# Prison Strikes AC

## Part 1: The Court

#### **[Guinier & Torres] RACISM IS RAMPANT, AND DEBATE’S A PLACE TO CHALLENGE IT –** rounds are practice for real world engagement of political problems.

Guinier & Torres: Guinier, Lani [Bennett Boskey Professor of Law, Harvard Law School] and Gerald Torres [Professor of Environmental Justice at the Yale School of the Environment]. “The Miner’s Canary, Enlisting Race, Resisting Power, Transforming Democracy.” Harvard University Press,2002. https://www.hup.harvard.edu/catalog.php?isbn=9780674010840 CV/CH

An individual in isolation cannot constitute or define the meaning of a political space. Only when individuals freely join together to resist and transform the forces of conventional power which named them as part of¶ a group in the first place can the possibilities emerge for generating new¶ forms of collective and democratic struggle. Those intermediate spaces defined by this reconceptualization of post-postmodern power offer the¶ opportunity for individuals to share their stories and construct relationships that reinforce a more systemic and critical social understanding. The effort to expand our readings of race and power beyond strictly win/lose outcomes is not explanatory as much as it is motivational. It describes, from the inside out, what it feels like to experience the joy of human solidarity when mobilized to generate new and unexpected outcomes. Thus, political race builds from inside the lived experience of a marginalized community and uses that experience as an imperfect but valuable lens through which to view and possibly enhance an individual’s political status. The lens on that experience can be stretched and even reshaped when human beings join together to engage in diagnosing and organizing through the multi-step process that we imagine. When and if it is¶ acknowledged, groups may move from this vantage point to join with others in free spaces of participatory democracy that resist authority and challenge the status quo. As we illustrate in Chapters 5 and 6, these free spaces are usually outside the formal public sphere of legislative decision-making; they are also¶ not the same as the public sphere of communitarian literature. They are instead intermediate or in-between places in which a marginalized group can share their experiences without interference from the dominant¶ group.6 The interstices are practice fields or training sessions for an eventual engagement with various hierarchical sources of power. They are laboratories¶ as well as launching pads.

#### [ROJ] Thus, the Role of the Judge is to Promote Anti-Racist Education in the Debate Space, meaning they must make this a place to confront that issue.

#### [Torres] And anti-racist education is uniquely key now – it’s the only way to address the problem.

Torres: Torres, Christina. [8th grade English teacher in Honolulu, Hawaii] “All Students Need Anti-Racism Education.” Tolerance.org, July 30, 2020. CH

