## Framing

#### The standard should be preserving human life

#### Science proves non util ethics are impossible and our version of util solves all aff offense

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(The Secret Joke of Kant’s Soul published in Moral Psychology: Historical and Contemporary Readings, accessed: www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf)

**What turn-of-the-millennium science** **is telling us is that human moral judgment is not a pristine rational enterprise**, that our **moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural**. **Because of this, it is exceedingly unlikely that there is any rationally coherent normative moral theory that can accommodate our moral intuitions**. Moreover, **anyone who claims to have such a theory**, or even part of one, **almost certainly doesn't**. Instead, what that person probably has is a moral rationalization. It seems then, that we have somehow crossed the infamous "is"-"ought" divide. How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977). Missing the Deontological Point I suspect that **rationalist deontologists will remain unmoved by the arguments presented here**. Instead, I suspect, **they** **will insist that I have simply misunderstood what** Kant and like-minded **deontologists are all about**. **Deontology, they will say, isn't about this intuition or that intuition**. It's not defined by its normative differences with consequentialism. **Rather, deontology is about taking humanity seriously**. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b). **This is, no doubt, how many deontologists see deontology. But this insider's view**, as I've suggested, **may be misleading**. **The problem**, more specifically, **is that it defines deontology in terms of values that are not distinctively deontological**, though they may appear to be from the inside. **Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love**, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." **This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things**. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view. In the same way, I believe that most of **the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics**. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that **consequentialists**, as much as anyone else, **have respect for persons**, **are against treating people as mere objects,** **wish to act for reasons that rational creatures can share, etc**. **A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-being in the decision-making process**. **Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial**. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be. What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. **If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will get** characteristically deontological **answers**. Some **will be tautological**: **"Because it's murder!"** **Others will be more sophisticated: "The ends don't justify the means**." "You have to respect people's rights." **But**, as we know, **these answers don't really explain anything**, because **if you give the same people** (on different occasions) **the trolley case** or the loop case (See above), **they'll make the opposite judgment**, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. **Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism**. Although these explanations are inevitably incomplete, **there seems to be "something deeply right" about them because they give voice to powerful moral emotions**. **But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question**.

#### Weigh Consequences---nonutil framing is irresponsible in the policy sphere.

Goodin 95 — Robert E. Goodin, Distinguished Professor of Philosophy and Social & Political Theory in the Research School of Social Sciences at the Australian National University, holds a D.Phil. in Politics from Oxford University, 1995 (“Utilitarianism as a public philosophy,” *Utilitarianism as a Public Philosophy*, Published by Cambridge University Press, ISBN 0521462630, p. 8-10)

The strength of utilitarianism, the problem to which it is a truly compelling solution, is as a guide to public rather than private conduct. There, virtually all its vices - all the things that make us wince in recommending it as a code of personal morality - loom instead as considerable virtues. Consider first the raft of criticisms couched in terms of the impersonality of utilitarianism. Like all universalist philosophies, utilitarianism asks us to take "the view from nowhere.”19 There is no obvious place within utilitarian theories for people's idiosyncratic perspectives, histories, attachments, loyalties or personal commitments. That rings untrue to certain essential qualities of personal life. The essence of the communitarian challenge is that everyone comes from somewhere. There are no free-floating individuals, of the sort with which liberals generally, and utilitarians paradigmatically, populate their moral theories."20 People have, and upon reflection we think they should have, principled commitments and personal attachments of various sorts.21[end page 8] As an account of the peculiar role responsibilities of public officials (and, by extension, of ordinary individuals in their public capacities as citizens) that vice becomes a virtue, though. Those agents, too, have to come from somewhere, bringing with them a whole raft of baggage of personal attachments, commitments, principles and prejudices. In their public capacities, however, we think it only right and proper that they should stow that baggage as best they can. Complete neutrality might be an impossible ideal. That is another matter.22 But it seems indisputable that that is an ideal which people in their public capacities should strive to realize as best they are able. That is part (indeed, a central part) of what it is to be a public official at all. It is the essence of public service as such that public servants should serve the public at large. Public servants must not play favorites. Or consider, again, criticisms revolving around the theme that utilitarianism is a coldly calculating doctrine.23 In personal affairs that is an unattractive feature. There, we would like to suppose that certain sorts of actions proceed immediately from the heart, without much reflection much less any real calculation of consequences. Among intimates it would be extremely hurtful to think of every kind gesture as being contrived to produce some particular effect. The case of public officials is, once again, precisely the opposite. There, it is the height of irresponsibility to proceed careless of the consequences. Public officials are, above all else, obliged to take care: not to go off half cocked, not to let their hearts rule their heads. In Hare's telling example, the very worst thing that might be said of the Suez misadventure was not that the British and French did some perfectly awful things (which is true, too) but that they did so utterly unthinkingly. Related to the critique of utilitarianism as a calculating doctrine is the critique of utilitarianism as a consequentialist doctrine. According to utilitarianism, the effects of an action are everything. There are no actions which are, in and of themselves, morally right or wrong, good or bad. The only things that are good or bad are the effects that actions produce.25 That proposition runs counter to certain ethical intuitions which, at [end page 9] least in certain quarters, are rooted deeply. Those who harbor a Ten Commandments view of the nature of morality see a moral code as being essentially a list of "thou shalts" and "thou shalt nots" - a list of things that are right or wrong in and of themselves, quite regardless of any consequences that might come from doing them.26 That may or may not be a good way to run one's private affairs. 27 Even those who think it is, however, tend to concede that it is no way to run public affairs. It is in the nature of public officials' role responsibilities that they are morally obliged to "dirty their hands" — make hard choices, do things that are wrong (or would ordinarily be wrong, or would be wrong for ordinary private individuals) in the service of some greater public good.28 It would be simply irresponsible of public officials (in any broadly secular society, at least) to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences."29 Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.

#### A pragmatic approach makes it impossible to go past the “problem identification” phase because the structure of pragmatism will always return us back to the status quo

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(Audrey, university of Utah, “Political Pragmatism and Educational Inquiry,” <https://educationjournal.web.illinois.edu/archive/index.php/pes/article/view/2301.pdf>)

In classical pragmatism, inquiry proceeds from an interruption or disequilibrium in experience and is addressed to the solution of particular, concrete problems considered in context. According to Peirce’s provocative formulation, “the action of thought is excited by the irritation of doubt, and ceases when belief is attained.”4 Doubt, as understood here, is neither existential nor willed but an intrusion from without: it is “the privation of a habit.”5 Ordinarily, we rely on tacit or conscious beliefs, Peirce claims, but when hesitancy and indecision interrupt habit, inquiry is set in motion. In How We Think, Dewey defines such interruptions as problems, a problem being “whatever…perplexes and challenges the mind so that it makes belief at all uncertain.”6 “A question to be answered, an ambiguity to be resolved, sets up an end and holds the current of ideas to a definite channel….The nature of the problem fixes the end of thought, and the end controls the process of thinking.”7 Given such a description of how purposes shape inquiry, critics have argued that the contextual, problem-centered character of pragmatism limits its ability to identify and analyze structural problems.8 If, for example, girls’ performance in computer classes is made the focus of inquiry, a problem-centered, contextual approach may yield a richly observed, sympathetic, and informative analysis, but the very definition of the problem will preclude any fully structural analysis.9 Almost inevitably, the problem posed will take the form, “Why are girls reluctant to program?” or “Why do girls as a group consistently perform less well than boys, in computer classes?” The problem will not take the form, “Why do boys typically thrive in computer programming classes?” or “How is boys’ superior performance in computer classwork related to the historically male-dominated character of academia, the organization of the workplace, or the construction of maleness as notfemaleness?” Put pragmatically, the reason that we do not frame the problem in terms of boys or academia or the workplace is that boys’ success does not give rise to a disruption of our system of beliefs. Since conditions of success constitute the field of meaning within which girls’ inferior performance on scientific and technological tasks can be detected and assessed, such conditions cannot themselves be “the problem.” Insofar as a system works for us, it makes sense to stop and look at things only when there is a non-functioning of the system. What this means, though, is that a problem-centered approach to inquiry usually will be geared to the restoration of the status quo. What counts as knowledge, accordingly, will depend on what serves the expectations and purposes of those who identify and frame the problems. Dewey indicated as much when he pointed out that we prefer not to understand why we have slums, since — while we deplore them — we are unwilling to live without them. Observing matter-of-factly that we (meaning a culpable, middle- and upper-class “we”) are “mostly satisfied” with the existence of slums, Dewey explained, “We do not “naturally” or organically need them, but we want them. If we do not demand them directly we demand them none the less effectively. For they are necessary consequences of the things upon which we have set our hearts.”10 While classical pragmatism’s problem-centered approach can identify structural conditions insofar as observed inequities conflict with beliefs about equality, the power inequities and conflicts of interest such inquiry acknowledges are likely to be understood in terms of their deviation from democratic ideals. Since it is not experience per se that is examined, but instead departures from the expected or preferred course of events, the givenness of the overarching context (experience, or nature, or democracy as an ideal) is unavoidable. When, for example, it is taken for granted that the nuclear family provides the most natural and nurturing environment for children, and that primary childcare is the lot of mothers, the “problem” of having both a family and a career becomes a woman’s problem. The question then is never raised as to who profits by the prevailing conceptions of work and of workers, of parenthood, or of family, or whether radically altered social and material arrangements might be desirable. Instead, the problem becomes that of how women are to cope, or of what adjustments can be offered in women’s working conditions so that “their needs” can be met.

