# Prison Strikes AC

## Part 1: Liberated Education

#### [ROJ & Giroux] THE AMERICAN EMPIRE IS CORRUPTING EDUCATION – it permits oppression for financial gain and DRIVES acceptance of the squo.

Giroux: Giroux, Henry A. [Waterbury Chair Professor, Pennsylvania State University] “Higher Education and the Politics of Disruption.” *Truthout*, March 17, 2015. CH

We now live at a time in which institutions that were meant to limit human suffering and misfortune and protect the public from the excesses of the market have been either weakened or abolished. (1) The consequences can be seen clearly in the ongoing and ruthless assault on the social state, workers, unions, higher education, students, poor people of color and any vestige of the social contract. Free-market policies, values and practices – with their emphasis on the privatization of public wealth, the elimination of social protections and the deregulation of economic activity – now shape practically every commanding political and economic institution in the United States. Public spheres that once offered at least the glimmer of progressive ideas, enlightened social policies, noncommodified values, and critical dialogue and exchange have been increasingly commercialized – or replaced by private spaces and corporate settings whose ultimate fidelity is to increasing profit margins. For example, higher education is defined more and more as simply another core element of corporate power and culture, viewed mostly as a waste of taxpayers’ money, and denied its value as a democratic public sphere and guardian of public values. What has become clear is that the attack on the social state, workers and unions is now being matched by a full-fledged assault on higher education. Such attacks are not happening just in the United States but in many other parts of the globe where casino capitalism is waging a savage battle to eliminate all of those public spheres that might offer a glimmer of opposition to and protection from market-driven policies, institutions, ideology and values. We live at a time when it is more crucial than ever to believe that the university is both a public trust and social good. At best, it is a critical institution infused with the promise of cultivating intellectual insight, the imagination, inquisitiveness, risk-taking, social responsibility and the struggle for justice. In addition, higher education should be at the “heart of intense public discourse, passionate learning, and vocal citizen involvement in the issues of the times.” (2) Underlying this vision of the university are some serious questions about its relationship to the larger society. For instance, how might the university’s responsibility be understood with respect to safeguarding the interests of young people at a time of violence and war, the rise of a rampant anti-intellectualism, a devastating gap in income and wealth, the rise of the surveillance state, and the threat of ecological and nuclear devastation? What might it mean to define the university as a pedagogical space that disrupts, disturbs, inspires and energizes young people to be individual and social agents rather than as an institution that redefines itself in terms of market values and reacts mostly to market fluctuations? It is in the spirit of such considerations that I first want to address those larger economic, social and cultural interests produced largely by the growing inequalities in wealth, income and power that threaten the notion of higher education as a democratic public good. As higher education’s role as a center of critical thought and civic engagement is devalued, society is being transformed into a “spectacular space of consumption” and financial looting. One consequence is an ongoing flight from mutual obligations and social responsibilities and a loss of faith in politics itself. This loss of faith in the power of politics, public dialogue and dissent is not unrelated to the diminished belief in higher education as central to producing critically engaged, civically literate and socially responsible citizens. At stake here are not only the meaning and purpose of higher education, but also civil society, politics and the fate of democracy itself. And yet, under the banner of right-wing reforms, the only questions being asked about knowledge production, the purpose of education, the nature of politics and the future are determined largely by market forces.

#### [Rodriguez] AND we have to center the prison industrial complex in educational spaces like debate – the classroom is essentially becoming the prison.

**Rodriguez:** Rodriguez, Dylan. [Writer] “The Disorientation of the Teaching Act: Abolition as Pedagogical Position” *JSTOR,* 2010.

