# Round 5 1NC v. Scarsdale RM

## Off

### Worker’s Freedom PIC

#### The AC is an effort in “left legalism”, they believe the right to strike is not adequately protected and the solution is to codify it. This ignores that it is the nature of rights themselves in liberal societies that produce conflict

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

A third example concerns the legal status of concerted activity taken in response to an employer’s unfair labor practices. The Supreme Court addressed this issue in a widely cited and discussed decision, NLRB v. Fansteel Metallurgical Corp.49 In that case, the employees responded to a series of the employer’s unfair labor practices — recognizing only an “independent,” company-dominated union, and employing a labor spy to engage in espionage within the bona fide, “outside” union — by “seizing the employer’s property” in a sit-down strike. The employer countered by announcing that “all of the men in the plant were discharged for the seizure and retention of the buildings.” The employer then appealed to the local sheriff, who with an “increased force of deputies” evicted the workers from the plant and arrested them; most of the workers were eventually fined and given jail sentences. As a remedy for the employer’s unfair labor practices, the Board ordered “‘immediate and full reinstatement to their former positions,’ with back pay.” However, the Supreme Court denied enforcement of this order, concluding that the workers had been legitimately discharged for illegally seizing the employer’s property. The court’s decision has been widely criticized for taking a narrow view of “concerted, protected activity,” and ignoring the workers’ claims to be acting in self-defense against the employer’s violation of their rights granted to them by the Wagner Act. According to Karl Klare, the language of the Fansteel decision reinforces the role of workers as sellers of labor power and consumers of commodities, rather than as producers, and obstructs an alternative perspective presaged by the “‘dereifying’ explosion of repressed human spirit” expressed in the sit-down strike.50 According to James Gray Pope, the Fansteel decision inverts appropriate legal hierarchies, placing the employer’s common-law property rights above those of the employee’s statutory right to engage in collective action, a conclusion that can only be justified by an unstated appeal to a discredited interpretation of the Constitution.51 Both critics, however, overlook the very first words of Chief Justice Hughes’s decision following its statement of facts: “For the unfair labor practices of [the employer] the Act provided a remedy. Interference in the summer and fall of 1936 with the right of self-organization could at once have been the subject of complaint to the Board.”52 Once again, using the strike to enforce workers’ statutory rights is legally duplicitous because the Board already possesses the power to enforce those rights. The court continued, “To justify such conduct because of the existence … of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations.”53 Responding to this language, Klare is correct to draw attention to the inherently peaceful nature of workers’ concerted activity in general and the sit-down strike in particular.54 But it is not the court’s hysterics that are most interesting; instead, it is the overlooked rationale that, whether violent or not, concerted action to enforce rights already subject to Board administration and enforcement subverts the appropriate scheme of rights enacted by the NLRA. Thus, it is not (or not just) ideologically freighted judicial reasoning that has undermined the labor movement, but the very rights themselves, created and enforced by the state apparatus, that have justified restrictions on concerted worker activity.

#### Subordination- rights weaken labor movements by making them dependent on a corrupt legal system. Cross-national analysis shows rights never help, they only hurt

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

Labor law presents an inescapable problem for the labor movement. If that claim was not already obvious, then the US Supreme Court’s decision in Janus v. AFSCME should have made this clear. Even labor law scholars, who once viewed labor law as a path of liberation for the labor movement, now see it as an ossified millstone around its neck. Recommendations for the reform and renewal of labor law therefore abound. In nearly all of these recommendations, there is no question that the law can and should play a fundamental role in revitalizing the labor movement. Indeed, labor law’s current flaw according to these recommendations is not the rights they provide, but only the “weakness” of these rights. In this essay, I want to ask a question that has quite a different implication for how trade unions should approach labor law: how did the regulation of labor relations come to assume the form of law? The first objective of this essay is to answer this question. As labor movements developed under capitalism in the late nineteenth and early twentieth centuries, the regulation of labor relations took different paths. The path that a particular country took was determined by various material, political, and ideological causes that this essay will try to describe. While some amount of legal regulation is inescapable in a society based on private property and generalized commodity exchange — which logically imply the contestation of private interests — labor movements in some parts of the world have been able to avoid the dependency and displacement that always follows a regime of full-blown legal regulation. Trade unions in Scandinavia in particular have been able to develop a system of labor regulation that avoids the subordination to the state that has been the fate of Anglophone countries, such as the US and Australia, as well as on the Continent, in France and Germany. Another objective of this essay is to show that even labor law sympathetic to unions, rather than loosening, came to bind ever more tightly the cords constraining labor. This is not, or at least not only, because of capitalist-class interest or ideology extrinsic to labor law, but in fact is quite intrinsic to law itself. As this essay will demonstrate, many of the restrictions and prohibitions that hobble the labor movement today are justified by the very rights the labor law statute, the National Labor Relations Act (NLRA), confers. Statutory labor law confers rights, and rights are distinguished by the fact that they constitute claims that are enforced through the machinery of the state apparatus. In the mind of a judge or bureaucrat, one can hardly complain about the suppression of workers’ self-activity to advance or enforce some interest or claim, because the existence of a corresponding legal right makes such activity legally redundant. Of course, there is an enormous sociological difference: if strikes are the means by which workers build solidarity and develop class consciousness, then the substitution of the strike for other means of reaching working-class objectives may, whether intentionally or not, undermine working-class interests.

