# NR

## T

Concede we meet

## Case

Recognizing a right to strike does NOT mean that the us literally looks at strikes and says “wow, I recognize this”, recognizing a right means that it is simply legally defensible in court

New NR definitions ok in this case because the ac acted like workers would get the right to strike

## DA

The plan destroys court legitimiacy by returning to lochern era doctrine, means the courts no longer can be used to deter nuke terror and we go extinct, outweights case on extinction + timeframe

Any risk of da offense means you vote neg

## K

### XT –Root cause

#### The plan is a short term solution – the can’t claim to “solve extinction” or “stop war” because, overall, they don’t

#### They solve a temporary problem and claim victory which empowers capitalism and is a hidden link – that’s farbod 15

#### Literally cross out every impact of case on the flow right now – it is structurally impossible for them to solve

### XT – Strike focus

Strikes focus – a valorization of strikes as the quintessential method of organizing both demonizes other, more radical, forms of organizing, but also enshrines proper labor organizing as having to do with a specific employer/employee relation as opposed to the overall dynamic of class domination of the bourgeoisie over the proletariat – our evidence is really good that not only does the plan A. create a complementary “right to not strike/organize” with the same force as the right to strike that dissuades people from radical politics but also B. represents the right-to-strike as a product of neoliberal choice akin to the right-of-contract.

The right-of-contract is the lynchpin of capitalist legalism – it stipulates that companies and potential employees have the right to negotiate anything they want into their individual contracts and the government cannot put any limitations on the stipulations in the contracts because both parties agreed to it. This is why, for example, Apple and Google employees can’t discuss the projects they’re working on – their contracts with the company have a non-disclosure agreement that they agreed to that legally prevents them from doing so. Here’s why that matters for the right-to-strike – just as potential employees have the right to choose to work or not work for a company, under neoliberalism, workers are now getting to choose when they want to work or not work due to the vision that workers are “human capital” – they are entrepreneurs themselves who get to choose if they want to work longer or shorter hours to sacrifice their well-being in order to make more money. Essentially, the right-to-strike is just that – a proclamation that workers now, as individual entrepreneurs, get to choose if they want to restrict their own labor power (human capital) at the expense of the larger company. This is a neoliberal rationality that views humans as entirely constituted by economic valuation and means the aff perpetuates every mode of domination they were trying to solve.

# NC

## 1 – not nebel T

#### A] Interp - the aff can't defend that a subset of just govs make unconditional right. The article “a” implies a nonspecific or generic reading of the word “government”.

Walden 20 Walden University [The Writing Center provides a broad range of writing instruction and editing services for students at Walden University, including writing assistance for undergraduates, graduate students, and doctoral capstone writers], “"A" or "An"” last modified July 14 2020, <https://academicguides.waldenu.edu/writingcenter/grammar/articles> SM

When to Use "A" or "An" "A" and "an" are used with singular countable nouns when the noun is nonspecific or generic. I do not own a car. In this sentence, "car" is a singular countable noun that is not specific. It could be any car. She would like to go to a university that specializes in teaching. "University" is a singular countable noun. Although it begins with a vowel, the first sound of the word is /j/ or “y.” Thus, "a" instead of "an" is used. In this sentence, it is also generic (it could be any university with this specialization, not a specific one). I would like to eat an apple. In this sentence, "apple" is a singular countable noun that is not specific. It could be any apple.

#### B] Violation – they only defend the US

#### C] Vote neg—

#### 1] Semantics outweigh:

#### A] Topicality is a constitutive rule of the activity and a basic aff burden, they agreed to debate the topic when they came to the tournament

#### B] Jurisdiction -- you can’t vote affirmative if they haven’t affirmed

#### C] It’s the only stasis point we know before the round so it controls the internal link to engagement, and there’s no way to use ground if debaters aren’t prepared to defend it.

