# Princeton r4

## Framework

#### I affirm the Resolution resolved: A just government ought to recognize the unconditional right of workers to strike.

#### For clarification in the round, I offer the following definitions.

#### Unconditional Right is defined by Reverso dictionary as “the agent doing or giving does not require anything to be done by others”

**Strike is defined by Merriam-Webster as “a period of time when workers stop work in order to force an employer to agree to their demands”**

#### Just Government is defined by JJ Richardson as “Just laws that protect people from unjust harm from others”

#### I value morality as the word ought in the resolution implies a moral obligation.

#### First, freedom is the primary moral good – when someone decides to do anything, they presume what they do is good. This requires that they treat the freedom which grants them the ability to do that thing as good as well. Gewirth writes,

[Alan Gewirth, () "The Ontological Basis of Natural Law: A Critique and an Alternative" American Journal Of Jurisprudence: Vol. 29: Iss. 1 Article 5, 1984, https://scholarship.law.nd.edu/ajj/vol29/iss1/5/, DOA:9-10-2018 // WWBW Recut LHP AV]

Let me briefly sketch the main line of argument that leads to this conclusion. As I have said, the argument is based on the generic features of human action. To begin with, **every agent acts for purposes [t]he[y] regards as good.** Hence, **[t]he[y] must regard as necessary goods the freedom** and well being **that [is]** are the generic features and **necessary conditions of** his **action** and successful action in general. From this, it follows that **every agent logically must hold or accept** that he has **rights to these conditions**. For if he were **to deny** that he has **these rights**, then he **would** have to **admit that it is permissible** for other persons **to remove** from him the very **conditions** of freedom and well-being **that**, as **an agent**, he **must have**. But **it is contradictory** for him **to hold both that [t]he[y] must have these conditions and also that he may not have them.** Hence, on pain of self-contradiction, every agent must accept that he has rights to freedom and well-being. Moreover, **every agent must further admit that all other agents also have those rights, since all other actual or prospective agents have the same general characteristics of agency** on which he must ground his own right-claims. What I am saying, then, is that every agent, simply by virtue of being an agent, must regard his freedom and well being as necessary goods and must hold that he and all other actual or prospective agents have rights to these necessary goods. Hence, every agent, on pain of self-contradiction, must accept the following principle: Act in accord with the generic rights of your recipients as well as of yourself. The generic rights are rights to the generic features of action, freedom, and well-being. I call this the Principle of Generic Consistency (PGC), because it combines the formal consideration of consistency with the material consideration of the generic features and rights of action.

#### Next, there are two models of freedom—the non-interference model and the non-domination model. The non-interference model holds that a person’s freedom is violated if they are actually interfered with, while the non-domination model holds that a person’s freedom is violated if someone has the capacity to arbitrarily interfere in their life. Thus, my value criterion is consistency with freedom as non-domination, defined as establishing institutional constraints that eliminate the capacity for arbitrary interference. Prefer it for 2 major pieces of evidence:

#### 1] The non-interference model is an insufficient understanding of freedom which cannot grasp many important issues such as why slavery is bad even if a slave master is kind, and it also cannot explain why it is okay to interfere on someone’s freedom if it is agreed on before-hand, such as me agreeing to the rules of this very tournament allowing you to stop me from speaking past my time limit. Pettit writes:

Philip Pettit, “Legitimacy and Justice in Republican Perspective” Current Legal Problems, 2012 RE Recut LHP AV

