indian belief to give control over natural or magical forces