#### 2] Limits:

#### A] Quantitative – there are over 195 affs – unlimited topics incentivize obscure affs, and kill reciprocal prep burdens which are key to well researched clash

#### B] Qualitative – spec allows them to cherry-pick small aff biased subsets which kills equitable neg ground and encourages a race to the fringe of the topic away from the core topic literature

#### C] TVA solves – read the aff as advantage

#### 3] Paradigm Issues –

#### 1] T is DTD –

#### A] their abusive advocacy skewed the debate from the start

#### B] DTA is incoherent because we indict their advocacy

#### 2] Comes before 1AR theory -- A] If we had to be abusive it’s because it was impossible to engage their aff B] T outweighs on scope because their abuse affected every speech that came after the 1AC C] Topic norms outweigh on urgency – we only have a few months to set them

#### 3] Use competing interps on T – A] topicality is a yes/no question, you can’t be reasonably topical B] only our interp sets norms -- reasonability is arbitrary and invites judge intervention C] reasonability causes a race to the bottom of questionable argumentation

#### 4] No RVIs – A] Forcing the 1NC to go all in on the shell kills substance education and neg strat B] discourages checking real abuse C] Encourages baiting – outweighs because if the shell is frivolous, they can beat it quickly

## 2 - K

“Communism is when no iphone” – Marx

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

Tomassetti, 21

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

\*legerdemain = slight-of-hand

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

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

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

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

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

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

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

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

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

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

#### HUGE HUGE LINK - THEY EMPOWER THE NEOLIBERAL AND IMPERIALIST US

#### 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

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, to 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 has 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.

## 3 - da

#### Court legitimacy is fragile now though it will hold absent huge controversial decisions

Pacelle 9/28/21 (Richard, Professor of Political Science University of Tennessee, "The Supreme Court's immense power may pose a danger to its legitimacy," <https://theconversation.com/the-supreme-courts-immense-power-may-pose-a-danger-to-its-legitimacy-168600>)

Groups, of course, might use the courts because the judiciary is the most appropriate venue to defend the rights of unpopular groups or ensure protections for defendants. The courts might better protect against tyranny of the majority. Groups might bring a case to protect the free exercise of religion by Muslims or challenge aid to religious schools as favoring one religion over another. The ultimate resource: legitimacy The Supreme Court’s public approval annually hovers around 50% to 60%, which is much better than Congress and typically better than the president. But that approval is at its lowest ebb in decades. The controversy over recent nominations, threats to pack the court, and whispers that certain precedents are about to be overturned have held the court up to more attention and threaten its legitimacy. And the court’s ultimate authority rests on its legitimacy. If the court is seen as too political, it will bleed this precious resource. The Supreme Court has almost complete discretion over the cases that it hears. It annually gets 7,000 to 8,000 petitions for its attention and it routinely takes about 85 cases for full review. The court takes cases to resolve disputes between lower courts and because the parties are raising important issues. But having a really important issue does not ensure the court will review it. Sometimes the court simply wants to let an issue develop a little more in the lower courts before addressing it. The court may not want to get ahead of public opinion. For years, the court simply refused to take cases involving gay rights. Sometimes, they try to avoid an issue in hopes Congress or the states might be compelled to intervene. The court’s ultimate decision is binding precedent on lower courts and the justices themselves. The justices have been criticized for using the court to make policy decisions. This is controversial in part because the justices are not elected and enjoy lifetime tenure. They cannot be voted out of office. Critics prefer that the court adopt judicial restraint and defer to the elected branches of government who could be removed by the voters if they oppose their policies. Both sides charge the other with being activists, which is the worst insult you could levy at a judge. But the court’s willingness to push its way into the political maelstrom has quietly been welcomed by the other branches that can avoid the difficult questions and then curry favor with the voters by criticizing the court. A court of law or of men and women? As this Supreme Court term begins, opponents and proponents of reproductive rights are predicting the court will overrule one of its precedents, Roe v. Wade. Of course, this would not be the first time that such a prediction has been made. Anyone analyzing the court needs to reconcile two competing realities. First, justices are relatively consistent in their decision-making: Conservatives issue conservative decisions and liberals issue liberal ones. Second, the court itself seldom overrules one of its precedents. In addition, despite the divisions on the court, usually about one-third of the cases are decided unanimously. Two decades ago, seven of the sitting justices at the time expressed the view that Roe was wrongly decided, but a majority of that court never voted to relegate it to the dustbin of history. On the other hand, when the court does overturn precedents – for instance, Brown reversed Plessy v. Ferguson, ending legal segregation – it is after the passage of time. Fifty years is typical and Roe is approaching that hallmark. [Over 110,000 readers rely on The Conversation’s newsletter to understand the world. Sign up today.] Occasionally, the court makes a decision that is out of step with public opinion and may pay a hefty institutional price. When the Taney Court issued the Dred Scott v. Sanford ruling in 1857, claiming freed enslaved people could not become citizens and overruling the Missouri Compromise that balanced the number of free and slave states, the decision weakened the judiciary for decades. When the conservative-leaning court gutted portions of the New Deal, President Franklin Roosevelt attacked the court and the court backed down.