But **while** the conception of **freedom as non-interference makes it impossible to argue** on grounds of freedom for **the legitimacy of any** likely **state**, **the republican conception** of freedom that it replaced **does not make this impossible** in the same manner. Indeed it is for that reason, I surmise, that **legitimacy was taken in the republican tradition to be something that could be institutionally secured in a state**: specifically, secured **by the fact of the state’s operating under the constraints imposed by a mixed constitution**. **On the republican conception, freedom is a matter of enjoying a suitable civic status**. Spelled out in greater detail, **it requires, first, a freedom in the exercise of** certain **choices**; **second**, a freedom **in the exercise of those choices that is secured on a certain basis**; **and third, a freedom that is understood in a distinctive manner, requiring non-domination rather than non-interference**. Taking up the first of these three conditions, the choices in which freedom is required are what John Libourne in the 17th century described as ‘the fundamental liberties’: **the choices, as I conceive of them, that all citizens can exercise and enjoy at one and the same time**.32 **These do not include choices requiring impossible abilities, as in the choice between walking on water and walking on solid ground**. Nor choices in which people are in essential competition, as in the choice between winning or not winning superiority over others. Nor choices involving victims, as in the choice between attacking another or not. **They are fundamentally compossible choices that may be simultaneously exercised by all and, at the same time, enjoyed by all.** They may be compossible by nature, as with the choice between speaking your mind and not speaking your mind. Or they may be compossible by virtue of institutional design, as with the choice between appropriating or not appropriating something under local rules of property. **Turning now to the second of our three conditions, the basis on which the fundamental or basic liberties have to be secured for civic freedom in the republican sense is a basis in public law**. As a matter of shared awareness amongst the citizenry, it has to be the case that **the free person**—the liber in early Latin usage, the ‘freeman’ in 17th-century English—**is protected**, perhaps even in some ways resourced, **in the exercise of relevant choices by a law that is promulgated in public and applied equally in defence of all**. It is this public entrenchment of freedom **that enables free persons**, in the age-old republican picture, **to be able to look one another in the eye, without fear or deference**: to escape not just servitude but also servility.33 Indeed the natural criterion for what constitutes adequate entrenchment is that **it is enough**, by local cultural standards, **to give this capacity to all citizens**, or at least to those who are not excessively timid or paranoid. In the ‘free Commonwealth’ or republic, as John Milton wrote, ‘they who are greatest ... are not elevated above their brethren; live soberly in their families, walk the streets as other men, may be spoken to freely, familiarly, friendly, without adoration’.34 We have seen that **republican freedom requires freedom in the choices associated with the basic liberties and that this must be secured on the basis of public law**. Turning finally to our third condition, it also equates freedom in a choice with the absence of domination, not interference. On this conception, **freedom requires people not to be subject to the will of others rather than requiring**, as Bentham required, **that they not be subject to the interference** **of** **others**. Freedom, as Algernon Sidney put it in the 17th century, consists in ‘independency upon the will of another’. ‘Liberty’, in an 18th-century variant, ‘is, to live upon one’s own terms; slavery is, to live at the mere mercy of another’.35 The difference between the two conceptions comes out in a difference on two fronts between the implications that they support. **It is possible to be subject to the will of another in a certain choice**—**it is possible to have to depend on the will of the other as to what you should choose there**— **without that other exercising any active interference**. **The classical example of such a possibility arises with the slaves who are lucky enough to have an indulgent master who gives them a great deal of latitude in the choices they may make for themselves**. **Even if the master allows the slaves to exercise the basic liberties of the society as they wish, still they are subject to the master’s will; they have to depend on the state of the master’s will remaining favourable if they are to be able to choose as they wish.** **The slaves may not suffer interference but still, on the conception of freedom as non-domination, they lack freedom**. They are not their own men or women. **The second difference** of implication between the rival conceptions of freedom appears in the possibility, not of domination without interference, but **of interference without domination**. **You are subject to the interference** of another in your choices, **even if there is an arrangement in place, perhaps set up by you**, perhaps set up by a third party, **under which you can control that interference; say, you can stop that interference at will or allow it to continue only on terms that you endorse.** **Suppose you hire someone** to make certain of your decisions for you— say, your financial or social or even religious decisions—or suppose that you inherit such an arrangement from your family**. The person hired may not always choose as you would choose—may even choose in a way that frustrates your current wishes**—**but so long as you have to the power to suspend and shape the interference, you are not subject to their will**. You do not depend on their will remaining a goodwill for being able to impose your wishes on the matters they currently administer for you. **This should serve to introduce the republican view of the freedom that can go with civic status. We might describe the social order established by a state as just, in a republican rendering of the idea, insofar as it enables people to enjoy such a civic status in relation to one another.** **But it remains to show why we need not despair, on this view of freedom, about identifying institutional conditions under which the coercive state would not jeopardize the freedom of its citizens in imposing such an order and would count therefore as legitimate**. Why does the legitimacy problem become feasible under the conception of freedom as non-domination, when it is so obviously infeasible under the conception of freedom as non-interference? The answer, at the abstract level, is pretty straightforward. The second implication of this way of conceptualizing freedom is that **interference in your choices need not be dominating and that when it is not dominating it does not impose another’s will and does not jeopardize your freedom.** **The coercive state, as we have seen, certainly interferes in the choices of its citizens**. But **this coercion or interference will not jeopardize the freedom of those citizens if they exercise an appropriately effective form of control over the interference.** And **so the prospect of a legitimate state is nothing more or less than that of a state in which citizens exercise a suitable type of control over the coercion that the state practices in their lives**. **The legitimate state will be**, in an etymological sense, **the democratic state**: **the state in which the demos or people exercise a suitable form of kratos or control over those in power.** **This abstract answer points us in the direction that a satisfactory theory of legitimacy has to take and identifies the ideal of a legitimate state, understood in the republican way, as a form of democratic ideal.** But these indications, reassuring as they may be, are worth little unless we can say more about the sort of control that citizens must be able to achieve over the workings of their polity. Without being able to go into much detail, I turn to a consideration of this challenge in the final section.