## 1

#### L: The Right to Strike legitimates neoliberal domination – it marks strikes as a restriction of one’s own personal labor power, which equivocates the right to strike with the right of contract – the plan is subtended by an assumption that workers are economic subjects who turn their labor into human capital, leaving the terms and conditions of neoliberal capitalism intact. Tomassetti, 21

[Julia, Assistant Prof. Law @ City University of Hong Kong, JD @ Harvard, PhD Sociology @ UCLA: “Neoliberal Conceptions of the Individual in Labour Law,” Chapter 7 in The Collective Dimensions of Employment Relations: Interdisciplinary Perspectives on Workers’ Voices and Changing (Palgrave Macmillan, 2021). [https://doi.org/10.1007/978-3-030-75532-4]//AD](https://doi.org/10.1007/978-3-030-75532-4%5d/AD)

\*legerdemain = slight-of-hand

Neoliberal theory telescopes the corporation to the individual subject through the concept of ‘human capital’. What is human capital? Simulating the emic perspective of the neoliberal subject, Feher (2009, p. 26) provides: ‘my human capital is me, as a set of skills and capabilities that is modified by all that affects me and all that I effect’. Whereas liberal agency is grounded in possessive individualism (Gershon 2011), neoliberal agency is based on human capital (Feher 2009; Brown 2015). Neoliberalism transmutes the firm from a coordinator of labour to the manager of an asset portfolio, and the worker from an owner of labour to the manager of a human capital portfolio.

The shift from labour to human capital reflects ‘neoliberal rationality’, which views neoliberalism as an ‘order of normative reason’ (Brown 2015; Foucault 2008). From an analysis of policies, economic arrangements, and other contemporary institutions, Brown (2015) distils neoliberal rationality as a complex of categories, practices, logics, and principles that differ from their liberal counterparts. Scholars have been addressing how platform companies, as part of the ‘gig economy’, enact, benefit from, and propel neoliberal policies and work arrangements (Zwick 2018). We see less work examining neoliberalism as a form of rationality. Yet, scholars are beginning to explore how neoliberal rationality and its construction of the individual manifest in and shape different social relations, including work. Moisander, Groß, and Eräranta (2018), for example, explore how a digital platform company, in order to manage precarious labour, sought to shape its workers’ subjectivity so that workers thought of themselves as little enterprises, or neoliberal agents.

This chapter argues that we can also see neoliberal rationality at work in legal reasoning, when companies, and sometimes legal decisionmakers, construe workers as neoliberal agents.

Using the SuperShuttle DFW dispute as my primary example, I show how a company can index the worker and ‘entrepreneur’ in neoliberal terms through practical and discursive techniques. The worker becomes an ‘entrepreneur’, but with a meaning far removed from a liberal understanding of the term. For example, on the practical side, the company designs the labour process to permit/require workers to determine their own working times by logging in and out of the platform. The platform then argues that, since workers can earn more money the more hours they log in, they are deploying a managerial strategy in deciding when and how long to work. For the liberal subject, choosing to work longer hours under the command of another for mostly fixed returns is not entrepreneurial. However, for the neoliberal subject, a decision to work longer hours reflects her discretionary commitment of human capital— her time.1 Human capital is like any other capital. It is ‘invested’ like other capital and earns ‘profit’ like any other capital. Therefore, working longer hours is the equivalent of risking any other capital for the sake of gain, like investing additional money in a business to expand production or enter a new market.

This is how the practice of permitting—requiring—workers to determine their own schedules facilitates a neoliberal legerdemain: the company provides the individual, as holder of human capital, the opportunity to make decisions about the use of this capital. In fact, it requires the worker to make these decisions. As a consequence, no matter how unskilled the work, and even where the costs and returns vary little or not at all with the duration of the work, time management becomes an entrepreneurial venture.

The analysis of SuperShuttle DFW shows how neoliberal rationality can transform discretion in carrying out work tasks into economic autonomy. Conceptualizing the worker as a manager of human capital makes it possible to interpret almost all worker discretion as entrepreneurial opportunity. As illustrated by the working hours example, within neoliberal rationality, the discretion need not be exercised in the context of product market competition to be entrepreneurial or involve activities characteristic of product market competition, like investing in advertising or making production more efficient. Nor does the desired end need to be monetary, because neoliberal rationality does not distinguish between the domains of production and reproduction (Feher 2009). Thus, taking time off from work can be an entrepreneurial opportunity. Further, the discretion need not be exercised in as methodological a fashion as expected under a liberal notion of entrepreneurialism. It can be more speculative and sporadic.

By showing how neoliberal rationality can shape legal evaluations of platform work, including what it means to be an entrepreneur, my analysis carries some implications for our understanding of digitally coordinated work. Advancements in information and communications technology have facilitated changes in how companies organize production and exchange. Yet, these changes do not always involve major shifts in the organization of authority relations, sites of entrepreneurial ferment, or loci of power. The analysis of SuperShuttle DFW suggests that some of these apparent transformations in the organization of work are artefacts of changes in our conception of individuals as economic agents.

#### L: The aff’s strike-focused politics privatizes and atomizes worker struggle – it channels it towards specific employers rather than class domination as a whole while ensuring the dictatorship of the bourgeoisie by privileging alternative modes of settlement outside and in spite of the specifics of the law itself. Feldman, 94

[George, Assistant Prof. @ Wayne State Law: “Unions, Solidarity, and Class: The Limits of Liberal Labor Law,” Berkeley Journal of Employment and Labor Law, Volume 15, No. 2, 1994. https://heinonline.org/HOL/Page?handle=hein.journals/berkjemp15&div=14&g\_sent=1&casa\_token=&collection=journals#]//AD

In other ways, however, the liberal vision of labor law that Justice Brennan exemplified has been severely limited. 19 One obvious limitation, for instance, has been the Court's preference for arbitration.20

\*\*\*FOOTNOTE 20 STARTS HERE\*\*\*

20. The Court's tendency to privilege arbitration has led it to impose legal limitations on the right to strike that are unsupported by the language, policy, or history of the labor laws. See Boys Mkts., Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970); Gateway Coal Co. v. United Mine Workers of Am., 414 U.S. 368 (1974), discussed infra at part III.C. For criticism of the Court's weakening of the right to strike, see Matthew W. Finkin, Labor Policy and the Enervation of the Economic Strike, 1990 U. ILL. L. REV. 547, 548-49; JAMES B. ATLESON, VALUES & AssuMiPTIONS IN AMERICAN LABOR LAW

\*\*\*FOOTNOTE 20 ENDS HERE\*\*\*

(1983). Yet a different kind of limit also has been present in the labor jurisprudence of the Court's liberal wing-a limit that is less obvious, usually has less immediate impact, but that is perhaps more deeply seated. The Court's privileging of arbitration restricts the means by which unions legally may act in response to concerns that are concededly legitimate. The limits discussed here, by contrast, define the legitimate boundaries of collective actions and collective concerns. The cases discussed here reflect the liberal doctrine that labor law protects unions only insofar as they limit their role to that of representative of the employees of an individual employer, and that the law will resist any union attempt to move beyond this limitation. That doctrine rejects protection when the underlying issue implicates the proper role of unions in American society.

