## FW – Standard

#### The standard is consistency with a Kantian system of equal and outer freedom:

#### Agency is constitutive and inescapable since to engage in anything one must engage in agency. Even when agents attempt to assess whether they should participate as agents, they are closed under the operation of reflective rational assessment. Thus, agents must be able to pursue their ends independent of the choices of others or else their reasoning wouldn’t produce an action and wouldn’t be practical.

#### That justifies universalizable ends

#### absent universal ethics morality becomes arbitrary and fails to guide action, making ethics useless

#### a priori principles like reason apply to everyone since they are independent of human experience and

#### any non-universalizable norm justifies someone’s ability to impede on your ends i.e. if I want to eat ice cream, I must recognize that others may affect my pursuit of that end and demand the value of my end be recognized by others. This also makes universalizability a side-constraint on ends-based frameworks.

#### It’s impossible to will a violation of freedom since deciding to do would will incompatible ends since it logically entails willing a violation of your own freedom. Constraints are necessary to retain the value of freedom which implies that one cannot hinder the freedom of others.

#### To clarify:

#### [1] The standard evaluates actions based upon their intrinsic nature, not foreseen consequences:

#### [A] To account for all foreseen impacts would prevent action because individuals would become morally culpable for all actions and states of affairs not just those that factor into the will

#### [B] Induction is circular because it relies on the assumption that nature will hold uniform and we could only reach that conclusion through inductive reasoning based on observation of past events and

#### [C] Prediction is impossible. Any action can lead to a domino effect that can have disastrous impacts in the end. For example, if I drop a pen, it could land on a Faultline triggering an earthquake.

#### Prefer the standard:

#### [1] Performativity—freedom is the key to the process of justification of arguments. Willing that we should abide by their ethical theory presupposes that we own ourselves in the first place. Thus, it is logically incoherent to justify a standard without first willing that we can pursue ends free from others.

## 1AC – Contention

#### I affirm; A just government ought to recognize an unconditional right of workers to strike.

#### [1] Right to Strike defends liberty for workers to both set and pursue their own ends and resist coercion from others, Gourevitch ’18:

Gourevitch, Alex. “A Radical Defense of the Right to Strike.” *Jacobin* 2018. https://jacobinmag.com/2018/07/right-to-strike-freedom-civil-liberties-oppression

Workers have an interest in resisting the oppression of class society by using their collective power to reduce, or even overcome, that oppression. Their interest is a liberty interest in a double sense. First, resistance to that class-based oppression carries with it, at least implicitly, a demand for freedoms not yet enjoyed. A higher wage expands workers’ freedom of choice. Expanded labor rights increase workers’ collective freedom to influence the terms of employment. Whatever the concrete set of issues, workers’ strike demands are always also a demand for control over portions of one’s life that they do not yet enjoy. 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. Still, the question remains: why should the right to strike be given moral priority over other basic liberties? The reason is not just that liberal capitalism produces economic oppression but that the economic oppression that workers face is in part created and sustained by the very economic and civil liberties that liberal capitalism cherishes. Workers find themselves oppressed *because* of the way property rights, freedom of contract, corporate authority, and tax and labor law operate. Deeming these liberties inviolable doesn’t foster less oppressive, exploitative outcomes, as its defenders insist — quite the opposite. The right to strike has a stronger claim to be protecting a zone of activity that serves the aims of justice itself — coercing people into relations of less oppressive social cooperation. Simply put, to argue for the right to strike is to prioritize democratic freedoms over property rights.

#### [2] The right to strike is consistent with negative rights – otherwise it requires direct government intervention to break the negotiation process that is already skewed towards employers, Sheppard ’96-takes out the third point:

Terry Sheppard, "Liberalism and the Charter: Freedom of Association and the Right to Strike" (1996) 5 Dal J Leg Stud 117. Yoaks