As more and more teachers, administrators, schools and organizations are questioning their practices and looking at the racist history of their institutions, many are finally asking, “How we can listen to and support Black students, teachers and communities who have been systemically silenced for too long?” This question is essential, and examining anti-Blackness in our practice is something we all must be looking at. Looking at anti-Blackness or inequities brought about by systems rooted in white supremacy and racism is something all students should be doing. While more institutions, including primarily or historically white ones, are committing to this work, white teachers with primarily white students can feel hesitant to discuss these issues since they may not feel it affects them. This idea is a fundamental misunderstanding of what anti-racist work actually is. Anti-racist work means acknowledging that racist beliefs and structures are pervasive in all aspects of our lives—from education to housing to climate change—and then actively doing work to tear down those beliefs and structures. Those beliefs and structures don’t just exist in primarily white/and or privileged institutions—they thrive there. Schools that house mostly students and teachers who have benefited from white privilege can lack the perspective to push back on institutional malpractice or racist mindsets that may be present. In addition, it is difficult to convince those with power and privilege to give those privileges up without clear education and work to understand why doing so is a necessity for true justice in our society. Doing the work in spaces of privilege may look different, but educators cannot pretend that anti-racist work doesn’t exist simply because their student body isn’t directly harmed by racism. There are clear aims that primarily white and otherwise privileged institutions must work toward in the fight against racism. Teachers must re-evaluate their curriculum. When teaching standards and core curricula have been developed for your students, it’s easy to simply follow along. However, it’s important to remember that our education system has been founded on historically racist practices, including silencing those from disenfranchised communities. It’s not just BIPOC who need to see themselves in the literature or history they study. White students need to hear those perspectives as well, just as straight and cisgender students need to read LGBTQ+ stories. This is because students need not just mirrors but also windows into other cultures, as Dr. Rudine Sims Bishop notes in her essay “Mirrors, Windows and Sliding Glass Doors.” Students from communities with white privilege need to hear voices from other perspectives in order to grow their own thinking. Those perspectives need to be diverse and empowering as well—only showing Black suffering or slavery does not begin to break down problematic beliefs about Black people. Instead, students coming from positions of power need to see and understand the power and agency of those who have been historically disenfranchised, particularly since society frequently tells them otherwise. This will allow white students and teachers to have a more accurate and nuanced understanding of our history, while also ensuring they can center BIPOC voices and be allies and accomplices instead of “saviors.” Students need to understand privilege and rethink power. Students from privileged communities can struggle to understand privilege since they may feel that they have had to work hard or struggle at times in their lives. Teachers must help students understand how privilege works at a systemic level that may have given students an edge that, while it may be one they didn’t ask for, is still very real. The work does not stop there, though. It can be easy in teaching privilege to fall into the trap of “white guilt” or “privilege guilt” (or even “survivor guilt” for BIPOC who have moved up socioeconomically and have internalized the belief that their communities were something to be “survived”). While guilt can be an important emotion to notice and process, educators should help students move through it to a place of action. Beyond “feeling bad” about generations of oppression, how can they use this knowledge to advocate for change and begin breaking down their own racist beliefs? How can they also reframe their understandings of privilege so that they stop prioritizing hegemonic ideas of success and worth? Some of that will mean teaching students to analyze and reframe how they see values and stories from other cultures. Most of us were taught to praise white-dominant cultural ideas: financial success, rugged individualism, paternalism. Because of this, cultures with different priorities may not be seen as “successful” or “valuable” in our eyes and in the eyes of our students. We need to teach students with privilege not to be “saviors” for historically disenfranchised communities, but rather to listen to, value and stand in kinship with them so we can work together toward justice. Schools must interrogate their practices and how they gained institutional privilege to begin with.

#### [Bledsoe & Wright] And racial capitalism is a root cause of structural violence in the squo.

**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:

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.

#### [ROB] The Role of the Ballot is to Endorse the Best Anti-Racist Resistance Strategy. That means we weigh the round based on whose advocacy better combats racism – NOT as a footnote to some big stick extinction scenario that directs the discussion elsewhere, but as a terminal impact in itself.

## Part 2: Behind the Wall

#### [Davis et al] The prisoner industrial complex, or PIC, is a continuation of slavery – it’s built on notions of stripping humanity of individuals to prioritize profit.

**Davis et al:** Davis, Angela. [Duke University Press], Shalyor, Cassandra. [Duke University Press] “Race, Gender, and the Prison Industrial Complex: California and Beyond” *Duke University Press,* 2001. <https://www.jstor.org/stable/40338793> JP