#### 2] Prefer it to resist oppression – domination as a condition takes away a person’s status as human – categorical dehumanization is created by communal recognition of domination, which makes it our primary ethical obligation to prevent oppression and therefore domination. Pettit 4:

PETTIT, PHILIP. “THE DOMINATION COMPLAINT.” Nomos, vol. 46, 2005, pp. 87–117. JSTOR, www.jstor.org/stable/24220143. Accessed 19 Aug. 2020.

#### The primary reason why the complaint about being dominated is of the first significance is that domination almost invariably undermines a person's capacity to enjoy respect in this sense. Where one person dominates another, it is almost bound to be a matter of common awareness among the people involved, and among other relevant parties, that this domination exists. The question as to whether someone is dominated by another is one that will interest all those involved, after all, and the answer to that question will be obvious in most cases from the sorts of resources they control relative to that other. Thus we may expect most people to recognize domination when they see it, and this in turn being obvious, to recognize that others will recognize it too, thereby giving rise to the usual hierarchy of common awareness; each will believe that the person is dominated, each will believe that each believes this, and so on.21 Once it is recognized as a matter of common awareness that someone is dominated, however, then that person will no longer be able to enjoy the basic respect that we think personhood entitles him to. He will no longer have the sort of voice that can be reliably forthright, or can be expected to be forthright. He will always be under suspicion of playing to the audience of the powerful and never having anything worthwhile to say in his own right. Dominated subjects of this kind may not be ignored or dismissed outright: they may be treated magnanimously to the trap pings of respect. But they will not command respect; they will receive it only in the manner of supplicants. They may be treated as if they had the status of persons, so we might put it, but they will not really have that status. Being a person is inseparable from earning and receiving respect as of right—as of effective, not just formal right—and in their case there will be no question of earning or receiving as of right. What they receive, they will receive only as a gift—only by grace of the powerful. This line of thought is a familiar and recurrent one in republican thought. It is worth mentioning in connection with it that Kant, the great philosopher of respect and personhood, seems to have shaped many of his ideas on that subject in his reflections on Rousseau's Social Contract, itself a book that belongs at least among the apocrypha of the republican tradition. The point is emphasized by J. B. Schneewind, who quotes Kant as saying: "It is not all one under what title I get something. What properly belongs to me must not be accorded to me merely as something I ask for."22 Schneewind comments: "If nothing is properly mine except what someone graciously gives me, I am forever dependent on how the donor feels toward me. My independence as an autonomous being is threatened. Only if I can claim the others have to give me what is mine by right can this be avoided."23 Given the connection between enjoying respect as a person and not being subject to domination, there is every reason to treat the complaint of being dominated as extremely significant. What more serious complaint could there be than one that draws attention to a relationship in virtue of which one's very standing as a person who can command the attention and respect of others is put in jeopardy? This is no mere trifle to do with having one's nose put out of joint, or one's feathers ruffled. It is a complaint of the first moment. Let some people be dominated and to that extent they will be put out of any community that involves those who dominate. They may aspire to community with such others and their presence may even be tolerated among those others. But they will always cut somewhat sorry or comic figures, and will always invite only condescension or contempt. They will have no more standing, in a somewhat archaic image, than dogs that cower at their masters' feet or snuggle that up their mistress’s skirt.