#### Prefer negative methodology- a comparative history approach reveals flaws in the affirmatives “critical labor law” approach. Their focus on specifics obscures the fundamental issue of statism

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

The intent of this brief comparative history is to reveal the uniqueness of the form of labor union organization found in the US. Unlike either the continental or Nordic variants, labor union organization in the US (and other Anglophone countries) is characterized by strong workplace-based organization (when and where it exists) and weak coordinating capacity above the workplace level (i.e., sectoral, national, etc.). This section will trace how that form of union organization gave rise to a law-based, statist form of labor-relations regulation. The shift to a law-based form of regulation was dramatic. Toward the end of the nineteenth century, neither unions nor collective bargaining had any legal existence. The only means available to a union to obtain recognition from an employer, bring the employer to the bargaining table, make a collective agreement, or even enforce a collective agreement, was through “extralegal” economic compulsion — the threat or exercise of strikes, boycotts, and other forms of concerted activity. Court injunctions frequently repressed such tactics — thus “recognizing” collective worker activity only in the negative sense. By the middle of the twentieth century, this had all changed: statutes established comprehensive legal regulation of all stages of a collective bargaining process presided over by an administrative agency, the NLRB, and the federal courts. What explains this transformation? How did the regulation of labor relations come to assume the form of law? Did alternative possibilities exist? DECENTRALIZED UNIONISM AND THE ADOPTION OF THE LEGAL FORM The answer I offer is that this statist regime of labor law is a product of the narrowness of labor relations themselves. Unions in the US have a strong workplace presence but weak coordinating capacity. This decentralized model of trade union organization produced pervasive employer-union conflict as well as union-union conflict. Owing to their lack of coordinating capacity, unions in the US were unable to forge a regime of self-regulation. A statist regime of labor law was constructed to fill the regulatory void. At the heart of the 1935 National Labor Relations Act (or Wagner Act, after its main sponsor Senator Robert F. Wagner of New York) is an election procedure in which the NLRB supervises a secret ballot election and, by majority rule, awards “exclusive representation” status to a union if it prevails. Other features of the Act fit neatly into this “recognition” framework. The Act bans “unfair labor practices” to ensure that the workers’ choice of representative (or whether to be represented) is “fair and free.” After a union is “certified” by the government, the Act provides for elaborate procedures for when workers may decertify a union or an employer withdraw recognition. The legal status of various kinds of economic weapons to which workers may resort often depend on whether a union has been certified. And certification grants to unions themselves certain rights and protections, including machinery for the enforcement of union-negotiated contracts. This regime can only be described as a highly statist form of labor-relations regulation. The origins of this majority-rule recognition procedure can be traced to the pre-New Deal era, specifically to attempts to regulate labor relations on the railroads. Union organization on the railroads is a classic example of the early-industrialization problem. First as fraternal and benefit societies, later as bona fide unions, there were no fewer than twenty different labor organizations representing workers in the railway industry. Each of these organizations, in structure and strategy, enacted the principle of exclusivity described in the previous section. “Each brotherhood, as was customary among American craft unions, claimed sole jurisdiction over the employment conditions governing employees in that craft,” whether or not the worker was a member of the union.34 At approximately the same time, railway unions began appealing to the majority-rule principle both to justify their demands for union recognition vis-à-vis employers and to solve their jurisdictional disputes with one another. This all took place against the backdrop of extraordinary labor strife. Later, this principle was adopted in one of first pieces of national legislation regulating labor relations, the Transportation Act of 1920. Fifteen years later, a series of statutes, court decisions, and policy choices had so narrowed the available options that “the question of Wagner’s intent became secondary to his policy constraints. Wagner built the NLRA upon an ideology that had become self-sustaining.”35 Scholars have criticized the NLRA for enshrining into law the old AFL’s “voluntarist” labor-relations philosophy. This was accomplished either by the passage of the NLRA itself or by its subsequent “judicial deradicalization.” Either version treats the NLRA as a kind of ex nihilo event, without any legal or policy history of its own.36 Ruth O’Brien convincingly demolishes this account. It was not the AFL’s voluntarism that prevailed but the progressive movement’s “responsible unionism.” For progressives, the labor movement was too narrowly self-interested to accommodate the “public interest.” What was needed was a Hobbesian strong state — one that would subordinate the labor movement to the “true” guardian of the public interest.37 I endorse O’Brien’s version of events, but she doesn’t account for the counterfactual: could the AFL’s voluntarism have been a viable alternative solution to the “labor problem”? Given the lack of coordinating capacity among US labor unions, I suggest not. At least partly, the progressives’ critique of the AFL-dominated labor movement was true. It is just that the possibilities, if not the concrete choices available to the labor movement in the early 1900s, were not limited to either a Leviathan or narrow craft voluntarism. The following comparative example makes this claim concrete. In a forgotten story in labor history — forgotten because of the opportunity that was not taken — the International Association of Machinists (IAM) and the National Metal Trade Association (NMTA) signed the so-called Murray Hill agreement in 1900. In terms of the agreement’s substance, employers conceded to a reduction in the working day from ten to nine hours for all machinists in NMTA shops. However, a complication arose from the union’s inability to convince all NMTA employers to also adopt a uniform 12.5 percent wage increase to maintain weekly earnings at earlier levels. The agreement was repudiated in the following strike wave, the union claiming that the employer had failed to agree to the wage increase, the employers accusing the union of calling strikes instead of settling the disputes through the central arbitration system established by the agreement. As told by Peter Swenson, employers would have in time accepted, and many would have even welcomed, centralized bargaining over wages and working conditions in exchange for the unions relinquishing their job-control objectives. Employers “slammed the door shut for all time, however, because union militants used the strikes to impose the closed shop … and rules prohibiting men from operating more than one machine at a time, working for piece rates, and instructing unskilled workers.”38 The IAM leadership did not approve the strikes and in fact had agreed to management’s demand for the open shop and the right to manage. Thus, the objective of taking wages out of competition came to founder on the IAM’s inability to control local militancy and designs on job control. At almost exactly the same time, in 1905, an almost identical experiment in the identical industry led the Swedish labor movement in a very different direction. Confronted with a metal-workers’ strike, the employers’ association in the engineering industry responded with a lockout at eighty-three member firms. The conflict led to the “first industry-wide multi-employer wage settlement for any industry in the country.” The agreement “allowed no restrictions on manning of machinery or hiring of unskilled workers and apprentices … [and] the union agreed to an open shop clause.” The metal workers’ counterpart in the United States, “[m]ilitant skilled craftsmen” in the IAM, “would have regarded the deal with dismay and disgust.” The next year, this industry agreement was followed by a multi-industry, national agreement known as the “December Compromise.” A key section of the agreement prohibits closed-shop agreements and establishes management control over “decisions involving hiring, firing, and supervising work.”39 Yet what workers gave up in firm-level “production politics” they gained in power over the labor market itself. Centralized bargaining has come to deliver high union density, the lowest level of wage dispersion in the advanced capitalist world, and most critically, high inclusivity, encompassing virtually all wage earners. The IAM’s attempt at establishing industry-wide bargaining vividly demonstrates how the US labor movement’s workplace-centered unionism acted as an obstacle to broader and more inclusive forms of worker organization. Centered at the workplace, and pursuing a job-control strategy, US unions had significant power to contest the employer’s domination of the labor process. Unfortunately, for exactly those same reasons, this constellation of power was too weak, too uncoordinated between firms, to contest the domination of the market. As the comparison of the IAM with the Swedish metal workers shows, local power generated conflict but obstructed efforts to develop self-regulation. Following decades of the “labor problem,” the state stepped in as regulator. As a result, “[g]overned by this state-operated regulatory agency [i.e., the NLRB], organized labor no longer shaped its own destiny—it was dependent on this agency.”40 O’Brien is therefore correct to insist that it was the progressives’ statist vision rather than the AFL’s voluntarist philosophy that prevailed. Nevertheless, we should not overlook how historically given forms of labor organization frustrated other possible forms of labor-relations regulation. This gives us another reason why voluntarism per se was not the culprit in labor’s current legal and existential crisis. Scandinavian self-regulation is, after all, another kind of voluntarism. At the same time, as the IAM example demonstrates, the institutional and organizational narrowness of craft unionism left the door open to a statist regime of labor law. THE CONSEQUENCES OF IGNORING THE LEGAL FORM Because of unions’ strong workplace presence but weak capacity for coordinating activity across workplaces, the regulation of labor relations was achieved by recourse to the law. This claim cuts directly against the thrust of a tradition of “critical” labor law. The story told by critical labor law scholars is of a potentially “anticapitalist” National Labor Relations Act that was “deradicalized” by conservative judges and narrow-minded intellectuals.41 In these approaches there is never any question whether the law should be used to regulate labor relations. Rather, the line of attack is to challenge the particular content of the labor law, not the form of regulation itself. Not only is this a mistake as a method of analysis but, as I will also demonstrate, it also commits an instrumentalist error about the nature of the law and the state within capitalism. A content critique of law obscures the way that law does more than simply help or hinder the labor movement achieve various, specific objectives. As a form of social regulation, the law also allocates determinate material and ideological resources as a means to achieve these ends. These means threaten to substitute for the working class’s own material and ideological means of regulation. This would not be an issue if labor unions or other working-class organizations were merely means of achieving gains for workers. But they are not. Whatever their limitations, unions are moments in the process by which workers constitute themselves as a class. Thus, the law — not in its content, but as a form of social regulation — always presents the danger of undermining this process through mechanisms of dependency and displacement.

