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#### The right to strike is a dangerous distraction that prevents the labor movement from challenging systems at the root cause of class inequality and that make it structurally impossible for legal institutions to protect workers. Empirically “right to strike” legislation hamstrings actual strikes via circumventive policies that jail strikers for engaging in theft, violence, etc while allowing for a façade of acceptance and forcing union representation, wages, and economic equality to plummet. The AFF results in scattered, ineffective, and “respectable” strikes and labor disputes re-routed towards legal arbitration while increased legal incorporation results in more tools for the elite to constrain the labor movement -- turns case and kills workers’ movement writ large. Vote NEG for an alternative that affirms a “direct endorsement of militancy and a turn away from the law and instead towards a political program that might advance the interests of the working class regardless of what the law might hold”

White 18 (Ahmed White – Nicholaus Rosenbaum Professor of Law @ University of Colorado Law School, “Its Own Dubious Battle: The Impossible Defense of an Effective Right to Strike”, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2369&context=articles , 2018, pgs. 1065-1073, EmmieeM)

One of the most important statutes ever enacted, the National Labor Relations Act envisaged the right to strike as the centerpiece of a system of labor law whose central aims included dramatically diminishing the pervasive exploitation and steep inequality that are endemic to modern capitalism. These goals have never been more relevant. But they have proved difficult to realize via the labor law, in large part because an effective right to strike has long been elusive, undermined by courts, Congress, the NLRB, and powerful elements of the business community. Recognizing this, labor scholars have made the restoration of the right to strike a cornerstone of labor law scholarship. Authorities in the field have developed an impressive literature that stresses the importance of strikes and strongly criticizes the arguments that judges, legislators, and others have used to justify their degradation of the right to strike. But this literature has developed without its authors ever answering a fundamental question, which is whether an effective right to strike is a viable aspiration in the first place. This Article takes up this question. It documents the crucial role that strikes have played in building the labor movement, legitimating the labor law itself, and indeed validating the New Deal and, with this, the modern administrative state; and it confirms the integral role that strikes play in contesting the corrosive power capitalism accords employers over the workplace and the spoils of production. But this Article also shows how the strikes that were effective in these crucial ways were not conventional strikes, limited to the simple withholding of labor and the advertisement of workers’ grievances. Instead, they inevitably embraced disorderly, coercive tactics like mass picketing and sit-down strikes to a degree that suggests that tactics such as these are indeed essential if strikes are to be effective. Yet strikes that have featured these tactics have never enjoyed any legitimacy beyond the ranks of labor, radical activists, and academic sympathizers. Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities. From this vantage, it becomes clear that an effective right to strike is not only an impossible distraction but a dangerous fantasy that prevents labor’s champions from confronting the broader, sobering truths that this country’s legal and political system are, at root, anathema to a truly viable system of labor rights and that labor’s salvation must be sought elsewhere.

INTRODUCTION

“They say ‘you got a right to strike but you can’t picket,’ an’ they know a strike won’t work without picket-in’.”1 This is the angry lament of Mac McLeod, a central character in John Steinbeck’s 1936 novel, In Dubious Battle, delivered just after Mac and fellow unionists were enjoined by a carload of heavily-armed police “to keep order.”2 “You can march as long as you don’t block traffic,” said the head cop, “but you are not going to interfere with anybody. Get that?”3

Recently adapted to film in a movie that is notably long on stars but short on distribution,4 the novel is considered one of Steinbeck’s finest.5 It is also perhaps the most powerful depiction of a labor strike in American literature. A bitter reflection on the intense interpersonal conflicts, moral dilemmas, and political impasses that are central to labor struggles, and based on the author’s acquaintances with workers and organizers in the region, the book tells the tragic story of a fruitpickers strike led by radicals in Depression-era California.6 In Dubious Battle broaches a set of crucial issues, which are seldom discussed anymore, concerning the nature of strikes and the acceptable limits of class struggle and workers’ protests in liberal society.7

For much of this country’s post-Civil War history, “hitting the bricks” was a way for workers to try to push back against capitalist employers. Sometimes the strikers succeeded, gaining union recognition and better working conditions. But often enough, their impertinence was repaid with arrests, beatings, and blacklisting; and the strikes ended in failure, sometimes with blood pooled on the streets and soaked into the dirt, as in Steinbeck’s story. Hundreds, possibly thousands lost their lives8 —one can only roughly estimate the numbers, so commonplace and prosaic were these practices in the late nineteenth and early twentieth centuries. Nevertheless, excluding the years 1906 through 1913, for which there are no records, between 1881 and 1935, the year Congress enacted the National Labor Relations Act (or Wagner Act, in its early form), there were in the neighborhood of 80,000 strikes in America, involving about 30 million workers.9 Despite all the dangers and the likelihood that their efforts would prove futile, workers in these millions downed the tools and picketed, convinced that doing so was not only necessary to their immediate interests but a mandate of their position in class society.

The Wagner Act purported, for the first time in American history, to extend a definite, readily enforceable right to strike to most American workers. Not coincidentally, the years surrounding its enactment featured the most intense wave of labor conflict in the country’s history. When the statute became effective in 1937 (having been widely ignored by employers and blocked by hostile courts), the violence of strikes began to diminish, though not so much their frequency. For much of the period after the Second World War, strikes remained common even as they also became less ambitious in their aims and less militant in their conduct. Beginning about forty years ago, things changed again. Strikes suddenly became rare as well, to the point that workers today basically do not strike at all. From 1947 through 1976, the government documented an average of just over 300 “major work stoppages” (strikes and lockouts involving at least 1000 workers) every year; over the last decade, the annual average was only 14.10 Even the much-ballyhooed mini-strike wave of 2018 appears to be largely an illusion built on a combination of wishful thinking and a convenient misconstruction of a string of well-reported, and sometimes impressive, strikes, as a trend.11 In any event, militancy of the sort that was commonplace when Steinbeck wrote his book, along with the open strife and bloodshed that made the novel a work of undeniable realism, are nearly unheard of today.

The waning of bloody battles may be a good thing. But there is not much to celebrate about the overall demise of strikes—not if you are a worker or care about the working class. For strikes are the most important mode of working class protest, the best way, it seems, for workers to directly challenge capitalist hegemony by their own hand, to alter the terms of exploitation if not to build a new world. As they have declined, so has the strength of the labor movement and, with this, the ability of workers to contest the power that employers wield over their work lives and economic fortunes. And so it is that with the demise of strikes, union representation has plummeted, wages have stagnated, economic inequality skyrocketed, and the everyday caprices and tyrannies of capitalist management have been entwined in the web of demeaning indignities, patronizing indulgences, and suffocating bureaucratic rules that define the contemporary workplace.

Nevertheless, in most quarters the decline in strikes has been taken in stride, if noticed at all. For most people, strikes are hardly more than historical relics or quaint curiosities that seldom affect their daily lives or command much of their attention. Ironically, this is probably one reason the very modest labor conflict of the last year has been so overcharacterized. Once a preoccupation of newspaper editorialists, lawyers, and other commentators, a concern of government, and the subject of numerous hearings and reports, abundant litigation, and seemingly endless attempts at legislation, strikes are now rarely of any interest in any of these quarters. Where judges, politicians, and editorialists once worried greatly over how to deal with strikes of the kind that Steinbeck fictionalized, how to protect the economy (not to mention the interests of individual capitalists) from the disruptive effects of labor unrest, and sometimes how to preserve the ability of workers to strike in meaningful ways, their successors stand mute in the context of the near extinction of this form of protest. It has been two decades since Congress, which once grappled with these issues on a regular basis, has seriously confronted the question of strikes.12 Its last engagement with the right to strike attempts, in the early 1990s, to enact modest changes in the law relative to employers’ use of replacement workers during strikes. And even this effort, which collapsed in the mid 1990s, hardly seemed possessed of the kind of urgency that characterized earlier forays on these issues.13

Among the few Americans who well remember what strikes are and why they are important are labor scholars. For them, at least, strikes remain a preoccupation. Prominent students of labor like James Atleson, Julius Getman, Karl Klare, and James Pope—to name the most notable of this group—have expended much effort over the past few decades identifying and critiquing legal doctrines which have undermined the right to strike. Important to them in this regard are doctrines that give employers the prerogative to easily replace striking workers; that allow employers to enjoin and even fire strikers on the ground that they have engaged in coercive “misconduct,” or because they have protested the wrong issue or in the wrong way; that prohibit sympathy strikes and general strikes, and spontaneous “wildcat” strikes; and that funnel labor disputes off of picket lines and into legal proceedings and arbitrations.14

These doctrines have eviscerated a once-vital right to strike, these scholars tell us, subverting a prerogative that earlier in the century was central to improving conditions for workers and lending legitimacy to the very idea that workers have rights to claim in the first place. Indeed, in the 1930s and 1940s, especially, a massive and sustained campaign of strikes proved crucial to the formation of the modern labor movement, the political and legal validation of the Wagner Act, and ultimately the survival of the New Deal itself. This was true even as the Wagner Act itself seemed to play a crucial role in conveying to workers, for the first time, an effective right to strike. But the problem as far as the right to strike goes, we are told, is that the statute was later weakened and corrupted by the connivances of judges and Congress, urged on by a business community relentless in its contempt for organized labor, and abetted at times by inept or corrupt union leaders and a weak and politically diffident National Labor Relations Board (NLRB, the entity with primary authority for enforcing the labor law). And so the Wagner Act is said to have had a great potential, only to have been tragically “deradicalized,” as Klare puts it; and workers are said to have “lost” the right to strike, in Pope’s words, with devastating consequences for workers today and ominous portents for generations ahead.15 Critically, these authors argue, an effective right to strike must be restored at the expense of these unjustified impositions.16 Only then will the labor law regain its relevance and the labor movement its ability to improve the lives of workers.

Early on, this attempt to defend an effective right to strike was the object of mean-spirited criticism by more conventional scholars who, in the guise of unmasking its interpretative shortcomings, rejected its radicalism and recoiled at its underlying supposition that law is not only malleable and untethered to its formal, elite iterations, but within the province of workers to reshape around their own interests and visions.17 Despite these efforts, which focused on the work of Klare and Katherine Stone, whose critique of post-war “industrial pluralism” shared a similar reasoning—or maybe, to some extent, anyway, because of them—support for this campaign to restore the right to strike seems like a mandate among scholars and commentators who purport to take seriously the interests of workers.18 And yet for all its appeal, this project nevertheless suffers from a remarkably negligent oversight, one that has nothing to do with morality of its pretense that the law is malleable and that workers can remake it—a proposition that is broadly true and eminently defensible. Instead, it has to do with its practical feasibility. In fact, as this Article argues, a critical reflection on this question suggests that the effort to realize an effective right to strike is actually quite impossible and that attempts to do so, however earnest and thoughtful they may be, represent as dubious a battle as the hopeless walkout dramatized in Steinbeck’s book.

This doleful conclusion rests on a frank understanding of the legal and political realities in which strikes necessarily play out. There are many kinds of strikes, but those that are apt to be successful in challenging employers’ power and interests entail a level of militancy that sets them against well-entrenched notion of property and public order. This was true in the 1930s and 1940s when these values contradicted, at once, strike militancy and whatever radical potential the Wagner Act may have had. Ironically, it is perhaps even truer today, now that workers do in fact enjoy the right to strike, albeit only in more conventional ways. Seen in this light, those doctrines that have undermined the right to strike are not aberrations or jurisprudential failings—not mistakes in any sense, in fact, nor a retreat from some earlier, truer iteration of the labor law. Rather, they represent a settling of the labor law on bedrock precepts of the American life. However illegitimate those precepts may be from a vantage that questions capitalism’s essential legitimacy and takes the rights of workers seriously, they reign supreme, foreclosing an effective right to strike.

All of this, as I argue in this Article, is made plainly evident by a critical review of the history of strikes and striking. To anticipate a bit more of the argument that follows, the strikes most crucial to the building of the labor movement in the 1930s and 1940s were not built only around peaceful picketing and a withholding of labor. Rather, they were sit-down strikes and strikes built on mass picketing, as well as, to some extent, secondary boycotts. And strikes of this kind were never considered lawful or politically appropriate. Ironically, it was these strikes that legitimated the Wagner Act itself and the New Deal. But they could not legitimate themselves.

Those who call for resurrecting the right to strike contend that the flourishing of strike militancy reflected, if not the inherent politics of the original Wagner Act before it was “de-radicalized,” then at least its potential. To be sure, it is clear that the Wagner Act was a remarkable document which did more to advance workers’ rights than any statute in American history; and it was at least ambiguous on the question of the legal status of strike militancy. But what seemed like its support for worker militancy was not a product of any particular potential. Rather, it was a reflection of the difficulty that judges, legislators, and other authorities, who dedicated themselves to restraining these strikes even as they flourished, encountered in prosecuting these values amid the unique economic and political conditions of the 1930s and 1940s. These obstructive conditions were quite temporary, though, and the authorities’ efforts culminated soon enough in the near-categorical prohibition of the tactics that had made strikes so effective. It is in this way that the history of strikes shows less in the way of de-radicalization than an encounter with the unyielding outer boundaries of what labor protest and labor rights can be in liberal society.