## Contention 1: Structural Domination

#### Absent a right to strike, workers experience Structural Domination – the labor market creates desperation and dominate workers into bad contracts – they need an alternative to solve this issue, Gourevitch writes:

Gourevitch, A.. “Quitting Work but Not the Job: Liberty and the Right to Strike.” Perspectives on Politics 14 (2016): 307 - 323. //LHP AV Accessed 7/4/21

The commodification of labor I: structural domination and exploitation So long as we view the labor market as a series of voluntary agreements, to which workers and employers freely consent, we cannot make adequate sense of the right to strike. There are two interconnected forms of compulsion to which workers are subject that undermine any such view. The first is a form of structural domination that renders workers vulnerable to exploitation, the second is a form of legal authority that gives employers arbitrary power in the workplace itself. If we recognize these as ineliminable features of the market for labor, then the right to strike makes sense not as a relic of feudal guild privileges nor just as an economically rational effort by some to maximize wages, but as a form of resistance to the modern labor market itself. Let us **begin with structural domination and** the problem of **exploitation**. **Though most closely associated with the Marxian tradition, the thought that desperate workers are exploited is a familiar one**. Even those not so sympathetic to the complaints of modern wage-laborers can be found saying, as David Hume famously did, that “the fear of punishment will never draw so much labour from a slave, as the dread of being turned off and not getting another service, will from a freeman” (Hume [1742] 1987, II.XI.16 fn39). Adam Smith gave this fact a turn in favor of workers: It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms… In all such disputes the masters can hold out much longer… Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the long-run the workman may be as necessary to his master as his master is to him, but the necessity is not so immediate. (Smith [1776] 1982, I.8.12) On top of which, as Smith noted, “**Masters are always and every where in a sort of tacit**, but constant and uniform **combination**.” In a world in which economic necessity couples with employer collusion, **workers have little choice**: “Such combinations [by employers], however, are frequently resisted by a contrary defensive combination of the workmen; who sometimes too, without any provocation of this kind, combine of their own accord to raise the price of their labour” (Smith [1776] 1982, I.8.12). For this reason Smith thought it was wrong to treat trade unions as criminal conspiracies.9 The view of unions and strikes as defensive, aimed at lessening employers’ ability to take advantage of workers’ need, persisted throughout the industrial age. By the time Hobhouse wrote Liberalism, it was possible for a liberal to argue that strikes might even be connected to human freedom: The emancipation of trade unions, however, extending over the period from 1824 to 1906, and perhaps not yet complete, was in the main a liberating movement, because combination was necessary to place the workman on something approaching terms of equality with the employer, and because tacit combinations of employers could never, in fact, be prevented by law. (Hobhouse 1944, 18) We must note, however, that nearly all of these arguments remain within a form of social theory that attempts to make capitalist practice more like its theoretical selfimage. These thinkers tended to defend unions and their right to strike as a way of achieving ‘real freedom of contract’ in the face of economic necessity. Hobhouse was updating Smith and Mill when arguing, “In the matter of contract true freedom postulates substantial equality between the parties. In proportion as one party is in a position of vantage, he is able to dictate his terms. In proportion as the other party is in a weak position, he must accept unfavourable terms” (Hobhouse 1944, 37). On this account, **the right to strike** is defensible only insofar as it helps maintain a position of relative equality among bargaining parties. It thereby **secures contracts that are not just voluntary but truly free** - Mill’s “necessary instrumentality of that free market.” This basic idea reappears in any number of twentieth century acts of labor legislation and jurisprudence, perhaps most notably in the 1935 law granting American workers the right to strike.10 The problem with the ‘real freedom of contract’ view is that it is based on faulty social analysis. **The labor market is not just another commodity market** in which property-owners are, or can be made, free to participate