A compulsory **deferral of abolitionist pedagogical possibilities** composes the largely unaddressed precedent of teaching in the current historical period. It is this deferral—generally unacknowledged and largely presumed—that both **undermines the emergence of an abolitionist pedagogical praxis** and illuminates abolitionism’s necessity as a dynamic practice of social transformation, over and against liberal and progressive appropriations of “critical/radical pedagogy.” Contrary to the thinly disguised ideological Alinskyism that contemporary liberal, progressive, critical, and “radical” teaching generally and tacitly assumes in relation to the prison regime, **what is** usually **required**, and what usually works as a strategy for teaching against the carceral common sense, **is a pedagogical approach that asks the unaskable, posits the necessity of the impossible**, **and embraces the creative danger** inherent in liberationist futures. About a decade of teaching a variety of courses at the undergraduate and graduate levels at one of the most demographically diverse research universities in the United States (the University [End Page 12] of California, Riverside) has allowed me the opportunity to experiment with the curricular content, assignment form, pedagogical mode, and conceptual organization of coursework that directly or tangentially addresses the formation of the U.S. prison regime and prison industrial complex. **Students** are consistently (and often unanimously) eager to **locate** their **studies within an abolitionist genealogy—**often **understanding their work as** potentially **connected to a living history of radical social movements and epistemological-political revolt**—and tend to embrace the high academic demands and rigor of these courses with far less resistance and ambivalence than in many of my other Ethnic Studies courses. There are some immediate analytical and scholarly tools that form a basic pedagogical apparatus for productively exploding the generalized common sense that creates and surrounds the U.S. prison regime. In fact, it is crucial for teachers and students to collectively understand that it is precisely the circulation and concrete enactment of this common sense that makes it central to the prison regime, not simply an ideological “supplement” of it. Put differently, many students and teachers have a tendency to presume that the cultural symbols and popular discourses that signify and give common sense meaning to prisons and policing are external to the prison regime, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dramas, etc.) simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a seductive and self-explanatory, but far too simplistic, way of understanding how the prison regime thrives. What we require, instead, is a sustained analytical discussion that considers how multiple layers of knowledge—including common sense and its different cultural forms—are constantly producing a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth. Rather, this fabricated, lived truth forms the template of everyday life through which we come to believe that we more or less understand and “know” the prison and policing apparatus, and which dynamically produces our consent and/or surrender to its epochal oppressive violence. As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state. Who is left for dead in the common discourse of crime, “innocence,” and “guilt”? How has the mundane institutionalized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, **teachers and students** can attempt to concretely understand how they **are a dynamic part of the prison regime’s production and reproduction**—and thus how they might also be **part of its abolition through the work of building and teaching a radical and liberatory common sense** (this is political work that anyone can do, ideally as part of a community of social movement). Additionally, the abolitionist teacher can prioritize a rigorous—and vigorous—critique of the endemic complicities of liberal/progressive reformism to the [End Page 13] transformation, expansion, and ultimate reproduction of racist state violence and (proto)genocide; this entails a radical critique of everything from the sociopolitical legacies of “civil rights” and the oppressive capacities of “human rights” to the racist state’s direct assimilation of 1970s-era “prison reform” agendas into the blueprints for massive prison expansion discussed above.17 **The abolitionist teacher must be willing to occupy the difficult and often uncomfortable position of political leadership** **in the classroom**. To some, this reads as a direct violation of Freirian conceptions of critical pedagogy, but I would argue that it is really an elaboration and amplification of the revolutionary spirit at the heart of Freire’s entire lifework. That is, **how can a teacher expect her**/his **students to undertake the** courageous and difficult **work of inhabiting an abolitionist positionality**—even if only as an “academic” exercise—**unless the teacher** herself/himself **embodies**, performs, and oozes **that very same political desire**? In fact, it often seems that doing the latter is enough to compel many students (at least momentarily) to become intimate and familiar with the allegedly impossible. Finally, the horizon of the possible is only constrained by one’s pedagogical willingness to locate a particular political struggle (here, prison abolition) within the long and living history of liberation movements. In this context, “prison abolition” can be understood as one important strain within a continuously unfurling fabric of liberationist political horizons, in which the imagination of the possible and the practical is shaped but not limited by the specific material and institutional conditions within which one lives. It