# Glenbrooks R4 vs Loyola AP

## 1

#### CP Text: A just government should recognize an unconditional right of workers to strike, but only for surprise strikes

#### Only surprise strikes can solve the advantages- multiple warrants. Anything else gets circumvented, could escalate, and aren’t effective

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Under this legal framework, strikes are a blunted tactic, quite intentionally so. They do accomplish something – in each of the three cases described above, workers would almost certainly have got a worse deal had they not struck. There are also strikes that yield apparently better deals, such as the contract bargained by Unite Here with Marriott hotels – arguably in part because contracts at seven different bargaining units expired simultaneously, allowing almost 8,000 workers to strike at once. But **strikes don’t change the big-picture balance of power between employers and workers.** Most of the time, strikes are like a fistfight in which one side gets a bloody nose, the other gets a black eye, and **each walks away saying “You shoulda seen the other guy.”** At best, a win looks like giving the other side two wounds while you only suffer one. Where do we go from here? Strikes can nonetheless be powerful, of course: it remains the case that withholding production is the greatest tool workers have. **Strikes are most effective when they contain an element of surprise, when the employer does not see them coming**, or when they skirt the framework described above. Quickie strikes and sit-downs can resolve a problem before things even escalate to appealing to the labor relations infrastructure (grievances, lawyers, arbitration). Fairly spontaneous, mass strikes do frighten and intimidate employers and tilt things in workers’ favor. It’s important for us on the left to maintain our ability to accurately analyze and assess strikes and their resolutions. If you were to look at union press releases following strikes, you would never know they were incorporating two-tiers or other losses. Unions tend to minimize the damage, so as not to demoralize workers or shake their faith in the union. However, if we keep calling losses (or pyrrhic victories) wins, we may lose the ability to discern wins and losses, and the difference. And we will lose sight of what makes a strike effective.

#### Sporadic strikes are superior to conventional strikes- if given time, employers can anticipate and mobilize which lets them circumvent or respond. This independently turns case because predictable strikes lead to crackdown in the form of losing pay and risking permanent replacement

Morris & Bolesta 19 [Keahn Morris is a partner in the Labor and Employment Practice Group in the firm's San Francisco office. John Bolesta is special counsel in the Labor and Employment Practice Group in the firm's Washington, D.C. office. “The NLRB Confirms that Intermittent Strikes in Furtherance of the Same Goal are Unprotected.” SheppardMullin. August 1, 2019. <https://www.laboremploymentlawblog.com/2019/08/articles/national-labor-relations-act/intermittent-strikes-unprotected/>] HW Alex Lee

Intermittent Strikes — What They Are, Why They Are Unprotected and Why the Law in the Area Requires Greater Clarity An **intermittent strike** occurs when employees repeatedly stop work, typically for periods of short duration. From the union/employee standpoint, such “**on again/off again” tactics are superior to conventional strikes because it is far more difficult for an employer to anticipate and effectively respond to sporadic work stoppages.** Indeed, **even if an employer is able to quickly mobilize to address a sudden strike, by the time the employer may have successfully geared up to operate**, the work stoppage is over, requiring the employer to either lockout the returning strikers, thereby prolonging the stoppage, or to return strikers to work and to restore the workplace to its pre-strike status quo, leaving the employer vulnerable to yet another quickie stoppage. Moreover, as a practical matter, quickie economic strikers lose less pay due to the shorter duration of their strikes and the shorter duration of their strike means that they are at less risk of being permanently replaced. Further, even though the Supreme Court declared long ago that the use of recurrent or intermittent work stoppages is unprotected by the Act, Auto Workers Local 232 v. Wis. Emp. Relations Board (Briggs-Stratton) 336 U.S. 245 (1949), whether a series of work stoppages qualify as unprotected intermittent strikes has been unclear under Board precedent. Among the considerations are: 1) whether employees have engaged in a pattern of recurring work stoppages and/or demonstrated an intent to engage in a future pattern of recurring work stoppages; 2) whether the work stoppages occurred over a short period of time and were short in duration; 3) whether the stoppages were part of a common plan aimed at addressing the same goal or dispute; 4) whether the stoppages arose from a union strategy to exert additional economic pressure on an employer; 5) whether the stoppages were part of a scheme to harass the employer into a state of confusion and chaos; and 6) whether the work stoppages arose from a union strategy to exert additional economic pressure on the employer during collective bargaining negotiations. Yet, by placing the burden of proving the unprotected nature of a strike on the employer and by basing its decisions on a case specific weighing and balancing of such factors, the Board has created a confused jurisprudence where factually similar cases that seemingly should have been similarly decided often come down on opposite sides of the protected/unprotected coin. Such unpredictable ad hoc decision-making **chills employer’s disciplinary response to intermittent strikes.** It also does a disservice to workers who engage in quickie strikes incorrectly believing them to be protected conduct. Unions, employees and the community action groups who act as their surrogates have **all recognized the advantages of intermittent strikes over conventional strikes** and are now making increased use of repetitive short term work stoppages instead of conventional strikes as a way of bringing maximum coercive pressure to bear on employers.