or not participate. Here some Marxist social theory is inescapable. **Workers who have no other consistent source of income than a wage have no reasonable alternative to selling their labor-power**. That is because, at least in highly capitalist societies where most **goods are only legally accessible if you can buy them**, **there is no other way of reliably acquiring necessary goods**. **The only way for most workers to get enough money to buy what they need is by selling their labor-power**. Their only alternatives are to steal, hope for charity, or rely on inadequate welfare provision. These are generally speaking unreasonable alternatives to seeking income through wages. **If workers have no reasonable alternative to selling their labor-power they are therefore forced to sell that labor-power to some employer or** another (Ezorsky 2007; Cohen 1988, 239-254, 255-285). This forcing exists **even when workers earn relatively high wages**, since **they still lack reasonable** **alternatives**, though the forcing is more immediate the closer one gets to poverty wages. The key feature of this forcing is that it is consistent with voluntary exchange but **it is not some occasional or accidental feature** of this or that worker’s circumstances. It is a product of the distribution of property in society. **People are forced to sell their labor when**, on the one hand, **everyone has property rights in their own capacity to labor** **and**, on the other hand, **some group** of individuals **monopolize all or nearly all of the productive assets** in that society. These are the necessary conditions to create a labor market sufficiently robust to organize production. That is to say, **a** **society in which the primary way of organizing production is through a labor market is one in which most people are forced into that labor market**. Or, put another way, a society in which most people were truly free to enter or not enter the labor market would be one in which labor is so radically de-commodified that the mere formal possibility of a labor market could not serve, on its own, to guarantee social reproduction. Relations among workers and employers would be truly free and thus truly contingent. It is only when there is a sufficiently large population of individuals who have nothing but their labor-power to sell that the mechanism of social forcing guarantees a constant supply of labor through the labor market itself. But this means that, in a society based on the commodification of labor, the conditions that would make the buying and selling of labor-power **a truly free** **set of exchanges** would require utterly transforming that market-based production relationship itself. **It would require giving workers a reasonable alternative to selling their labo**r – say through a sizable, unconditional basic income and universal public goods, or through giving all workers the possibility of owning or cooperatively owning their own enterprise**. Such measures would amount to a radical de-commodification of labor-power, an overcoming of the very social conditions that give rise to the labor market’s self-image as a site of free exchange**. As Ira Steward, a nineteenth century American labor reformer, once said, “if laborers were sufficiently free to make contracts…they would be too free to need contracts” (quoted in Stanley 1998, 96). The foregoing social analysis is familiar enough, but its implications for the right to strike are rarely considered. The right to strike begins to make more sense if we reflect upon the fact that **workers who are forced to sell their labor are vulnerable to exploitation**. Exploitation just is the word for structural domination in the domain of economic production (Vrousalis 2013; Roberts, n.d., Chap. three). **Some** workers **will accept jobs at going wage rates** and hours, **others will be unable to bargain** for what they need**, and most can be made to work longer hours**, **at lower pay, under worse conditions than they would otherwise accept.** Many employers know this and will take advantage of it (Greenhouse 2009; Krugman, New York Times, December 23, 2013). Even if employers do not intentionally take advantage of it, they do so tacitly by making numerous economic decisions about hiring, firing, wages and hours that assume this steady supply of economically dependent labor. So it is not just the force of necessity, but the fact that this forcing leaves workers vulnerable to exploitation and the further fact that **this is a class condition** that is relevant to our thinking. It explains why **workers might seek collective solutions to their structural domination** and why they might refuse to believe that they can overcome their exploitation through purely individual efforts.