is useful to continually ask: on whose shoulders does one sit, when undertaking the audacious identifications and political practices endemic to an abolitionist pedagogy? There is something profoundly indelible and emboldening in realizing that one’s “own” political struggle is deeply connected to a vibrant, robust, creative, and beautiful legacy of collective imagination and creative social labor (and of course, there are crucial ways of comprehending historical liberation struggles in all their forms, from guerilla warfare to dance). While I do not expect to arrive at a wholly satisfactory pedagogical endpoint anytime soon, and am therefore hesitant to offer prescriptive examples of “how to teach” within an abolitionist framework, I also believe that rigorous experimentation and creative pedagogical radicalism is the very soul of this praxis. There is, in the end, no teaching formula or pedagogical system that finally fulfills the abolitionist social vision, there is only a political desire that understands the immediacy of struggling for human liberation from precisely those forms of systemic violence and institutionalized dehumanization that are most culturally and politically sanctioned, valorized, and taken for granted within one’s own pedagogical moment. To refuse [End Page 14] or resist this desire is to be unaccountable to the historical truth of our moment, in which the structural logic and physiological technologies of social liquidation (removal from or effective neutralization within civil society) have merged with history’s greatest experiment in punitive human captivity, a linkage that increasingly lays bare racism’s logical outcome in genocide.18 Abolitionist Position and Praxis Given the historical context I have briefly outlined, and the practical-theoretical need for situating an abolitionist praxis within a longer tradition of freedom struggle, I contend that there can be no liberatory teaching act, nor can there be an adequately critical pedagogical practice, that does not also attempt to become an abolitionist one. Provisionally, I am conceptualizing abolition as a praxis of liberation that is creative and experimental rather than formulaic and rigidly programmatic. **Abolition is a “radical” political position,** as well as a perpetually creative and experimentalpedagogy, **because formulaic approaches cannot adequately apprehend the biopolitics**, dynamic statecraft, **and** internalized **violence of** genocidal and proto-genocidal **systems of** human **domination.** As a productive and creative praxis, this conception of abolition posits the material possibility and historical necessity of a social capacity for human freedom based on a cultural-economic infrastructure that supports the transformation of oppressive relations that are the legacy of genocidal conquest, settler colonialism, racial slavery/capitalism,19 compulsory hetero-patriarchies, and global white supremacy. In this sense, **abolitionist praxis does not singularly concern itself with the “abolition of the prison industrial complex**,” although it fundamentally and strategically prioritizes the prison as a central site for catalyzing broader, radical social transformations. In significant part, this suggests envisioning and ultimately constructing “a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscape of our society.”20 In locating **abolition**ist **praxis within a longer political genealogy** that anticipates the task of remaking the world under transformed material circumstances, this position refracts the most radical and revolutionary dimensions of a historical Black freedom struggle that positioned the abolition of “slavery” as the condition of possibility for Black—hence “human”—freedom. To situate contemporary abolitionism as such is also to recall the U.S. racist state’s (and its liberal allies’) displacement and effective political criminalization of Black radical abolitionism through the 13th Amendment’s 1865 recodification of the slave relation through the juridical reinvention of a racial-carceral relation: Amendment XIII Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.21 [emphasis added] Given the institutional elaborations of racial criminalization, policing, and massive imprisonment that have prevailed on the 13th Amendment’s essential authorization to replace a regime of racist chattel slavery with racist carceral state violence, it is incumbent on the radical teacher to assess the density of her/his entanglement in this historically layered condition of [End Page 15] violence, immobilization, and capture. Prior to the work of formulating an effective curriculum and teaching strategy for critically engaging the prison industrial complex, in other words, is the even more difficult work of examining the assumptive limitations of any “radical pedagogy” that does not attempt to displace an epistemological and cultural common sense in which the relative order and peace of the classroom is perpetually reproduced by the systemic disorder and deep violence of the prison regime. In relation to the radical **challenging** of **common sense** discussed above, another critical analytical tool for building an abolitionist pedagogy **entails the rigorous, scholarly dismantling of the “presentist”** and deeply ahistorical **understanding of** policing and **prisons**. **Students** (and many teachers) **frequently enter such dialogues with an utterly mystified conception of** **the** policing and **prison** apparatus, **and do not** generally **understand that** 1) these apparatuses in their current form are very recent creations, and have not been around “forever”; and 2) **the rise of these institutional forms of criminalization**, domestic war, **and mass-scale imprisonment forms one link in a historical chain of genocidal and proto-genocidal mobilizations of the racist state** that regularly take place as part of the deadly global process of U.S. nation-building. In other words, not only is the **prison** regime a very recent invention of the state (and therefore is neither a “permanent” nor indestructible institutional assemblage), but it **is** institutionally and historically **inseparable from the precedent and contemporaneous structures of large-scale racist state violence**. Asserting the above as part of the core analytical framework of the pedagogical structure can greatly enable a discussion of abolitionist possibility that thinks of the **critical dialogue** as a necessary **continuation of long historical struggles against land conquest, slavery, racial colonialism, and imperialist war.