#### Recognizing an unconditional right to strike breaks the floodgate for First Amendment protections over labor – creates a flood of legal challenges that destroys court legitimacy and returns to Lochner-era doctrine

Weinrib 17 (Laura, Professor of Law and an Associate Member of the University of Chicago Department of History. A legal historian, her scholarship explores the intersection of constitutional law and labor law, University of Chicago Law School, "The Right to Work and the Right to Strike," <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2121&context=public_law_and_legal_theory>)

As the Roberts Court has forged ahead with the Lochnerization of the First Amendment, it has begun to expand constitutional protections for employees who object to the payment of union dues. It has curtailed the ability of public sector unions to collect payments toward ideological activity by adjusting the default rules of non-member contributions, 116 and it has reduced the class of state-funded workers covered by Abood. 117 Thus far, it has declined to extend reciprocal protection to labor’s expressive activity. It has rejected unions’ freedom of association claims,118 and it has accepted statutory restrictions on secondary activity and the right to strike. This outcome would have been a tremendous surprise to interwar advocates and judges. By the end of the New Deal, all the signs pointed the other way. Unions enjoyed burgeoning First Amendment rights, whereas the objections of non-members were of minimal constitutional concern. There were comparatively few advocates for a union’s duty of fair representation to bargaining unit employees, whether statutory or constitutional, and, within the New Deal administration at least, the closed shop was widely accepted as a legitimate outcome of workplace democracy.119 If the Supreme Court ultimately recognizes a First Amendment right to work, a cascade of cases will follow. As an initial matter, the dues-paying members in that new regime may plausibly object that the government is forcing them to subsidize nonmembers in violation of their First Amendment rights. 120 But the slippery slope is steeper than that. Union members may also feel that an injunction to enforce a no-strike clause is incompatible with the First Amendment. They may argue that they are entitled to express their solidarity with other struggling workers—that picketing over disputes at distant workplaces is protected by the Constitution, even when unions are involved.121 For their part, the right-to-work forces are almost certain to transpose their argument onto private sector labor law, which the Supreme Court (sidestepping a significant state action question with respect to constitutional claims122) has proven inclined to align with its public sector decisions as a matter of statutory interpretation. One might imagine that the Court’s one-sided First Amendment expansion will prove difficult to contain. In fact, lower courts have already begun to narrow the class of secondary activity subject to regulation. And to the extent the justices hold the line, they will open themselves to the same charges of hypocrisy and antilabor bias that beset their Lochner-era forebears. Moving forward, lawyers, litigants, and judges will have to decide whether robust First Amendment review of labor law would ultimately serve their interests, and at what cost. 123 During the decades after the Constitutional Revolution, the Supreme Court insisted that the First Amendment must occasionally yield to legislative choices about “the competing interests of unions, employers, their employees, and the public at large.”124 In upholding a state injunction against peaceful picketing in the 1957 decision Teamsters Union v. Vogt, 125 Justice Frankfurter explained on behalf of the Supreme Court majority that constitutional protection for free speech did not immunize labor activity from state regulation.126 In a mournful dissent, Justice Douglas described the decision as a “formal surrender.” 127 “[F]or practical purposes,” he explained, the law had reverted to the “situation . . . as it was when Senn v. Tile Layers Protective Union was decided.” Organized labor was protected by statute rather than the Constitution, as it was in the brief period been between the Supreme Court’s validation of the NLRA in Jones & Laughlin Steel and its subsequent decisions elevating union activity to First Amendment status. That is, labor picketing was subject to government regulation, as it was before the modern First Amendment took shape. 128 But in accusing the Court of “com[ing] full circle,” 129 Justice Douglas exaggerated the extent of the Court’s retreat. The picketing decisions of the midtwentieth century reflected a durable compromise, pursuant to which labor and antiunion speech were equivalently inured to First Amendment challenge. Lurking behind labor’s First Amendment exceptionalism was the recognition that the postwar labor law regime, with its complicated balancing of employer and worker rights, had operated to dampen industrial unrest and facilitate American economic growth. 130 To advance these goals— which may have seemed like “compelling government interests,” though the accommodation was rarely framed in conventional doctrinal terms—the courts constrained the operation of the First Amendment in the labor context. Just as an unequivocal right to strike would unleash unpalatable economic power, an unequivocal right to work would disturb the New Deal settlement and impugn the legitimacy of the courts, not to mention the stability of the postwar legal order. Against this broader backdrop, recognizing a First Amendment obstacle to public sector agency fees threatens to unweave the web. To couch the right to work in the Constitution while licensing courts and legislatures to suppress the right to strike would truly be to “come full circle.” It would replicate the constitutional dynamics of the Lochner-era, an approach excoriated by generations of scholars and judges for its lopsided attentiveness to the interests of antiunion workers and employers. 131 It would, in short, mark a return “for practical purposes” to the “situation . . . as it was” before Jones & Laughlin Steel was decided. And the situation then, it bears remembering, was a world on the brink of revolution.

