## 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.

//CX --

[K ]  
**What is the significance of striking being implemented as a right a right?   
W**hat’s the difference between current strikes and the right to strike?

- Get them to say it has to be a right to the state protects the people

[Case- 1]

-Could you define what “advancing society” means  
- Who is recognizing a right to strike? What does a recognition look like?

## Case

#### \*The right to quit and the right to strike are not correlated Gourevitch, PhD, 16

(Alex, PoliSci@Brown, Gourevitch, A. (2016). Quitting Work but Not the Job: Liberty and the Right to Strike. Perspectives on Politics, 14(02), 307–323. doi:10.1017/s1537592716000049 )

**If a right to strike is not a right to quit, what is it?** It is the right that workers claim to refuse to perform work they have agreed to do while retaining a right to the job. Most of what is peculiar, not to mention fraught, about a strike is contained in that latter clause. Yet, surprisingly, few commentators recognize just how central and yet peculiar this claim is.16 Opponents of the right to strike are sometimes more alive to its distinctive features than defenders. One critic, for instance, makes the distinction between quitting and striking the basis of his entire argument: the unqualified right to withdraw labour, which is a clear right of free men, does not describe the behaviour of strikers.... Strikers ... withdraw from the performance of their jobs, but in the only relevant sense they do not withdraw their labour. The jobs from which they have withdrawn performance belong to them, they maintain.17 On what possible grounds may workers claim a right to a job they refuse to perform? While many say that every able-bodied person should have a right to work, and they might say that the state therefore has an obligation to provide everyone with a job, the argument for full employment neveramounts to saying that workers have rights to specific jobs from specific private employers. For instance, in 1945, at the height of the push for federally-guaranteed full employment, the Senate committee considering the issue took care to argue that “the right to work has occasionally been misinterpreted as a right to specific jobs of some specific type and status.” After labeling this a “misinterpretation,” the committee’s report cited the following words from one of the bill’s leading advocates: “It is not the aim of the bill to provide specific jobs for specific individuals. Our economic system of free enterprise must have free opportunities for jobs for all who are able and want to work. Our American system owes no man a living, but it does owe every man an opportunity to make a living.” 18 These sentences remind us how puzzling, even alarming, the right to specific jobs can sound.

**A right does not guarantee more/better strikes – multiple warrants**

**Waas PhD 12**

Professor Bernard Waas, Sep 2012, "Strike as a Fundamental Right of the Workers and its Risks of Conflicting with other Fundamental Rights of the Citizens " World Congress General Report, [https://www.islssl.org/wp-content/uploads/2013/01/Strike-Waas.pdf //](https://www.islssl.org/wp-content/uploads/2013/01/Strike-Waas.pdf%20//) AW