The simplest way to differentiate these two concepts of rights and freedoms, which are often taken as synonymous, is to say that a right is a right to something while a freedom is a freedom from something, usually government interference. The question that is raised here is whether striking is a freedom or a right.55 The distinction is important because the liberal will only support the negative conception of non-interference but not the positive right to formulation.56 What are the union members being given when they exercise their right to strike? Some would answer that they are being given higher wages, better benefits or whatever else is sought by striking. If this is the case, then it is untrue that workers have a right to any of these things. The liberal does not allow that anyone has a right to a particular wage for a specific job. Those philosophers who have protested the supply and demand determination of prices and wages have created various schemes for an objective calculation of wages and prices. Marx, for example, believed that each person should be given a wage according to their need. Liberals deny these claims and argue that the only price or wage is what the market will bear. But this is not what unions are asserting when they postulate a right to strike. There is no set wage or benefits package that is morally justifiable outside the turbulent give and take of the free market. In contrast to socialists, liberals do not believe that one end result is any more just than another. As long as the rules of the game are just, the results will be just. This is how liberals justify the often severe inequality present in a liberal society and attack socialists for wanting to change the outcome. The analogy that is often used focuses upon the rules of a game. It would make little sense to criticize the score of a hockey game even if the home team is defeated soundly. As long as all the rules apply equally to both teams, the final score is just. Only if one team were allowed to be offside and the other not would there be cause to question the outcome of the game. It does not matter that one team is better and stronger than the other team. Such is the case with labour negotiations. Liberals cannot complain that a union receives too much in labour negotiations simply because it has the bargaining power to exact a generous contract. Likewise, socialists cannot complain if the union failed to have its demands met. What the unions are really seeking is the right to enter into the labour negotiation process without the fear of the state's coercive powers being used against them. It is a freedom they seek, the same freedom liberals seek for all individuals-the freedom from government interference. The right to strike is only a right in the sense that unions have the right to enter into labour negotiations free from government intervention. In the same sense, freedom of religion is a right to worship free of state involvement. So the right to strike is really the freedom to strike. The argument has been made that if the government is kept out of the labour field by providing unions with a constitutionally protected freedom to strike, the balance of power would be unfairly changed in favour of the unions. Mcintyre]. makes the point when he writes: To intervene in that dynamic [i.e. that of labour negotiations] ... by implying constitutional protection for a right to strike would, in my view, give to one of the contending forces an economic weapon removed from and made immune, subject to s. l, to legislative control which could go far towards freezing the development of labour relations and curtailing the process of evolution necessary to meet the changing circumstances of a modern society in a modern world.57 Mcintyre J. believes that in dismissing the case he is leaving the situation as it was before with the power structure more or less equal. After all, he is not taking the freedom to strike away from unions but merely allowing the legislatures to regulate this freedom as they see fit. Unions can still legally strike in the same manner as they always could. The fact that some unions did strike, and strike successfully, does not mean that unions had the legal freedom to strike. Even after this decision, some unions will still strike. The conclusion that the freedom to strike is not compromised because the government allows some strikes to go on is a non sequitur. A totalitarian regime may allow certain religions to practice but ban all others. Could this regime be said to have freedom of religion? What the Supreme Court did in failing to recognize a constitutional freedom to strike was to allow the government to step into any labour dispute and order the union back to work, which, in effect, enervates the freedom to strike. Mcintyre J. believes that in denying unions the freedom to strike he was remaining impartial in the field of labour relations. In fact, he believes that if unions were granted this freedom, he would be "freezing" the "process of evolution" by giving unions an unfair advantage. In its present form, the labour negotiation process is generally to the advantage of the employer. Obviously, some unions have more bargaining power than others. However, this power rarely exceeds that of their employer. For many reasons, unions are reluctant to launch a strike and once they do strike, there are pressures on a union to settle quickly. First, as Smith pointed out, the effects of a labour dispute are more immediate to the workers than to management: A landowner, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, a few could subsist a month, and scarce any a year without employment. In the long-run the workman may be as necessary to his master as his master is to him; but the necessity is not so immediate. [my emphasis]. 58 Even farther removed are the stockholders of those companies that are publicly traded. Secondly, many companies will have a reserve of their product on hand, especially if they have anticipated labour trouble, which will see them through the initial strike period. Workers, on the other hand, may have limited savings but even if they do, they will reluctantly dip into their life savings or their child's college fund, certainly more reluctantly than the company will use up its surplus stock. Also, depending on the provincial legislation and the union contract, it may be possible for the company to bring in replacement workers while the strikers must report for picket duty each day. Where replacement workers cannot be used, some companies can get by for a short time by using management to run the factory. Often, union workers are restricted from finding a temporary job during the strike and even when this is permissible, the hopes of finding an interim position are limited. A strike may involve thousands of workers, each of them feeling the effects of the work stoppage differently. This is why it is very difficult, even in a small union, to maintain cohesion, while the employer can more easily offer a united front. It is difficult to maintain that the Supreme Court's decision is neutral. The government only rarely intervenes on behalf of the unions. None of Canada's major political parties have a great track record on protecting unions.

#### [3] Right to strike ensures a process of collective bargaining – absent a right to strike it would literally force workers to work against their will, violating freedom, Croucher ’11:

Croucher, Richard, Mark Kely, and Lilian Miles. "A Rawlsian basis for core labor rights." *Comp. Lab. L. & Pol'y J.* 33 (2011): 297. Yoaks