#### Methodological questions should be prioritized over policy -it’s a logical prior question to solvency

Bartlett ‘90, professor of law at Duke University, 1990 (Katharine, 103 Harvard Law Review 829, February, lexis)

Feminists have developed extensive critiques of law n2 and proposals for legal reform. n3 Feminists have had much less to say, however, about what the "doing" of law should entail and what truth status to give to the legal claims that follow. These methodological issues matter because methods shape one's view of the possibilities for legal practice and reform. Method "organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification." n4 Feminists cannot ignore method, because if they seek to challenge existing structures of power with the same methods that [\*831] have defined what counts within those structures, they may instead "recreate the illegitimate power structures [that they are] trying to identify and undermine." n5

#### A just government ought to recognize an unconditional freedom to strike.

#### A “right” gives power to the state, a freedom reduces it. The alternative is mutually exclusive with the case and solves better

Dimick, JD/PhD, 19

(Matt, Law@Buffalo, *Counterfeit Liberty*, Catalyst Vol 3 No 1 Spring)

What then should be the attitude of the labor movement toward the law? The very existence of the state and law requires some engagement with it, if only to avoid it. I address these issues in the next section. LABOR LAW AND UNION STRATEGY I have argued that the regulation of labor relations need not always assume the form of law, and that in fact it does not always assume the extreme form of legalism that we find in the United States. I have also demonstrated the contradictory nature of rights in the regulation of labor relations. What kind of labor legal strategy emerges from this analysis? The introduction drew the distinction between rights and freedoms.68 Rights are those interests or actions that are protected by the coercive power of the state. Freedoms on the other hand are those interests or actions that are not prohibited by the state, but also with which others may interfere; freedoms are neither legally protected nor prohibited. My contention is that the labor movement should advance labor freedoms and be wary about labor rights. This contention follows from the previous analysis. Since rights are distinguished by the fact that they are protected by the coercive power of the state, bureaucrats, judges, and legislators can use that fact to restrict labor’s own means and powers to enforce these interests and claims, subordinating society to the state. Indeed, as I have shown, state officials, with interests and power of their own, are likely to view labor’s competing power as legally redundant and particularly subversive. Labor freedoms restrict the coercive power of the state in a way that gives priority to labor’s autonomous sources of power, subordinating the state to society. Advancing labor freedoms is hardly an unambitious strategy, since direct prohibitions on concerted activities are abundant. The three most restrictive prohibitions on strike activity are those directed to (1) mass picketing,69 (2) organizing and bargaining strikes,70 and (3) secondary strikes and boycotts.71 Each is an affirmative ban on worker collective action, by which an employer may have the actions enjoined and the union fined. As such, they are restraints on workers’ freedom of action. The first ban has done the most to destroy the power of the strike and, as discussed below, to open the door to the employer’s use of replacement workers. The second has done the most to squelch coordinated worker activity across firms and industries. As identified earlier, the third has done the most to derail and suppress organic worker self-organization. These restrictions could be eliminated through various means. Congress could amend the National Labor Relations Act, and remove the offending provisions. Some labor law scholars have argued that these provisions violate the First Amendment and therefore should be declared unconstitutional. The labor movement should entertain all options, but I have little doubt that massive civil disobedience though direct worker confrontation with these legal barriers will also be necessary to discredit and overcome them. If such labor freedoms were achieved, employers would be under no state-imposed duty to refrain from interfering with workers engaged in such activities. Workers