#### Unions want to surprise employers with sudden and unpredictable strikes anyways- that means the PIC sufficiently solve the aff

Waas 12 [Professor for Labour Law and Civil Law, Goethe University Frankfurt Coordinator of the European Centre of Expertise in the field of Labour Law, Employment and Labour Market Policy (ECE). “Strike as a Fundamental Right of the Workers and its Risks of Conflicting with other Fundamental Rights of the Citizens.” XX World Congress, International Society for Labour and Social Security Law, General Report III. September 2012. <https://www.islssl.org/wp-content/uploads/2013/01/Strike-Waas.pdf>] HW Alex Lee

III. The Right to Call a Strike As has been outlined above, **in many countries individual workers are seen as bearers of the right to strike**, although this right may only be exercised collectively. This view is taken, for instance, in Italy, the consequence being that even a loose or spontaneous association of workers can declare a strike. In Uruguay, too, the right to strike may be invoked and exercised by a group of workers, organised or not, unionised or not. As is the case in Italy, the right to strike is considered an individual right that may be collectively exercised. Finally, in Hungary, not only trade unions, but every individual worker has the right to strike. Accordingly, trade union membership is not relevant. There is one exception, however: Solidarity strikes must be organised by a trade union. In other countries, “wild cat-strikes” are prohibited, and qualifying as a trade union does not suffice to call a strike. Germany is a case in point. Trade unions are empowered to call a strike if, but only if, they enjoy the so-called “capacity to bargain collectively”. This 16 capacity requires, among other things, an ability to enforce their objectives (so-called social power). Trade unions must be in a position to exert sufficient pressure to induce the counterpart to conclude a collective bargaining agreement. Because the right to bargain collectively is constitutionally applicable to only those groups which can make sensible contributions to the spheres not explicitly regulated by the state, trade unions must be in a position to exert sufficient pressure in order for their counterpart to embark on negotiations for a collective agreement. That the right to strike is conditional on the “capacity to bargain collectively” seems plausible given the fact that German law guarantees the right to strike only insofar as that right is understood as being necessary for ensuring proper collective bargaining. As a result, “wild cat-strikes” are prohibited in Germany. However, trade unions may legitimise such strikes with retroactive effect by taking over the strike. Courts will generally hold that trade unions may take over a “wild cat-strike” for two reasons. First, unions would have been put in a position of mere observers if the “wild cat-strike” were not capable of being legitimised. Second, unions must be able to determine the point in time at which a strike was initiated. It is within this context that the courts also **acknowledge trade unions’ aim to surprise employers with sudden strike action** (by taking over a strike which was initially initiated by a group of workers). In Japan, the basic legal set-up is similar. The right to strike as guaranteed by the Constitution is understood to ensure equality between the employer and the workers in collective bargaining and as a means to overcome deadlocked negotiations. Consequently, to qualify as lawful a strike must be organised by a so-called “constitutional union” which requires, inter alia, independence from the employer. The existence of “social power” is not required. In Turkey, a lawful strike can also only be staged by a trade union which is party to collective negotiations. Under Turkish law, trade unions must be active in an industry. In addition, a union must represent a minimum of 10 per cent of the employees working in a given sector, as well as more than half of the employees in the establishment(s) in which it intends to conclude a collective agreement9 . In other countries, the legal situation differs completely. In Ireland, for instance, nonunionised bodies as well as the workers themselves may call or launch strikes, though some of the immunities provided by statutory law are only applicable to members and officials of trade unions. In Finland, too, strikes can be organised by a group of workers or by a trade union. However, workers who strike in response to a trade union’s call for strike enjoy better 9 Article 12(1) of Act No. 2822. 17 protection from dismissal10. Even if the strike is illegal, the worker is protected if the strike was called by a union. In the United States, work stoppages may be initiated by employees who act alone or by their representative labour union. A concerted action of employees may be found to be legally protected11, even though no actual bargaining relationship with the employer exists. In most cases, however, work stoppages take place at facilities at which the employees are represented by parties to the collective bargaining negotiations.