That question emerges in a variety of contexts. In some, a broad definition of unions' societal function may require, or may seem to require, limiting individual rights;21 in others, the Court's conclusion, or something very similar to it, is so clearly required by statute that the conclusion cannot be ascribed to the conscious or unconscious ideological views of the Justices.22

\*\*\*FOOTNOTE 21 STARTS HERE\*\*\*

21. When such a conflict is actually present, the proper place to draw the line is fairly subject to debate; a judge determined to protect both strong unions and individual employee rights might resolve apparent conflicts between the two in different ways without forfeiting a claim of taking each seriously. See infra notes 237-41; cf Emporium Capwell Co. v. Western Addition Community Org., 420 U.S. 50 (1975).

\*\*\*FOOTNOTE 21 ENDS HERE\*\*\*

At other times, however, liberal members of the Court have narrowed the range of permissible union concerns and therefore of unions' social role in contexts in which the law would have allowed a broader understanding, and in which the danger of conflict with individual rights was either absent or too attenuated to serve as a reasonable justification. In some cases this desire to narrow the sphere of union activity is central to the Court's reasoning; in others, it is a subsidiary theme, or is present only as an underlying assumption, unstated and perhaps unconscious, whose presence helps account for the result reached.

This article examines what the members of the Supreme Court who have been identified with its liberal wing have said explicitly or by necessary implication about what is the legitimate sphere of union activity in American life. This vision of the role that unions should play in society has both practical and ideological consequences. Modern labor law, faithful to the Wagner Act's premises, aims to particularize rather than generalize workers' struggles; it directs them towards their specific relationship to their employer, rather than to the larger relationship of their class to employers and to work; it privatizes and depoliticizes those struggles.23

\*\*\*FOOTNOTE 23 STARTS HERE\*\*\*

23. It is in this sense that I think the frequently voiced point of authors associated with the Critical Legal Studies movement is correct. It is not that workers' struggles are channeled to arbitration rather than to a public body like the National Labor Relations Board (NLRB), see Katherine Van Wezel Stone, The Post-War Paradigm in American Labor Law, 90 YALE L.J. 1509 (1981). but rather that whatever method workers employ-even including a strike or other collective job actions-the locus of the struggle remains the particular workplace or employer. It is in this sense that workers' struggles are channeled away from "political" dimensions.

\*\*\*FOOTNOTE 23 ENDS HERE\*\*\*

Given the contextual limitations mentioned, this analysis necessarily must be cautious. It must take account of the constraints of statutory language and congressional intent and, where applicable, of judicial deference to the decisions of the NLRB. 24 This analysis also must recognize the presence of other policy or ideological considerations that are unrelated to the theme of limiting the breadth of union concerns. Nonetheless, this theme is demonstrably present in a wide variety of legal settings, transecting the doctrinal categorizations that abound in labor law.

#### L: Rights-focus on labor organizing represents legislative capture – it reinscribes the ontological domination of the state through cooption and interpretation of revolutionary struggle by the law – that alienates movement organizers from each other, demobilizing radical struggle.

Gabel, 84

[Peter, Prof. Law @ New College of California School of Law, San Francisco: “The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves,” Texas Law Review 62, no. 8 (May 1984). [https://heinonline.org/HOL/Page?handle=hein.journals/tlr62&div=65&g\_sent=1&casa\_token=&collection=journals]//AD](https://heinonline.org/HOL/Page?handle=hein.journals/tlr62&div=65&g_sent=1&casa_token=&collection=journals%5d//AD)

\*edited for offensive language

B. The Strategy of State Officials: Pseudo-Recognition and Containment by Interpretation

Rights-victories can facilitate a movement's cooptation by tempting the movement to "return" its power to the State in exchange for what I will call a pseudo-recognition of the movement's particular demands. I use the term "the State" here, just as I have earlier, to refer not to a collection of officials conceived as a conceptual unit, but to the projected image of authority that these officials "speak for" and that alienated consciousness "believes in" to provide itself with an illusory political foundation. This collectively believed-in authority serves as the political vehicle for opposing the internal development of the movement precisely to the degree that the group as a whole feels the need to resist the sense of possibility awakened by the movement's energy.

During the movement's rising period, the need to remain alienated continues to exist in each of us, including those at the movement's core, but its intensity is distributed throughout the group as a whole according to "social position," understood in a strictly experiential sense. For insofar as the movement initially finds the conviction to discover itself and "arise" through an affirmation of its difference from the rest of the group, it provokes a complex reaction in the group as a whole that depends in part upon how each person feels "positioned" in relation to the movement's particularity. While each movement as a movement aims at universality, the demands that emerge from its alienated particularity are aimed against others in their alienated particularity in a way that both [silences] ~~mutes~~ (in some locations) and accentuates (in other locations) the movement's transformative appeal. For example, a workers' movement may cause "management" and all those who identify with managerial "differentness" to want to "defend themselves"; yet the very fact that the workers have at first defined themselves against management may allow students who are beginning to discover themselves through their difference from teachers to "hear" the movement's deeper meaning. [Black people] ~~Blacks~~ who organize against whites may cause whites to rigidify behind their difference, while striking a chord among women who are also coming to experience each other in a new way through their discovery of the social meaning of a common physical difference. While any true account of a movement's impact would require a narrative description with much greater phenomenological texture than I can produce here, it is through the totality of these ontological resonances, each acquiring its quality from the unique way that the movement aims at the disalienating universal through the alienated particular, that the movement influences the "consciousness-war" occurring within each one of us between the need to remain alienated and the desire to surpass this alienation.

In this early period it is virtually inevitable that the balance of forces within the group as a whole ("society") will tilt in favor of the loyalty to substitute connection that forms the inertia of the status quo, and the group tacitly will rely upon its State officials to cope with the heightened conflict that the movement has generated within it. The "social position" of these officials is somewhat unique because they are called upon to represent the constitution of the group to itself as it actually is (in the sense that their perceived legitimacy as "representatives" extends no further than the group's own dominant self-understanding), and yet they also help to constitute the balance of forces that forms this understanding in their capacity as real people who are part of the group. And as people they are likely to be relatively unavailable to the movement's transformative appeal because this appeal threatens the very "belief in the State" upon which their existing identities depend; they will be inclined to defend themselves against any movement, because movements by their very nature pose a challenge to the alienated universality that in their case constitutes their particularity. As a result, State officials are likely to play the part of "barometers on the side of alienation," seeking to recognize the movement's presence within the group to the extent necessary to maintain their legitimacy, but doing so in a way that sides with the tilt in the group as a whole toward preserving the collective belief in the authority of the State.

The cooptation strategy that these officials adopt-a strategy that may or may not be conscious as regards its form, but remains unconscious as regards its experiential meaning-is to calibrate their responses to the movement's demands so as to encourage the tendency already present in the movement to return to a state of quiescence. This strategy seems to involve roughly three stages37 that take place across a time-span (often decades) dictated by the pulse of the movement itself. At first, these officials refuse to recognize the legitimacy of the movement's demands at all because they are inconsistent with existing law. This risks increasing the anger that forms part of the movement's strength and it may provoke destabilizing confrontations and demonstrations that increase the movement's visibility and appeal (for example, it may create a dispersed group of "sympathizers"). But this risk is a calculated one because it shores up the resolve of those who are opposed to the movement by backing up this resolve with an affirmation of what "the people" believe, while also tempting those within the movement to warp their own understanding of how the movement itself is constituted. Because the movement has achieved its disalienating reciprocity in part on the basis of a "surface recognition" of its common difference within the alienated social order, and because this new feeling of connection is as yet somewhat weak in light of the movement's incomplete internal confidence in its own autonomous and transcendental constitution, the movement suffers from an internal tendency to turn itself back into a group that is constituted "from the outside" on the basis of the inert particularity that as a movement it is seeking to surpass. When State officials refuse to recognize the legitimacy of the movement's demands, the movement may partially give in to this tendency by seeing itself less through its own eyes and more through the "eyes of the State," as if "the State" were the source of its being and for that reason ought to recognize it. The initial refusal of recognition by State officials, in other words, may begin to seduce the movement into deciding that "getting our rights" is the movement's ultimate objective rather than being but a moment of its own internal development. To that extent the movement's anger at the State may reveal a tendency toward compliance rather than transformation.