As this all played out, it left in its wake a right to strike, but one whose power consists almost entirely of the ability of workers to pressure employers by withholding labor, while also maybe publicizing the workers’ issues and bolstering their morale. But while publicity and morale are not irrelevant, in the end they are not effective weapons in their own right. Nor are they generally advanced when strikes are broken. Moreover, the withholding of labor, unless it could be managed on a very large scale—something the law also tends to prohibit by its restrictions on secondary boycotts, by barring sympathy strikes and general strikes—is inherently ineffective in all but a small number of cases where workers remain irreplaceable. Of course, striking in such a conventional way accords with liberal notions of property and social order; but precisely because of this it is simply not coercive enough to be effective. And it is bound to remain ineffective, particularly in a context where workers far outnumber decent jobs, where mechanization and automation have steadily eaten away at the centrality of skill, where the perils that employers face in the course of labor disputes are as impersonal as the risks to workers are not, where employers wield overwhelming advantages in wealth and power over workers, where the state’s machinery for enforcing property rights and social order have never been more potent—where, in fact, capital is capital and workers are workers.

From this perspective, the quest for an effective right to strike emerges as a fantasy—an appealing fantasy for many, but a fantasy no less, steeped in a misplaced and exaggerated faith in the law and a misreading of the class politics of modern liberalism. The campaign to resurrect such a right appears, too, not only as a dead-end and a distraction, but an undertaking that risks blinding those who support viable unionism and the interests of the working class to the more important and fundamental fact that liberalism and the legal system are, in the end, antithetical to a meaningful system of labor rights. It is for this reason that the call for an effective right to strike should be set aside in favor of more direct endorsement of militancy and a turn away from the law and instead towards a political program that might advance the interests of the working class regardless of what the law might hold.

The argument that follows further elaborates these main contentions about the history of striking and the nature of strikes in liberal society, augmented by a discussion of the legal terrain on which all of this has played out. It unfolds in three main parts. Part I describes how the concept of a right to strike developed in concert with the history of striking itself, how both were influenced by the evolving condition of labor, and how this history created the circumstances under which it became possible to conceive of an effective right to strike without making this possible in fact. Part II consists of a critical review of the fate of coercive and disorderly strikes, especially those featuring sit-down tactics and mass picketing. It considers how the courts, the NLRB, and Congress confronted these strikes, and how they moved with increasing vigor to proscribe them as soon as these strikes emerged as effective forms of labor protest. Part III looks more carefully at the underpinnings of this repudiation of strike militancy, finding in court rulings and other pronouncements against the strikes an opposition to coercion and disorder that, even if sometimes invoked disingenuously, is nonetheless firmly anchored in modern liberalism and its conception of the appropriate boundaries of class protest and labor conflict. On this rests the argument that an effective right to strike is impossible and the pursuit of it, problematic. The final part is a brief conclusion that sums up some of the implications of this argument.

#### There is no strike wave, just media smoke tricks. Empirics on current strike trends and outcomes of “Right to Strike” legislation go heavily NEG – you cannot legalize revolution and all legislation is merely a ruse to constrain the workers’ movement through the guise of “legal management”

White 18 (Ahmed White – Nicholaus Rosenbaum Professor of Law @ University of Colorado Law School, “Its Own Dubious Battle: The Impossible Defense of an Effective Right to Strike”, https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2369&context=articles , 2018, pgs. 1124-1131, EmmieeM)

In fact, at this crucial moment it was common for elites of all stripes to claim that they supported the right to strike and yet to assert that it was being abused by unionists who insisted on winning every labor dispute and using coercive and disorderly methods to do so. In 1946, Hebert Hoover, who might well have denied just such a thing fifteen years earlier, inveighed that “Nobody denies that there is a ‘right’ to strike”; but that right, he said, had been abused to the detriment of the public interest.295 Although considerably more liberal than Hoover, Walter Lippmann, the extremely popular political commentator, offered a similar judgement about a railroad strike that same year, concluding “we must henceforth refuse to regard the right to strike as universal and absolute, and as one of the inalienable rights of man.”296 Also writing in 1946, Henry Ford II, whose father had used a small army of thugs and toughs to enforce the open shop at his plants and bitterly fought unionization until 1941, now purported at once to support the right to strike—and to believe that it should be limited.297 “There is no longer any question of the right of organized workers to strike, but that right,” he said, “is being misused.”298

Like Taft-Hartley’s supporters in Congress, figures like Hoover, Lippmann, and Ford did not trouble themselves to confess that such tactics as they so blithely condemned might actually be necessary to counterbalance the power of employers and give life and meaning to a statute that did not take adequate account of this basic reality, let alone that they were essential in establishing the idea that workers enjoyed any enforceable right to strike. But they did not have to, either; for they honestly did not believe that labor should generally prevail. Liberal or conservative, it did not matter; these were capitalists in a capitalist society, contented, consistent with their values, with a right to strike that went little further than a right to withhold one’s labor.

To be sure, these were not the views of ordinary people. But the public’s perspective did not seem to vary all that much from those of elites. Although overall approval of union membership as measured in Gallup surveys slipped noticeably after 1937, it remained quite high— well above fifty percent right through the 1940s.299 Nevertheless, Gallup surveys taken in June 1937, after the big wave of sit-strikes had waned noticeably, but while mass picketing and overall levels of labor militancy remained high, revealed that fifty-seven percent supported the proposition that the militia should “be called out whenever strike trouble threatens.”300

As with the sit-down strikes, too, the status of mass picketing and other forms of strike militancy can also be gauged by the way these tactics were defended. During the hearings on Taft-Hartley, only a few labor leaders stood against the torrent of criticism of these practices by businessmen, conservative unionists, and congressmen and senators, and tried to parry the move to prohibit the strikes. With only a couple of exceptions, most of them consistently qualified their defense of these tactics by downplaying their coercive qualities—again the very thing that made them so effective in the first place—while also describing them as expedients, presumably temporary, that were justified by the unreasonable stances of some employers.301

While the political motivations and implications of this campaign against these forms of strike militancy might be as dubious as the attacks on the sit-down strikes, their value in expressing dominant political judgments concerning these tactics is not. Repeatedly, it was taken for granted that workers could not be allowed to excessively coerce their fellow workers, that they should be obliged to adhere to their contractual obligations, that they did not own the streets or the workplace, and that whatever the right to strike was, it was surely, as Brandeis had insisted, not an absolute right. Of course, all of this was controversial for many unionists. But unionists were almost the only ones to really push back against these measures. Even President Harry Truman’s dramatic veto of Taft-Hartley is widely regarded as a political move taken with the expectation that Congress would override the veto anyway.302 It is also notable that despite dedicating itself to this aim, the labor movement has never come close to repealing the Taft Hartley Act, or even securing the enactment of favorable amendments to any of its provisions.

And then there is the replacement worker doctrine where, if anything, the change in the law even more clearly reflected the depth and power of liberal norms. For the rule established in Mackay Radio came out of the blue. It was set forth in a case which required no such question to be resolved, in a manner that drew no support from the text of the Wagner Act, and on the basis of legislative history that was ambiguous at best. Worse, as Getman points out, the rule is in direct conflict with the very statutory principle of barring discrimination on the basis of a worker’s assertion of the basic labor rights laid out in § 7 that it was, itself, supposedly derived from.303

As an exercise in statutory construction and administration, Mackay Radio makes no sense; but as a defense of property rights it makes all the sense in the world. One way to see this is to consider what would have happened had the Court decided the matter in a fundamentally different way. If employers were barred from replacing economic strikers, it seems likely that strikes would have proliferated to an extraordinary extent, as workers could at least plausibly have expected to be able to strike under a broad array of circumstances and yet be restored to their jobs no matter the outcome. But precisely because such a doctrine would have given workers so much power, Congress would almost certainly have stepped in with its own rule, codifying employers’ right to permanently replace striking workers and bringing this to an end. Ultimately, it is difficult to imagine a much more liberal alternative to the Mackay Radio rule surviving for very long—a point that also draws support from labor’s failure to repeal the rule in Congress in the early 1990s.304

A simple exercise in counterfactual speculation bears similar fruit in regard to other, more basic, limitations on the right to strike, including those imposed relative to sit-down strikes, mass picketing, and secondary boycotts. Shrill and self-interested though it was, all the testimony from employers and their allies during the hearings on TaftHartley or Landrum-Griffin about the perils posed by these tactics, was fundamentally correct. For were workers able to make unfettered use of sit-down strikes, mass picketing, and general strikes and sympathy walkouts, they could have very much challenged the sovereignty of capitalists in and about the workplace, and with this the bedrock institutions and norms of liberal society. As Jim Pope puts it, Charles Evans Hughes’ opinion in Fansteel established the maxim that “the employer could violate the workers’ statutory rights without sacrificing its property rights, while the workers could not violate the employer’s property rights without sacrificing their statutory rights.”305 This is unquestionably true. But equally unquestionable is that neither this court nor any other important arbiter of legal rights in this country was ever prepared to endorse the contrary view that property rights might be sufficiently subordinate to labor rights as to justify the kinds of tactics by which workers could routinely defeat powerful employers on the fields of industrial conflict

Significantly, there is no reason to believe that any of this has changed or is poised to change today. Quite the contrary: In a culture and political system more immersed than ever in the veneration of order and control, mediated by criminal law and police work, by the celebration of property rights, and by a readiness to punish violence, it is all but unthinkable that the courts or the NLRB would deign to give legal sanction to workers to engage in any sustained way in the kinds of tactics that might make going on strike a worthwhile thing to do.

CONCLUSION

One of the outstanding ironies in a story rich with many is that the very things which made the prospect of an effective right to strike seem for a time so viable—the unlawful, illiberal, and altogether intolerable coerciveness of sit-down strike and mass picketing, especially—are also what made this concept impossible to ever realize. As we have seen, effective strikes could build the labor movement, validate the Wagner Act, secure the New Deal, and in many ways change America. But they could not make themselves legitimate.

So it is that workers have found themselves with a right to strike that equals little more than a right to quit work—and maybe lose their jobs or their houses and savings in the balance. They have a right to strike, as Steinbeck’s character, Mac, complained, but they “can’t picket”—at least, not in a way that is really apt to change anything. And so they do not strike—in fact, under these circumstances they usually should not strike.

The proof of this is readily evident, not only in the dramatic decrease in strikes since the 1970s, but in the sad regularity with which even the most vibrant strikes have ended in defeat for workers. Phelps Dodge (1983), Greyhound (1983 and 1990), Hormel (1985-1986), Caterpillar (1992, 1993, and 1994-1995), Detroit Daily News/Daily Free Press (1995-1997)—these are but the most notable of a litany of vibrant strikes since the 1970s that ended in failure.306 They are, in fact, the definitive labor struggles of this period, overshadowing a much smaller number of comparable disputes, like the strikes at United Parcel Service in 1997 and Verizon in 2016 that—often shaped by uniquely favorable labor dynamics—ended in something resembling victory for the union.307 Each of these big and unsuccessful strikes was motived by very modest, in fact anti-concessionary, goals and well-supported by workers and the larger public alike. And each featured mass picketing and other attempts at militancy. But these tactics were met with injunctions, civil suits, mass arrests, and criminal prosecutions, which ended the protests and left the employers free to exert their vast advantages in material wealth and political power, end the disputes on their terms, and leave thousands of strikers unemployed.308

It is true that the last year or so has witnessed what many people have declared to be a miniature strike wave, that has been widely celebrated by unionists and their allies as a welcome departure from past trends and portent, many hope, of a sustained resurgence of labor activism.309 Headlined by statewide teachers strikes in West Virginia, Oklahoma, and Arizona, all in the first part of 2018, the strikes commanded a great deal of media coverage, at least compared to what labor disputes usually receive nowadays.310 However, closer inspection suggests that this wave is mainly an artifact of wishful thinking exacerbated by the novelty for many people nowadays of seeing these strikes reported in the media. For in fact, the number of strikes over the last couple of years has remained close to the level that has prevailed for several decades now.311

Perhaps more significant in putting these strikes in proper context is a reflection on their character. None have been organizing strikes. All of these strikes have been over contracts and working conditions, with many driven by workers’ opposition to concessions and ended with less than spectacular gains by the strikers.312 Moreover, the strikes which comprise this supposed wave have been disproportionately mounted by government workers—teachers, mainly—who are not covered by the National Labor Relations Act. For this reason, several of the strikes have been unlawful, as state law typically denies such workers the right to strike anyway. But at the same time—and this may be the most crucial point—none of these strikes has unfolded in an especially militant way, at least by historical standards. There have been no big sit-down strikes, no threatening episodes of mass picketing, no routing of “scabs,” no destruction of property. Which is all to say that the kinds of strikes that built the labor movement eighty or more years ago remain thoroughly in check.

There is little hope within the prevailing political and juridical order that things could ever be any different. Perhaps the right to strike could be made effective if it were fundamentally reconfigured in illiberal, corporatist terms. The right could conceivably be reconfigured such that the government might intervene more aggressively and make the workers protests effective—for example, stepping in to decide by adjudication, mediation, or arbitration which side should win a strike. Elements of this approach, which was vigorously opposed by IWW and AFL unionists alike in the early twentieth century, can be found internationally, in industry-specific statutes like the Railway Labor Act, and in labor statutes that apply to government workers, although most often when the law goes down this path it all but dispenses with the right to strike anyway, treating it as a redundancy, a tool without a purpose. As Senator Wagner himself perceived, alignment between the excessive reliance on the authority of the state to manage labor relations and the denigration of the right to strike was both dysfunctional and dangerous. As he put it back in the summer of 1937, defending the recently-passed statute that bore his name and the right that he placed at the center of it, [t]he outlawry of the right to strike is a natural concomitant of authoritarian governments. It occurs only when a government is willing to assume definitive responsibility for prescribing every element in the industrial relationship—the length of the day, the size of the wage, the terms and conditions of work.313

Clearly no such regime will be instituted in any event, not least because, as interest in such schemes in the twentieth century makes clear, support for this kind of corporatist intervention in labor disputes has itself been an elite reaction against strike militancy that currently does not exist. Where does this leave workers and unions, possessed of a right they cannot afford to surrender but cannot rely on as a means of advancing their interests and standing in society?