** This also means that our discussions take place within a longer temporal community with those liberation struggles, such that we are neither “crazy” nor “isolated.” I have seen students and teachers speak radical truth to power under difficult and vulnerable circumstances based on this understanding that they are part of a historical record. I have had little trouble “convincing” most students—across distinctions of race, class, gender, age, sexuality, and geography—of the gravity and emergency of our historical moment. It is the analytical, political, and practical move toward an abolitionist positionality that is (perhaps predictably) far more challenging. This is in part due to the fraudulent and stubborn default position of centrist-to-progressive liberalism/reformism (including assertions of “civil” and “human” rights) as the only feasible or legible response to reactionary, violent, racist forms of state power. Perhaps more troublesome, however, is that this **resistance to** engaging with **abolitionist** praxis seems to also **derive from a deep and broad epistemological and cultural disciplining of the political imagination that makes liberationist dreams unspeakable**. This **disciplining is** most overtly produced through hegemonic state and cultural apparatuses and their representatives (including elected officials, popular political pundits and public intellectuals, schools, family units, religious institutions, etc.), but is also **compounded through** the **pragmatic imperatives of** many liberal and **progressive** nonprofit organizations and social **movements that reproduce the political limitations of the** [End Page 16] nonprofit **industrial complex**. 22 In this context, the liberationist historical identifications hailed by an abolitionist social imagination also require that such repression of political-intellectual imagination be fought, demystified, and displaced.Perhaps, then, **there is no viable** or defensible **pedagogical position other than an abolitionist one**. **To live** and work, learn and teach, and survive and thrive **in a time defined by** the capacity and political willingness to eliminate and neutralize populations througha culturally valorized, **state sanctioned** nexus of **institutional violence, is to** better **understand** why **abolitionist praxis in this historical moment is primarily pedagogical, within and against the “system” in which it occurs**. While it is conceivable that in future moments, abolitionist praxis can focus more centrally on matters of (creating and not simply opposing) public policy, infrastructure building, and economic reorganization, the present moment clearly demands a convening of radical pedagogical energies that can build the collective human power, epistemic and knowledge apparatuses, and material sites of learning that are the precondition of authentic and liberatory social transformations. The prison regime is the institutionalization and systemic expansion of massive human misery. It is the production of bodily and psychic disarticulation on multiple scales, across different physiological capacities. The prison industrial complex is, in its logic of organization and its production of common sense, at least proto-genocidal. Finally, **the prison regime is inseparable from**—that is, present in—the **schooling regime** in which teachers are entangled. **Prison is not simply a place to which one is displaced** and where one’s physiological being is disarticulated, at the rule and whim of the state and its designated representatives (police, parole officers, school teachers). **The prison regime is the** assumptive premise of **classroom** teaching generally. While many of us must live in labored denial of this fact in order to teach as we must about “American democracy,” “freedom,” and “(civil) rights,” there are opportune moments in which it is useful to come clean: the vast majority of what occurs in U.S. classrooms—from preschool to graduate school—cannot accommodate the bare truth of the proto-genocidal prison regime as a violent ordering of the world, a primary component of civil society/school, and a material presence in our everyday teaching acts. **As teachers, we are institutionally hailed to the service of genocide management**, in which our pedagogical labor is variously engaged in mitigating, valorizing, critiquing, redeeming, justifying, lamenting, and otherwise reproducing or tolerating the profound and systemic violence of the global-historical U.S. nation building project. As “radical” teachers, **we are politically hailed to betray genocide management** in order to embrace the urgent challenge of genocide abolition. **The short-term survival of those populations rendered most immediately vulnerable to the** mundane and **spectacular violence of this system, and the long-term survival of most of the planet’s human population** (particularly those descended from survivors of enslavement, colonization, conquest, and economic exploitation), **is significantly dependent on our willingness to embrace this form of pedagogical audacity**