There is another right for us to address here under the first principle. Even the right to bargain collectively as asserted by the ILO is, taken in isolation, a hollow right. It is necessary to have the possibility of recourse to industrial action in some form to back one’s bargaining position in order for a right to bargain to be substantive. If it is illegal for workers to take any action opposing an employer’s interests, then the right to bargain is meaningless, since the employer is free to ignore workers’ attempts to negotiate. We therefore must consider not only the rights to organise and bargain collectively, but also the right of labour to act collectively. The paradigmatic form of such a right of labour, the one most often discussed, is the right to strike, though other forms of industrial action exist. A right to strike is often mooted and has been seriously considered by the ILO for adoption as a declared right, though the ILO has not heretofore put it forward as a core right in the way it has other rights. That the ILO should be relatively conservative in asserting the rights of labour is unsurprising, given its tripartite structure and diplomatic position. However, the ILO has in various places outside of its most fundamental documents acknowledged that the right to bargain collectively implies a right to strike.39 The right to strike appears as a special and controversial case, then, but we argue that from a rights perspective it is a simple, fundamental freedom. The right to conduct industrial action is in effect that to withdraw their labour in some way (quitting, striking, going slow) unless collective demands are met. As individuals, every worker, if they are not a slave (and slavery is explicitly not permitted under Rawls’s first principle) has a right to withdraw their own labour, and might of course threaten this in individual negotiations with their employer. Effectively, what occurs in industrial action is a pooling of individual rights into collective rights, via the individual freedom to associate with our peers, and in this respect we may still discuss these collective rights qua individual rights under Rawls’s first principle of justice. That is, individuals may be said to have an individual right to join in collective industrial action to improve their conditions. Of course, it will be argued that there is no right to strike if it involves a breach of contract. However, no contract can literally force labour – if it did that, it would breach the right to freedom from slavery. Rather, it can only schedule penalties, typically financial, where labour is not performed. In effect, as long as the freedom to contract is limited by the right to freedom from slavery, there is an implied freedom to strike. Thus, it is because of the very lack of complete freedom to make contracts that prevents us having a primary right to bargain that we do have a primary freedom to strike. We cannot, according to Rawls, sign away our basic freedom to refuse to do any particular job.40 Of course, a complete ban on bargaining would make striking pointless. We can say we have a fundamental right to strike, but that we won’t want to exercise it unless we also have a right to bargain. And we will now argue that there a substantive right to bargain collectively is assured under the second principle of justice.

#### [4] Absent a right to strike, employers use workers as a mere means to an end because they give workers little say in the process of negotiating employment conditions which treats them as passive tools for the use of profit, a right to strike ensures that workers give continual meaningful consent to the employment relationship without threat of coercion

#### [5] Strikes prevent workers from being used as a means

**Lofaso 17** Anne Marie Lofaso, Workers’ Rights as Natural Human Rights, 71 U. Miami L. Rev. 565 (2017) Available at: https://repository.law.miami.edu/umlr/vol71/iss3/3 [Anne Marie Lofaso is Associate Dean for Faculty Research and Development and a professor at the West Virginia University College of Law. In 2010, she was named WVU College of Law Professor of the Year.]

It is the categorical imperative’s second formulation, known as the principle of ends, the principle of dignity, or the humanity principle, where Kant seems to add something more.202 Kant’s humanity principle tells us to treat people as if each person has intrinsic value simply because each person is human: “Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as an end and never merely as a means.”203 The humanity principle forbids us to act in ways that exploit human beings or at least in ways that merely exploit human beings.204 Presumably, hiring workers per se does not violate the CI even though the employer uses its workers in furtherance of its purposes. The moral question inherent in a natural human rights approach to workers’ rights is whether these workers are being used merely as a means. Those interested in workers’ rights must determine whether, as a matter of fact (as opposed to a matter of law), workers are actually being used in an exploitative manner. This is essentially an empirical assessment of the moral claim: Are institutions, which are designed to protect workers, doing their job? It is also a legal strategy for developing positive labor standards, which reflect a particular conception of human dignity and autonomy while minimizing the impact of state and business coercion of workers.205 This particular formulation of the CI further and most clearly shows how the CI is in tension with political (or even economic) utilitarianism, by which majority rule governs and the ends justify the means.206 Morality requires that when people act we consider the humanity of each person and the effect of our actions on others’ humanity.

#### [6] Strikes are an omission of action

**Benjamin 78** Walter Benjamin, On Violence, Reflections: Essays, Aphorisms, Autobiographical Writings [Walter Bendix Schönflies Benjamin was a German Jewish philosopher, cultural critic and essayist]

This is above all the case in the class struggle, in the form of the workers' guaranteed right to strike. Organized labor is, apart from the state, probably today the only legal subject en­titled to exercise violence. Against this view there is certainly the objection that an omission of actions, a nonaction, which a strike really is, cannot be described as violence. Such a consideration doubtless made it easier for a state power to conceive the right to strike, once this was no longer avoidable. But its truth is not unconditional, and therefore not unrestricted. It is true that the omission of an action, or service, where it amounts simply to a "severing of relations," can be an entirely nonviolent, pure means. And as in the view of the state, or the law, the right to strike conceded to labor is certainly not a right to exercise violence but, rather, to escape from a violence indirectly exercised by the employer, strikes conforming to this may undoubtedly occur from time to time and involve only a "withdrawal" or "estrangement" from the employer. The mo­ment of violence, however, is necessarily introduced, in the form of extortion, into such an omission, if it takes place in the context of a conscious readiness to resume the suspended action under certain circumstances that either have nothing whatever to do with this action or only superficially modify it. Understood in this way, the right to strike constitutes in the view of labor, which is opposed to that of the state, the right to use force in attaining certain ends. The antithesis between the two conceptions emerges in all its bitterness in face of a revolu­tionary general strike. In this, labor will always appeal to its right to strike, and the state will call this appeal an abuse, since the right to strike was not "so intended," and take emer­gency measures.