## 2

#### Inevitable economic crises from capitalism are the root cause of populism – history proves the aff misdiagnoses the problem

Kaletsky 17

([Anatole Kaletsky, BA in Mathematics@King's CollegeCambridge, Econ@Harvard University,], “The role of capitalism in the rise of populism”, January 12, 2017, https://www.weforum.org/agenda/2017/01/the-role-of-capitalism-in-the-rise-of-populism)//HW-CC

LONDON – The biggest political surprise of 2016 was that everyone was so surprised. I certainly had no excuse to be caught unawares: soon after the 2008 crisis, I wrote a book suggesting that a collapse of confidence in political institutions would follow the economic collapse, with a lag of five years or so. We’ve seen this sequence before. The first breakdown of globalization, described by Karl Marx and Friedrich Engels in their 1848 The Communist Manifesto, was followed by reform laws creating unprecedented rights for the working class. The breakdown of British imperialism after World War I was followed by the New Deal and the welfare state. And the breakdown of Keynesian economics after 1968 was followed by the Thatcher-Reagan revolution. In my book Capitalism 4.0, I argued that comparable political upheavals would follow the fourth systemic breakdown of global capitalism heralded by the 2008 crisis. When a particular model of capitalism is working successfully, material progress relieves political pressures. But when the economy fails – and the failure is not just a transient phase but a symptom of deep contradictions – capitalism’s disruptive social side effects can turn politically toxic. That is what happened after 2008. Once the failure of free trade, deregulation, and monetarism came to be seen as leading to a “new normal” of permanent austerity and diminished expectations, rather than just to a temporary banking crisis, the inequalities, job losses, and cultural dislocations of the pre-crisis period could no longer be legitimized – just as the extortionate taxes of the 1950s and 1960s lost their legitimacy in the stagflation of the 1970s. If we are witnessing this kind of transformation, then piecemeal reformers who try to address specific grievances about immigration, trade, or income inequality will lose out to radical politicians who challenge the entire system. And, in some ways, the radicals will be right. The disappearance of “good” manufacturing jobs cannot be blamed on immigration, trade, or technology. But whereas these vectors of economic competition increase total national income, they do not necessarily distribute income gains in a socially acceptable way. To do that requires deliberate political intervention on at least two fronts. First, macroeconomic management must ensure that demand always grows as strongly as the supply potential created by technology and globalization. This is the fundamental Keynesian insight that was temporarily rejected in the heyday of monetarism during the early 1980s, successfully reinstated in the 1990s (at least in the US and Britain), but then forgotten again in the deficit panic after 2009. A return to Keynesian demand management could be the main economic benefit of Donald Trump’s incoming US administration, as expansionary fiscal policies replace much less efficient efforts at monetary stimulus. The US may now be ready to abandon the monetarist dogmas of central-bank independence and inflation targeting, and to restore full employment as the top priority of demand management. For Europe, however, this revolution in macroeconomic thinking is still years away. At the same time, a second, more momentous, intellectual revolution will be needed regarding government intervention in social outcomes and economic structures. Market fundamentalism conceals a profound contradiction. Free trade, technological progress, and other forces that promote economic “efficiency” are presented as beneficial to society, even if they harm individual workers or businesses, because growing national incomes allow winners to compensate losers, ensuring that nobody is left worse off. This principle of so-called Pareto optimality underlies all moral claims for free-market economics. Liberalizing policies are justified in theory only by the assumption that political decisions will redistribute some of the gains from winners to losers in socially acceptable ways. But what happens if politicians do the opposite in practice? By deregulating finance and trade, intensifying competition, and weakening unions, governments created the theoretical conditions that demanded redistribution from winners to losers. But advocates of market fundamentalism did not just forget redistribution; they forbade it.