As the movement gathers momentum in this double direction-the one toward itself, the other away from itself and toward "the State"- the forces of alienation will begin to realign themselves to prepare for the second stage of the State's strategy, the stage of pseudo-recognition. Through a real intuition that spreads through the withdrawn selves on the basis of their existing organization of reciprocity (a phenomenological definition of "the social structure"), some people remain staunchly opposed to the movement because of their particular social relationship to it, while others begin to mediate the movement's relationship to the group as a whole (through "the media," for example) by recasting the movement's demands as a legitimate "rights-debate" with "difficult arguments on both sides." As leaders of collective experience, these oracles of the center seek to "mold public opinion" in a way that secures its anonymous or empty character against the risk that the desire unleashed by the movement could become a genuinely public force; their efforts are nervously aimed at reassuring the group as a whole that the images supporting our substitute connection can be reorganized to accommodate the movement's demands. These efforts are a measure of the movement's authentic impact. But they are also aimed at bombarding the movement itself with a false picture of its public success by suggesting that the movement is making headway because of its compatibility with the political foundations of the status quo (when exactly the reverse is the case). To the degree that the State's original refusal of recognition has already encouraged the movement to experience its own reciprocity as deriving from its external and role-based particularity, this shift toward mediation may further this temptation by implying that the "bad State" may be willing to back down and atone for its wrongs if the movement will abandon its transformative ambitions, or at least postpone them until an unrealizable future when these ambitions will be "allowed."

When State officials subsequently begin to recognize the movement's specific demands in the form of rights-victories, they do so with the hope that the movement will "trick itself' into equating these victories with its own internal ends. As State officials know perfectly well, it is not necessary or even conceivable that the movement will accept the acquisition of a few rights as all that it means to accomplish. It is necessary only that the movement divert itself from its authentic self-understanding enough to deceive itself into thinking that its objectives could eventually be realized through existing law, as if alienation could ever be overcome with its own agreement. For State officials comprehend in their being that once this diversion occurs, the movement will tend increasingly to see its own capacity to realize itself'as located outside of itself in "the State," and to that degree its transformative momentum will tend to collapse from within for reasons described earlier: "belief in the State" itself derives from the reciprocal denial of desire that divides us from each other by our role-performances and that secures the apparent reality of these performances through our collective obedience to a projected authority. Thus the recognition of the movement's demands by State officials is actually a pseudo-recognition because it intends to strip these demands of their universal and transformative meaning and to induce the movement to grasp itself as a "recognized particularity," playing its part along with all of the others in the circle of collective denial that forms the alienated whole.

But just as the State's original refusal to recognize the movement may partly strengthen as well as weaken the movement's internal solidarity, the eventual recognition of the movement also has this dual potential: it runs the risk of giving the movement the foothold in public consciousness that partly inspired its struggle for rights in the first place. The consciousness-war can be quite fluid at the moment of recognition, with each side struggling over the meaning of what is happening, and struggling not only against each other but among themselves and within everyone insofar as these "sides" are lived as a universal conflict that pervades each person's relationship to others. When bluecollar workers win the right to strike, the bank teller may or may not be happy depending upon countless resonations that overdetermine each other in both directions without absolutely determining anything in advance (including her relationship to her mother, her husband's job, her loyalty to the bank, her "white-collar" identity, her sense of how women should respond to conflict, her vision of her children's prospects, and including what, if anything, happens in the bank that day). To control this fluidity, State officials, to the extent that they remain on the side of alienation, must rely on the third stage of their strategy, the stage of "interpretation," to stabilize a situation that they have had no choice but to help create.

This third stage has been discussed extensively in those critical legal studies writings38 that have traced in specific historical instances how these officials attempt, through a process of doctrinal interpretation and legislative compromise elaborated over many years, to reconcile the movement's rights-victories with the pact of the withdrawn selves (as expressed through the intent of the framers, of the legislature, of the parties, of "the people"), and to distinguish these victories from their true social origins in the intent of the movement. During this extended period while the consciousness-war is waged with fluctuating intensity in countless microphenomenological contexts that mutually influence and totalize each other, these officials play a unique and constitutive role in equilibrating the conflict as a whole by purporting to universalize the meaning of each shift in direction through successive case-by-case revisions of what the Constitution says.39 They absorb what they can of the social texture of these shifts, test it for available alienated image-content, write it up as a fantasy narrative that is vaguely consistent with prior chapters, and then feed it back into the group as a whole as the official interpretation of how they, the people, believe it should "come out."' 40 But I think it is a mistake to understand this process as something that one group does to another, as if the State were trying to manipulate the movement into internalizing false consciousness by acting upon it in a one-way fashion. It is rather the final phase of a reciprocal and intersubjective struggle over the possibilities of social connection itself, as this struggle is mediated through a contest over the ontological meaning of legal concepts in their universal or constitutional dimension.

To the degree that the movement is successful in this universal sense, it can use a rights-strategy as part of its effort to leverage itself into public space with the ultimate aim of creating an experience of public community that could dissolve people's belief in and obedience to the State itself-it is only then that the judge can appear as a man in a tunic and "the law" can appear as something like his speech-impediment. But to the degree that the State is successful in using its rightsstrategy to tempt the movement to substitute rights-consciousness for its own critical self-understanding, the movement's members will gradually find themselves losing each other in their legal reflection and becoming attached to this reflection as the medium through which they recognize one another. By their efforts they will have changed their material and cultural circumstances to the degree that their particular demands can be "balanced" with the common commitment to maintaining the stability of the hierarchical order. But they will experience a hemorrhage of being that will allow them to be reabsorbed into this order, first by depriving them of their unique public appeal in a way that will lead public space to reenclose around them, and finally by hierarchizing themselves to secure the denial of desire upon which their continued acceptance within the group as a whole seems to depend.

#### I: Our critique independently outweighs the case - neoliberalism causes extinction and massive social inequalities – the affs single issue legalistic solution is the exact kind of politics neolib wants us to engage in so the root cause goes unquestioned – and treat this as a no long-term solvency argument – the inequalities of labor relations are fundamental to capitalism. Farbod 15

( Faramarz Farbod , PhD Candidate @ Rutgers, Prof @ Moravian College, Monthly Review, http://mrzine.monthlyreview.org/2015/farbod020615.html, 6-2)

Global capitalism is the 800-pound gorilla. The twin ecological and economic crises, militarism, the rise of the surveillance state, and a dysfunctional political system can all be traced to its normal operations. We need a transformative politics from below that can challenge the fundamentals of capitalism instead of today's politics that is content to treat its symptoms. The problems we face are linked to each other and to the way a capitalist society operates. We must make an effort to understand its real character. The fundamental question of our time is whether we can go beyond a system that is ravaging the Earth and secure a future with dignity for life and respect for the planet. What has capitalism done to us lately? The best science tells us that this is a do-or-die moment. We are now in the midst of the 6th mass extinction in the planetary history with 150 to 200 species going extinct every day, a pace 1,000 times greater than the 'natural' extinction rate.1 The Earth has been warming rapidly since the 1970s with the 10 warmest years on record all occurring since 1998.2 The planet has already warmed by 0.85 degree Celsius since the industrial revolution 150 years ago. An increase of 2° Celsius is the limit of what the planet can take before major catastrophic consequences. Limiting global warming to 2°C requires reducing global emissions by 6% per year. However, global carbon emissions from fossil fuels increased by about 1.5 times between 1990 and 2008.3 Capitalism has also led to explosive social inequalities. The global economic landscape is littered with rising concentration of wealth, debt, distress, and immiseration caused by the austerity-pushing elites. Take the US. The richest 20 persons have as much wealth as the bottom 150 million.4 Since 1973, the hourly wages of workers have lagged behind worker productivity rates by more than 800%.5 It now takes the average family 47 years to make what a hedge fund manager makes in one hour.6 Just about a quarter of children under the age of 5 live in poverty.7 A majority of public school students are low-income.8 85% of workers feel stress on the job.9 Soon the only thing left of the American Dream will be a culture of hustling to survive. Take the global society. The world's billionaires control $7 trillion, a sum 77 times the debt owed by Greece to the European banks.10 The richest 80 possess more than the combined wealth of the bottom 50% of the global population (3.5 billion people).11 By 2016 the richest 1% will own a greater share of the global wealth than the rest of us combined.12 The top 200 global corporations wield twice the economic power of the bottom 80% of the global population.13 Instead of a global society capitalism is creating a global apartheid. What's the nature of the beast? Firstly, the "egotistical calculation" of commerce wins the day every time. Capital seeks maximum profitability as a matter of first priority. Evermore "accumulation of capital" is the system's bill of health; it is slowdowns or reversals that usher in crises and set off panic. Cancer-like hunger for endless growth is in the system's DNA and is what has set it on a tragic collision course with Nature, a finite category. Secondly, capitalism treats human labor as a cost. It therefore opposes labor capturing a fair share of the total economic value that it creates. Since labor stands for the majority and capital for a tiny minority, it follows that classism and class warfare are built into its DNA, which explains why the "middle class" is shrinking and its gains are never secure. Thirdly, private interests determine massive investments and make key decisions at the point of production guided by maximization of profits. That's why in the US the truck freight replaced the railroad freight, chemicals were used extensively in agriculture, public transport was gutted in favor of private cars, and big cars replaced small ones. What should political action aim for today? The political class has no good ideas about how to address the crises. One may even wonder whether it has a serious understanding of the system, or at least of ways to ameliorate its consequences. The range of solutions offered tends to be of a technical, legislative, or regulatory nature, promising at best temporary management of the deepening crises. The trajectory of the system, at any rate, precludes a return to its post-WWII regulatory phase. It's left to us as a society to think about what the real character of the system is, where we are going, and how we are going to deal with the trajectory of the system -- and act accordingly. The critical task ahead is to build a transformative politics capable of steering the system away from its destructive path. Given the system's DNA, such a politics from below must include efforts to challenge the system's fundamentals, namely, its private mode of decision-making about investments and about what and how to produce. Furthermore, it behooves us to heed the late environmentalist Barry Commoner's insistence on the efficacy of a strategy of prevention over a failed one of control or capture of pollutants. At a lecture in 1991, Commoner remarked: "Environmental pollution is an incurable disease; it can only be prevented"; and he proceeded to refer to "a law," namely: "if you don't put a pollutant in the environment it won't be there." What is nearly certain now is that without democratic control of wealth and social governance of the means of production, we will all be condemned to the labor of Sisyphus. Only we won't have to suffer for all eternity, as the degradation of life-enhancing natural and social systems will soon reach a point of no return**.**