could be terminated for engaging in mass picketing, organizing strikes, or secondary picketing. Freedoms may therefore strike some readers as insufficient. Yet, it has been the burden of this essay’s comparative, historical, and legal analysis to demonstrate the self-defeating sociological effects of labor rights. Nevertheless, there is truth to the claim that certain, fundamental labor rights remain essential. Thus, insofar as it facilities worker solidarity and collective action, there seems little reason to eschew, for example, a worker’s right to join a union. Even more fundamentally, the rights of workers to be free from the employer’s physical assaults or from the state’s interference with speech and expression are also necessary. The distinction between rights and freedoms is no talisman. Rather, the ultimate objective must be kept in mind: the collective self-organization of the working class.72 To convince the reader that this proposal is not merely wishful thinking, we should recall the self-regulation models of Scandinavia. In Denmark and Sweden, the regulation of labor relations — including such fundamental matters as union recognition and minimum wages — falls within the purview of unions and organized employer associations. Strikes that are banned in the United States remain viable options in Scandinavia. Enforcement of the rules and agreements depends primarily (though not exclusively) on the economic weapons of labor and employers, rather than the physical compulsion administered by the state. Labor courts, unlike the NLRB, operate outside the hierarchy of the bureaucracy and courts of the state apparatus.

#### Statism destroys value to life

**Kateb** – Professor of Politics and Director of the Program in Political Philosophy at Princeton – **1992** (George, The Inner Ocean p. 117-118)

What is statism? From a broad range of possible meanings, we may confine ourselves for the moment to the sense present in nuclear rhetoric. Let us say that this statism is the belief that a government is not a mere government but a state and that as such it is the locus of identity of a society; that it is not only distinct from but above society; that it has rights (not merely duties); that its survival can be secured at any cost to its own society or to others. We ordinarily associate such thinking with absolute monarchy or with modern party and military dictatorships. We certainly do not think that such a belief is compatible with the Constitution or with the moral ideas connected with political legitimacy in general. Statism is a vision of life in which people are means to the end of the survival of power, in which society is understood as one great quasi-military organization or power base and in which the state is seen not only as a society's leadership but also as its reason for being. Officials may not recognize their rhetoric and themselves in this description. But I do not see what the expressed determination to risk or engage in a sizable exchange of nuclear weapons could mean except that the idea of statism has been accepted. This point becomes especially evident when we see that American nuclear rhetoric explicitly refers to a protracted nuclear war and thus to the readiness to accept massive numbers of American deaths. Even if we choose to leave aside the rhetoric concerning limited or special nuclear uses, and also to leave aside the massive numbers of deaths in other countries, we are compelled to take in the fact that the American government says it is willing to have the American people endure countless deaths. This willingness, in turn, can only mean that officials think that as long as the executive upper echelons survive intact, and with them a corps of military and police, the only other need is enough people left alive to supply the means necessary for the government—that is, the state—and its purposes. Its purposes are one: to remain and continue to bear the true existence and meaning of society, even when millions have been passively victimized unto death. I do not see what other implication can be drawn from any rationalization of the use of nuclear weapons in a sizable exchange. If we insist that even a so-called special or limited use carries with it the immediate or delayed possibility of escalation, then we simply say that the rationalization of any use of nuclear weapons is the most extreme form of statism and therefore is the most extreme form of illegitimate or anti-constitutionalist doctrine.