No national laws on strike action are alike. Notably, the law on strike action is part of a much broader picture. As strikes are mostly related to collective bargaining, distinct perspectives that may exist in national systems in this regard inevitably influence assessments of strikes. If the room for bargaining is deemed an area in which the state does not interfere, the decision to use strike action may essentially be left to the autonomous decision-making of trade unions. If, on the other hand, the state tightly regulates collective bargaining, then it seems plausible for regulations on strikes to be subject to similar rules. A possible link between collective bargaining and strikes may also have other implications. If the right to conclude collective agreements is, for instance, limited to the most representative unions only, then the case might be that only members from those unions actually enjoy the right to strike. More generally, legal systems differ considerably with respect to who may represent workers´ interests. In many countries, trade unions exercise monopoly power in the representation of workers. In other countries, dual systems are in place. Works councils, for instance, may be the representative bodies at the level of the individual establishment, while trade unions may represent workers´ interests at the company and, in particular, at the branch level. Though collective agreements can be concluded at all these levels, it may very well be that works councils are prevented from staging a strike when the employer is reluctant to conclude an agreement. Instead of calling a strike, the works council may have to take recourse to arbitration as is indeed the case, for instance, in Germany. 2 Second, entirely different attitudes exist towards strikes. In some countries, strikes are considered “a right to self-defence” which is not necessarily directed at the employer; in other countries, the area of admissible industrial action may be necessarily congruent with the relationship between employers and employees. In yet other countries, strikes are seen as acts of “self-empowerment” which have very little to do with a legal order granting certain powers or rights. Finally, in some countries, the right to strike is viewed as being firmly rooted in human dignity, granted to each individual worker and not waivable by him or her, and in others, the perspective may be more “technical” with a considerable power to dispose of the right to strike. Third, as strikes are a means of balancing power between the employer and the workers, socio-economic conditions which influence this relationship may have to be considered when determining the rules on strikes. To give only two examples: Today, many companies are highly dependent on each other. Some of them may even form clusters. A move to reduce in-process inventory and associated carrying costs has made just in time production prevalent among, for instance, car manufacturers. Accordingly, a strike at a supplier will quickly start affecting the customers, a fact that lends additional power to unions and can therefore not be easily disregarded when determining the rules on strikes. Similarly, if employers can move factories beyond borders, which is indeed possible in times of a globalized economy, the question what workers should be able to throw into the balance needs to be addressed. The following comparative overview tries to shed light on the various legal systems and the solutions they provide to the most important issues relating to strikes. It must be noted, however, that **descriptions of the legal situation can only do so much**. As every comparatist knows, **a considerable gap exists between the “law in the books” and reality**. This may, in particular, be true with regard to strikes, because **striking is part of a “fight” which raises the question of power, a question that cannot be answered by simply referring to legal rules**. In some countries, into strike action often takes place outside the scope of the legal framework. Not only are many strikes unofficial, strikers all too often do not care much about the law. Accordingly, to get a clear understanding of what strike action means “on the ground”, one would have to broaden the perspective and take industrial relations as whole account. In this context, many questions would have to be raised, for instance, about the number and structure of the relevant “players”, about trade union democracy, discipline 3 among trade union members, accountability and the feeling of responsibility on the part of unions as well as employers, dependence or independence of trade unions, the scope of inter-union rivalry, etc. Many questions have yet to be answered and the answers may often be disputable. The following section discusses the legal situation of strike law.

**Strikes hurt worker’s relationship with the company – no chance for higher wages**

**Orechwa 19**

Jennifer Orechwa (30 years of supporting Human Resources & Labor Relations professionals. Award-winning Employee Engagement Expert ProjectHR Podcast Host ), 10-01-2019, "How Unions Hurt Workers: The 2019 GM Strike," Projections, <https://projectionsinc.com/unionproof/how-unions-hurt-workers-the-gm-strike-continues/>