#### A: New radical party politics are key—we need a new political ecology of class. That solves 100% of labor problems, the environment, and imperialism.

#### A: The alternative is to affirm the model of the Communist Party – only party organizing can provide effective accountability mechanisms to correct chauvinist tendencies, educate and mobilize marginalized communities, and connect local struggles to a movement for global liberation.

Escalante, Philosophy @ UOregon, 18

[Alyson, M.A., is a Marxist-Leninist, Materialist Feminist and Anti-Imperialist activist. “PARTY ORGANIZING IN THE 21ST CENTURY” September 21st, 2018 <https://theforgenews.org/2018/09/21/party-organizing-in-the-21st-century/>] rVs

I would argue that within the base building movement, there is a move towards party organizing, but this trend has not always been explicitly theorized or forwarded within the movement. My goal in this essay is to argue that base building and dual power strategy can be best forwarded through party organizing, and that party organizing can allow this emerging movement to solidify into a powerful revolutionary socialist tendency in the United States. One of the crucial insights of the base building movement is that the current state of the left in the United States is one in which revolution is not currently possible. There exists very little popular support for socialist politics. A century of anticommunist propaganda has been extremely effective in convincing even the most oppressed and marginalized that communism has nothing to offer them. The base building emphasis on dual power responds directly to this insight. By building institutions which can meet people’s needs, we are able to concretely demonstrate that communists can offer the oppressed relief from the horrific conditions of capitalism. Base building strategy recognizes that actually doing the work to serve the people does infinitely more to create a socialist base of popular support than electing democratic socialist candidates or holding endless political education classes can ever hope to do. Dual power is about proving that we have something to offer the oppressed. The question, of course, remains: once we have built a base of popular support, what do we do next? If it turns out that establishing socialist institutions to meet people’s needs does in fact create sympathy towards the cause of communism, how can we mobilize that base? Put simply: in order to mobilize the base which base builders hope to create, we need to have already done the work of building a communist party. It is not enough to simply meet peoples needs. Rather, we must build the institutions of dual power in the name of communism. We must refuse covert front organizing and instead have a public face as a communist party. When we build tenants unions, serve the people programs, and other dual power projects, we must make it clear that we are organizing as communists, unified around a party, and are not content simply with establishing endless dual power organizations. We must be clear that our strategy is revolutionary and in order to make this clear we must adopt party organizing. By “party organizing” I mean an organizational strategy which adopts the party model. Such organizing focuses on building a party whose membership is formally unified around a party line determined by democratic centralist decision making. The party model creates internal methods for holding party members accountable, unifying party member action around democratically determined goals, and for educating party members in communist theory and praxis. A communist organization utilizing the party model works to build dual power institutions while simultaneously educating the communities they hope to serve. Organizations which adopt the party model focus on propagandizing around the need for revolutionary socialism. They function as the forefront of political organizing, empowering local communities to theorize their liberation through communist theory while organizing communities to literally fight for their liberation. A party is not simply a group of individuals doing work together, but is a formal organization unified in its fight against capitalism. Party organizing has much to offer the base building movement. By working in a unified party, base builders can ensure that local struggles are tied to and informed by a unified national and international strategy. While the most horrific manifestations of capitalism take on particular and unique form at the local level, we need to remember that our struggle is against a material base which functions not only at the national but at the international level. The formal structures provided by a democratic centralist party model allow individual locals to have a voice in open debate, but also allow for a unified strategy to emerge from democratic consensus. Furthermore, party organizing allows for local organizations and individual organizers to be held accountable for their actions. It allows criticism to function not as one independent group criticizing another independent group, but rather as comrades with a formal organizational unity working together to sharpen each others strategies and to help correct chauvinist ideas and actions. In the context of the socialist movement within the United States, such accountability is crucial. As a movement which operates within a settler colonial society, imperialist and colonial ideal frequently infect leftist organizing. Creating formal unity and party procedure for dealing with and correcting these ideas allows us to address these consistent problems within American socialist organizing. Having a formal party which unifies the various dual power projects being undertaken at the local level also allows for base builders to not simply meet peoples needs, but to pull them into the membership of the party as organizers themselves. The party model creates a means for sustained growth to occur by unifying organizers in a manner that allows for skills, strategies, and ideas to be shared with newer organizers. It also allows community members who have been served by dual power projects to take an active role in organizing by becoming party members and participating in the continued growth of base building strategy. It ensures that there are formal processes for educating communities in communist theory and praxis, and also enables them to act and organize in accordance with their own local conditions. We also must recognize that the current state of the base building movement precludes the possibility of such a national unified party in the present moment. Since base building strategy is being undertaken in a number of already established organizations, it is not likely that base builders would abandon these organizations in favor of founding a unified party. Additionally, it would not be strategic to immediately undertake such complete unification because it would mean abandoning the organizational contexts in which concrete gains are already being made and in which growth is currently occurring. What is important for base builders to focus on in the current moment is building dual power on a local level alongside building a national movement. This means aspiring towards the possibility of a unified party, while pursuing continued local growth. The movement within the Marxist Center network towards some form of unification is positive step in the right direction. The independent party emphasis within the Refoundation caucus should also be recognized as a positive approach. It is important for base builders to continue to explore the possibility of unification, and to maintain unification through a party model as a long term goal. In the meantime, individual base building organizations ought to adopt party models for their local organizing. Local organizations ought to be building dual power alongside recruitment into their organizations, education of community members in communist theory and praxis, and the establishment of armed and militant party cadres capable of defending dual power institutions from state terror. Dual power institutions must be unified openly and transparently around these organizations in order for them to operate as more than “red charities.” Serving the people means meeting their material needs while also educating and propagandizing. It means radicalizing, recruiting, and organizing. The party model remains the most useful method for achieving these ends. The use of the party model by local organizations allows base builders to gain popular support, and most importantly, to mobilize their base of popular support towards revolutionary ends, not simply towards the construction of a parallel economy which exists as an end in and of itself. It is my hope that we will see future unification of the various local base building organizations into a national party, but in the meantime we must push for party organizing at the local level. If local organizations adopt party organizing, it ought to become clear that a unified national party will have to be the long term goal of the base building movement. Many of the already existing organizations within the base building movement already operate according to these principles. I do not mean to suggest otherwise. Rather, my hope is to suggest that we ought to be explicit about the need for party organizing and emphasize the relationship between dual power and the party model. Doing so will make it clear that the base building movement is not pursuing a cooperative economy alongside capitalism, but is pursuing a revolutionary socialist strategy capable of fighting capitalism. The long term details of base building and dual power organizing will arise organically in response to the conditions the movement finds itself operating within. I hope that I have put forward a useful contribution to the discussion about base building organizing, and have demonstrated the need for party organizing in order to ensure that the base building tendency maintains a revolutionary orientation. The finer details of revolutionary strategy will be worked out over time and are not a good subject for public discussion. I strongly believe party organizing offers the best path for ensuring that such strategy will succeed. My goal here is not to dictate the only possible path forward but to open a conversation about how the base building movement will organize as it transitions from a loose network of individual organizations into a unified socialist tendency. These discussions and debates will be crucial to ensuring that this rapidly growing movement can succeed.