#### Current legal norms ensure that our current conception of the right to strike is insufficient as the alternative necessary to prevent this form of domination, Gourevitch 16:

Gourevitch, A.. “Quitting Work but Not the Job: Liberty and the Right to Strike.” Perspectives on Politics 14 (2016): 307 - 323. //LHP AV Accessed 7/4/21

This is standard liberal advice on how to solve the problem. Workers are free to pursue their interests so long as they do not violate the basic rights of anyone else. They may engage in moral suasion, hoping to convince others not to take their jobs, or to convince employers to bargain with them rather than make contracts with others. Their freedom includes the right to join forces, so long as they don’t force anyone to join. They are free to bargain collectively, so long as they do not force anyone to bargain. Unfortunately, **this voluntarist solution** works only by **deal**ing **a near irrevocable blow to the right to strike itself**. **Few strikes** **with** any reasonable chance of **success** **can hope to stand on moral suasion alone**, especially when no serious pressure can be brought against employers or replacement workers (Cramton and Tracy 1998; Currie and Ferrie 2000; Naidu and Yuchtman, n.d.). **A strike is not part**, at least not only a part, **of** those **activities** of civil society **that hope to win by the ‘soft force of the better argument’** alone. **Strikers must be able to impose severe costs** on employers and replacements. If the right to strike protects some important human interest it cannot do so by effectively neutralizing that very form of collective action. Moreover, as one commentator reminds us, if there really is a right to the job that workers refuse to perform then, **a strike goes beyond merely attempting to persuade people not to break the strike**; to use a suitably vague phrase, **it involves putting pressure on those who would break the strike, to make it difficult or unpleasant for them to do so.** That, surely, is what the apparatus and ideology of strikes is for: not just to persuade non-strikes so that they willingly accept whatever restrictions the strikers seek to impose; but to put pressure on them so that unwillingly, if needs be, they decline to break the strike…( Locke 1984) So far then, we are on the horns of a dilemma. **Either the right to strike really includes the right to the job that strikers refuse to perform, in which case a wide range of actions are permitted or at least enjoy some prima facie justification**. **Or the right to strike must take place purely in voluntaristic terms, in which case no basic rights are violated. But in that case there is little chance of the strike succeeding and there is no recognition of the strikers’ right to the job**. Lest this seem like a purely theoretical dilemma a brief survey of **American labor law shows us the stakes** of falling on one side or the other. As we shall see, American labor law has essentially chosen **the liberal voluntarist position**, which surrounds strikes with a number of rules and prohibitions that protect rights of property, contract, and managerial control at the expense of **leaving an extremely constrained right to strike – perhaps no real right to** **strike at all**. The stakes: American case **In the United States the law says that private sector workers have a right to strike** (National Labor Relations Act 1935, 7, 13). 4 As part of this law **the state may not issue pre-strike injunctions nor may it criminalize collective bargaining** or the taking of strike action. 5 The law also prohibits employers from blacklisting pro-union employees or requiring ‘yellow-dog’ contracts.6 **Nor may they fire a worker for defending unions or for going on strike** (National Labor Relations Act 1935, 8(a); Norris-Laguardia Act 1932). Notably, **protections for pro-union workers are one of the few restrictions on the employer’s employment-at-will rights to hire and fire whomever** he wants (Coppage v. Kansas 1915). This restriction means that **American law recognizes that the prospect of losing one’s job is a coercive threat**. The threat of losing one’s job as a consequence of striking violates the right to strike. That is relevant because, surprisingly, while employers may not fire pro-union workers, **the Supreme Court says that employers’ interest in maintaining production** and controlling their property **means they may threaten to close an entire business or relocate a plant solely because** workers have threatened **a strike** (Textile Workers Union v. Darlington Manufacturing Co. 1965). **They are also legally permitted to hire permanent** 4 I am especially indebted to Laura Weinrib, whose helpful guidance on American labor law has saved me from a number of errors. 