As prison populations have soared in the United States, the conventional assumption that increased levels of crime are the cause has been widely contested. Activists and scholars who have tried to develop more nuanced understandings of the punishment process- and especially racism's role- have deployed the concept of the "prison industrial complex" to point out that the proliferation of prisons and prisoners is more clearly linked to larger economic and political structures and ideologies than to individual criminal conduct and efforts to curb "crime." Indeed, vast numbers of corporations with global markets rely on prisons as an important source of profit and thus have acquired clandestine stakes in the continued expansion of the prison system. Because the overwhelming majority of U.S. prisoners are from racially marginalized communities, corporate stakes in an expanding apparatus of punishment necessarily rely on and promote old as well as new structures of racism. Women especially have been hurt by these developments. Although women comprise a relatively small percentage of the entire prison popu- lation, they constitute, nevertheless, the fastest growing segment of pris- oners. There are now more women in prison in the State of California alone than there were in the United States as a whole in 1970 (Currie 1998). Because race is a major factor in determining who goes to prison and who does not, the groups most rapidly increasing in number are black, Latina, Asian-American, and indigenous women. Globalization of capitalism has precipitated the decline of the welfare state in industrialized countries, such as the U.S. and Britain, and has brought about structural adjustment in the countries of the southern region. As social programs in the U.S. have been drastically curtailed, imprisonment has simultaneously become the most self-evident response to many of the social problems previously addressed by insti- tutions such as Aid to Families with Dependent Children (afdc). In other words, in the era of the disestablishment of social programs that have historically served poor communities, and at a time when affirmative action programs are being dismantled and resources for education and health are declining, imprisonment functions as the default solution. Especially for women of color, who are hardest hit by the withdrawing of social resources and their replacement with imprisonment, these dra- conian strategies- ever longer prison sentences for offenses that are often petty- tend to reproduce and, indeed, exacerbate the very problems they purport to solve. There is an ironic but telling similarity between the economic impact of the prison industrial complex and that of the military industrial complex, with which it shares important structural features. Both systems simultaneously produce vast profits and social destruction. What is beneficial to the corporations, politicians, and state entities involved in these systems brings blight and death to poor and racially marginalized communities throughout the world. In the case of the prison industrial complex, the transformation of imprisoned bodies of color into consumers and/or producers of an immense range of commodities effectively transforms public funds into profit, leaving little in the way of social assistance to bolster the efforts of women and men who want to overcome barriers erected by poverty and racism. For example, when women who spend many years in prison are released, instead of jobs, housing, health care, and education, they are offered a small amount of release money, which covers little more than a bus ride and two nights in an inexpensive hotel. In the "free world," they are haunted by the stigma of imprisonment, which renders it extremely difficult for a "felon" to find a job. Thus they are inevitably tracked back into a prison system that in this era of the prison industrial complex has entirely dispensed with even a semblance of rehabilitation.

#### [Sainato] And the current conditions prisoner workers face fuels the PIC.

**Sainato**: Sainato Michael [Writer on Civil Rights issues for the Miami Times] “Companies claim there’s a labor shortage. Their solution? Prisoners.” The Guardian, 2021. <https://www.theguardian.com/us-news/2021/jul/20/companies-claim-theres-a-labor-shortage-their-solution-prisoners> MB