#### 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.

#### 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. **F**

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**.**

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

#### Keep in mind – they only cement in class politics by forcing the lower class to militarize against the upper– they are opposite of this alt and completely uncompatible so we preempt the perm and sever it

Gindin 16 Sam Gindin was research director of the Canadian Auto Workers from 1974–2000 and is now an adjunct professor at York University in Toronto. 12.20.2016 <https://www.jacobinmag.com/2016/12/socialist-party-bernie-sanders-labor-capitalism>, Building a Mass Socialist Party The response to Bernie showed that a socialist party in the United States is possible. But there is no shortcut to building power.

There are no blueprints to pull off the shelf, no models to comfortably point to, no social base chomping at the bit for the long road to an uncertain somewhere else. Even in the case of those unions that broke with their labor peers and supported Sanders, it is quite another thing to take the next step and completely break with the Democratic Party. Nor is it just a matter of the how and when of getting such a party started. The more fundamental question of what kind of party we are actually talking about remains paramount. What the moment seems to call for is a sober step back and — borrowing from Jane McAlevey — implementation of a “stress test” (McAlevey prefers the term “structure test”). Let’s test ourselves. Do the commitments and capacities exist to establish a loose but relatively coherent socialist current across the country? If this can’t be done, then bravely announcing the formation of a new party won’t go anywhere. The institutional essence of trying to create such a current/tendency has often been discussed and this familiar ground can be quickly summarized: Based on recruitment from the many activists mobilized by the Sanders campaign (or past socialist legacies in the case of Canada), socialist groupings would be formed in multiple centers. Each would develop a democratic structure, raise funds, and in terms of engagement determine which movements and struggles to prioritize. The groups would develop an infrastructure for communication, internal discussion/debate, and public forums. They would eventually hire part-time or full-time organizers, make links with other regions, and develop what Greg Albo calls a “political ecology of protest” — that is, frame the protests within a larger political context. Progressive candidates would be supported for a miscellany of local offices to build alliances, develop administrative skills within the movement, and provide a base for local experiments in alternative ways to address economic, environmental, and cultural needs. Speakers from abroad could be brought in for national tours reporting on related experiments elsewhere. National conferences would be held, common national campaigns chosen to build some practical unity. Debates would naturally evolve over whether the time seems opportune to give birth to a new party with its greater discipline and eventual electoral ambitions, or whether further preliminary steps remain necessary. Underlying these institutional tasks would be a number of general political tasks. First, constantly hammering capitalism as an undemocratic social system that cannot meet popular needs, cannot meet human potentials, and cannot avoid despoiling the planet. Second, insisting that if we are to do more than complain, we need to build an institutional capacity with some hope of matching capitalism’s power; we need to move to deep organizing. Third, that at this particular moment what is especially crucial is to organize ourselves to make the socialist idea relevant once more — that is, t