#### **[ROB] Thus, the Role of the Ballot is to Interrogate the Manifestations of the Prisoner Industrial Complex.**

## Part 2: Behind the Wall

#### [Lopez] EXPLOITATION IS THE SQUO – prisoners are currently being exploited for labor, sometimes working for *nothing*.

**Lopez**: Lopez German [Senior Correspondent] “Americas’s prisoners are going on strike in at least 17 states” Vox, 2018. MB

If there’s one issue inmate protesters are united on, it’s prison labor. In many states, prisoners are forced to work for cents an hour or even for free. This is allowed after the abolishment of slavery through the 13th Amendment of the US Constitution, which banned slavery and involuntary servitude “except as a punishment for crime whereof the party shall have been duly convicted.” [Hundreds of thousands](http://prospect.org/article/great-american-chain-gang) of inmates across the US have jobs — not just firefighting, but also more typical jobs like kitchen work, cleaning, and GED tutoring. Sometimes the jobs will take inmates outside of prison, although more frequently they merely mimic real-world jobs or involve menial chores that need to be done around the prison. The average pay in state prisons is 20 cents an hour, according to [the Marshall Project](https://www.themarshallproject.org/2016/09/27/a-primer-on-the-nationwide-prisoners-strike#.KMWpTz2VD). During the 2016 prison strikes, protesters characterized the practice as modern slavery. And with black people [disproportionately likely](http://www.vox.com/2015/5/29/8687205/criminal-justice-racism) to be incarcerated, there are racial disparities in this often forced, low-paid labor. The 2018 protesters are taking a similar approach. “Prison slavery exists,” Sawari argued. “The 13th Amendment didn’t abolish slavery. It wrote slavery into the Constitution. There’s a general knowledge that the 13th Amendment abolished slavery, but if you read it, there’s an exception clause in the abolishing of it. That’s really contradictory — that something would be abolished and there would be an exception to that.” She pointed to companies that have taken advantage of prison labor in the past, including [Victoria’s Secret](https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/06/17/yes-prisoners-used-to-sew-lingerie-for-victorias-secret-just-like-in-orange-is-the-new-black-season-3/?utm_term=.5b0f6c136d65) and [Starbucks](https://www.bloomberg.com/view/articles/2017-06-02/paying-inmates-minimum-wages-helps-the-working-class) — arguing they need to be called out for what amounts to, in some inmates’ view, exploitation. Prison officials and other advocates argue, however, that prison labor can help inmates gain much-needed real-world working experience. Some research has backed this up: A [study](http://www.bop.gov/resources/research_projects/published_reports/recidivism/oreprprep_cmq.pdf) of federal prisoners found inmates who took part in UNICOR, the federal prison work program, were 24 percent less likely to reoffend and 14 percent more likely to be employed a year after their release. And a [study](http://www.nationalcia.org/wp-content/uploads/Pride-Research-2005.pdf) of a Florida program found significant increases in employment after release, but no changes in inmates’ likelihood to reoffend. These studies aren’t definitive proof, because they have serious selection bias issues. It’s difficult to know whether the inmates participating in prison labor programs are those who are already less likely to reoffend and more likely to get and keep a job after prison — since they’re able and, in some cases, volunteering to work while they’re incarcerated. Some studies try to control for this, but it can never be fully ruled out. There’s also a moral argument against prison labor as it’s done today: Even if prison work helps some inmates, that doesn’t justify paying prisoners pennies or nothing at all. Under this view, if the prison work programs are beneficial, spending on them should be increased so everyone can participate and get more pay for their work. Of course, these are also people in prison — a place they are in as punishment for their crimes. So why do they deserve to be paid a higher wage? Sawari countered that these inmates are still often the primary breadwinners for their families and expected to meet some financial obligations even before their release. “Prisoners do like having the opportunity to earn, because they do have to support themselves financially in a lot of ways,” Sawari said. “Prisoners have to provide for their health care, their dental care. They have to buy food if they want to eat outside the three times a day most prisons serve. … They have to buy clothes like jackets and boots, hygiene products, cosmetics, books, study materials, paper, tape, scissors. Any little thing they need, they have to buy that. So they want to be able to.” Prison officials say they couldn’t afford to pay inmates more. They point out that there are many extra costs tied to prison labor — such as the chance of lockdowns, security needs, and the costs of inmates’ housing, food, and health care. As California Department of Corrections and Rehabilitation spokesperson Jeffrey Callison told me, “The per capita cost of one inmate in our prison system now exceeds $80,000.” Those are expenses employers in the free world don’t typically have to carry. But for many inmates, the poor pay still feels unfair. So they’re protesting for three weeks.