Are they bound like Steinbeck’s strikers to meet defeat, albeit in a more peaceful way? Maybe. In one of his many commentaries on the sit-down strikes as they raged across the country in the spring of 1937, Walter Lippmann took time to analyze one of the speeches in which James Landis had argued that the tactic might well become a new right, in the same way that the right to strike in general had been created through its persistent assertion in the face of opposition and incredulity. No revolutionary, Lippmann nonetheless understood what Landis apparently did not: that the right Landis spoke of was revolutionary in its conception, and therefore not just an impracticality but a contradiction. “Never in the history of the law has rebellion been made lawful. Only the rights demanded by the rebels have been legalized,” said Lippman.314

As the labor scholars who call for the restoration of an effective right to strike have all understood, the tactics that made such strikes possible were tolerated only so long as there was not a functional system of labor rights in place, one that could stand alone in courts and hearing rooms. Once this was the case—once the rebel unionists’ aims, or at least those imputed to them, were realized—the sit-down strikes were predictably banned, and then so were mass picketing, secondary boycotts, and so forth. Thus it is that in cases like Fansteel and the debates on Taft-Hartley, sit-down strikers, mass picketers, and the like were presented as enemies of the labor law. Even more recent attacks on the right to strike, such as complaints in the 1980s about union violence going uncensored and the modest moves by the NLRB to rein in this, too, have been inevitably justified not in terms of overthrowing the system of labor rights but managing it, reconciling its virtues with the normative and juridical mandates of liberal society. And so it is that the right to strike—the right to an effective strike—has been sacrificed not in the name of capitalist hegemony but on liberalism’s altar of labor peace. Unfortunately, so far as the interests of workers go, these are the same thing.

#### Illegal strike activity solves the affirmative – the aff is an attempt to regulate the ongoing strike wave

**Olivier 10/28**

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Workers across the United States are finally saying they’ve had enough. Nineteen months into the pandemic, 24,000 of them are exercising the strongest tool they have: the power to withhold their labor. With the country already facing severe supply chain disruptions, these strikes have put added pressure on employers to improve wages and working conditions. At the John Deere factories in Iowa, Kansas, and Illinois, 10,000 employees represented by the United Auto Workers (UAW) went on strike after rejecting a proposed contract that included wage increases below inflation levels and the elimination of pensions for new employees. Other strikes include 2,000 [healthcare](https://www.cbsnews.com/news/mercy-hospital-nurses-strike-labor-shortage-2021/) workers at Buffalo’s Mercy Hospital; 1,800 telecom workers at California’s Frontier Communications; and 1,400 production workers at several Kellogg’s cereal plants. Thousands of additional workers have authorized strike votes. Earlier this month, an overwhelming majority of workers in the International Alliance of Theatrical Stage Employees (IATSE), which represents over 60,000 people in the film and TV industry, [voted in favor](https://iatse.net/by-a-nearly-unanimous-margin-iatse-members-in-tv-and-film-production-vote-to-authorize-a-nationwide-strike/) of a strike. A few days later, [24,000](https://www.washingtonpost.com/business/2021/10/11/24000-kaiser-permanente-workers-authorize-strike-over-pay-working-conditions/) Kaiser Permanente healthcare workers in California and Oregon followed suit. Harvard’s graduate student union, with roughly 2,000 members, also authorized a strike with a 92 percent vote. “Workers are fed up working through the pandemic under the conditions they’ve been working in,” says Joe Burns, a former union president and [author of](https://www.akpress.org/strikebackupdated.html) “Strike Back: Using the Militant Tactics of Labor’s Past to Reignite Public Sector Unionism Today.” The strike wave “also reflects that there’s a tight labor market.” “We’ve noticed a considerable uptick in the month of October,” says Johnnie Kallas, a PhD student at Cornell’s School of Industrial and Labor Relations (ILR) and Project Director for the ILR [Labor Action Tracker](https://striketracker.ilr.cornell.edu/about.html). The ILR has tracked 189 strikes this year. Of those, 42 are ongoing in October while 26 were initiated this month Kallas and his team have been collecting data on strikes and labor protests since late 2020; they officially launched the Labor Action Tracker on May Day of this year. “There’s a lack of adequate strike data across the United States, says Kallas. “We thought this was a really important gap to fill.” The Bureau of Labor Statistics (BLS), he explains, only keeps track of work stoppages involving 1,000 employees or more, and which last an entire shift. “As you can imagine, this leaves out the vast majority of labor activity,” Kallas says. Workers are demanding higher wages, adequate benefits like healthcare and pensions, improved safety and working conditions, especially concerning COVID-19, and reasonable working hours. The ILR Tracker has also been keeping tabs on “labor protests” —i.e., “collective action by a group of people as workers but without withdrawing their labor” —which aren’t recorded by BLS at all. The federal minimum wage has been stagnant at $7.25 an hour since 2009, even as inflation has increased by 28 percent since then. Meanwhile, over the past year consumers have seen a sharp increase in the cost of everyday goods such as bacon, gasoline, eggs, and toilet paper due to the pandemic. This means workers’ wages aren’t going nearly as far as they used to. For months, the media has been [reporting](https://www.reuters.com/business/no-end-sight-labor-shortages-us-companies-fight-high-costs-2021-10-26/) on a “labor shortage” that has purportedly left employers unable to fill jobs. Fast food restaurants have [posted signs](https://twitter.com/ABC15Patrick/status/1382415576006496264?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1382415576006496264%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.the-sun.com%2Fnews%2F2741287%2Fsonic-viral-sign-workers-dont-want-to-work%2F) that read: “We are short-staffed. Please be patient with the staff that did show up. No one wants to work anymore.” Small business owners and corporate CEOs alike have gone on cable news to complain about the hundreds of thousands of people who prefer to live on government assistance rather than find a job. But the truth, said Kallas, is that there’s [no shortage of labor](https://www.orlandoweekly.com/Blogs/archives/2021/10/20/a-florida-man-applied-for-60-entry-level-jobs-in-a-month-to-prove-the-so-called-labor-shortage-is-a-myth). Rather, employers can’t find people to work [for the wages they’re offering](https://www.orlandoweekly.com/Blogs/archives/2021/10/20/a-florida-man-applied-for-60-entry-level-jobs-in-a-month-to-prove-the-so-called-labor-shortage-is-a-myth). Saturation coverage of the labor shortage has come at the expense of amplifying the human cost of the government’s having cut unemployment benefits for 7.5 million workers on Labor Day, while an additional three million lost their weekly $300 pandemic unemployment assistance. Time magazine [called it](https://time.com/nextadvisor/in-the-news/unemployment-benefits-expire-in-september/) the “largest cutoff of unemployment benefits in history.” Just two weeks earlier, a [flurry](https://www.cnbc.com/2021/08/23/ending-unemployment-benefits-had-little-impact-on-jobs-study-says.html) of newly published [studies](https://www.nytimes.com/2021/08/20/business/economy/unemployment-benefits-economy-states.html) showed that states that chose to withdraw earlier from federal benefits did not succeed in pushing people back to work. Instead, they [hurt their own economies](https://www.businessinsider.com/cutting-off-unemployment-hurts-states-did-not-help-employment-research-2021-9) as households cut their spending to compensate for the lost benefits. In Wisconsin, instead of increasing benefits or raising the minimum wage, state legislators have decided to address the labor shortage by putting children to work. Last week, the state senate [approved a bill](https://www.businessinsider.com/labor-shortage-wisconsin-senate-jobs-work-teenagers-child-labor-hours-2021-10) that would allow 15 and 16-year-olds to work as late as 9 p.m. on school nights and 11 p.m. on days that aren’t followed by a school day. The only state legislator to speak out against the bill was Senator Bob Wirch, who [said that](https://wisconsinexaminer.com/2021/10/21/senate-votes-to-extend-work-hours-for-some-teens-under-16/) “kids should be doing their homework, being in school, instead of working more hours.” Despite these setbacks, the tight labor market has given workers considerable leverage. “Workers are more confident that they can strike and not be replaced,” says Burns. In places where non-union labor, or “scabs,” have been brought in to replace striking workers, there have been several incidents that underscore the importance of a union in creating a safe work environment. Jonah Furman, a labor activist who has been covering the John Deere strike closely, reported that poorly trained replacement workers brought in to a company facility were involved in a serious [tractor accident](https://labor411.org/411-blog/scab-crashes-tractor-on-day-1-of-john-deeres-replacement-of-striking-workers/) on the morning of their first day. A higher profile and more deadly incident occurred last week when the actor Alec Baldwin fatally shot cinematographer Halyna Hutchins with a prop gun that was supposed to contain only blank rounds. According to [several](https://www.insider.com/rust-camera-crew-walked-off-protest-hours-before-fatal-shooting-2021-10) [reports](https://www.motherjones.com/media/2021/10/rust-alec-baldwin-strike-labor-gun-iatse/) on the incident, the union camera crew quit their jobs and walked off the set earlier that day to protest abysmal safety standards—and were immediately replaced with inexperienced, non-union labor. “Corners were being cut — and they brought in nonunion people so they could continue shooting,” one crew member told the [LA Times](https://www.latimes.com/entertainment-arts/business/story/2021-10-22/alec-baldwin-rust-camera-crew-walked-off-set). Kallas says the incident “clearly demonstrates the importance of workplace safety and the significance of capturing both strikes and labor protests” when collecting data. “What’s becoming increasingly common are these walkouts and mass resignations,” he says. He mentioned a Burger King in Nebraska where the entire [staff walked out](https://globalnews.ca/news/8023338/burger-king-sign-quit-employees-lincoln-nebraska/#:~:text=Fed%2Dup%20Burger%20King%20staff,%E2%80%9CSorry%20for%20the%20inconvenience.%E2%80%9D) to protest poor working conditions that included a broken air conditioner in 90° F temperatures and staff shortages. They left a note on the door that said, “We all quit. Sorry for the inconvenience.” In another non-strike labor action, dozens of non-union school bus drivers in Charles County, Maryland [called in sick](https://www.wusa9.com/article/news/education/150-school-bus-routes-affected-friday-in-charles-county-after-rumoured-driver-sick-out-maryland/65-88bf184f-0cf1-4182-aa06-05e983188934) to protest their low wages and lack of benefits. Over 160 bus routes were affected by the action. Meanwhile, adjacent school districts that are critically short of bus drivers find themselves unable to attract new candidates because of the perceived risk associated with driving a bus crowded with children during the pandemic. In an [Opinion piece](https://www.theguardian.com/commentisfree/2021/oct/13/american-workers-general-strike-robert-reich) for The Guardian US, former Secretary of Labor Robert Reich suggested that the United States was in the grips of an unofficial general strike, with workers quitting their jobs “at the highest rate on record.” Why? Because they were “burned out,” fed up with “back-breaking or mind-numbing low-wage shit jobs.” The pandemic, asserted Reich, was “the last straw.” In July, an anonymous group [called for a](https://boldtv.com/cheyenner/2021/07/19/did-you-know-theres-going-to-be-a-general-strike-in-2021/) general strike on October 15, but the day came and went without much fanfare. “Traditionally, general strikes happen because workers actually want to go on strike, and not because someone declares it on Facebook or Twitter,” says Burns. Rosa Luxemburg, the German socialist and philosopher who rose to prominence at the beginning of the last century, believed general strikes were the tool to usher in social revolution after developing class consciousness through the patient building of worker organizations, such as unions. “That’s not happening today,” says Burns. The 24,000 striking workers today pale in comparison to the mass strikes of the early to mid-twentieth century, when workers shut down production by the hundreds of thousands. Some [4.6 million workers](http://www.rochesterlabor.org/strike/) went on strike in 1946, accounting for 10 percent of the workforce. Today things aren’t as simple. In August 1981, President Ronald Reagan fired over 11,000 air traffic controllers who went on strike after negotiations between the Federal Aviation Administration broke down. These workers were prohibited from ever working for the federal government again, creating a chilling effect among unions. Reagan’s action set the tone for labor relations for the next four decades, while his administration ushered in a new era of corporate dominance, known as neoliberalism. Today, corporations such as Amazon regularly [use threats](https://www.nytimes.com/2021/03/16/technology/amazon-unions-virginia.html), [intimidation tactics](https://nowthisnews.com/news/amazon-accused-of-intimidating-workers-after-warehouse-votes-to-not-unionize), and [surveillance](https://www.theguardian.com/commentisfree/2021/mar/02/mcdonalds-unions-workers-rights) against employees to prevent them from unionizing. “When workers engage in a true strike wave, politicians want to step in and regulate it and establish some procedures,” says Burns. The Taft-Hartley Act was passed one year after the [general strikes of 1946](https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/strike-wave-united-states), making wildcat strikes, secondary boycotts, and union donations to federal political campaigns illegal. The act also allowed states to pass right-to-work laws, severely limiting effective union organizing, and required union officers to sign affidavits pledging they were not communists. The Red Scare, initially sparked by the Russian Revolution of 1917, resulted in sustained attacks against organized labor, particularly the leftist Industrial Workers of the World, or “Wobblies.” By the end of the Second World War, with labor militancy intensifying and the power of the Soviet Union growing, the Red Scare had morphed into a reign of terror against an “internal enemy.” Reagan later used language from the Taft-Hartley Act that prohibited workers from striking against the government to declare the air traffic controllers’ strike illegal. Today, workers face serious legal barriers to organizing under a system of labor law that favors the employer. Over the years, these laws have restricted the scale with which strikes can be organized and the total number of workers who belong to unions. At the peak of organized labor in 1954, [34.8 percent of](https://www.pewresearch.org/fact-tank/2014/02/20/for-american-unions-membership-trails-far-behind-public-support/) American wage and salary workers belonged to a union; by 2020, that number was down [to](https://www.bls.gov/news.release/union2.nr0.htm#:~:text=The%20number%20of%20wage%20and,workers)%2C%20or%206.7%20percent.) 10.8 percent, a trend that has been closely linked to decreased wages over the last few decades. Against these grim numbers, legislation like the [Protecting the Right to Organize (PRO) Act](https://www.npr.org/2021/03/09/975259434/house-democrats-pass-bill-that-would-protect-worker-organizing-efforts) could make a huge difference to labor organizing. The PRO Act would allow workers to engage in secondary boycotts, restrict right-to-work laws, ban anti-union captive audience meetings and exact financial penalties against companies found to be in violation of the law. The bill is something President Joe Biden campaigned on during the 2020 presidential election and has pushed to include in his Build Back Better agenda. “I’m skeptical based on actual history that we’re gonna see a legislative fix to this problem,” says Burns. “**When workers are militant and engaged in activity, legislation will follow.** Not the other way around.” The strike wave we’re witnessing today speaks to a growing militancy against several decades of sustained corporate combat. It’s an uphill battle that no one union can win in isolation. With organized labor depleted and battle weary, the only path forward is to enlist other workers to fight by organizing new unions and activating those that already exist. Only by growing its numbers will labor enact the systemic change necessary to put working people on better footing. As labor activists have long proclaimed, “**there’s no such thing as an illegal strike, only an unsuccessful one.”**