o both create a new generation of intellectual organizers committed to socialism and through popular education contribute to placing socialism on the agenda again. Fourth, active engagement in existing union and movement struggles is elemental. Absent such engagement we cannot possibly grasp the lay of the land, learn to deal with the inevitability of compromises, expand our base, or act constructively. Within such struggles a key challenge is to overcome the sense that socialist perspectives are distant and impractical ideals and demonstrate that they matter now — that they can contribute in practical terms to developing and carrying out union and movement strategies. Of special importance here are interventions in a number of debates that have stymied and divided the broad left. One is the centrality of the working class and unions. Much of the Left reserves its enthusiasm for the social movements while denigrating unions. But if the working class cannot be organized as an exemplary democratic social force, then social transformation is likewise impossible. While social movements are critical to social change, their ability to build the kind of sustained social power that might lead a challenge to capitalism have historically been disappointingly limited. Moreover, social movements remain dependent on the organizational capacities, independent resources and leverage of the working class. Yet there has always been the question of where unions, with their sectional roles as representatives of particular groups of workers, fit into a struggle beyond capitalism. Today, there is no avoiding the most fundamental questions about the capacity of existing unions to play a role in social transformation. Is union renewal and radicalization possible? And especially critical to the place of a socialist current, is this possible without the intervention of socialists committed to that reinvention of unions? A related and especially fraught controversy revolves around the relationship between class and identity. The US election has amplified these divisions. It is not news that there are nativist and racist attitudes within the white US working class. But there is a strong case to be made at this point — as more information comes out we can be more definitive — that the deciding factor in the key Midwest states was not the white working class’s enthusiasm for Trump’s xenophobia and misogyny but the built-up anger against an establishment that had for so long ignored their class concerns. The increase in the numbers that abstained from voting for Clinton (or Trump) far exceeded those who switched to Trump. This does not excuse the apparent toleration of Trump’s racism and sexism but it does mean that the appeal of Trump among white voters should not be exaggerated. Any attempt to fight the expected direction of the Trump presidency can’t start by blaming the white working class for Trump’s victory but must take the frustrations of the white working class seriously and win them to its side. In this context, class politics is not a stand-in for setting aside the injustices of racism but rather a reminder that categories abstracted from class — like “white,” “black,” and “Latino” — obscure the imbalances in power internal to each group; that only a class orientation can unify an otherwise fragmented working class; and insisting on class unity implies the committed, active support for full equality within the class. Fighting racism inside the class and in society as a whole is fundamental to building class power. A third controversy relates to immigration and solidarity. To simply assert the righteousness of fully open borders in the present context of economic insecurity cannot help but elicit a backlash and will ultimately do little for refugees and future immigrants. Workers who have seen their own standards undermined over time without their unions or the government responding to this may have charitable sentiments but they are not going to prioritize open borders. More can be achieved by trying to win people to a more liberal but regulated border policy, by fighting for full equality of workers once they are here, and by insisting that refugees and new immigrants get the social supports they need to concretize that equality — all of which bring us into solidaristic struggles over union rights and the restoration and expansion of the welfare state. A fourth tension is that between the urgency of ecological time and the inherently extended epoch of revolutionary time. The environmental crisis demands change now but building the social force capable of bringing about that change — especially as it must mean a degree of democratized economic and social planning that inherently and fundamentally challenges corporate power — can’t help but take time even if should obviously be started now. A related friction is how to prioritize the environment since planetary survival is at stake without setting aside struggles for social justice. As the environmental crisis worsens, the greatest inequalities will revolve around access to the basics of food, water, and air so the crisis cannot be separated from its impact on inequality and justice. At the same time, unless one thinks that addressing the elite will solve the environmental crisis, the only path to building the social power necessary to transform society and deal with the environment is by way of incorporating issues of inequality and social justice. Finally, as we turn to the programmatic content of a socialist current we must confront a set of thornier issues lying behind any focus on jobs and public goods and services. Progressive policies on health care, education, housing, public transportation, minimum wages, labor rights, jobs, just environmental transitions, etc. are of course central to building a broad base. But without a further and more radical set of policies that involve fundamental economic interventions such as challenging free trade, private control over investment, and the financial power of banks and investment houses, the social policies simply cannot be sustained. In fact, in today’s context more radical policies are essential for even achieving moderate reforms. This consideration shifts the emphasis from the terrain of policies to the terrain of power — to an alternative politics rooted in developing the deepest political capacities.