#### That spills over – there’s no logical limit to its deregulatory potential of free speech and that has MASSIVE impacts on the administrative state

Shanor 16 (Amanda, Ph.D Candidate Yale Law JD Yale Law, Wisconsin Law Review, "The New Lochner" Lexis, 2/1)

The current movement for robust commercial speech rights is premised on the notion that all speech is speech and so entitled to equal constitutional protection. In the words of one advocate on the heels of the Supreme Court's decision in Sorrell, "A free society would be better served by striving to achieve First Amendment parity among forms of speech that are occasionally treated differently through artificial, illogical, and increasingly unenforceable distinctions. Thankfully, the Supreme Court appears to be heading in that direction by acknowledging that speech is speech." n236 Floyd Abrams, the preeminent First Amendment advocate, captured the concept perhaps [\*192] most compellingly: "Liberty is liberty... . [and] the First Amendment is about liberty." n237 Due to the pervasiveness of speech and expression, that contention, however attractive, has no principled limit. Because of that pervasiveness, the logical conclusion of the notion that "speech is speech' and liberty, liberty is a radical reconfiguration of governmental power. Take much of the work of the Securities and Exchange Commission, Consumer Financial Protection Bureau, or Federal Drug Administration. Each agency requires hundreds if not thousands of mandated disclosures about matters from financial statements to mortgage conditions to drug contents and warnings. Under a "speech is speech' theory, all of these mandates would be subject to strict scrutiny. As the First Circuit observed: There are literally thousands of similar regulations on the books - such as product labeling laws, environmental spill reporting, accident reports by common carriers, SEC reporting as to corporate losses and (most obviously) the requirement to file tax returns to government units who use the information to the obvious disadvantage of the taxpayer. n238 The approach of commercial speech advocates would subject innumerable laws to strict scrutiny - including those that require nutritional labels, n239 disclosure of information related to securities, n240 Truth in Lending Act disclosures, n241 disclosures in prescription drug advertisements, n242 warnings for pregnant women on alcoholic beverages, n243 airplane safety information, n244 and required exit signs. n245 Not only that, but a "speech is speech' theory would subject deliberately false commercial statements - that is, outright fraud - to "fatal in fact' review on the basis that the distinction between false and true [\*193] statements is content discrimination. n246 It would constitutionalize ordinary contract law and the filing of tax returns. There is, in short, no logical limit to the new Lochner. As I argue below, such a limitless contention cannot be required by the First Amendment. But before turning to that argument, this Part will explore the implications of the current contest between the First Amendment and the modern regulatory state.

#### Court legitimacy solves nuclear terrorism.

Knowles 10 (2010 (Robert, Visiting assistant professor of Chicago-Kent college of law, “Responses to the ten questions,” William Mitchell Law Review, 36 Wm. Mitchell L. Rev. 5061)