#### [Sainato] Further, these work conditions perpetuate the prison industrial context. Prison workers are used as an excuse to continue mass incarceration.

**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. 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] And 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. 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.

#### [HLR 2] The aff’s inherent – there is no recourse for when prisoners want to strike now.

**HLR 2:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. JP

**As a threshold matter, state and federal statutory law provides no recourse for protecting prison strikes**. Incarcerated individuals are not included as protected “employees” in the text of federal labor laws like the Fair Labor Standards and the National Labor Relations Act, and courts have refused to extend the protections that these statutes offer to those confined within prison walls. Further, this Note is aware of no state labor laws, or for that matter any state constitutional provisions, that have been interpreted to allow prisoners to strike. **Not only are prison strikes not protected by statutory law — they also are often explicitly prohibited. State statutes and prison regulations pose the most immediate barrier to prison strike activity, as states across the union appear to categorically bar prison strikes and other forms of inmate collective organizing**. For instance, Alaska’s administrative code lists “participation in an organized work stoppage” and “encouraging others to engage in a food strike” as “high-moderate infractions.” Some other states have adopted similar statutory or administrative provisions. For a related analysis of state statutes and prison regulations governing prison “protest speech,” see Andrea C. Armstrong, Racial Origins of Doctrines Limiting Prisoner Protest Speech,. The same is true at the federal level, as the Bureau of Prisons has made “[e]engaging in or encouraging a group demonstration” and “encouraging others to refuse to work, or to participate in a work stoppage” prohibited acts. Further research is certainly necessary to develop a fuller, more nuanced treatment of the various state and federal statutory schemes that impact prison strikes. Further research could reveal differences across states in the severity of punishment for prison strike activity, as well as the scope of permissible collective action by prisoners. This could, in turn, reveal possible avenues for potentially protecting prisoners’ ability to strike. See, e.g., In re Gomez, 201 Cal. Rptr. 3d 124 (Ct. App. 2016) (holding that an inmate participating in a broader hunger strike and work stoppage across California prisons did not violate a California regulation that requires inmates to “refrain from behavior that might lead to violence or disorder, or otherwise endangers the facility, outside community or other person,” . As the court held in that case, none of the accusations against the inmate regarding striking “suggested prison operations were thrown into disorder.” Id. at 137. **But even this brief overview drives home a clear bottom line: that state and federal laws, in their current forms, likely offer no viable protection for prison strikes and indeed often prohibit them outright.**

## Thus, I affirm:

#### [HLR 3] Resolved: A just government ought to recognize an unconditional right of prison workers to strike.

**HLR 3:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. 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. 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 4] Next, prison strikes are a key way for inmates to get redress from the state – empirics prove.