#### 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.

#### 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.

## Case

**Existing committees represented by workers monitor and combat inequality in the squo**James J **Brudney 21**, “The Right to Strike as Customary International Law”, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1710&context=yjil#:~:text=Using%20international%20labor%20and%20human,customary%20international%20law%20(CIL)>., //NL  
ILO = International Labour Organization

Convention 87, addressing freedom of association and protection of the right to organize, 33 was promulgated by the ILO in 1948. Unlike other U.N. specialized agencies, the ILO has a tripartite governing structure. Each of the 187 Member States is represented not only by governments but also by organizations of employers and of workers (referred to as “social partners”). Their right of participation as representatives includes the right to vote; the standard ratio of representation is 2:1:1, or two government, one employer, and one worker. 34 In the absence of an express provision on strikes in Convention 87, two leading ILO supervisory bodies have developed over many decades recognition for the right to strike as an essential component of FOA. The independent CEACR was established in 1926; it is charged with making impartial observations that address questions or concerns regarding a country’s progress toward compliance with ratified conventions in law and practice.35 The tripartite CFA was established in 1951, based on recognition that the principles of FOA and the rights to organize and engage in collective bargaining required a dedicated supervisory procedure to monitor compliance even in countries that had not ratified Conventions 87 and 98.36

**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 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.

**A right to strike is circumvented through policies which allow employers to permanently replace workers who strike for economic reason, thus discouraging any strikes despite a right to strike protected by law.**

**Pope 04 (James Gray Pope (Doctorate in politics at Princeton, former representative of unions, Distinguished Professor of Law and Sidney Reitman Scholar at Rutgers), 2004, "How American Workers Lost Their Right to Strike, and Other Tales," *Michigan Law Review*,** https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1620&context=mlr**) // CR**

In NLRB v. Mackay Radio & Telegraph Co., the Supreme Court laid down a dictum that has puzzled legal scholars and vexed unions increasingly over the years. so According to this dictum, an employer enjoys the right permanently to replace workers who strike for better wages and conditions. The dictum is puzzling because the strike is one of those "concerted activities" protected under section 7, and employers are prohibited from discharging or otherwise interfering with, restraining, coercing or discriminating against employees for exercising section 7 rights. s1 Yet the Mackay Court simply asserted the employer right, offering no explanation why strikers - who are admittedly protected against "discharge" - can nevertheless be replaced permanently at the discretion of the employer. The employer's right to hire permanent replacements operates as an unqualified trump over the section 7 right to strike for better conditions and higher wages. The employer need not show any business reason for its exercise (for example, that unless replacements are offered permanent employment the company will be unable to continue operating), and the rule leaves no room for the Board to argue that the impact of permanent replacement on the section 7 right outweighs the employer's interest. s2 Theoretically, an employer violates the Act if it replaces strikers for reasons of anti-union animus. But because animus is virtually impossible to prove (unless the employer is clumsy enough to reveal it in public), the law does nothing to prevent an employer from seizing on the strike as an opportunity to replace union with nonunion workers. s3 In effect, when workers go out on strike, they give the employer a license to discriminate; the employer need only limit itself to (1) "permanently replacing" union workers as opposed to "discharging" them, and (2) discriminating only between strikebreakers and strikers as opposed to discriminating among loyal strikers (as on the facts of Mackay, where the employer targeted active unionists for replacement) or among strikebreakers. The result is a bizarre reversal of the strike's traditional function. Although the strike is legally protected so that it can provide workers with a source of bargaining power, it now serves as a source of employer bargaining power. According to a recent study of collective bargaining negotiations, employers are now more likely to threaten permanent replacement than unions are to threaten a strike.54 As Cynthia Estlund recently put it, the Mackay dictum has "rendered the strike useless and virtually suicidal for many employees, and has become employers' Exhibit Number One in union organizing campaigns. "55 As employers have turned increasingly to permanent replacements, the incidence of strikes has dropped sharply.56 That the labor movement considers the Mackay dictum to be a serious problem is evidenced by the fact that in 1996, at a time when the Presidency and both houses of Congress were held by Democrats, the AFL-CIO launched an intense campaign for legislation to overturn it - only to see the bill succumb twice to Senate filibusters.57 The Mackay Court cited no source and offered no reasoning to support the existence of an employer right permanently to replace strikers.58 The statutory language, which makes it an unfair labor practice for the employer to engage in "discrimination" based on union activity or to "coerce" employees in the exercise of their section 7 rights, appears to negate any such right.59 An employer that retains nonstriking workers at the end of a strike while denying returning strikers their jobs is certainly discriminating - in the ordinary meaning of the word - based on union activity.60 Workers who cross picket lines are rewarded with permanent jobs, while workers who exercise their statutory right to strike are punished with the loss of their jobs. And there are few more potent forms of coercion than forcing individual workers to choose between a protected activity and losing their jobs to permanent replacements. Whether the loss of a job comes as a result of a discharge (concededly illegal) or of "permanent replacement," it certainly constitutes a powerful disincentive to engage in protected activity. Furthermore, at the time of Mackay, section 13 of the Act barred courts not only from construing the Act to impose direct legal restraints on the right to strike, but also from reading it to "interfere with or impede or diminish" the right "in any way."61 Commentators have tried to fit the Mackay dictum into the structure of current law by asserting that it rests on the assumption that employers have a legitimate business need to offer prospective replacements permanent employment in order to operate during strikes.62 But the Court never made any such determination, and there is nothing in the opinion to indicate that the Justices were thinking along those lines. If they were, then they were simply wrong on the facts. Employers routinely succeed in obtaining striker replacements without offering permanent employment, and there is no evidence that they need to make such offers.63 Moreover, the Mackay dictum would not fit into the structure of current law even if employers could show that they were motivated by a desire to attract replacement workers. Under the current standard, which outlaws employer countermeasures that are "inherently destructive" of section 7 rights even if the employer acted out of legitimate business reasons, the hiring of permanent replacement workers would seem to be inherently destructive just as discharge is inherently destructive.64 In short, the Mackay dictum cannot be explained or rationalized with reference to the employer's need to hire striker replacements.