Some employers around the US are responding to perceived worker shortages in their industries by pursuing cheap sources of labor, such as people currently or formerly in prison. During a recent industry conference, a Waste Management Services executive discussed hiring immigrants to fill commercial driver’s license positions, and other executives suggested using prison or work release programs to address perceived labor shortages in the sanitation, waste and recycling industry. Campaigners say the move would be exploitative and reflects a refusal to simply raise wages to attract employees. “The talk about immigrant labor, prison labor, it’s all about exploitation, nothing else,” said Chuck Stiles, director of the Teamsters solid waste and recycling division, which represents about 32,000 workers in the private waste industry. “There is no driver shortage. There is a huge wage and benefits shortage that these waste companies refuse to give up anything on the bottom line.” Stiles said several prison work release programs targeted by the waste industry fail to provide decent wages and benefits in an industry where workers face significant safety risks, poor weather conditions, long hours and scarce time off for holidays. Employers and industry groups have claimed labor shortages were stifling recovery from the Covid-19 pandemic, with the US Chamber of Commerce and Republican governors blaming unemployment benefits. Some 26 states have canceled federal extended unemployment benefits early, though economists have noted the available jobs recovery data shows there is no economy-wide labor shortage. That hasn’t stopped employers and business groups from using perceived labor shortages as a pretext to seek out cheap labor sources; employers are hiring teenagers to fill open jobs, automating some job roles to avoid raising wages, lobbying Congress to double the cap on work immigration visas and expanding the use of prison labor. The restaurant industry in Michigan, Texas, Ohio and Delaware recently announced a prison work release program for the food service and hospitality industry. In April, Russell Stover candy production facilities in Iola and Abilene, Kansas, began using prison labor through the Topeka correctional facility in response to staffing issues disrupting production lines. About 150 prisoners work at the plant, making $14 an hour with no benefits or paid time off, while other workers start at higher wages with benefits and paid time off. Kansas also deducts 25% of prisoners’ pay for room and board, and another 5% goes toward a victim’s fund. The prisoners also must pay for gas for the nearly two-hour bus ride to and from the plant. Brandilynn Parks, president of the Kansas Coalition for Sentence and Prison Reform, said these programs can be beneficial for prisoners, but often are a way for employers and the prison system to take advantage of a vulnerable population, while driving down wages and taking jobs from other workers in the community. She noted many private companies that hire prison workers will not employ them after they are released and will not hire job applicants with criminal records. She added that these programs perpetuate mass incarceration. “Whenever we have private industries coming into the Kansas department of corrections, they sign a contract guaranteeing a certain number of people will be working there,” said Parks. “That means there has to be a certain number of people incarcerated, so we’re not working to lower the prison population, but instead building the prison industrial complex as a working machine where people become numbers – and we need a certain amount of numbers to keep them employed to uphold the contracts.” Parks argued employers refusing to pay living wages is the primary factor driving perceived labor shortages, and that the expansion of prison workforce programs are not good faith efforts to solve the problem. Hiring people “who are at their lowest in life and then throwing them crumbs is despicable,” Parks said. “The contract guaranteeing this amount of people makes it difficult to release people because they’re making the department of corrections money. So the DOC and private industry wins and they try to make it appear as though the incarcerated win, when really they’re being taken advantage of.” Even before the pandemic, the construction industry targeted prison labor sources amid what employers have claimed is a severe construction labor shortage that has only worsened under Covid-19. Construction is also one of the industries where significant numbers of formerly incarcerated people find work. In New York City, construction industry employers recruit recently released prisoners who must seek and maintain employment as a condition of their release from prison. Thousands of workers in New York City are siphoned from prison into low-paying construction jobs with no benefits, no health insurance and unsafe working conditions. These job sites, known as “body shops”, use subcontractors so that employers can offload risk insurance liability. The practice has been spreading, but the New York city council is considering legislation to regulate these employers. “Throughout the pandemic, body shop laborers left their homes and took trains and buses to crowded job sites, building the NYC skyline. They did this without health insurance, without an economic safety net and with the constant threat of re-imprisonment if they refused to continue to work,’’ said Chaz Rynkiewicz, vice-president and director of organizing for Construction and General Building Laborers Local 79. “While other workers were called heroes for working during the pandemic, body shop workers are told that their criminal justice history sentences them to a lifetime of hard labor with negligible reward.”