**HLR 4:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. 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 5] And strikes offer an alternative to violence and a means of collective bargaining for inmates.

**HLR 5, brackets in original text:** Harvard Law Review. [Academic Journal] “Striking the Right Balance: Toward a Better Understanding of Prison Strikes” *HLR,* March 2019. 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.

#### [Bozelko] Indeed, strikes empower prisoners to express their grievances – they’re key to changing the power dynamic.

**Bozelko:** Bozelko, Chandra. [Writer at Reuters] “Commentary: The real reason prisoners are striking” *Reuters,* 2018. JP

**The lack of oversight has become dangerous. While we don’t know the numbers of prisoners who are injured at work (OSHA maintains that data on employees only), we do have stories about allegations of substandard care and dangerous working conditions. In one case, a Georgia man who lost his leg after a fall in a prison kitchen won $550,000 from the state after claiming that a prison doctor neglected his injury. Other inmates have lost thumbs and fingers when they were caught in machinery**. In Pueblo, Colorado, a female inmate, Kara Fuelling, was almost decapitated while working in a saw mill when a blade tore through her helmet. In California, two inmates conscripted into firefighting detail through the state Department of Corrections lost their lives. In Georgia, just this past May, a prisoner on work detail was killed by a distracted driver passing the highway work site. **Although it could be argued that these injuries and deaths can happen anywhere, the difference is that workplaces outside of prison have some safety oversight and with it, a higher standard of care**. If prisons had to comply with OSHA standards, these injuries and deaths may have been prevented. Inmate injuries are worthy of even more preventive oversight when you consider that medical care can be substandard in many correctional facilities. The Georgia inmate who lost his leg initially sustained only a dime-sized cut above his ankle, but evidence in the lawsuit indicated that a lack of care worsened his injury to the point that he had to sacrifice a limb. Kara Fuelling, the saw mill worker, wasn’t brought to an emergency room but was rather transported to the prison infirmary. According to Fuelling’s lawsuit, a doctor who examined her was concerned about possible infection because the saw blade was dirty; she went on to develop an antibiotic-resistant MRSA infection. Many of these injuries are caused by equipment that, according to a report in the University of Pennsylvania Journal of Business and Employment Law, was known to be faulty or defective. **Even when inmates are hurt because the correctional facility is negligent, there’s little to no recourse for incarcerated workers when they are injured. This is mostly because occupational statutes in 43 states exclude incarcerated workers from the definition of employees, and thereby don’t allow those workers to file worker compensation claims**. This is much more a problem for inmates than it is for the prisons themselves. In all of the litigation over prison work injuries, only a handful of courts have said that dangerous conditions violate the Constitution’s Eighth Amendment prohibition on cruel and unusual punishment. Because there’s little-to-no liability for the facilities, danger abounds in American prisons. One of the motivating factors for the current strike is the April riot at Lee Correctional Center in South Carolina, where seven prisoners were killed. Initially, prison officials blamed the deaths on gang disputes and the use of contraband cellphones. But as more eyewitness accounts became available, the Lee riot was revealed to have taken place in a “gladiator school” where guards had reportedly abandoned their posts. One inmate said that there were no immediate deaths from the violence within the facility. The people who died were allowed to bleed out, he said, as guards looked on**. Strikes like the current one are necessary to change safety conditions in prisons because the usual avenues of remedy – grievance procedures and courts – have been blocked off by an erosion in human rights standards when it comes to people who have been convicted of breaking the law**. Many people may be horrified by the way incarcerated people are treated, but disagree with the tactic of a strike where the risk of injury goes up even further as strikers are dragged to solitary confinement and disciplined in other ways. But there is no other way. Courts and administrative remedies have failed to protect imprisoned people. While incarcerated we witnessed many inmates who came to expect injuries, accidents and even death. Such an expectation of punishment seems medieval, but prisoners are taking a stand to show that it is, unfortunately, still a modern phenomenon.