#### R: K First - There is no material world that we can separate from the lens through which we view it. Deconstructing the AFF scholarship is a prior question that has material effects.

#### R: Therefore the ROB is one of deconstruction – vote for the side which best challenges neoliberal scholarship Springer ‘12

Simon Springer - Department of Geography, University of Otago. “Neoliberalism as discourse: between Foucauldian political economy and Marxian poststructuralism.” Routledge. May 2012. JJN from file \*bracketing in original

Conclusion In arguing for an understanding of neoliberalism as discourse, I do not presume that comprehending neoliberalism separately as a hegemonic ideology, a policy and program, a state form, or as a form of governmentality is wrong or not useful. Rather I have simply attempted to provoke some consideration for the potential reconcilability of the different approaches. My argument should accordingly be read as an effort to destabilize the ostensible incompatibility that some scholars undertaking their separate usage seem keen to assume. Without at least attempting to reconcile the four approaches we risk being deprived of a coherent concept with which to work, and thus concede some measure of credibility to Barnett’s (2005) claim that ‘there is no such thing as neoliberalism’. Such a position renders the entire body of scholarship on neoliberalism questionable, as scholars cannot be sure that they are even discussing the same thing. More perilously, to accept such a claim throws the project of constructing solidarities across space into an uneasy quandary, where the resonant violent geographies of our current moment may go unnoticed, a condition that plays perfectly into the ideological denial maintained by the current capitalist order (Zizek, 2011). In ignoring such relational possibilities for resistance to the contemporary zeitgeist, Barnett (2005) seems keen to engage in disarticulation ad nauseam. Yet deconstruction is meant to be interruptive not debilitating. As Spivak (1996, p. 27) contends, ‘Deconstruction does not say there is no subject, there is no truth, there is no history. ... It is constantly and persistently looking into how truths are formed’. It is about noticing what we inevitably leave out of even the most searching and inclusive accounts of phenomena like neoliberalism, which opens up and allows for discursive understandings. Rather than making nice symmetrical accounts of the ‘real’ at the meeting point of representational performance and structural forces, neoliberalism understood as a discourse is attuned to processual interpretation and ongoing debate. While there are inevitable tensions between the four views of neoliberalism that are not entirely commensurable, their content is not diametrically opposed, and indeed a considered understanding of how power similarly operates in both a Gramscian sense of hegemony and a Foucauldian sense of governmentality points toward a dialectical relationship. Understanding neoliberalism as discourse allows for a much more integral approach to social relations than speech performances alone. This is a discourse that encompasses material forms in state formation through policy and program, and via the subjectivation of individuals on the ground, even if this articulation still takes place through discursive performatives. By formulating discourse in this fashion, we need not revert to a presupposed ‘real-world’ referent to recognize a materiality that is both constituted by and constitutive of discourse. Instead, materiality and discourse become integral, where one cannot exist without the other. It is precisely this understanding of discourse that points to a similitude between poststructuralism and Marxian political economy approaches and their shared concern for power relations. I do not want to conclude that I have worked out all these tensions, my ambition has been much more humble. I have simply sought to open an avenue for dialogue between scholars on either side of the political economy/ poststructuralist divide. The importance of bridging this gap is commensurate with ‘the role of the intellectual ... [in] shaking up habits, ways of acting and thinking, of dispelling commonplace beliefs, of taking a new measure of rules and institutions ... and participating in the formation of a political will’ (Foucault, quoted in Goldstein, 1991, pp. 11– 12). Such reflexivity necessarily involves opening ourselves to the possibility of finding common ground between the epistemic and ontological understandings of political economy and poststructuralism so that together they may assist in disestablishing neoliberalism’s rationalities, deconstructing its strategies, disassembling its technologies, and ultimately destroying its techniques. In changing our minds then, so too might we change the world.

## 2

**Just governments ought to recognize the right to strike except where a continued strike would constitute a health, safety, or welfare exception per our Slater evidence**.

#### CP solves the case while preserving rapid responses to public crises

Slater 18 (Joseph, Professor University of Toledo College of Law "Strike Rights of Essential Employees in the U.S.A." MOTI MIRONI AND MONIKA SCHLACTER, EDS., REGULATING STRIKES IN ESSENTIAL SERVICES: A COMPARATIVE ‘LAW IN ACTION’ PERSPECTIVE (Walters Kluwer, 2019 Forthcoming)<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266882>)

More significantly, public-sector labor statutes routinely provide that Strikes which begin as legal strikes (i.e.,the employees were allowed to strike at the time they went out on strike) may nonetheless be enjoined if, at some point during the strike, the strike threatens the health, safety, and/or welfare of the public. For example, the Ohio statute provides that if ‘the public employer believes that a lawful strike creates clear and present danger to the health or safety of the public’, it may seek to have the strike enjoined. If the labor board and court agree to the injunction, the parties will also be ordered to resume bargaining with a mediator.58 Whiletheserulesapplytoallpublicemployeeswhohavetherighttostrike, in practice, they are applied to employees whose work involves a middle category in the ‘essential’ scale: often, workers in public transportation and public school teachers. These cases are often difficult for labor boards and courts because of the obvious tension: strikes are meant to cause some dislocations and inconveniences, so at what point does an otherwise legal strike create the types of problems that threaten the health, safety, or welfare of the public? For example, Masloffv.PortAuthorityofAlleghenyCounty,613A.2d1186(Pa.1992)wrestled With a ‘health, safety, and welfare’ exception in a strike(legal at its inception)by Mass transit workers. Masloff upheld an injunction over a dissent. The majority opinion explained that ‘ordinary inconveniences resulting from a strike will not suffice to establish a clear and present danger’, but distinguished situations ‘when such matters accumulate to such an extent, have continued for so long, or are aggravated by unexpected developments.’ The majority opinion stressed that the city had introduced thirty witnesses who testified about the negative impact of the strike, including blind, epileptic, professionals, ‘blue-collar’ and

#### Having rapid response for public health is key to stopping global war Wiist et al 14

(William H. Wiist was with the Interdisciplinary Health Policy Institute at Northern Arizona University, Flagstaff. Kathy Barker is with Washington Truth in Recruiting, Seattle. Neil Arya is with Office of Global Health, University of Western Ontario; Environment and Resource Studies, University of Waterloo; and Family Medicine, McMaster University, Hamilton, Ontario. Jon Rohde is retired. Martin Donohoe is with the School of Community Health, Portland State University, Portland, OR. Shelley White is with the Department of Health Sciences Worcester State University, Worcester, MA. Pauline Lubens is with the MPH Program in Public Health, University of California, Irvine. Geraldine Gorman is with the College of Nursing, University of Illinois, Chicago. Amy Hagopian is with the Department of Global Health, University of Washington School of Public Health, Seattle, The American Journal of Public Health, "The Role of Public Health in the Prevention of War: Rationale and Competencies," ida.lib.uidaho.edu:2531/doi/full/10.2105/AJPH.2013.301778, 1/31)