#### The 1AC is respectability politics – their endorsement of non-violence legitimizes violent responses to perceived violent protestors and splits up solidarity among different factions. Militarized violent responses are inevitable and black and brown people are already coded as violent and beget violence for even nonviolence. The 1AC is part of an ahistorical fantasy about nonviolent resistance, papering over the blood of activists and their own regrets over pursuing nonviolence. This turns the case and decimates solvency. Pierce 20

Rebecca Pierce, “The Limits and Dangers of a Fixation on “Nonviolence””, 2020, New Republic. https://newrepublic.com/article/158087/limits-dangers-fixation-nonviolence

In the immediate aftermath of the Twin Cities protests following the police killing of George Floyd, St. Paul Mayor Melvin Carter claimed that all of the arrests tied to rioting in the area were from out of state. “We don’t know these folks,” he said. Minnesota Governor Tim Walz made a similar claim. Both statements were widely disseminated by other news outlets, but a KARE 11 investigation quickly revealed most of those arrests were in fact of local residents. As anti-police-brutality demonstrations sweep all 50 states and countries around the world following the deaths of Floyd and Breonna Taylor, so has debate about what constitutes legitimate protest and legitimate protesters. With sensational imagery of extreme police repression of protests alongside riots and looting saturating the news cycle, many commentators are seeking to distinguish between peaceful protests and what many have labeled “outside agitation,” in which property destruction following, or sometimes during, demonstrations is blamed primarily on white anarchists or even police or vigilante agents provocateurs. ¶ In many cases, this focus on the specter of destructive interlopers is an attempt to grasp onto certainty in a terrifyingly uncertain moment, and some of it comes from a place of seeking to legitimize nonviolent protests in the face of widespread repression. But there are real risks that come with this desire to tell a clean story about “good” protesters and “bad” protesters. Labeling all riots the work of outside agitators threatens to legitimize state violence that has only become more dangerous with President Trump’s attempted designation of antifa as a terrorist organization and threat to send the U.S. military into states and cities where protests continue (a violent sentiment that was echoed last week by Senator Tom Cotton in the legitimizing pages of The New York Times). The emphasis on the conduct of protesters erases the violent escalation of law enforcement, who in recent days have blinded people with rubber bullets, sprayed tear gas and pepper spray indiscriminately (a tactic that is under scrutiny in Ohio after a 22-year-old woman died after she was reportedly teargassed), incited physical confrontation, driven vehicles into crowds, and killed a man while clearing a protest in Louisville, Kentucky.¶ Such totalizing narratives about the “right way to protest” also flatten nonviolent resistance into a form of respectability politics that robs those enacting or rejecting it of their agency and precludes the complex forms of solidarity that can exist within and beyond it. These dynamics are not without precedent, both in our history and globally. They put emphasis on optics, when the focus of these protests is changing the material conditions of Black lives in a country built on violent white supremacy and colonialism. And by seeking refuge in such stories, we may prematurely foreclose the future these protests are trying to build just as they’re beginning to cohere—unpredictably and often tenuously—at a mass scale. ¶ The U.S. media’s fascination with “peaceful protests” is often colored by a romanticized and sometimes ahistorical view of the civil rights movement, in which organizers like the Student Nonviolent Coordinating Committee opposed segregation, and the violence used to maintain it, with nonviolent protests, sit-ins, and boycotts. And while concrete gains were won by these tactics, those enacting them were often themselves labeled “outside agitators” by segregationists, and their tactics were regarded by white observers as confrontational, disruptive, and worthy of condemnation. These peaceful protests could not stop the violent repression of their movements nor the constant arrests and eventual assassination of leaders like Martin Luther King Jr. and Medgar Evers. ¶ The death of King, in particular, led to nationwide riots that were both a manifestation of grief and a response to the very clear rejection of these nonviolent efforts by white supremacists that his murder represented. And it was the persistence of this white supremacist violence in the face of Kingian peaceful protests that gave rise to the Black Power era, in which such nonviolent tactics were often rejected as failures, sometimes by the very activists who had worked so hard to promote them. Former SNCC leader Kwame Ture (formerly Stokely Carmichael), who previously advocated nonviolent action, once famously quipped, “In order for nonviolence to work, your opponent must have a conscience. The United States has none.”¶ Despite this righteous frustration, nonviolence has persisted as a tactic in the U.S. and globally, taking on diverse forms that reflect the wide range of communities applying it. But rather than a demand to be made upon the oppressed by outsiders (and often by oppressors themselves), “peaceful protest” is best understood as a choice that people struggling for justice make based on a number of different factors—political principle, tactical concerns, or communal inclusivity. Last year, I documented nonviolent protests led by Ryukyuan elders in Okinawa, Japan, who, in the face of overwhelming domination by both the U.S. and Japanese militaries, choose nonviolent protest tactics as a political rejection of militarism and war. Every week, elders in the district of Henoko block the entrance of Camp Schwab U.S. Marine base to prevent the entrance of cement trucks that are filling Oura Bay for a runway project that threatens local marine life, and every week they are carried off by militarized police. The protests and a recent referendum have been unable to stop the base construction, but they represent popular opposition to the base expansion, create solidarity through political spectacle, and signal a rejection of violence and war that has plagued an island community occupied by various military powers for over a century.¶ But what happens when, much like in U.S. uprisings right now, nonviolence is posed as a demand by outsiders, rather than an act of political agency by those undertaking it? Even communities consistently partaking in nonviolent resistance risk being deemed not nonviolent enough. Palestinians in the West Bank and Gaza have long led weekly unarmed protests against occupation and siege in the face of tear gas, live ammunition, rubber bullets, and mass incarceration in Israel’s military prison system. Despite the high profile of these weekly protests, Palestinians are often assumed by outsiders to be exclusively engaging in armed resistance and are frequently met with Western demands for a “Palestinian Gandhi.” ¶ Such demands not only erase Palestinian organizing, they also serve to obscure the power dynamics at play, making it seem as if any action that falls outside traditional models of nonviolence is on par with the level of violence inflicted by a full-scale military occupation. ¶ Peaceful protests met with militarized counterterror responses characterize our current era of U.S. activism, where Black and Indigenous organizing from Standing Rock to the streets of Ferguson, Missouri, has been treated as a threat to national security. Despite the widespread violence of the massive militarized police response to the current demonstrations, Black organizers across the U.S. continue to engage in protests that are rooted in Black American histories of organizing, which include, but do not end at, nonviolence. The continued practice of nonviolence remains a choice that reflects the agency of communities that both operate on political principle and seek to create a safe and inclusive environment to collectively grieve the loss of those slain by police, actively resist the systematic white supremacy fueling these murders, and demand change.¶ In city after city, these peaceful protests are being met with brutal militarized police response, including the firing of tear gas and rubber bullets alongside violent mass arrests, all of which serve not only to repress them but to disrupt the sense of community and safety organizers work so hard to build. “They were laughing at one point,” a protest medic told The New Republic earlier this week while describing violent police escalation against protesters. “I think they think this is funny.”¶ The riots and looting that follow, or happen concurrent with, many of these protests are by their very nature out of the control of organizers and thus difficult to pin down to a single source or meaning. (You could say the same for much of what happens at protests of this scale, as people are often responding dynamically to the circumstances around them.) And while it may be tempting to defend the legitimacy of peaceful demonstrations by attributing rioting to outside agitation, the truth is often more complicated. Claiming otherwise with certainty carries serious risks.¶ Such narratives made it all the way to the Trump administration, with Attorney General Bill Barr declaring that: ¶ The greatness of our nation comes from our commitment to the rule of law.… The voices of peaceful protest are being hijacked by violent radical elements.… In many places, it appears the violence is planned, organized, and driven by anarchistic and far left extremists, using Antifa-like tactics, many of whom travel from out of state to promote the violence.¶ The president has used this narrative as a justification for a threat to declare antifa—which is not an organization so much as a set of principles undertaken to oppose fascism—a “terrorist organization.” This antifa panic contributed to the blanket detention of protesters in New York City, and vigilante violence targeting a multiracial family in Washington, whom attackers accused of being “antifa.”¶ This atmosphere creates even greater risks for Black activists who are already targeted by similar efforts to label their organizing “Black identity extremism.” In this way, an attempt to distance Black organizers from the property destruction linked to protests actually helps to further criminalize them and plays into narratives that falsely associate them with terror, which in turn justifies their violent targeting by police forces. There is no real escape in this narrative distinction, then, from the state’s ability to use protests as a pretext to further criminalize and surveil Black communities. ¶ The question of the “white anarchist” protester—a media and cultural shorthand for the outside agitator—is an alternative framing of this same effort to undermine current protest. While the ability to riot and be seen as legitimate, or at least nonthreatening, is a time-honored aspect of white privilege, those involved in the current unrest have not been exclusively white people. And such claims also sidestep the reality that protests of all tactics have been extremely diverse, with white participants often taking on a role of solidarity in putting their bodies between Black activists and the police across the country. ¶ In any mass movement, there are going to be a host of differing opinions on strategy. Property damage in communities already impacted by income inequality and racism has real consequences, and activists across the country have worked together to intervene when fires and looting have threatened needed community resources and infrastructure. The discomfort many people of color experience in response to white participation in acts of property damage, even among those who may not object to these tactics outright, is a valid concern. While these protests have created new opportunities for white solidarity against state and nonstate violence against Black people, it is a fair instinct to question the potentially shallow nature of that solidarity. What does it mean for outsiders to engage in property destruction in places where they don’t have to live with the aftermath? Will white protesters engaging in these tactics remain in the work of dismantling policing when the protests wane? To reject white participation in these uprisings is to foreclose any possibility of lasting solidarity, but it remains difficult not to have an answer to questions that feel so urgent. ¶ A parallel tension around the role of white people in protests is the role of white supremacists in fomenting violence. But these concerns over vigilante white supremacist infiltration, beyond lacking in real evidence, obscure the fact that for decades, activists have had to contend with state white supremacist infiltration and agitation under Cointelpro and other government surveillance and interference in organizing. White supremacist vigilante violence, like that of the white supremacist violence of the state, seizes the opportunities it is presented. To reject radical political action over fears about co-optation by white supremacists would be a form of political fatalism—a diminishment of the possibility that it can be defeated.¶ So what then explains the widespread unrest that remains a part of these peaceful protests? The difficult truth is, there isn’t just one explanation. In some cases, rioting is a result of protesters responding to excessive force from police who, rather than de-escalating the situation, have violently recreated the issues of police brutality that they came to demonstrate against. There is also the reality of the unprecedented economic precarity facing the U.S. in a moment when issues of racial justice cannot be separated from the unfolding disaster of Covid-19 in a hypercapitalist America that is failing to provide for basic needs guaranteed in most other countries. ¶ And in this context, the rule of law, which law enforcement itself fails to uphold for Black and brown people every day, becomes that much more brittle in the face of a system that hoards wealth while denying basic rights. In a system that values property over people, property destruction becomes a symbolic tool for letting out the frustrations of the unheard, and is increasingly seen by many as legitimate rebellion. None of this precludes opportunism or outside interference, but it leaves little to hold onto in terms of easy answers.¶ The question of whether multitactic protest “works,” while historically complex, is being answered in real time. The national uprisings in recent weeks have created new realities. Protesters have moved an abolitionist framework—often articulated in emerging national demands to defund police departments—to the mainstream in an unprecedented way. In response, a veto-proof majority of the Minneapolis City Council has moved to disband the city police department, while elected officials in Los Angeles, New York, and elsewhere have pledged to reduce police budgets and redistribute those resources to community programs. Growing in recognition with that demand is skepticism of the reformist model that has, in its focus on bias training and superficial adjustments to written policy, only reproduced and repackaged the violence of policing. Major institutions in Minnesota, from the University of Minnesota to the school board and parks department in Minneapolis, have in recent days ended their formal relationships with police. ¶ So perhaps we are asking the wrong questions. Peaceful demonstrations represent the majority of the actions happening across the country, so there is really no need to demand them. The hyperfocus by many on property destruction in the face of protests demanding the basic right of Black people to live, again places value on vandalized cop cars over living, breathing human beings. And while debates about tactics are healthy, the coexistence of rioting and peaceful protests does not delegitimize the overall cause driving this moment. The diversity of tactics playing out in protests right now are very much born of the same conditions. A failure to understand that can, at worst, aid repression, as Angela Davis writes: “The conservative, who does not dispute the validity of revolutions deeply buried in history, invokes visions of impending anarchy in order to legitimize his demand for absolute obedience. Law and order, with the major emphasis on order, is his watchword.”