#### Statism causes extinction

**Beres, 1994** (Louis Rene, Professor of International Law in the Department of Political Science at Purdue University, Spring,, Arizona Journal of International and Comparative Law, Lexis)

The State presents itself as sacred. The idea of the State as sacred is met with horror and indignation, especially in the democratic, secular West, but this notion is indisputable. Throughout much of the contemporary world, the expectations of government are always cast in terms of religious obligation. And in those places where the peremptory claims of faith are in conflict with such expectations, it is the latter that invariably prevail. With States as the new gods, the profane has become not only permissible, it is now altogether sacred. Consider the changing place of the State in world affairs. Although it has long been observed that States must continually search for an improved power position as a practical matter, the sacralization of the State is a development of modern times. This sacralization, representing a break from the traditional [\*20] political realism of Thucydides, n57 Thrasymachus n58 and Machiavelli, n59 was fully developed in Germany. From Fichte n60 and Hegel, through Ranke and von Treitschke, n61 the modern transformation of Realpolitik has led the planet to its current problematic rendezvous with self-determination. Rationalist philosophy derived the idea of national sovereignty from the notion of individual liberty, but cast in its modern, post-seventeenth century expression, the idea has normally prohibited intervention n62 and acted to oppose human dignity and human rights. n63 Left to develop on its continuous flight from reason, the legacy of unrestrained nationalism can only be endless loathing and slaughter. Ultimately, as Lewis Mumford has observed, all human energies will [\*21] be placed at the disposal of a murderous "megamachine" with whose advent we will all be drawn unsparingly into a "dreadful ceremony" of worldwide sacrifice. n64 The State that commits itself to mass butchery does not intend to do evil. Rather, according to Hegel's description in the Philosophy of Right, "the State is the actuality of the ethical Idea." It commits itself to death for the sake of life, prodding killing with conviction and pure heart. A sanctified killer, the State that accepts Realpolitik generates an incessant search for victims. Though mired in blood, the search is tranquil and self-assured, born of the knowledge that the State's deeds are neither infamous nor shameful, but heroic. n65 With Hegel's characterization of the State as "the march of God in the world," John Locke's notion of a Social Contract -- the notion upon which the United States was founded n66 -- is fully disposed of, relegated to the ash heap of history. While the purpose of the State, for Locke, is to provide protection that is otherwise unavailable to individuals -- the "preservation of their lives, liberties and States" -- for Hegel, the State stands above any private interests. It is the spirit of the State, Volksgeist, rather than of individuals, that is the presumed creator of advanced civilization. And it is in war, rather than in peace, that a State is judged to demonstrate its true worth and potential. [\*22] How easily humankind still gives itself to the new gods. Promised relief from the most terrifying of possibilities -- death and disappearance -- our species regularly surrenders itself to formal structures of power and immunity. Ironically, such surrender brings about an enlargement of the very terrors that created the new gods in the first place, but we surrender nonetheless. In the words of William Reich, we lay waste to ourselves by embracing the "political plague-mongers," a necrophilous partnership that promises purity and vitality through the killing of "outsiders."

## Case

### Framework

#### [1] Consequentialism is fair in-round

#### Clear weighing eliminates uncertainty (prob, mag, etc. are quantifiable)

#### (10 deaths > 1 death)

#### How to determine what better fulfills freedom?

#### [2] consequentialism also solves because it is not arbitrary --- thinks about what, objectively causes the greatest good for all people. Universalizable actions aren’t necessary for maintaining equality. Through considering the immense pain that treating people unequally causes, we can avoid inequality.

#### [3] AT Consequentialism fails –

#### A] AT Induction fails – Induction is fundamental to any sort of argument, so rejecting induction would be to reject any argument the affirmative makes about cause and effect.

#### B] AT Butterfly effect – government policies are in the unique position to cause nuke war, so they should consider their actions carefully. If the Aff proves certain results are caused by many different actions (which the Aff can argue), isn’t really caused by the single problem

#### C] AT Aggregation is impossible – is possible, death and suffering are universally painful by definition; this doesn’t change from person to person.

#### D] Infinite obligations – Doesn’t freeze action; see governments able to act while considering good of the people.

#### [4] A priori ethics aren’t a stable epistemology –

#### a] AT Cartesian Skep – the idea of an evil demon tricking us is ridiculous (no demons)

#### b] AT Uncertainty – Use probabilities, inherent in every single action we do.

#### c] AT Prerequisite – can interpret our own senses (empirical observation) only way to consider world around us.

#### [5] Practical reason doesn’t hijacks –

#### a] AT Regress – reason is not subjective – Enlightenment philosophers who based their works on “reason” still had disagreements

#### b] AT Action theory – inconsistent; the “effect” of moving one’s arm can be thought of as one whole effect, as the minutiae of the individual muscles all work for a single effect of moving the arm.