#### [HLR 1] Further, silence surrounds this issue – the public isn’t informed of prison strikes as a result.

**HLR 1, brackets in original text:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/> JP

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. I. PRISON STRIKE BACKGROUND AND HISTORY The term “prison strike” encompasses a range of nonviolent collective actions by prisoners — namely work stoppages, sit-ins, spending boycotts, hunger strikes, and other forms of protest — that challenge the rule or order of prison administration and generally disrupt “business as usual” within the prison. 9. Prison strikes differ from other forms of collective action in prisons, including prison riots and rebellions, in that they are peaceful forms of resistance: they do not involve the threat or the use of force against persons or property. 10. And prison strikes differ from other forms of prison disturbances, like individual inmate protests, that are not collective in nature and therefore do not disrupt normal prison activity or obstruct prison officials’ control. 11. See id. Generally speaking, prison strikes (and prisoner collective action more broadly) have not received rigorous scholarly or media analysis until very recently. Social scientists, legal scholars, and the press have largely failed to provide a systematic accounting of the history and place of prisoner protest in the American penal system, particularly prior to the early to mid-twentieth century. 12. Against this backdrop of scarce attention, this Part briefly considers the history of prison strikes, both to illuminate an important but overlooked aspect of prison life and to inform the legal analysis that follows. In particular, this Part provides an abbreviated overview of strikes across four key periods of prison development in the United States: (1) the inception of the American prison during the early American republic, (2) the creation of modern legal punishment and penitentiaries between the antebellum period and Reconstruction, (3) the explosion of prison systems and prison labor between Reconstruction and World War II, and finally (4) the prisoners’ rights and reform movements emerging between the end of World War II and our present-day mass incarceration system. This overview suggests that as the carceral state has expanded and evolved, so too have prison strikes — thus placing actions like the latest 2018 strike in a long tradition of prisoners organizing to express deeply held grievances. Further, examining the history of prison strikes reveals that strikes are often the only way for the incarcerated to act on those grievances — and that while strikes have rarely brought about immediate changes, they have helped initiate longer-term prison reforms and have periodically been successful in drawing attention to the otherwise unnoticed plight of those behind bars.

## Thus, I affirm:

#### [HLR 2] Resolved: A just government ought to recognize an unconditional right of prison workers to strike. This entails codifying a right for all inmates to engage in nonviolent collective action.

**HLR 2:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/> JP

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. I. PRISON STRIKE BACKGROUND AND HISTORY The term “prison strike” encompasses a range of nonviolent collective actions by prisoners — namely work stoppages, sit-ins, spending boycotts, hunger strikes, and other forms of protest — that challenge the rule or order of prison administration and generally disrupt “business as usual” within the prison. 9. Prison strikes differ from other forms of collective action in prisons, including prison riots and rebellions, in that they are peaceful forms of resistance: they do not involve the threat or the use of force against persons or property. 10. And prison strikes differ from other forms of prison disturbances, like individual inmate protests, that are not collective in nature and therefore do not disrupt normal prison activity or obstruct prison officials’ control. 11. See id. Generally speaking, prison strikes (and prisoner collective action more broadly) have not received rigorous scholarly or media analysis until very recently. Social scientists, legal scholars, and the press have largely failed to provide a systematic accounting of the history and place of prisoner protest in the American penal system, particularly prior to the early to mid-twentieth century. 12. Against this backdrop of scarce attention, this Part briefly considers the history of prison strikes, both to illuminate an important but overlooked aspect of prison life and to inform the legal analysis that follows.

**They add:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/> JP

The foregoing analysis suggests that the First Amendment is a critical, worthwhile vehicle for considering the merits of a right to strike for prisoners. As Justice Black recognized, the importance of such analysis likely transcends prisoners themselves. He wrote: “I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.” But this Note acknowledges that judicial recognition of prison strikes’ First Amendment values requires significant doctrinal change. Convincing the Supreme Court to overturn its Jones and Turner precedents, and instead to adopt a test with less deference than is currently afforded to prison administrators, is unlikely. As a result, future research is necessary to identify other potential avenues to consider the legal status and merits of prison strikes. **As alluded to above, labor law presents one such promising avenue, as does state constitutional and statutory law. Drawing from the broader jurisprudence around hunger strikes, and this area of the law’s focus on the body, may present yet another avenue to consider. And more fundamentally, reconsidering incarceration — including the nature of penal punishment, the constitutional status of prisoners, the judiciary’s role in our carceral system, and the ability of social science and social movements to inform the law — may be needed to protect prison strikes and bring about the reforms that strikes have advocated for.** There is a difficult tension in our jurisprudence on prisoners. On the one hand, prisoners are found to enjoy some constitutional rights. On the other hand, prisoners’ rights are often curtailed and must give way to the regulations that prison officials employ to maintain security and order in our correctional system. **Allowing prisoners to peacefully strike allows our criminal justice system to navigate this tension, preserving the goals of prison officials while allowing prisoners to surface critical problems in prison conditions and our criminal justice system as a whole. The strikes also represent an important end unto themselves: they are an important statement of prisoners’ humanity, dignity, and entitlement to a life beyond “modern slavery.”**