## 1NC

#### Interpretation: The aff many not specify workers

#### Violation: They do

#### Vote neg:

#### Limits – you can pick any worker in any occupation– it explodes neg prep and leads to random worker of the week affs bc there’s more than a 1000 different occupations.

## Case

#### Their evidence concludes the opposite about racial capitalism – Harker reads blue

**1AC Bledsoe & Wright:** Bledsoe, Adam [Department of Geography, Florida State University], and Willie Jamaal Wright [Assistant Professor, Department of Geography, Rutgers University]. “The anti-Blackness of global capital.” *Environment and Planning D: Society and Space*, Vol. 37, Issue 1, 8–26, 2019. <https://journals.sagepub.com/doi/pdf/10.1177/0263775818805102> CH

The world is living through a moment in which hyper-visualized examples of anti-Black violence have gripped the public and spurred discourses around Black life and its prevailing (lack of) value (Akuno, 2015; Ferreira da Silva, 2017; Sharpe, 2016). From Ferguson to Baltimore to Charleston to New York to Minneapolis to Orlando to Rio de Janeiro, highly publicized images of the murder of Black women, men, children, and transgendered people have forced academics and lay people alike to reflect on the material and immaterial factors that have created the world in which we currently live. The discipline of Geography has begun to attend to the issue of anti-Blackness in present-day constitutions of space (Derickson, 2016; Eaves, 2016; McCutcheon, 2016; Pulido, 2017). Environment and Planning: D, specifically, has reserved space for geographical engagements with current forms of anti-Blackness and the responses to it. These engagements have yielded important interventions by Deborah Cowen, Nemoy Lewis, and Brian Jordan Jefferson, which have addressed the issue of anti-Blackness in unique ways. Cowen and Lewis (2016) offer an analysis of internal colonialism, arguing that the “Black ghetto” remains a space of colonial administration and imperial violence that take shape through gentrification, the subprime mortgage crisis, the suburbanization of displaced Black communities, and the intense policing of Black peoples that necessarily occurs as part of such processes. Jefferson, on the other hand, explores how renewed rounds of Black murder help to reify racial hierarchy for White populations facing structural insecurity like increased unemployment, fears of “terroristic” violence, increased drug and alcohol abuse, and suicides (Jefferson, 2016). Both essays draw on prevailing political economic trends to help explain present manifestations of premature Black death. We seek to carry these conversations forward by offering new explanations of the connections between political economy and anti-Blackness within the context of the United States and abroad. They add:

**Here is the section they leave out**

We draw on the concept of “anti-Blackness” as it is defined by scholars who engage with Afro-Pessimism. These scholars argue that civil society as we understand and live it is (in)formed by the dehumanizing condition of chattel slavery. They claim that civil society, therefore, is inherently antithetical to all manifestations of Black social life, yet requires Blackness for its political, economic, ontological, epistemological, and—as we aim to show—spatial coherence (Hartman, 1997; Sexton, 2016; Sharpe, 2016; Wilderson, 2010). As demonstrated in the articles cited above, current expressions of anti-Blackness remain imbricated in prevailing and developing political economic practices. In this article, we attempt to more fully explicate not only how global capital and anti-Black violence exist simultaneously but also how various expressions of anti-Blackness around the world are necessary for the perpetuation of global capitalism. To do this, we first explore theories of global capital to flesh out some of its structural characteristics. Next, we turn to a discussion of theories of anti-Blackness to highlight how Black populations’ assumed spatial incapacity in the modern epoch is a condition that makes the perpetual accumulation of capital possible. The penultimate section explores how globalized capital expresses itself in the United States, with the St. Louis, Missouri metropolitan area as a case study. The final sections serve to demonstrate how an understanding of global capitalism’s reliance on anti-Blackness is already expressed in the discursive and material practices of Black grassroots political actors. Drawing on the discourses and actions of Black Lives Matter (BLM), the Movement for Black Lives (M4BL), and the Afro-Brazilian community of Ilha de Mare´ in Bahia, Brazil, we argue that those facing anti-Black expressions of capital recognize the impossibility of separating Black death from capital accumulation. In drawing on examples from the Global North and Global South, we demonstrate some of the ways that global capital accumulation manifests differently around the world. Moreover, we highlight that, regardless of the particular expression of capitalism, antiBlackness conditions the possibility of capitalist reproduction across different global contexts. The critiques and actions of political movements clearly highlight how anti-Blackness is not a mere result of global capital but actually scaffolds the ground on which capitalism stands. Global capital and its effects Expressions of violence are often the result of structural arrangements. Much of the routinized violence of the present day is tied to localized manifestations of global capitalism. These manifestations have resulted in new social and spatial relations, labor regimes, and specific practices of organizing and managing built and “natural” environments, as well as the populations therein. Regarding Afro-descendant populations, these changes result in new manifestations of violence. Cowen and Lewis (2016) argue that anti-Blackness takes on specific characteristics based on “shifts in the social order.” These shifts are part of emerging global political economic trends. Phenomena like white flight, urban renewal, and Black spatial displacement—which have affected the lived experiences of Black populations in the United States—are examples of how urban spaces in the United States have shifted in their social, economic, and material makeup over the past five decades. While capitalism has always had a global reach, the late 20th century saw capitalist power achieve unprecedented levels of influence. This consolidation of capitalist power occurred, in part, as a response to the struggles of racialized populations and workers’ unions which, in the mid to late 20th century, demanded dignified employment, livable wages, social programs, and land reform, among other things (Gilmore, 2007: 39–40; Harvey, 2007: 7; Kaufman, 2013; Woods, 2017: 188). As a result of the organizing capabilities and political demands made by those in labor movements, the Civil Rights movement, the Black Power movement, and land reform activists, new manifestations of capitalism emerged that worked to reverse and appropriate the gains made by these movements and reify the influence of capitalist actors. Huey Newton diagnosed this phenomenon in 1971, noting that capital (specifically within the United States) has not only expanded its territorial boundaries but also shifted its forms of control such that there exists a global capitalist power that controls “all the world’s lands and people” (Newton, 2002: 186–187 emphasis in original). According to Newton, one effect of the expanding reach of global capitalism is that the roles of nation-states fundamentally change. While previously nation-states maintained greater control of the political and economic aspects of their territory, the increased power of capital now means that nation-states’ “self-determination, economic determination, and cultural determination have been transformed by the imperialists of the ruling circle” (Newton, 2002: 170). More specifically, the governing role of the nation-state has become subordinated to the agenda of capital(ists), so that corporations’ actions “directly structure and articulate territories and populations. They tend to make nation-states merely instruments to record the flows of the commodities, monies, and populations that they set in motion” (Hardt and Negri, 2000: 31). In addition, sovereign state actions such as policing, military interventions, state and municipal funding, and taxes (or lack thereof) are increasingly influenced by, and manipulated for, the propagation of global capital. In short, expressions of state sovereignty are co-opted to benefit capital. As global purveyors of capital increasingly replace the nation-state as controllers of sovereign space, the various populations within these formerly bounded territories become subject to a number of shifts. In order to counter labor organizing, capital uses the “spatial fix” to find labor pools and regulations that it can more profitably exploit (Harvey, 2001). This manifests in phenomena like capital flight and “outsourcing,” in which production moves to new locations. It is, in part, through such arrangements that the deindustrialization of cities like Detroit, Milwaukee, Baltimore, and Pittsburgh occurred, as the owners of the means of production moved manufacturing facilities to areas with cheaper sources of labor and less stringent financial and environmental regulations (Boggs, 1968). A result of this geographic rearrangement of production is that labor practices which previously provided stable, long-term, unionized jobs are replaced by “flexible” arrangements defined by temporary, low-paid, insecure, and nonunionized employment. Simultaneously, precarious laborers, now under- and unemployed, occupy neighborhoods where land precipitously drops in value. With time, these undervalued locations become sites of real estate speculation and urban renewal (Marable, 2000; Taylor, 2016). These effects often take on both class and racial characteristics. Newton (2002), for instance, notes how globalized capital leads to increasing numbers of Blacks falling into the category of the lumpen proletariat (196; 210). Classed subordination is not the only (nor necessarily the most fundamental) form of oppression Black people face, however. Indeed, in the modern epoch, anti-Blackness does not simply “follow” global capitalism. Rather, through perpetual and multifaceted enactments of violence, anti-Blackness makes possible the accumulation necessary for capitalist reproduction. Violent forms of domination accompany (and make possible) the reproduction of global capitalism. This violence targets all manner of people, specifically those who do not exhibit a form of humanity normalized under Western modernity (e.g., lesbian, gay, bisexual, transgender, and queer (LGBTQ) and gender nonconforming folk, Muslims, Latinx, and undocumented immigrants) or a manner of spatiality that adheres to the tenets of capitalist notions of individual ownership (Mitchell, 2003). Under this new phase of capitalism, ever-expanding groups of people are subjected to precarious life (Mbembe, 2017). Still, experiences of anti-Blackness remain unique, as the openness of Black people to violence and the assumed a-spatial nature of Black populations remain constitutive factors of the modern world. The logics underpinning anti-Black violence are inheritances of chattel slavery. These logics cast Black geographies as empty and threatening, open to occupation, and subject to surveillance and assault. Indeed, capitalism’s perpetuation relies as much on anti-Blackness as it ever has. The following section seeks to clarify the ways in which antiBlackness makes capital accumulation possible. Colonial ethics reverberate in the present The increasing globalization of capital and spatial marginalization of “superfluous” populations is fundamentally tied to the negation of Black life and assumptions of Black nonbeing. The treatment of Black lives as the embodied absence of value, or, “the very condition of existence and the determination of value,” underpins Black non-being and the assumed lack of Black cartographic capacity in the dominant spatial imaginary, making global capitalism possible (Ferreira da Silva, 2017: 1). The interconnected nature of capitalism and race is a well-worn topic. Scholars have theorized race as an ideological outgrowth of the economy (Hall, 1996); as an apparatus used to facilitate flows of people and commodities (Lowe, 2015); as a central component of capitalist maturation (James, 1989); and as a phenomenon necessary for the establishment of the world system (Robinson, 2000), among countless other approaches. Geographers, too, have unpacked the ways in which regimes of capitalism employ racialized concepts to reproduce. Geographic interrogations of racial capitalism have analyzed the role of racist assumptions in implementing neoliberal reforms in the wake of a natural disaster (Derickson, 2014); the manipulation of racial distinction to prevent labor organizing (Wilson, 2000); how resistance to Black landownership underpinned early 20th-century industrial agriculture (Williams, 2017); the role of capitalism in perpetuating environmental racism (Pulido, 2017); and the centrality of plantation relations to numerous variations of capitalism (Woods, 1998). Nonetheless, we must push further to explicate the ways in which capitalism is actually dependent on anti-Blackness to realize itself, instead of understanding anti-Black racism as a secondary effect of the economy or a phenomenon that emerges periodically. That is to say, reflections on the interlinked nature of race and capitalism must move beyond an assumption of economic causality and grapple with the ways in which anti-Blackness is actually an always-present precondition for capital accumulation. In explicating anti-Blackness, we draw on an Afro-Pessimist framework, as Afro-Pessimism makes distinct claims about the nature of Blackness in the modern world. An Afro-Pessimist analysis of antiBlackness does not treat anti-Black racism as a contingent phenomenon (Wilderson, 2011: 3–4) but rather as a global, ever-present factor that exists as the basis “for expansion and unending space within the symbolic economy of settlement” (King, 2014). Such an approach forces us to recognize how anti-Blackness punctuates the modern epoch by identifying the underlying logics that inform concrete manifestations of anti-Black racism around the world. In this way, Afro-Pessimism adds new dimensions to already-existing work on the connections between anti-Blackness and political economy by recognizing that, while capitalism exploits all of the world’s populations, it does not dominate all of them in the same way. With regard to the question of space, anti-Blackness helps us understand how the afterlife of slavery (Hartman, 2007: 6) leads to Black populations being conceptually unable to legitimately create space, thereby leaving locations associated with Blackness open to the presumably “rational” agendas of dominant spatial actors. Black populations, then, serve as the guarantor of capitalism’s need to constantly find new spaces of accumulation. In this section, we offer an explanation of how capitalism relies on anti-Blackness by foregrounding anti-Blackness as a phenomena with its own internal logics and concrete expressions. Capitalism is rooted in violent forms of captivity and murder unleashed on indigenous and Afro-descendant populations the world over (Ferreira da Silva, 2004; James, 1989; Rodney, 1972; Williams, 2014; Wynter, 1995). At its origin and in its contemporary manifestations, then, capitalism is systemically related to slavery and its various global permutations (Robinson, 2000: 313–314). The assumption that Black populations lack both humanity and “space, that is ethno- or politico-geography,” defines the treatment of enslaved Black peoples. Today, the assumed a-spatiality that defined conditions of chattel slavery continues to imprint the socio-spatial relations that reproduce global capital (Robinson, 2000: 81, 200). Black populations are deemed a-spatial as a result of the fact that modern notions of space and practices of spatial production are rooted in specific relations of power (Massey, 2005: 64, 100–101). These power relations are themselves organized around logics that have particular historical roots (Santos, 2008: 21). In the colonial epoch, chattel slavery—the social, legal, and political reduction of Africans to the status of nonhumans—produced the figure of the Black, which had a nullified spatial capacity (Wilderson, 2010: 279), was disavowed as a human being (Ferreira da Silva, 2015: 91), and was a priori structurally prevented from enacting “rational” spatial expressions (Santos, 2009: 24). Locations associated with Black populations became wholly “unhallowed” spaces, which would never receive recognition as legitimately occupied (Wynter, 1976: 81). This is not to suggest that Black peoples were or are understood as not physically present. Black bodies are certainly recognized as existing in exteriority (Raffestin, 2012: 129). Still, this recognition of physical presence does not signify that Black populations’ are understood as establishing legible space. Despite physical presence, Black populations nonetheless remain rendered “ungeographic” in dominant understandings of space (McKittrick, 2006: x). Hence, the geographic locations in which Black populations reside are treated as open to the varied agendas espoused by dominant spatial actors. Capitalism’s new rounds of accumulation require access to spaces that previously had different relations to capitalist practices. The assumed a-spatiality of Black populations often leads to purveyors of capitalism treating locations inhabited by Black people as available for emerging modes of accumulation. Put another way, spaces that were once marginal or peripheral to the perpetuation of capital accumulation become sites of appropriation precisely because the (Black) populations occupying them receive no recognition as viable spatial actors. The spaces necessary for new forms of accumulation are thus conceptually open because of this assumed a-spatiality and subsequently physically opened via the spatial removal and dispersal of Black residents. This dispersal entails violent actions that are a priori legitimate because of the assumed lack of Black spatial agency. In other words, new spaces of “investment have been mapped onto previous racial and colonial (imperial) discourses and practices” evidencing an inextricable relationship between anti-Black notions of space, capitalism’s logic of perpetual expansion, and the acceptable subordination of Black physical presence (Chakravartty and Silva, 2012: 368). This is what Frank Wilderson terms the “deterritorialisation of Black space” (2003: 238) that is necessary for accumulating capital vis-a`-vis emerging political economic practices. Katherine McKittrick similarly notes that Black geographies are cast as “the lands of no one” and “emptied out of life” in order that “suitable capitalist life-support systems” be put into place and globally propagated (McKittrick, 2013: 7). A number of present-day practices demonstrate the reliance of capital on this notion of empty, lifeless, Blackened spaces, such as capital disinvestment, white flight, gentrification, urban renewal, incarceration, and policing. These spatial arrangements identify Black peoples as inhuman and locations associated with Black populations as lacking a legitimate form of occupation and usage. Such assumptions contribute to the subordination of Black populations and spaces to dominant notions of “appropriate” uses of space, while “illegitimate” spaces of Blackness remain under siege by purveyors of capital. As this occurs, new spaces of accumulation open in areas formerly peripheral to the capitalist agenda. At the same time that these new rounds of accumulation take place, sovereign expressions of power serve to forcibly remove Black people and ensure they remain separated from these new spaces of accumulation. Subsequently, Black people are routinely harassed for existing in the communal spaces in which they have resided for generations.1 Along with public policy shifts, policing, incarceration, and extrajudicial killings simultaneously disqualify Black spatial agency and remove Black bodies from spaces deemed open for appropriation by capitalism’s purveyors, thereby simultaneously spatializing antiBlackness and reproducing global capital. The systemic casting of Black spaces as lifeless and open to appropriation for the continuation of capital breathes new life into “civil society’s political economy: [the Black body] kick-starts...capital at its genesis and rescues it from its over-accumulation crisis at its end—black death is its condition of possibility” (Wilderson, 2003: 238). Put simply, the endless accumulation of capital and its legitimating sovereign practices are, in part, made possible through the continued societal insistence on Black inhumanity and a Black lack of cartography, which casts Black spaces as empty. Hence, there exists an unquestionable connection between the colonial logics inaugurated centuries ago and today’s capitalist agenda. The lack of recognition of Black humanity underpins both projects. Early capitalism flourished thanks to the relegation of enslaved Blacks to the ontological and legal condition of non-humans on the plantations, in the forests, and in the mines of the Americas, while slaveholders and early insurance companies made fortunes off their investments in the transatlantic slave trade. Similarly, real estate speculation (Harvey, 2010), urban renewal (Perry, 2013), the roll-back of social wages (Wacquant, 2009), and the explosion of prisons (Gilmore, 2007)—all of which have allowed Bledsoe and Wright 13 present-day capitalism to continue its agenda of accumulation—are only possible via the understanding of spaces inhabited by Black populations as empty and naming and treating those same populations as abject, inhuman beings. In this way, the anti-Blackness and assumed lack of Black being that originated in and defined the colonial epoch remains present with us today, despite the new material practices and justifications it takes on. Anti-Blackness remains an ever-present condition, defining the modern world. Scholars can and should look to Black thinkers and activists to help make sense of the interrelated phenomena of anti-Blackness and global capital, as Black grassroots actors explicate the linkages between these phenomena (Burton, 2015). Spatial manifestations of capital and anti-Blackness A number of phenomena have resulted in public attention to, a refusal of, and organized action against the violence inherent in globalized capital and its expressions of sovereignty. The need for analysis and resistance is particularly evident regarding Black populations, as global capital and its attendant sovereignty have established new rounds of anti-Black, death-dealing (Gilmore, 2002) realities. In the United States, these realities include the demographic history of Ferguson and white flight in St. Louis; the factors that led to the precarious nature of Eric Garner’s livelihood; and the industrial and political abandonment of the majority Black municipality of Baltimore, to name but a minimum. In each example, the constitutive relations of the locations in question shifted to accommodate, among other things, the changing demands of capital. These relations entailed renewed forms of antiBlack violence which subsequently became flashpoints for Black grassroots organizing. In this section, we take the case of metropolitan St. Louis, Missouri and reflect on how changes in Ferguson’s racial–spatial make up reflect wider societal shifts taking place as a result of global capitalism. Because conditions in Ferguson have pushed conversations around anti-Blackness in the United States, an interrogation of the city’s relation to racial capitalism is appropriate. Following this subsection, we reflect on the ways that Black grassroots organizations diagnose and respond to such violence. Ferguson, MO Alvaro Reyes (2013) contextualizes the murder of Mike Brown by situating the town of Ferguson, Missouri as part of a wider national trend of gentrification, white flight, and policing. Long steeped in anti-Black violence, the St. Louis Metropolitan area, of which Ferguson is a part, perpetuates capital accumulation in part by relying on the disenfranchisement and premature ending of Black lives. Beginning in the 1950s, White residents fled St. Louis’ inner city for presumably safer, whiter suburbs like Ferguson. By the 1990s, Ferguson’s population was roughly 73% White, a demographic reality that began to change due to gentrification trends in the mid-1990s—a practice which coincided with the de-industrialization of St. Louis. Both led to the forced removal of inner-city Black residents and their relocation to now cheaper suburbs, such as Ferguson (Moskowitz, 2017). These trends help explain why today, Ferguson has a majority (67%) Black population, 25% of which is below the poverty line (Reyes, 2013). Black displacement from St. Louis’ inner city opened new spaces of investment for global capitalist actors. St. Louis’ Central West End (CWE) is an illustrative example of the ways in which the city is a site of intertwined anti-Blackness and global capital accumulation. Located south of the racialized “Delmar Divide” (Harlan, 2014), the CWE experienced a significant outmigration of Black residents in the late 20th century and an influx of White residents in the first 14 Environment and Planning D: Society and Space 37(1) decade of the 21st century (Gordon, n.d.a). The displacement of Black populations and increase of White populations in inner-city St. Louis coincided with a late 20th-century explosion of urban renewal mechanisms like enterprise zones, planned industrial expansion, and redevelopment corporations. These phenomena served to classify inner-city spaces populated by Black communities as “blighted” and in need of development, offering tax incentives to a variety of developers while making the locations too expensive for low-income Black communities to remain (Gordon, n.d.b). Today, the CWE is a “trendy” location, replete with hotels, restaurants, bars, and luxury apartments. Complexes like the CWE City Apartments and Citizen Park—both built in the last decade—are examples of how global capitalist actors profit from the systematic displacements of Black communities. CWE City Apartments are owned by Transwestern (2018), a private real estate firm that “assists clients through more than 180 offices in 37 countries as part of a strategic alliance with [French investment bank] BNP Paribas Real Estate.” Citizen Park, on the other hand, is managed by Asset Plus Companies—a real estate management firm that works with global corporations like ING Bank, Mitsubishi, and Bank of America. These two brief examples demonstrate how, in St. Louis, the built environment acts as a means of capital accumulation for global capitalist actors. These spaces are made available thanks to the spatially superfluous nature of Black communities which were displaced from this part of the city through a variety of political economic mechanisms. The mechanisms that pushed Black populations out of the CWE subsequently allowed globally active companies to establish profit-producing sites in the same location, while the displaced were forced to move to suburban locations like Ferguson. These conditions are in no way serendipitous occurrences. Instead, they form part of global political economic realities that entail specific understandings and uses of space. As new forms of accumulation—such as urban renewal and real estate investment—are implemented to perpetuate capitalism, new spaces become “open” for occupation, use, and exchange. Notions of certain spaces being available for appropriation depend on ideas of certain populations being unable to adequately occupy or administer space. In the 1950s, St. Louis saw an abandonment of people and resources from the inner city and a fixing of Black people in the same location. The past two decades have witnessed capital reinvest in some of these same spaces, a practice made possible through the expulsion, dispersal, and policing of Black residents. Thus, as global capital’s role in reshaping metropolitan St. Louis is unquestionable, so, too, is the ethic of anti-Blackness in capitalism’s current unfolding. In Ferguson, Mike Brown was murdered under conditions of induced resettlement, structural poverty, unequal distributions of political influence and police power, and a fundamental understanding that Black populations lack spatial agency. Such realities are a result of both capital’s needs for new spaces of accumulation and the insistence that Black populations cannot occupy space legitimately. These intertwined realities of capitalist expansion and structural anti-Blackness led to the dehumanization and displacement of Black populations in the St. Louis metropolitan area and disinvestment in their lived spaces. These shifts are hardly specific to St. Louis. Indeed, they constitute a global phenomenon in which capitalism requires that spaces take on new qualities and functions.

Of the many political economic factors effecting Black populations in the United States, neither gentrification, deindustrialization, capital flight, nor any other such phenomenon develop by chance (Lees, 2000, 2012; Moskowitz, 2017; Paton, 2014). Rather, these processes are all part of a much larger trend within the global economy that results in a spatial, economic, and cultural reorganization of society. This new ordering of our globe happens in accord with ever-innovating forms of capitalism. Gentrification, in particular, has come to comprise “an increasingly unassailable capital accumulation strategy” by weaving “global financial markets together with large- and medium-sized real-estate developers” (Smith, 2002: 443). As capitalism enacts new rounds of accumulation through practices like gentrification, its purveyors (e.g., real estate developers, financiers, and municipal leaders) must find or create favorable conditions for that accumulation. Thus policies, relations, and regulatory identities that once inhibited the free flow of capital (tariffs, unions, Keynesian modes of governance, localized non-capitalist practices, etc.) are increasingly manipulated and done away with to facilitate new rounds of accumulation (Hackworth and Smith, 2001; Moskowitz, 2017). As a result, human and nonhuman beings are increasingly at the mercy of capitalism and its exploitations, expropriations, and expulsions (Sassen, 2014). These oppressive spatial processes continually affect Black populations. The spatial fix—described by David Harvey (2001)—preserves and propagates capitalism and also entails a racial fix(ation) as the continuation of accumulation treats certain places and populations as obsolete, in need of appropriation, removal, and erasure. For example, in the midst of efforts to accumulate surplus value through real estate development via the gentrification of Black communities, municipalities attempt to appease Black communities and capitalize on Black cultural/spatial expressions by hemming Black histories into museums as they eradicate the makers of Black history. The African American Library at the Gregory School in Houston’s Fourth Ward, the Houston Museum of African American Culture in Houston’s Third Ward, and the National Museum of African American History and Culture in Washington, D.C. are examples of this phenomenon. Each cultural hub emerged as the neighborhoods and cities in which they are located underwent forms of gentrification that dislocated many Black residents and history makers.