The reality is that a strike hurts the workers the most. They don’t hurt the union. In fact, union leaders see a strike as a chance to get some nationwide publicity as an organization helping the “little guys” take on the big bad abusive employer. Strikes don’t permanently hurt the company because a large company like GM has a contingency plan and is prepared to keep operating without the striking workers by taking steps like temporarily shutting down some plants and consolidating operations. It’s the workers that are hurt, encouraged by the unions and some politicians to subject themselves to **loss of income and job stability**. Instead of encouraged, it should read that workers are “used” by the unions and [political parties](https://www.cnbc.com/2019/09/16/2020-election-democrats-cheer-uaw-strike-against-gm-criticize-trump.html) to push their agenda. Unions thrive on making employers look bad, and politicians that believe America’s big businesses take advantage of employees use the strikes as proof. The general line is that, “If employees are willing to suffer a loss of income, benefit and job stability, the workplace policies must be abusive.” The negotiations for a new 4-year collective bargaining agreement started July 16, 2019, and two months later the strike began after negotiations reached an [impasse](https://projectionsinc.com/unionproof/collective-bargaining-good-faith-impasse/). On September 16, 2019, more than 48,000 union members at 55 plants in the Midwest and South GM factories went on strike. […] You may think a company suffers as much as or more than workers during a strike. That is the message unions give workers. If union members didn’t believe that, there would be no reason to go on strike. The whole purpose of a strike is to hurt the business so the employer caves in to union demands. Of course, strikes are a powerful example in which unions hurt workers. However, consider the fact it’s the employees walking picket signs in all kinds of weather. It’s not the employer. As the strike starts its second week, it’s the employees who will have to live on $250 per week strike pay after the eighth day of the strike. It’s the workers who toss-and-turn at night while wondering how they will support their families pay their bills. During the first week of the strike, GM chose to [shift the cost of healthcare payments](https://www.reuters.com/article/us-usa-autos-labor/gm-switches-health-insurance-costs-to-union-for-striking-workers-talks-continue-idUSKBN1W21TW) for striking employees to the union, in order to help make up for likely stalled vehicle production and to demonstrate the costs the company carries (over $900 million each year) to provide excellent benefits to its workers. The unions will have to pay the money for health insurance out of their strike fund, including for COBRA payments for hourly employees. The strike fund does not cover vision, dental, and hearing, so all workers are penalized again for striking. […]Stay Union Free [Unions use words](https://projectionsinc.com/unionproof/the-language-of-unionization/) like “sacrifice” and “taken advantage of” to appeal to people’s emotions. They don’t talk about local businesses hurt by the strikes. They don’t make mortgage payments for their members. Additionally, they don’t offer to increase strike pay to put food on people’s tables. Ultimately, they don’t recognize or address the ways unions hurt workers. All of this is a good reminder that keeping a business union free remains an important strategy for long-term business sustainability. [Educate your leaders and employees on unions](https://projectionsinc.com/) by taking advantage of communication tools like [video, web and eLearning](https://projectionsinc.com/unionproof), engage your employees and be transparent about changes needed to remain competitive. It’s the path to becoming an employer of choice with a workforce that has no need for unions.

**Strikes hurt unions and their members**

**Gardapee 12**

Pamela Gardapee (studied accounting, computers and writing before offering her tax, computer and writing services to others, 2012-08-16 (date found in source code), "How Do Strikes Affect Labor Union Members?," Your Business, [https://yourbusiness.azcentral.com/strikes-affect-labor-union-members-2432.html //](https://yourbusiness.azcentral.com/strikes-affect-labor-union-members-2432.html%20//) AW

Whether you are a small business or a big business, strikes can hurt both the business and the members. Although companies have options during a strike, the labor union members have very few options after the strike vote is cast and the members walk out. **The affect of a strike on union members is just as hard as it is for the business.** Earnings The earnings that a labor union member is used to making will stop. Although there is a strike fund that provides some money to strikers every week, the amount doesn’t make up for lost wages. Every union is different, but members could only make a fraction of their normal wages, depending on the union to which they belong and the funds available. However, the only way to get paid from the union strike fund is to walk the picket line. If an employee belongs to the union, that person cannot choose to work without resigning from the union or he could face fines because he is not abiding by the bylaws set forth by the union. If a union member doesn’t resign from the union before working for the employer, the union will fine that person and can sue him for the money. Benefits ref Labor union members who strike for long periods of time can lose benefits such as sick pay, vacation and medical insurance. The company can only stop benefits if the actual expired contract stipulates it, however. Some unions also have funds to pay for some or all employee benefits during a strike. Morale Moral is likely to deteriorate if the strike drags on. Companies will be watching for this problem with labor union members. Members start feeling the strain from loss of wages, benefits and available work. Relationships feel the strain when a wage earner is no longer bringing home enough money to feed the family or pay the bills. When the strike lasts longer than a few weeks, morale continues to decline. Communication Communication with the company may stop. This can affect all the striking members. Companies can opt to hire workers to replace the striking members. When and if the strikers return to work, there will be a strain between the members and the management team caused by a strike. The workers hired during the strike can keep their jobs even after the strike is over if the company chooses, which means labor union members will lose their jobs. The company does not have to rehire the union members.