## Part 3: Shining Light

#### [Kaur] Prison strikes create media attention that sheds light on the injustices of the prisoner industrial complex.

**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).

#### [HLR 3] Next, prison strikes are a key way for inmates to get redress from the state – empirics prove.

**HLR 3:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/> JP

3. Petition for Redress. — Inmates’ strikes can be seen not only as expressions of their dignity and general efforts to express their voices beyond prison walls but also as significant methods of assembly to call attention to specific grievances and seek redress from the government. 169. While in theory “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,” 170 in practice, “prisons often escape the daily microscope focused on other American institutions such as schools, churches, and government.” 171. Id. at 145. Courts grant prison administrators wide deference not only in running day-to-day life within prisons but also in restricting press access to prisons. 172. Therefore, much of the American public — already closed off from and largely indifferent to the lives of prisoners — is kept even more in the dark about prison conditions and the state of our carceral system as a whole. Prison conditions, from what has been documented, are horrendous across states. Many prisons are severely overcrowded and seriously understaffed; 173. inmates routinely experience physical abuse and even death at the hands of prison guards, 174 receive inadequate protection from guards, are deprived of basic necessities, 175. are given substandard medical care, 176 and are forced to live in squalor and tolerate extreme circumstances; 177. most prisoners have minimal, if any, access, to rehabilitative or mental health services; 178. and prisoners have little legal recourse, as internal prison grievance procedures are often stacked against inmates, 179. and judicial deference and federal legislation have effectively shut the courthouse doors on prisoners’ civil rights claims. 180. And across prisons, criminal sentencing laws not only have contributed to an unprecedented era of mass incarceration, but also have forced African Americans and people of color broadly to bear much of this burden. 181. As the Marshall Project states, “[s]ociety won’t fix a prison system it can’t see”; 182. Keller, supra note 172. peaceful prison strikes like the 2018 strike, however, draw back the “iron curtain” of prison walls, bringing to light many of the pressing issues described above. Through these strikes, inmates are able not only to express their grievances to their prison administrators, but also to “publicize their on-the-ground realities to the larger world” 183. As recent history has shown, inmates have experienced some success by pressing their claims against the government through publicized strikes. For example, as described above, the California strikes in 2011 and 2013 generated public outcry that eventually resulted in transformations to the California prison system’s solitary confinement policies. 185. See supra note 73 and accompanying text. In Alabama, inmates’ participation in the 2016 nationwide prison strike helped prompt the Department of Justice to open an investigation into the state’s prison conditions. 186. And more broadly speaking, strikes like the 2018 strike have begun to “remedy power imbalances, bring aggregate structural harms into view, and shift deeply entrenched legal and constitutional” barriers to critical prison reforms. B. CONSIDERING ADDITIONAL LEGAL AVENUES FOR PROTECTING PRISON STRIKES The foregoing analysis suggests that the First Amendment is a critical, worthwhile vehicle for considering the merits of a right to strike for prisoners. As Justice Black recognized, the importance of such analysis likely transcends prisoners themselves. He wrote: “I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”