#### [Kaur] The India Strike worked because of militarism – inserted in blue

**Kaur:** Kaur, Baljeet. [Researcher at the Quill Foundation] “Prisoners' Right to Strike: Protests by Inmates Should Not Be Considered an Offence” *Engage,* 2019. <https://www.epw.in/engage/article/prisoners-right-strike-protests-inmates-should-not> JP

**In the unbearable heat of Rajasthan, some undertrial male prisoners in Jaipur Central Jail, locked up in small suffocating cells for up to 23 hours without ventilation or fans, resolved to take action. The prisoners started a hunger strike demanding installation of boxes where prisoners could put their complaints, and regular visits of a judge to look into their complaints (Waqar 2019).** Prisoners had intimated about their hunger strike along with the demands in a letter to the prison authorities and the judge presiding over their trials. On the intervening night of 29 and 30 March 2019, some undertrial prisoners in Jaipur Central Jail were dragged and beaten up brutally, leading to fractured limbs and serious injuries. **Despite the judge issuing a notice to the jail authorities, prisoners not only suffered physical beatings, but they were also charged under Sections 332 (voluntarily causing hurt to deter public servant from his duty) and 353 (use of criminal force on public servant in execution of his duties) of the Indian Penal Code (IPC) for causing injury to a prison official’s finger, and inflicting self-harm (Hindu 2019).** The most astonishing aspect of this turn of events is that the demands of the prisoners for which they started the hunger strike are the mechanisms that prison authorities should on their own be adopting as per the mandatory directions given by the Supreme Court in several cases including Sunil Batra (II) v Delhi Administration and Madhukar B Jambhale v State of Maharashtra. **On 23 and 24 June, 2017 women prisoners of Byculla Jail in Mumbai rebelled to highlight torture and murder of their co-prisoner Manjula Shetye by prison staff. If it wasn’t for their strike, Manjula’s case would never have seen the light of the day. Their strike brought so much attention to Manjula’s murder in custody that not only the accused prison staff were arrested and are currently being tried, but ministers and parliamentarians have visted the prisoners**. However, an first information report against the 200 women prisoners was filed for allegedly rioting, making unlawful assembly (Dalvi, 2018).

#### Prison strikes don’t work – at best they cause incremental, half-hearted reforms; at worst prisoners get punished for them.

Thompson ’16 (Christie; writer for the Marshall Project; 9-21-2016; “Do Prison Strikes Work?”; Marshall Project; https://www.themarshallproject.org/2016/09/21/do-prison-strikes-work; Accessed: 11-8-2021; AU)

On Sept. 9, prisoners across the country stopped showing up for their work assignments to protest what they call slave-like conditions for incarcerated workers. Inmates make pennies an hour keeping the prison running — such as cleaning and cooking — or providing cheap manufacturing for private businesses. Inmates involved in the protest are calling for higher wages, better working conditions and less severe punishment while on the job. The work stoppage was organized by inmates in multiple states and labor activists with the Industrial Workers of the World to coincide with the 45th anniversary of the Attica riot, which was preceded by a strike in the prison’s metal shop. Prisoners and labor organizers on the outside hoped it would be the largest prison strike in history. It’s hard to quantify exactly how many prisoners in how many states have participated, as prison officials and organizers give conflicting accounts of its scope. Activists claim inmates in at least 11 states are taking part. This strike is the latest in a long history of prisoners trying to use what little leverage they have — whether work stoppages or hunger strikes — to demand change from administrators. Some have been more successful **than others**. Here’s a look at five other prison strikes and **what came of them**: Post-WWII Labor Strikes University of Michigan professor Heather Ann Thompson’s history of labor movements in prison details how a series of work stoppages and sit-down protests took off in prisons across the U.S. in 1947. In little over a decade, hundreds of prisoners in Connecticut, New Jersey, New York, Wisconsin, Louisiana, Ohio, and Georgia stopped working to protest long hours, trifling pay, and grueling work environments. Prisoners in Georgia and Louisiana went even further and slit their heel tendons so they could not be forced to work. While the work stoppages **did not lead** to immediate **changes**, they inspired another era of prison protest in the ‘60’s and ‘70’s, which included the Attica work stoppage and eventual riot. Those movements achieved **slight pay raises** and improved safety precautions in some states and led to the creation of prisoner-led unions. 2010 Georgia Labor Strike In 2010, state prisoners across Georgia launched what many then called the largest prison work strike in U.S. history — though official numbers are difficult to confirm. At the protest’s height, organizers said thousands of inmates participated across at least six state prisons. Georgia inmates were paid nothing for their work, as dictated by state law, and were asking for better conditions and more access to programming. Not only were Georgia inmates not showing up to their job assignments — they refused to leave their cells at all until their demands were met. The strike **lasted six days**, and garnered coverage in news outlets like The New York Times. It ended when prisoners decided to leave their cells to go to the law library and try to sue for improvements instead. (It’s **unclear** what became of those efforts). **Prisoners in Georgia are still not paid for their labor**. 2011-2013 Pelican Bay Hunger Strike In 2011, 400 prisoners in California’s supermax prison started refusing their meals. Their numbers grew to 7,000 as they were joined by prisoners all over the state. The inmates had a list of five demands, including limits on solitary confinement and changes to how the prison determines gang membership. Their fast ended after three weeks when prison officials agreed to reconsider some of their solitary confinement policies. Inmates returned to hunger-striking later in 2011 and again in 2013 saying the **changes were too small and too slow**. But the protests did have a significant impact. After the initial strike, the chair of the California Assembly’s Public Safety Committee held a hearing on conditions at Pelican Bay. In 2012, the nonprofit Center for Constitutional Rights filed a class-action lawsuit against the state over its use of prolonged isolation. Todd Ashker, one of the strike’s organizers, was the lead plaintiff. The suit was settled in September 2015, addressing many of the strikers’ concerns about how people end up in solitary and how long they remain there. 2013 Guantanamo Hunger Strike Detainees at the U.S. military prison in Cuba began hunger-striking in March 2013 to fight against their indefinite detention and alleged mistreatment. At the strike’s peak in July that year, 106 men were refusing to eat and 45 were being force-fed through nasal tubes. The strike — for its duration, size, and the graphic nature of force-feeding — **outraged** the public and policymakers and increased pressure on President Obama to fulfill his promise of closing the controversial prison. Since the strike, Obama has lowered the number of men held at Guantanamo from over 2,000 to 61, but has yet to close the prison entirely. 2015-2016 Immigration Detention Center Hunger StrikesSince 2015, hunger strikes have begun at various immigration detention centers — prison-like facilities where immigrants are held while their deportation case is decided — throughout the U.S. Roughly 200 detainees at Eloy Detention Center in Arizona stopped eating in June 2015, in part to pressure an investigation into recent deaths at the facility. That fall, immigrants in detention in California, Alabama, Louisiana, and Texas also stopped eating to object to their indefinite detention and poor conditions. More recently, 22 mothers being held with their children in a family detention center in Pennsylvania went on a hunger strike this August. Their strike accompanied a series of handwritten letters they sent to immigration officials asking to be released from indefinite detention. The strike has continued off-and-on since then, with even their children threatening to refuse to attend classes in solidarity with their mothers. It’s too soon to tell what the impact of their protests might be.

#### No visibility – lack of public attention means strikes never generate sufficient pressure to spark change.

HLR ’19 (Harvard Law Review; 3-8-2019; “Striking the Right Balance: Toward a Better Understanding of Prison Strikes”; Harvard Law Review; https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/; Accessed: 11-8-2021; AU)

But more broadly, the prison strikers sought to draw public attention to longstanding grievances over inhumane treatment within prisons across the country and to call for significant criminal justice reforms. The strikers, through the inmate organization Jailhouse Lawyers Speak, issued a list of ten national demands, calling for, among other things, improved prison conditions, better access to rehabilitation programs, voting rights for all current and former prisoners, and the “immediate end to the racial overcharging, over-sentencing, and parole denials of Black and brown humans.”4× Most critically, the strikers passionately called for the “immediate end to prison slavery”5× — the label that activists use to describe the exploitative labor practices within prisons of putting prisoners to work, sometimes compulsorily, for just “cents an hour or even for free.”6× Although **none of the strikers’ ten demands have yet been met**, the 2018 nationwide prison strike was still a remarkable event in its scope and coordination, as well as its ability to generate public support and attention. An estimated 150 different organizations endorsed the strike; citizens held numerous demonstrations outside of prisons in solidarity; and a range of national media publications provided detailed coverage of the protest’s motivations, objectives, tactics, and status as potentially the “largest prison strike in U.S. history.”7× Despite the 2018 prison strike’s apparent gravity, it is difficult to fully contextualize its significance because **surprisingly little attention** has been paid to prison strikes previously. For instance, just two years prior, in 2016, a similar nationwide prison strike was described as “[t]he **largest** prison strike . . . you [probably] **haven’t heard about**.”8× In light of this reality, this Note peers behind prison walls to improve our understanding of prison strikes — the end goal being to open the door to a broader discussion of why and how these strikes should receive legal protection. Part I briefly documents America’s history of prison strikes, showing that the 2018 nationwide strike is the latest in a long, important tradition of prisoners using the only real means available to them — collective actions against prison administrators — to protest labor conditions and other deeply held grievances. Part II then evaluates the legal framework governing prison strikes, demonstrating that such strikes likely do not receive sufficient protections under either the Constitution or federal and state statutes and therefore can be shut down by prison administrators without fear of judicial oversight. Part III, informed by the rich history of prison strikes, argues that their potential and demonstrated value demands, at the very least, consideration of the merits of protecting incarcerated individuals’ right to strike, and it contends that the First Amendment framework offers one potential avenue to allow prisoners to peacefully surface pressing problems in our carceral system and to collectively express their humanity and dignity.

#### Multiple alt causes to recidivism – low wages are a drop in the bucket.

Tegeng et al. ’18 (Goche; professor in the Department of Psychology at Wollo University; 2018; “Exploring Factors Contributing to Recidivism: The Case of Dessie and Woldiya Correctional Centers”; Arts and Social Sciences Journal; https://www.hilarispublisher.com/open-access/exploring-factors-contributing-to-recidivism-the-case-of-dessie-and-woldiya-correctional-centers-2151-6200-1000384.pdf; Accessed: 11-8-2021; AU)

Recidivism is “one of the most fundamental concepts in criminal justice” and relevant in understanding the core functions of the criminal justice system such as incapacitation, deterrence, and rehabilitation [1]. Within criminal justice agencies, the level of recidivism is an important outcome variable that provides the basis for determining the extent to which an agency has been able to effectively intervene in the criminality of the offender populations it serves, identifying the needs for more effective programs, communicating the need for increased resources, and demonstrating accountability to the public and to legislators [2]. There are **many different plausible contributing factors** that might explain why released offenders could not successfully reenter the community. A notable number of studies examined the contributing factors to recidivism among released offenders. The **most plausible reasons** to explain the relatively high recidivism rate among released offenders were centered on the offenders’ **educational illiteracy**, **lack** of vocational **job skills**, lack of interpersonal skills, or **criminal history**. Besides, socio-economic factors such as gender, **age and employment status** influence the possibility of committing crimes after first conviction. In terms of gender, men are more likely to return to prison because of **criminal peer associations**, **carrying weapons**, alcohol abuse, and **aggressive feelings** [3]. According to United States Sentencing commission 24.3 and 13.7 percent of males and females were recidivates respectively in USA. **Age is** also another demographic **determinant factor** for recidivism. A study in USA shows that recidivism rates decline relatively consistently as age increases. So youths are more likely to offend than older people. Among all offenders under age 21, the recidivism rate is 35.5 percent, while offenders over age 50 have a recidivism rate of 9.5 percent (United States Sentencing commission, 2004). Therefore, incarceration, particularly at a young age, can lead to an accumulation of disadvantages over the life course, with future opportunities severely restricted [4]. On the other hand, the **absence of employment** is a consistent factor in recidivism and parole or probation violations, and **having a criminal history** limits employment opportunities and **depresses wages**. In New York State, labor statistics show that **89%** of formerly incarcerated people who violate the terms of their probation or parole are unemployed at the time of violation. Further research suggests that 1 year after release, up to 60% of former inmates are not employed. Nationally, according to a study by Bushway and Reuter [5], one in three incarcerated people reported being unemployed before entering state prison, and fewer than half had a job lined up before release. Moreover, family is **another main factor** in the formation of individual and social personally of the child. From the child’s point of view, parents are the most important and most valuable models of the universe. Prisoners’ recidivism rates are associated with the amount of contact they receive with their families [6]. Less care of family to their children [7] and lack of family involvement is **strongly related** to crime and incarceration rates. In line with this, studies in Australia revealed that, offenders with limited family support or attachment are more likely to reoffend. Alongside, drugs problem is one of the **main headline crime stories** of our times which leads to crime. The urge to commit crimes by drug addicts and alcoholics is **motivated** by the desire to support their habits. Much of these offenders’ behavior can be linked to substance abuse and addictions (UNODC, 2012). Because they tend to serve short-term sentences, their access to treatment and other programmers while in detention is quite limited and they remain at high risk of reoffending. The issue crime in general and recidivism in particular has attracted the interest of some researchers in Ethiopia. These studies were basically focused on criminal behavior; juvenile delinquency and the criminal justice system i.e. have tried to point out from legal perspectives. Yet the amount of researches and the knowledge obtained from those researches do not suffice to explain the extent and depth of the problem related to recidivism rather they try to highlight the issue from criminal behavior. Andargachew [8] in his book “The Crime Problem and Its Correction” found that Ethiopian prisons are suffered from over crowdedness, lack of sanitation, and insufficient amount and quality of food service. He has also focused the history of Ethiopian police force as well as the history of judicial system in Ethiopia. However, Andargachew failed address the issue of recidivism and lack of rehabilitation on repeat offenders. Daniel [9] also studied Crime incidences in Addis Ababa with an emphasis on the nature, spatial pattern, causes, consequences and possible remedies and showed different variables causing criminal behavior. But he too failed to identify the major causes of recidivism. Nayak [10] studies magnitude and impact Juvenile Delinquency in Gondar, explored that Juveniles who were from large sized /or disintegrated family commit delinquent act than smaller sized and healthy family. It has a greater impact on different levels like, individual, family, community and society at large. Yet, he also lacked from discussing recidivism. In addition to this, Meti [11] in his/her study in Addis Ababa tried analyze the influence of socio economic factors on crime with particular emphasis on the triggering factors that prompt criminal behavior is a timely endeavor. But he still refrained from explaining the factors contributing to recidivism. On top of that, methodologically, the aforementioned studies gave a huge emphasis on quantitative method in the understanding of crime and criminal behavior, for the sake of describing socio-economic and demographic characteristics of study participants’ vis-à-vis recidivism. On the contrary, in the present study attempt has made to incorporate qualitative method intensively due to the fact that lived experience of recidivists are more understandable through a detailed and rich data that could be collected by giving more attention to qualitative method.