# 2NR

## Voters

#### 1] first on case- concede inhereany but not solvency- they did not answer to our strikes hurt unions turn- their only response was that it was temporary, but even if it is temporary hurting unions is bad and triggers your impacts

#### 2] second on case- they did not respond to the circumvention debate- extend Pope 04 – employers just permanently replace workers who strike so striking becomes almost useless, this takes out their entire link chain

#### 3] kick the K

#### 4] Condo

### Offense

#### The neg gets conditional advocacies- first the offense

#### Logic- just because you prove the counterplan is bad doesn’t mean you prove the aff is good, not acting is a choice

#### Neg flex- we are reactionary and the aff is not, flexibility gives us a fighting chance because we’re able to test which strategies to go for- otherwise they win after the 1AR if they give good answers to our one position creating bad debates

#### The 1AR should be hard- it’s the turning point in the debate where the aff needs to make tough choices

#### Key to research- the neg needs to prep multiple strategies or else it discourages research, outweighs because research is the only skill we take in the real world

### Defense

#### Next the defense-

#### We debate in both worlds too- if we kick the CP the AC becomes entirely offense

#### Straight turns and perms check- they can stick us with the net benefit and get infinite condo advocacies on each flow

#### No new 2AR negs because we don’t get 3NR to respond, if they respond it makes negating almost impossible

#### 5] on the counterplan, first destroy the perm

### AT: PDB

#### Permutation is severance – severs out of unconditional by creating a condition under certain public health and crisis instances where the right to strike is revoked

#### Makes the aff a moving target which makes neg CP ground unpredictable and doesn’t let us test the aff from all angles

#### Bad advocacy – they shouldn’t be able to cherrypick portions of their advocacy based on negative positions, that kills advocacy skills and cheapens the value of debating

#### Perm also links to net benefit

#### Err negative on competition questions

#### We have a definition of unconditional and its contextualization to free speech laws on the books that’s McCoy – means any sad explanation for why our CP is cheating goes out the window

#### Aff gets to speak first and last and gets to choose the topic of the debate

#### Solvency advocates in the literature check abuse

#### 6] overview of the PIC- This PIC just creates a temporal kind of condition on the aff. It says that we can acknowledge the right to strike as long as there are no major emergencies in public health or welfare. Slater is the solvency advocate and he uses some pretty common sense examples when courts have ruled that employees had to cancel a strike. One example was a public transportation group because traffic got too dangerous and many people were injured. There are two modules, one is relatively generic about public health being able to solve war, the other is about US public health leadership and has a China impact.

#### 7] the PIC solves all their offense but does it better, we compete and our