Courts are widely regarded as rule-based institutions, rather than political institutions, that can ensure that the political branches do not shortcircuit processes for changing the law or act to violate fundamental constitutional principles. The approval of courts lends legitimacy to government action. When other nations see the United States following the law, they are more likely to acquiesce in U.S. leadership. This makes this task of providing global public goods-such as fighting terrorism-easier for the United States. As the largest public-goods consumer, the United States benefits the most from perceptions of its own legitimacy. Legitimacy becomes especially important in view of declining U.S. influence relative to other powers. The world may not be multi-polar today, but it could be by mid-century. America's enormous military advantage will decrease over time, and its reduced share of global economic output will give it less ability to throw its weight around. Although the costs for the United States of disregarding international legal norms may seem worth it now, those costs will increase from year-to-year. To the extent that international institutions-including frameworks of international law-provide some "stickiness," the United States is better off investing its own legitimacy in these institutions now, while it has maximum influence. If the United States leaves its imprint on international law and institutions, they will be less costly for the United States to comply with in the future and much more costly for a rising rival, such as China, to ignore. Nonetheless, there are some who argue that we are already living in a multi-polar world, and that rogue states and terrorist groups like al Qaeda are our true rivals. Advances in technology will-if they do not already-enable terrorists or rogue states to deploy small nuclear and biological weapons to threaten American cities, making up in sheer mayhem what they lack in armies and navies. A nuclear explosion in a large metropolitan area-such as New York-has the potential to change life as we know it. In this sense, al Qaeda can be viewed as an existential threat. 9 However, the capacity for small groups to leverage extremism into great destruction does not alter the fundamental structure of geopolitics. Not all existential threats are the same. A nuclear device would be just as dangerous in the hands of a domestic group or a lone wolf as it would be in the hands of al Qaeda. It would be a mistake to assume that these new threats are best pursued by giving the executive branch greater deference. In fact, the dangers from terrorism make even clearer the need to adhere to established principles. The United States will occupy a global leadership role for decades to come. Successful management of global crises-including a catastrophic terrorist attack-lies not in counterbalancing rivals, but in better management of the international system. The United States cannot hope to tackle large-scale global problems-terrorism especially-if the rest of the world loses confidence in American leadership. The best way for courts to help carry out this task is to ensure that the political branches adhere to the rule of law.

## Case

Conceded no solvency in CX – unions don’t address the root cause

**Key players refuse to stand with striking workers – no chance for strikes to have impact on the capitalist system beyond individual companies**

**Jabali 19**

Malaika Jabali, (Masters degree and law degree from Columbia University), 10-4-2019, "A wave of labour organizing is sweeping America. Will Democratic leadership catch on?," [https://www.theguardian.com/commentisfree/2019/oct/04/a-wave-of-strikes-is-sweeping-the-us-will-the-democratic-party-stand-with-workers //](https://www.theguardian.com/commentisfree/2019/oct/04/a-wave-of-strikes-is-sweeping-the-us-will-the-democratic-party-stand-with-workers%20//) AW