Motivation for public health involvement in the prevention of war derives from the profession’s code of ethics, which affirms that public health focus on “principally the fundamental causes of disease and requirements for health, aiming to prevent adverse health outcomes.”60(p4) The WHO has stated, “The role of physicians and other health professionals in the preservation and promotion of peace is the most significant factor for the attainment of health for all.”61 War often infringes on international humanitarian law62 specified in international conventions and protocols,63 and is illegal except in circumstances allowed by the United Nations Security Council.62 Public health has a history of interventions on the political, social, economic, cultural, and educational fundamental causes and requirements for health,64,65 and of ethics analyses of public health interventions that give consideration to social justice.66 Activities of several health professions organizations illustrate application of the principles of public health ethics to the prevention of war. From 1969 to 2012 the APHA passed 33 policies directly related to war1 including those in opposition to individual outbreaks of armed conflict, for banning specific types of weapons, and the most recent in 2012, calling for the cessation of military recruiting in public secondary schools.66 In 1985 the APHA adopted the policy “The Health Effects of Militarism.”67 The association opposed militarism on the basis of the threat to health from war with nuclear and other weapons, budget cuts to health and social programs, the growth of the military budget, and military interventions. The policy called for preparation of teaching curricula and the development of learning-aid methods on the subject of militarism and health, for use in medical, nursing, public health, and other health science schools.67 Since 1985 members of the APHA Peace Caucus have participated in developing and promoting antiwar and antiweapons policies adopted by the APHA, and in advocacy. During the 1986 APHA annual meeting more than 400 APHA members and attendees protested at the Nevada Test Site to support a Comprehensive Test Ban Treaty; 138 participants in nonviolent civil disobedience were arrested.68 In 1998, the World Health Assembly formally adopted “Health as a Bridge for Peace” as a WHO framework for health workers providing health services in conflict and postconflict situations to contribute to peace building through diplomacy, mediation and conflict resolution, advocacy for the abolition of weapons, and working for human development.69 Health has been a rationale for promoting peace during humanitarian ceasefires in El Salvador and Uganda in the 1980s. It also framed the WHO’s efforts to integrate health systems in the 1990s in southern Africa and the former Yugoslavia in the 1990s.70 In 2011 the World Federation of Public Health Associations passed a resolution71 recommending that public health professionals become active advocates for legislation related to the arms trade, the ratification of treaties and protocols related to war, and the development of initiatives that address the structural causes of war. The International Physicians for the Prevention of Nuclear War (IPPNW) was founded on the ethic of protecting and promoting health.72 The IPPNW engaged in advocacy, met with global political leaders, held international conferences, and won the Nobel Peace Prize in recognition of its contribution to a “redefinition of priorities, with greater attention being paid to health and other humanitarian issues.”73 Medact, the British affiliate of IPPNW, issued a report before the 2003 Iraq war estimating the number of casualties and advocating against the war, initiating a debate about the war in health journals.74 Proposals were made for a public health approach to assessing risks and benefits of launching the 2001 war on the Taliban75 and of sanctions as a means of avoiding war.76 Public Health Skills Relevant to Preventing War Public health professionals are uniquely qualified for involvement in the prevention of war on the basis of their skills in epidemiology; identifying risk and protective factors; planning, developing, monitoring, and evaluating prevention strategies; management of programs and services; policy analysis and development; environmental assessment and remediation; and health advocacy. Some public health workers have knowledge of the effects of war from personal exposure to violent conflict or from working with patients and communities in armed conflict situations. Public health also provides a common ground around which many disciplines are willing to come together to form alliances for the prevention of war. The voice of public health is often heard as a force for public good. Through regular collection and review of health indicators public health can provide early warnings of the risk for violent conflict.77 Public health can also describe the health effects of war, frame the discussion about wars and their funding (e.g., “Defending freedom requires health care for everyone”), and expose the militarism that often leads to armed conflict and incites public fervor for war. Thus, public health can make a unique contribution to the prevention of war because it begins with data and links it to programs and services, training, policy, and advocacy, all focused on prevention. Social-Ecological Public Health Framework for Preventing War The 2009 APHA policy1 on the prevention of war applied the primary, secondary, and tertiary prevention framework78,79 that has been applied in the health literature to a variety of public health threats, including violence.6,80 Interventions in war for each of the 3 categories of prevention have been delineated at the individual, community, and societal levels,81 with corresponding roles described for health workers.82 The 2009 APHA policy and other analyses described a typical public health role in secondary prevention (e.g., epidemiology of injury, disease, and mortality) and tertiary prevention (e.g., managing the health effects on displaced people), along with a rehabilitative and reconstructive role (disability, mental trauma, and collateral effects on society).1,83,84 However, the APHA policy stressed a shift toward the primary prevention of war, a role some public health professionals may find novel or have not embraced. Primary prevention has also been called “primordial prevention” or “pre-event prevention” (i.e., preventing armed conflict before it begins by eliminating factors necessary for the existence of war).80 Because the 3-part prevention framework does not provide as comprehensive a perspective as does the more contemporary ecological model of health, we emphasize the latter. The multidimensional ecological model85–89 expands the domain of prevention3,90,91 to include the personal, social, and economic conditions, inequities in the distribution of power, money, and resources (i.e., the social determinants of health).36 Among the major causes of war, the WHO Commission on the Social Determinants of Health identified low national income and poverty, injustice, the distribution of access to resources, ethnic identity, and social exclusion associated with poverty and inequity, to which the commission attributed the effects to failures of governance.36 Risk factors for and root causes of war include governance; economics; geography; development status; disparities in education and health; cultural factors; political, economic, and social inequalities; extreme poverty; economic stagnation; poor government services; high unemployment; environmental degradation; and individual (economic) incentives.92 War may also be incited by religious reasons, revenge, ideology, lack of mutual understanding about capabilities, bargaining failures, and the decision to arm.93,94 Ecological models can help illuminate a role for public health in the prevention of war and increase understanding that the fundamental underlying causal factors1,3,81,84,94–96 are relevant to public health’s role in the prevention of war. The Institute of Medicine’s 2003 report on the nation’s public health system emphasized the importance of integrating the ecological model into education and training.79,97 This model is now incorporated into the competency frameworks for public health professionals,98 including public health education.99,100 The ecologic perspective on the determinants of war requires public health professionals to understand that decisions in public health are political by nature,101–105 and thus that they need to develop relevant expertise,106–108 including advocacy. The importance of public health advocacy has been acknowledged by the WHO109 and the Association of Schools of Public Health (ASPH).99,100,110 The ASPH’s Global Health Competency Model identifies advocacy as a key competency.99 Its competency framework for DrPH graduates includes a full domain dedicated to advocacy, wherein competencies included are “analyz[ing] the impact of legislation, judicial opinions, regulations, and policies on population health,” and “establish[ing] goals, timelines, funding alternatives, and strategies for influencing policy initiatives.”110 As part of accreditation through the Council on Education for Public Health,111 individual schools and programs of public health may define their graduate competencies, and some schools feature advocacy as a competency requirement.112 The Society for Public Health Education lists advocacy competencies among the responsibilities for certification of health education specialists.113 APHA staff engage in advocacy, solicit members to participate in and provide training in advocacy, and publish “how-to” guides.114 Although public health applies a similar approach and methods as does the international relations peace-building field,115,116 public health’s role in war could be strengthened by adapting peace-building skills such as conflict mediation and prevention,117,118 dialogue,119 reconciliation,120 and nonviolent civil resistance.121 Public health workers have unique opportunities to apply such skills during war by bringing parties together to cooperate in and coordinate health activities.69 After a violent conflict they can apply those skills to providing guidance in health-related reconstruction and development.122 Although international relations peace-building efforts usually address conflict or postconflict situations, those efforts do consider power-sharing and the reorganization of power relationships,115 factors relevant to militarism. A preventive approach to war emphasizes public health’s role in discerning the complex fundamental causes of war and engaging in activities to address those causes before war starts (or advocating for appropriate agencies to do so). This article focuses on US militarism as one of the fundamental causes of war; a cause largely overlooked in public health curriculum.

#### Biden is looking to reassert US global health leadership, but it’s fragile backsliding fractures global cooperation on health initiatives Igoe 20 (Michael, M.A. in International Studies University of Montana and Senior Reporter at Devex covering global health and foreign aid, Devex, "Can Biden rebuild US global health leadership?"https://www.devex.com/news/can-biden-rebuild-us-global-health-leadership-95771)