#### Housing – local environments influence decision-making post-imprisonment.

Flores ’18 (Nayely; contributor to the Research Journal of Justice Studies and Forensic Science; 5-21-2018; “Contributing Factors to Mass Incarceration and Recidivism”; San Jose State University; https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1061&context=themis; Accessed: 11-8-2021; AU)

Neighborhood environmental context has been found to **influence** the **behavior** of those that reside in that neighborhood. The social organization of neighborhoods, specifically poor ones, have a **significant impact** on the level of crime and recidivism rate in that particular neighborhood. According to Kubrin and Stewart’s (2006) study, when offenders are released back into their neighborhoods, they seek resources **in their neighborhood** to successfully integrate back into society; however, when that is not present the probability of them returning to the criminal justice system is **significantly higher**. Moreover, when individuals in neighborhoods have high rates of crime, poverty, and high social disorganization, the risk of youth falling into the criminal justice system also increases. Harris’s (2010) study finds that Blacks who find themselves in these neighborhoods are at a higher risk to become incarcerated than whites. In addition, socioeconomic disparities between Blacks and whites make it more difficult for Blacks to access resources once they are in the criminal justice system, making them **susceptible to recidivism**. Typically, offenders return to their neighborhoods with little to no money, the clothes on their back, and no employment. When they are returning to a neighborhood that has those same characteristics (high unemployment, poverty, etc.), there is a **considerable likelihood** of reoffending (Stahler et al., 2013). Overall, many studies show a **significant relationship** between mass incarceration and neighborhood environment.

#### No solvency

Schwartzapfel 14 (Beth Schwartzapfel – Journalist writing for The Prospect, “The Great American Chain Gang: Why can't we embrace the idea that prisoners have labor rights?”, https://prospect.org/justice/great-american-chain-gang/, 28 May 2014, EmmieeM)

Despite the conditions and the pay, most inmates want to work. A job gives them a safe place to be for hours each day, provides a break from the monotony of prison life, and-in most states-puts a few dollars and cents in their commissary account. "I was happy to work," Hazen says. "It made me feel like I wasn't so much in prison. It gave me a minute by myself to get away from the craziness, time to think and reflect and figure out what I wanted to do with my life." What the job didn't provide was a wage sufficient to support her son and accumulate some savings for post-prison life, or job training that would help her pursue the goals she established in that dish room: to study psychology and one day open a domestic-violence shelter. After six months of work, Hazen left prison the way most people do: with a criminal record, no meaningful job experience beyond what she went in with, and not even enough savings to buy a suit for a job interview ($43).

Study after study has found what common sense would suggest: Prisoners who gain professional skills while locked up, and those who earn a decent wage for their work, are far less likely to end up back behind bars. But if prisons in America, with the world's highest incarceration rate, had to pay minimum wage-let alone the prevailing wage-they couldn't keep operating. If inmates like Hazen weren't washing dishes in Massachusetts prisons, the state's corrections department would spend an average of $9.22 to hire someone else to do it (the mean hourly wage for a dishwasher, according to the Bureau of Labor Statistics). That's 30 to 45 times what inmates make for performing the same service. As a result, prisons-and taxpayers-use prisoners to save hundreds of millions of dollars each year on labor costs, according to the GAO.

"If our criminal-justice system had to pay a fair wage for labor that inmates provide, it would collapse," says Alex Friedmann, managing editor of Prison Legal News, an independent magazine that promotes inmates' rights. "We could not afford to run our justice system without exploiting inmates."

#### The state legitimizes resistance to retain its monopoly on violence – liberation requires operating outside of legal recognition that inevitably coopts movements to entrench broader cycles of violence. The state shields the bourgeois by “gifting” workers the right to engage in strikes in exchange for the power to decide which grievances constitute “legitimate” abuse that would allow resistance efforts to meet the definition of a strike. RTS merely lets the state appear as an ally to the Left, allowing it to infiltrate and sap momentum while simultaneously making the Left less appealing to voters

Crepon 19 (Marc Crepon – professor of philosophy @ ecole Normale Superieure @ Paris and research director at Centre national de la recherche scientifique Husserl Archives, translation by Micol Bez, Critical Times, “The Right to Strike and Legal War in Walter Benjamin’s ‘Toward the Critique of Violence’”, https://read.dukeupress.edu/critical-times/article-standard/2/2/252/141479/The-Right-to-Strike-and-Legal-War-in-Walter, August 19, EmmieeM)

If we wish to understand how the question of the right to strike arises for Walter Benjamin in the seventh paragraph of his essay “Zur Kritik der Gewalt,” it is important to first analyze the previous paragraph, which concerns the state's monopoly on violence. It is here that Benjamin questions the argument that such a monopoly derives from the impossibility of a system of legal ends to preserve itself as long as the pursuit of natural ends through violent means remains. Benjamin responds to this dogmatic thesis with the following hypothesis, arguably one of his most important reflections: “To counter it, one would perhaps have to consider the surprising possibility that law's interest in monopolizing violence vis-à-vis the individual is explained by the intention not of preserving legal ends, but rather of preserving law itself. [This is the possibility] that violence, when it does not lie in the hands of law, poses a danger to law, not by virtue of the ends that it may pursue but by virtue of its mere existence outside of law.”[1](javascript:;)

In other words, nothing would endanger the law more than the possibility of its authority being contested by a violence over which it has no control. The function of the law would therefore be, first and foremost, to contain violence within its own boundaries. It is in this context that, to demonstrate this surprising hypothesis, Benjamin invokes two examples: the right to strike guaranteed by the state and the law of war.

Let us return to the place that the right to strike occupies within class struggle. To begin with, the very idea of such a struggle implies certain forms of violence. The strike could then be understood as one of the recognizable forms that this violence can take. However, this analytical framework is undermined as soon as this form of violence becomes regulated by a “right to strike,” such as the one recognized by law in France in 1864. What this recognition engages is, in fact, the will of the state to control the possible “violence” of the strike. Thus, the “right” of the right to strike appears as the best, if not the only, way for the state to circumscribe within (and via) the law the relative violence of class struggles. We might consider this to be the perfect illustration of the aforementioned hypothesis. Yet, there are two lines of questioning that destabilize this hypothesis that we would do well to consider.

First, is it legitimate to present the strike as a form of violence? Who has a vested interest in such a representation? In other words, how can we trace a clear and unequivocal demarcation between violence and nonviolence? Are we not always bound to find residues of violence, even in those actions that we would be tempted to consider nonviolent? The second line of questioning is just as important and is rooted in the distinction established by Georges Sorel, in his Reflections on Violence, between the “political strike” and the “proletarian general strike,” to which Benjamin dedicates a set of complementary analyses in §13 of his essay. Here, again, we are faced with a question of limits. What is at stake is the possibility for a certain type of strike (the proletarian general strike) to exceed the limits of the right to strike—turning, in other words, the right to strike against the law itself. The phenomenon is that of an autoimmune process, in which the right to strike that is meant to protect the law against the possible violence of class struggles is transformed into a means for the destruction of the law. The difference between the two types of strikes is nevertheless introduced with a condition: “The validity of this statement, however, is not unrestricted because it is not unconditional,” notes Benjamin in §7. We would be mistaken in believing that the right to strike is granted and guaranteed unconditionally. Rather, it is structurally subjected to a conflict of interpretations, those of the workers, on the one hand, and of the state on the other. From the point of view of the state, the partial strike cannot under any circumstance be understood as a right to exercise violence, but rather as the right to extract oneself from a preexisting (and verifiable) violence: that of the employer. In this sense, the partial strike should be considered a nonviolent action, what Benjamin named a “pure means.”

The interpretations diverge on two main points. The first clearly depends on the alleged “violence of the employer,” a predicate that begs the question: Who might have the authority to recognize such violence? Evidently it is not the employer. The danger is that the state would similarly lack the incentive to make such a judgment call. It is nearly impossible, in fact, to find a single instance of a strike in which this recognition of violence was not subject to considerable controversy. The political game is thus the following: the state legislated the right to strike in order to contain class struggles, with the condition that workers must have “good reason” to strike. However, it is unlikely that a state systematically allied with (and accomplice to) employers will ever recognize reasons as good, and, as a consequence, it will deem any invocation of the right to strike as illegitimate. Workers will therefore be seen as abusing a right granted by the state, and in so doing transforming it into a violent means. On this point, Benjamin's analyses remain extremely pertinent and profoundly contemporary. They unveil the enduring strategy of governments confronted with a strike (in education, transportation, or healthcare, for example) who, after claiming to understand the reasons for the protest and the grievances of the workers, deny that the arguments constitute sufficient reason for a strike that will likely paralyze this or that sector of the economy. They deny, in other words, that the conditions denounced by the workers display an intrinsic violence that justifies the strike. Let us note here a point that Benjamin does not mention, but that is part of Sorel's reflections: this denial inevitably contaminates the (socialist) left once it gains power. What might previously have seemed a good reason to strike when it was the opposition is deemed an insufficient one once it is the ruling party. In the face of popular protest, it always invokes a lack of sufficient rationale, allowing it to avoid recognizing the intrinsic violence of a given social or economic situation, or of a new policy. And it is because it refuses to see this violence and to take responsibility for it that the left regularly loses workers' support.

The second conflict of interpretation concerns what is at stake in the strike. For the state, the strike implies a withdrawal or act of defiance vis-à-vis the employer, while for the workers it is a means of pressuring, if not of blackmail or even of “hostage taking.” The difference is thus between an act of suspension (which can be considered nonviolent) and one of extortion (which includes violence). Does this mean that “pure means” are not free of ambiguity, and that there can be no nonviolent action that does not include a residue of violence? It is not clear that Benjamin's text allows us to go this far. Nevertheless, the problem of pure means, approached through the notion of the right to strike, raises the following question: Could it be that the text “Zur Kritik der Gewalt,” which we are accustomed to reading as a text on violence, deals in fact with the possibility and ambiguity of nonviolence?

The opposition between the aforementioned conflicts of interpretation manifests itself in Benjamin's excursus on the revolutionary strike, and specifically in the opposition between the political strike and the proletarian general strike, and in the meaning we should attribute to the latter. As previously discussed, the state will never admit that the right to strike is a right to violence. Its interpretative strategy consists in denying, as much as possible, the effective exercise of the right that it theoretically grants. Under these conditions, the function of the revolutionary strike is to return the strike to its true meaning; in other words, to return it to its own violence. In this context, the imperative is to move beyond idle words: a call to strike is a call to violence. This is the reason why such a call is regularly met with a violent reaction from the state, because trade unions force the state to recognize what it is trying to ignore, what it pretends to have solved by recognizing the right to strike: the irreducible violence of class struggles. This means that the previously discussed alternative between “suspension” and “extortion” is valid only for the political strike—in other words, for a strike whose primary vocation is not, contrary to that of the proletarian general strike, to revolt against the law itself. Essentially, the idea of a proletarian general strike, its myth (to borrow Sorel's words), is to escape from this dichotomous alternative that inevitably reproduces and perpetuates the violence of domination.

Let us consider one final point in Benjamin's reflection, which concerns the crucial problem of designation. The fundamental question is that of knowing what we can and should call violence:

For, however paradoxical it may seem on first glance, even conduct undertaken in the exercise of a right can be described under certain conditions as violence. And indeed such conduct, when it is active, can be called violence if it exercises a right that is vested in it by the power of the legal order in order to topple that very order. When passive, however, it is nonetheless to be described as violence if it constitutes extortion in the sense developed above. (§7)

Three questions emerge from the designation of an action as violent. The first is how to understand what is at stake. What forces are engaged when “we” (who, in fact?) describe an action as violent? The second asks what the idea of the proletarian general strike teaches us regarding the specific function of violence—“to found or transform legal relations.” Finally, the third problem requires us to examine what it means to recognize violence in an action that we would be tempted to consider nonviolent. These three questions remind us that naming violence is not only an exercise of power, but that it is always, in itself, the locus of a power struggle.