Workers are fed up. From teachers and hotel workers to nurses and auto workers, about three dozen labor strikes since 2018 have made the nation’s headlines. Over the weekend, a youth-led climate strike spanned the globe and a [walkout of General Motors workers entered its second week.](https://www.freep.com/story/money/cars/general-motors/2019/09/25/gm-uaw-strike-update-why-so-long-bernie-sanders/2434259001/) For the [past several weeks](https://www.modernhealthcare.com/providers/85000-kaiser-permanente-workers-threaten-strike), thousands of medical practitioners at Kaiser Permanente have been preparing for a national strike against the healthcare company in October. This groundswell of labor activism has intersected with a number of progressive issues debated among Democratic party presidential candidates, including the urgency of climate change, exploitation of undocumented immigrants, Medicare for All, and concentrated wealth amassed by corporate profiteers, often at the expense of everyday workers. The signs indicate American workers are moving left. The question is: will the national Democratic party leadership move with them? Frequently, strikes and other forms of labor organizing transcend the specific demands of a company’s employees – they raise questions about corporate malfeasance more broadly and make workers more attuned to the systems that enable inequality. The Fight for $15 campaign, for instance, started in 2012 with New York City fast-food workers demanding $15 an hour and union rights. The campaign now fights for “underpaid workers everywhere”, according to the group’s website, and has spread to more than [300 cities on six continents](https://fightfor15.org/about-us/). Likewise, Amazon workers formed Amazon Employees for Climate Justice and [nearly 2,000](https://medium.com/@amazonemployeesclimatejustice/amazon-employees-are-joining-the-global-climate-walkout-9-20-9bfa4cbb1ce3) participated in the recent climate strike to protest against the company’s role in climate change. Workers in its Whole Foods division have [pushed back](https://www.businessinsider.com/whole-foods-workers-demand-amazon-sever-ties-to-ice-2019-8) against the company’s contract with Palantir, a big data company that has [helped Ice raid workplaces for undocumented immigrants.](https://www.businessinsider.com/palantir-employees-ice-petition-alex-karp-2019-8) Instead of championing this progressive wave, House leaders, Democratic leaders seem to be taking steps to undermine it On Wednesday, in Detroit, Senator Bernie Sanders [joined](https://www.detroitnews.com/story/business/autos/2019/09/25/bernie-sanders-calls-justice-outside-detroit-hamtramck-gm-plant/2423023001/) United Auto Workers members participating in the General Motors strike and addressed corporate greed beyond GM executives. Peppering his remarks were [supportive shouts and applause from the audience](https://twitter.com/_ericdlawrence/status/1176874954043875328) when he mentioned justice, inadequate healthcare, the practice of corporate offshoring and the fatigue of Americans around the country who work multiple jobs. Strikers joined him in shouting “[enough is enough](https://twitter.com/_ericdlawrence/status/1176876591638622209?s=20)”. Despite this growing progressive fervor, the Democrats’ congressional leadership – including Nancy Pelosi and Chuck Schumer – have focused almost entirely on targeting Donald Trump, reaching a zenith with Pelosi’s announcement to [launch an impeachment inquiry](https://www.theguardian.com/us-news/2019/sep/24/pelosi-impeachment-inquiry-trump-ukraine) into his interactions with Ukraine. Outside of this singular focus, where is the Democrats’ vision? What policies are they advocating to show that they, too, stand with the thousands of workers enduring economic stagnation and a weakened social safety net as [corporate profits soar?](https://www.nytimes.com/2018/07/13/business/economy/wages-workers-profits.html) Unfortunately, instead of championing this progressive wave, House leaders, Democratic leaders seem to be taking steps to undermine it. In September, the Los Angeles Times [reported](https://www.latimes.com/politics/story/2019-09-03/democratic-committee-accused-of-trying-to-hinder-progressive-candidates) that political consultants were warned that the Democratic Senatorial Campaign Committee would boycott their services if they worked with progressive senatorial candidates in Colorado and Maine. The likely justification Democratic leaders will fall back on is that they are catering to the center to win competitive swing districts and thus the Senate. But instead of “Blue No Matter Who”, the approach seems to be more like “Blue, But Not You”. And there is no evidence that it’s a winning a strategy. In a May [New York Times interview,](https://www.nytimes.com/2019/05/04/us/politics/nancy-pelosi.html) Pelosi pressed Democrats to “own the center left, own the mainstream”, and have been [backing moderate Senate candidates](https://www.latimes.com/politics/story/2019-09-03/democratic-committee-accused-of-trying-to-hinder-progressive-candidates) over progressives, including the pro-fracking John Hickenlooper. In last year’s midterms, the Democratic Congressional Campaign Committee [reportedly sent internal memos](https://www.vox.com/policy-and-politics/2018/5/3/17290902/dccc-2018-midterms-primaries-democrats-nancy-pelosi-laura-moser) telling candidates not to fight for gun reform or Medicare for All. If electability is the concern, why waffle on policies [most Americans agree with?](https://www.cnbc.com/2019/03/27/majority-of-americans-support-progressive-policies-such-as-paid-maternity-leave-free-college.html) The steady support for Bernie Sanders and increasing support for Elizabeth Warren have cut into Joe Biden’s lead in [some polls](http://emersonpolling.com/2019/09/17/biden-sanders-warren-in-statistical-tie-in-democratic-primary-harris-struggles-in-home-state/), while the centrist candidates the DSCC is championing [have done little to prove that they can actually win.](https://theintercept.com/2019/08/15/senate-democrats-2020-chuck-schumer/) **The 2016 election should have been a sign that there was a growing disconnect between the priorities of the political establishment and the American public**. Impeachment proceedings may provide temporary cover, but they do not replace sustainable, visionary leadership. For that, we may have to rely on those emboldened workers who continue to shout across America that “enough is enough”.