BURLINGTON, Vt. — Despite President Donald Trump’s claims that Democrats would stop talking about COVID-19 as soon as the election was over, Joe Biden has put the pandemic front and center in the days after he was declared president-elect. On Monday, two days after major news networks confirmed his election as the 46th president of the United States, Biden unveiled the 13 members of the COVID-19 task force, which will help translate his campaign plans into a concrete pandemic response that can be implemented when Biden takes office on Jan. 20, 2021. The list includes prominent global health leaders, including Rebecca Katz, director of the Center for Global Health Science and Security at Georgetown University, former U.S. Global AIDS Coordinator Eric Goosby, and Global Health Council head Loyce Pace. Over four tumultuous years, Trump proposed to slash funding for international health programs, sidelined America’s own technical experts and agencies, picked political fights with international health institutions in the midst of the COVID-19 crisis, and declined to join collective efforts aimed at ensuring equitable access to a vaccine. 5 Trump-era global health policies a Biden administration might undo Politics have significantly impacted a number of U.S. global health policies. Here are some that will likely be changed when Biden takes office as president. Biden has sought to provide reassurance that his administration will seek to return the U.S. government to a place of global health leadership, pledging to undo many of the Trump administration’s policies, and to take a more active and productive role on the global stage “Americans are safer when America is engaged in strengthening global health. On my first day as President, I will rejoin the @WHO [World Health Organization] and restore our leadership on the world stage,” Biden wrote on Twitter in July. Global health experts caution that restoring U.S. global health leadership to its former status will not be as easy as flipping a switch. Some of them doubt it will be possible to return to the world that existed before Trump and before COVID-19. “I think there has been a fundamental change,” said Jennifer Kates, senior vice president and director of global health and HIV policy at the Henry J. Kaiser Family Foundation. “That doesn't mean that the U.S. could not be a global leader on health again, but I think the stance and the positioning is likely going to be different,” she added. In the past, Kates said, the U.S. government typically played a prominent role within global health institutions in three ways. First, as a moral leader — “pushing for the idea that the U.S. and others had an important role to play in bettering people's lives around the world.” Second, as a source of technical expertise, and finally, as a funder. “What's happened, particularly in the last several months, is that ability to count on the U.S. playing those roles has eroded,” Kates said. That has, in turn, revealed the “fragility” of a global health system that relied heavily on U.S. leadership to function, Kates said, and even with the prospect of a more favorable Biden administration, it has left other governments and partners wondering whether there are any guarantees a similar situation will not arise again. “You have these currents out there in which you can see other countries stepping up in global health discussions — and why would they step back?” said Amb. John Lange, a former deputy global AIDS coordinator and special representative on avian and pandemic influenza. New alliances and coalitions have formed in the absence of U.S. involvement — such as cooperation between France and Germany to lead WHO reform, or the creation of COVAX — the vaccine access initiative co-led by Gavi, the Vaccine Alliance; the Coalition for Epidemic Preparedness Innovations; and WHO — which the U.S. has so far declined to join. “They've been able to go forward without the U.S. at the table,” Kates said. That has implications for a Biden administration looking to reengage on the global health front. America’s international partners are unlikely to be as deferential to the U.S. government’s positions and preferences when it comes to global health policy, experts told Devex. In turn, U.S. officials may find they will have to be more accomodating of other viewpoints if they want their input welcomed back into negotiations, and they may have to demonstrate some goodwill. “It’s not just a matter of saying, ‘oh well we’re not going to withdraw from WHO, therefore everything’s fine and we’re back to our leadership role.’ We will need to be in a position to be generous,” Lange said. Along with reversing the Trump administration’s WHO withdrawal plan, an obvious first step would be paying the U.S. government’s $200 million-owed in assessed contributions to the international health body, and following that with voluntary contributions to support long-standing priorities such as eliminating polio, fighting tuberculosis, and providing immunizations, Lange said. With the U.S. reporting over 100,000 new cases of COVID-19 per day, the pandemic has also upended America’s global health standing, especially as other countries prove more successful at stopping the spread of the coronavirus. “United States leadership in global health remains crucial, but the world is increasingly unwilling to accept it,” Swee Kheng Khor, a senior visiting fellow at United Nations University, wrote to Devex by email. The U.S. has significant scientific expertise, experience fighting pandemics, capital, and manufacturing capacity, so will always be a part of any long-term effort to enhance global health security. But the ground has shifted during the pandemic, Khor said. “The US will come up against a world that is increasingly insular, more willing and able to be self-reliant, and less willing to accept US leadership (especially if it’s conditional or neo-colonial),” he wrote. Khor noted that “middle powers” including South Korea, Taiwan, and Vietnam “have excelled in their pandemic responses, shifting global perceptions away from the public health resilience and preparedness of the US.” With the exception of a few hot-button political issues such as sexual and reproductive health, U.S. global health programs have traditionally enjoyed broad bipartisan support. But America’s partners and allies are concerned about the degree to which global health and health institutions have been politicized during the Trump administration.

#### US health leadership is key to contain China

Fidler 21 (David, Senior Fellow for Global Health and Cybersecurity at the Council on Foreign Relations, Think Global Health, "A New Era in U.S. Global Health Leadership?" https://www.thinkglobalhealth.org/article/new-era-us-global-health-leadership)

President Biden's decision to re-engage with WHO meant U.S. participation in the assembly meeting has heightened significance. But the meeting demonstrated that what the united States considers leadership in global health does not conform with what WHO officials, other influential member states, and health advocates want from the United States concerning this pandemic and beyond. The U.S. government's commitment to vaccine nationalism appears unmoved by rhetoric about vaccine apartheid. The Biden administration rebuffed the call by European allies to have the assembly authorize immediate negotiations on a pandemic treaty. Nor did the United States support making the WHO more independent through expanded powers or increased assessed contributions. The U.S. government confronted China, turning the search for the pandemic's origins into a zero-sum contest between the U.S. intelligence community and the Chinese communist party. In some respects, the effort to re-establish U.S. leadership in global health echoes features of such leadership before the pandemic. Participation in WHO processes has not been the defining feature of the political and financial commitments that the U.S. government has made in global health. The United States has long prioritized its initiatives (e.g.,the President's Emergency Plan for AIDS Relief), bilateral relationships, and voluntary contributions to WHO over increasing the organization's authority and mandated funding. In global health and other areas, the United States is rarely keen on negotiating treaties, preferring non-binding instruments or arrangements. In past pandemics, the United States secured pharmaceutical interventions for its population before facilitating global access (e.g., vaccines for pandemic influenza H1N1). In other respects, the assembly meeting reflected how the transformed contexts of domestic and international politics are shaping U.S. policies. Political calculations made in navigating a deeply divided American body politic clearly inform the sustained strength of U.S. vaccine nationalism and the decision to use the pandemic to get tough with China. The pandemic's agitation of the U.S.-China rivalry also demonstrates how much the shift in the international balance of power affects U.S. engagement in global health. Geopolitics provide incentives for the United States to protect and leverage its power, maximize its influence across diplomatic endeavors, and contain and roll back China's ambitions. None of these incentives point to the WHO being a strategic fulcrum for the United States in global health politics.

**Authoritarian expansion spurs global nuclear war**

**Orts 18**, University of Pennsylvania Guardsmark Professor at The Wharton School

[Eric, “Foreign Affairs: Six Future Scenarios (and a Seventh),” 6-27-18, https://www.linkedin.com/pulse/foreign-affairs-six-future-scenarios-seventh-eric-orts, accessed 2020]

7. Fascist Nationalism. There is another possible future that the Foreign Affairs scenarios do not contemplate, and it’s a dark world in which Trump, Putin, Xi, Erdogan, and others construct regimes that are **authoritarian and nationalist**. Fascism is possible in the United States and elsewhere if big business can be seduced by promises of riches in return for the institutional keys to democracy. Perhaps Foreign Affairs editors are right to leave this dark world out, for it would be very dark: **nationalist wars** with risks of **escalation into global nuclear conflict**, further digital militarization (even Terminator-style scenarios of smart military robots), and unchecked climate disasters.

The global challenges are quite large – and the six pieces do an outstanding job of presenting them. One must remain optimistic and engaged, hopeful that we can overcome the serious dangers of tribalism, nationalism, and new fascism. These "isms” of our time stand in the way of solving some of our biggest global problems, such as the risks of thermonuclear war and global climate catastrophe.

## Case

**An unconditional right legalizes strikes with misconduct and without a legal purpose – turns case by giving strikes a bad rep**

**Guerin J.D. 13**

Lisa Guerin, J.D., 2013-06-17 (date from source code), "Strikes," nolo, <https://www.nolo.com/legal-encyclopedia/strikes.html/> //AW

No-Strike Clauses Even **strikes with a legal purpose are not protected** by the NLRA If the union's contract with the employer (the [collective bargaining](https://www.nolo.com/legal-encyclopedia/collective-bargaining.html) agreement) includes a no-strike clause. With a few limited exceptions (for example, if employees are refusing to work because of unusually dangerous working conditions), a strike that violates a no-strike provision is illegal. Strike Misconduct A strike can also become unlawful if strikers engage in serious misconduct, such as violence or threats, physically preventing other from entering or leaving the workplace, or sit-down strikes, in which employees refuse to leave the workplace and refuse to work. These strikes are not protected by the [NLRA](https://www.nolo.com/legal-encyclopedia/free-books/employee-rights-book/chapter15-2.html).