#### [HLR 4] And strikes offer an alternative to violence and a means of collective bargaining for inmates.

**HLR 4, brackets in original text:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/ JP

The right to strike within prisons may be conceptually viewed as a composite of three separate fundamental First Amendment freedoms: the freedom to peacefully associate, the freedom of speech, and the freedom to assemble and petition for redress of grievances. 145. Each is considered in turn. 1. Association. — The right to peaceful association is one that captures the right of individuals to commune with others for the expression of ideas and for effective advocacy. 146. Although “association” does not appear in the text of the First Amendment, the Court has long recognized the right as both implicit in and derived from the First Amendment’s other express guarantees (namely speech and assembly), and as a separate substantive due process right. Strikes, like prison unions, represent an important means of association for prisoners — allowing them to “lay claim to a social identity as ‘workers’ . . . and in doing so generate claims to respect and solidarity.” 147. This identity and solidarity can, in turn, enable inmates to engage in productive and peaceful bargains with prison officials for better conditions, higher pay, and other reform desires. Bargaining is, in many respects, already very common in prisons, “for the simple reason that [prison] administrators rarely have sufficient resources to gain complete conformity to all the rules.” 148. However, such bargaining typically happens in an informal, ongoing, private process; 149. in their recurrent, day-to-day contact with inmates, prison administrators use their arsenal of tools to “negotiate” only with select inmate leaders, 151. Id. at 738–39. with the central goal of maintaining “short term surface order.” 152. Id. at 729. This informal bargaining is “dysfunctional” to the long-term stability of prison institutions and “the real needs of those incarcerated within” them 153. Id. at 738. — creating hierarchical relationships 154. Id. at 739–40. that breed mistrust 155. Id. at 741–42. and leave many inmates powerless and feeling aggrieved. 156. Id. at 741–43. As a result, inmates often feel that they have to resort to violence to protect themselves from exploitation, express their dissatisfaction, and obtain redress. 157. Alternatively, peaceful, collective prison strikes avoid these harmful consequences by allowing for “open” and “formal” negotiations between all inmates and prison staff. 158. And by permitting peaceful strikes, prison administrators “provide inmates with a channel for airing grievances and gaining official response . . . giv[ing] the institution a kind of safety-valve for peaceful, rather than violent, change” 160. — avoiding potentially expensive and time-consuming litigation and even helping rehabilitate inmates, 161. Note, supra note 148, at 751–52. all while deemphasizing hierarchical structures in prisons that harm institutional order. 162.

## Underview

#### [Dixon] Reformism is key.

Dixon:Activist and founding member of Direct Action Network Summer, Chris, “Reflections on Privilege, Reformism, and Activism”, https://theanarchistlibrary.org/library/chris-dixon-reflections-on-privilege-reformism-and-activism-a-response-to-sasha-k-s-activism-an Online

To bolster his critique of 'reformism,' for instance, he critically cites one of the examples in my essay: demanding authentic **we need revolutionary strategy that links diverse, everyday struggles and demands to long-term radical objectives, without sacrificing either. Of course, this isn't to say that every so-called 'progressive' ballot initiative or organizing campaign is necessarily radical or strategic. Reforms are not all created equal. But some can fundamentally shake systems of power, leading to enlarged gains and greater space for further advances.** Andre Gorz, in his seminal book Strategy for Labor, refers to these as "non-reformist" or "structural" reforms. He contends, "a struggle for non-reformist reforms--for anti-capitalist reforms--is one which does not base its validity and its right to exist on capitalist needs, criteria, and rationales. A non-reformist reform is determined not in terms of what can be, but what should be." **Look to history for examples: the end of slavery, the eight-hour workday, desegregation. All were born from long, hard struggles, and none were endpoints. yet they all struck at the foundations of power (in these cases, the state, white supremacy, and capitalism), and in the process, they created new prospects for revolutionary change.** Now consider contemporary struggles: amnesty for undocumented immigrants, socialized health care, expansive environmental protections, indigenous sovereignty. These and many more are arguably non-reformist reforms as well. **None will single-handedly dismantle capitalism or other systems of power, but each has the potential to escalate** struggles and sharpen social contradictions. And We shouldn't misinterpret these efforts as simply meliorative incrementalism, making 'adjustments' to a fundamentally flawed system.