**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 – turns case**

**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 the use of temps and scabs who are readily available to employers and can have the skills of union workers. They allow employers to continue business during a strike.**

**Hatton 14 (Erin Hatton (PhD, Associate Professor of Sociology at University of Buffalo), January 2014, "Temporary Weapons: Employers’ Use of Temps Against Organized Labor," *ILR Review*,** https://www.jstor.org/stable/pdf/24369593.pdf**) // CR**

While this single counterexample is hardly conclusive, it underlines a central finding of this study: The temporary help industry has become a tool for implementing employers' anti-union offensive. This study thus suggests that the temporary help industry has had a more direct role in restructuring the employment relationship than previously thought. The temp industry has not only enabled the wide-scale replacement of permanent employees with temps and exerted downward pressure on employment standards, as previous research has shown, but has also facilitated employers' attacks against unions by helping employers block union organization drives, weaken or eliminate existing unions, force concessions at the bargaining table, and harass striking workers. Although employers have a long history of hiring "scab" labor to accomplish these goals, the scale of worker replacement afforded by the temporary help industry makes this a distinctly different anti-union weapon. Temp agencies are not only able to mobilize hundreds of workers with little notice, they are able to mobilize hundreds of highly skilled workers, as evidenced by the agencies that specialize in supplying nurses and other health care workers to medical facilities during disputes. As a result, employers are using agency temps not only to replace workers who go on strike but also to replace workers who try to organize a union, workers who might vote in favor of a union, workers who refuse to capitulate at the bargaining table, and workers who consider going on strike but do not. In other words, as a result of the easy availability of temps, the bar for replacing pro-union workers with nonunion labor has been lowered. Without such easy access to so many workers, however, employers' ability to do so would be severely diminished, as suggested by the Heartland Human Services case. But easy access to large numbers of workers is not the only basis for temps' strength as an anti-union weapon. The unique precarity of agency temps means that, even if they support unions, they almost certainly cannot unionize. Aside from a few well-publicized exceptions, temps are often considered "un organizable" (Cook 2000). Although temp agencies might employ thousands of temporary workers, few of them actually work together. Instead they are sent from workplace to workplace, isolated from both their temporary and permanent counterparts. Even if they work for a prolonged time at a single worksite, few temps can risk engaging in union activities. They could lose their current job as well as any future jobs by being branded so-called trouble makers. Temps' economic survival depends on the continued approbation of their worksite employer and their temp agency, which generally means not getting involved in union activities. The structure of the triangular employment relationship requires temps to depend on their worksite employer for their economic survival, and it also requires temp agencies to depend on those same employers. As these findings suggest, at times this means that temp agencies will comply with employer demands—both legal and not—at the expense of workers in order to retain the company's business. Thus we saw temp agencies—at the behest of their client companies—illegally screening temps for union sentiment, illegally harassing workers on the picket line, and bending over backward to convert temps into permanent employees over the course of a weekend. If temps were to risk unionizing, moreover, the structural ambiguity of the triangular employment relationship hinders their ability to defend their right to union organizing. Although all workers cannot legally be fired or discriminated against for engaging in union activities, temps who try to organize might not be "fired." Instead, they might be assigned to a new job, or not sent out on assignment at all. If proven to be retaliatory, such actions would be considered illegal. But for most temps the burden of proof would be too great: both temp agencies and employers can blame a temp's job loss on the vagaries of the business cycle rather than their union activities. (In 17 states, in fact, temps are not considered "unemployed"—even if they have not been given a job assignment—if they do not contact their temp agencies before applying for unemployment insurance [NELP 2001].) Such ambiguity means that temporary workers are less protected against illegal retribution for union activities, which adds yet another layer of vulnerability to their structural precarity. The very structure of the triangular employment relationship—which generally positions the temp agency as the official employer of temps—also currently acts as a legal barrier to temps' union organizing. This structure allows employers to replace pro-union workers with another employer's (highly precarious) employees, and it prevents temps from joining the unions of regular employees—at least under labor law as currently construed. As mentioned above, at the time of this writing the NLRB maintains that, because temps and their permanent counterparts are legally employed by different employers, bargaining units containing temps are "multi employer" units that require the consent of each employer—consent that is seldom forthcoming. Ultimately, then, employers' use of agency temps to defeat workers' unions is a distinctively new weapon. "Temporary weapons" offer employers a range of anti-union tools – tools that might once have been used only by large, dedicatedly anti-union employers but are now available to any company with a phone. While it is difficult to know the scale of their use, taking measure of that scale is of utmost importance, foremost because currently little stands in the way of expanding implementation of such tools. Scholars and labor practitioners should thus focus on 1) bringing temps into the labor movement and 2) taking them out of the anti-labor movement.