Prefer consequentialism because it aims to actually improve people’s lives; which does more to ensure people can actually enjoy their freedoms

### Offense

#### Turn: Doctors

#### Strikes can harm the public, which is unethical under Kantian ethics. Workers who go on strike treat those they’re meant to help as a means rather than an end—physician strikes prove.

Howard, 20

Howard, D. (March 22, 2020). What Should Physicians Consider Prior to Unionizing? AMA Journal of Ethics, 22(3), 193–200. <https://doi.org/10.1001/amajethics.2020.193>. Danielle Howard, MD is a third-year neurology resident at Duke University Hospital in Durham, North Carolina. She completed medical school at the University of Miami Leonard M. Miller School of Medicine and has a long-standing passion for ethics with interests in the ethics of end-of-life care and patient autonomy.

Nonetheless, if a group of physicians decides to employ collective action, there are legal and ethical ground rules to follow to ensure patient safety. The National Labor Relations Act stipulates that physician unions must give employers a 10-day notice of “concerted refusal to work.”8 Physicians must also ensure that emergency care is still available to those who seek it and that patients who are already hospitalized continue to receive care. If unionized physicians feel that prolonged action is required, they must regularly evaluate the collective effect of their behavior on patient care. Patient safety is most physicians’ priority, but physician strikes will almost always disadvantage patients in some way even if done safely. The possible disadvantage to patients highlights the crux of the moral issue of physician strikes. In Immanuel Kant’s Groundwork for the Metaphysics of Morals, one formulation of the categorical imperative is to “Act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end and never merely as a means.”24 When patient care is leveraged by physicians during strikes, patients serve as a means to the union’s ends. Unless physicians act to improve everyone’s care, union action—if it jeopardizes the care of some hospitalized patients, for example—cannot be ethical. It is for this reason that, in the case of physicians looking to form a new union, the argument can be made that unionization should be used only as a last resort. Physician union members must be prepared to utilize collective action and accept its risks to patient care, but every effort should be made to avoid actions that risk harm to patients. This ethical problem evaporates if physicians strike on behalf of patient care, thereby making patients an end as well as a means. There are several instances in which patient care influenced physicians’ collective actions. One example is a resident strike in 1997 at Boston Medical College to demand translators for non-English speaking patients.25 If other avenues of change have been exhausted, it is morally acceptable for physicians to unionize and employ collective action—including striking—as long as patients’ best interests are their reason for doing so. Such collective action would not only mitigate ethical complexity but also garner support, and, historically, physician strikes have been more successful when they have strong support from both physician and patient populations.16

#### Doctor strikes use patients as a mean rather than an end and strikes in general punish a third party to apply pressure on one’s employer for gains. As rules must be universal, an unconditional right to strike is unethical from a deontological perspective.

Muhudhia, 2017

Muhudhia, S. O. (1-20-2017). ETHICO-LEGAL INQUIRY INTO STRIKE ACTION BY DOCTORS IN KENYA. Dr Stephen has qualifications in Bioethics: a Masters degree in Bioethics and Health Law from the University of the Witwatersrand in Johannesburg,and a Post Graduate Diploma in Biomedical Ethics from Sindh Institute of Urology and Transplant,, Pakistan. He is an Adjunct Professor of Bioethics of Trinity International University, Illinois, USA. And the Co-Director of Africa Bioethics Initiative of the same university. He was awarded the distinct recognition as the “International Bioethics Scholar of the Year 2018” by Trinity International University. <https://wiredspace.wits.ac.za/jspui/bitstream/10539/23188/1/Research%20Report%20Stephen%20Muhudhia%20887305%20January,%202017.pdf>

Emmanuel Kant declared that there were categorical imperatives that are necessary for an action to be morally right or that lack of compliance with the categorical imperatives rendered an action morally unacceptable. The first of these imperatives is that it must be possible to apply the action or rule to all similar situations all the time without exception. The second imperative is that one must act in such a way that he/she treats other human beings including himself always as an end and never merely as a means to an end (Rachels and Rachels, 2012a). In applying the first imperative it is evident that