5 The story is more complicated since injunctions have returned through ‘no-strike’ clauses in union contracts and through the use of other elements of the criminal code. See White 2008. 6 Yellow-dog contracts make not joining a union a condition of employment**. replacement workers and these workers may vote to decertify the current union** (NLRB v. Mackay Radio & Telegraph Co. 1938; Pope 2004; Atleson 1983, 1-34). **Thus, employers may explicitly threaten the entire body of workers with loss of their jobs and, though firing workers is illegal, may permanently replace them**. **It is unclear what conceptual distinction lies behind** the legal distinction between ‘**firing’ and ‘permanent replacement’ or ‘shutting down and moving’ since the effect** on the worker **is the** **same**. As one legal scholar has put it, “The ‘right to strike’ upon risk of permanent job loss is a ‘right’ the nature of which is appreciated only by lawyers” (Atleson 1983, 30) But there it is, in law. For these reasons alone we might think **American workers do not enjoy a real right to strike**. Yet there is more.7 **Workers may not organize in industry-wide unions without** individual, workplace-by-workplace **unionization agreements**. Strikes must also usually take place on a workplace-by-workplace rather than industry-wide basis (Burns 2011). **Closed and union shops are acceptable in many states**, though some prohibit even mandatory collection of dues, and the Supreme Court allows employers to ban unionorganizers from their property (Lechmere, Inc. v. National Labor Relations Board 1992; National Labor Relations Board v. Babcock and Wilcox Co. 1956). Further, **the employer’s property-interest in** the “core of **entrepreneurial control**” over hiring and firing, plant location, investment, pricing, production processes **remains outside the scope of what law** and precedent **have established as labor’s legitimate interests** (Burns 2011, 7 For a summary of the most important legal limitations on strikers, see (Pope 2004, 47- 70, 115-136). 123-26; Atleson 1983, 67-109). **Strikes must therefore be restricted on illegal labor practices or on bread and butter issues like wages and hours**. **Workers may not engage in sympathy strikes or secondary boycotts**, which includes legal prohibition on workers picketing outside stores that use or sell products made in struck workplaces (Pope 2004; Taft-Hartley Act 1947; National Labor Relations Act 1935). To understand the consequences of that last prohibition, **consider a store that is selling goods made with parts from a struck factory**. **Anyone not from the striking factory may stand outside**, simply as a citizen with free speech rights, **and petition** against shoppers spending their money there. **But a worker from the striking factory may not do the same** because it is considered illegal, secondary picketing. **To go on strike is therefore to lose** some basic **civil liberties.** 8 In other words, the repertoire of **mass, solidarity-based strikes across an industry are** no longer a part of union action at least in part because they have been, since the mid-twentieth century, **illegal**. There are other relevant laws and precedents, but this gives a vivid enough picture as it is. The facts described in the previous three paragraphs remind us why **our thinking about the right to strike matters.** **If the right to strike is just a derivative** right, with the same general structure and function as rights of association, contract, and property, then many, if not all, of the laws or precedents described above are defensible. These **restrictions flow** from a rejection of the view that workers have an enforceable right to the job they strike; from the requirement that collective action remain voluntary; and from a refusal to accept that workers as a whole have shared interests as a consequence of 8 I have taken this comparison from Pope who has used it many times. their social position. Unions may, at most, operate closed shops and enjoy a formal right to strike, but they may not interfere with the core property rights of employers, contract rights of workers, nor claim that the interests of workers expand beyond a narrow range of issues in the workplace itself. **If, however, we take the right to strike to be a distinctive kind of right**, in which workers do legitimately have a right to the job over which they strike, **then we would have to reject many existing restrictions on strike activity**. In other words, many of the current legal restrictions on workers make some kind of sense if we accept the voluntarist position. To understand why this voluntarist view is wrong, we must move to the world of social theory. Specifically, we have to understand the way in which the commodification of ‘labor-power’ subjects workers to overlapping forms of unfreedom.

#### The affirmative’s plan of granting the unconditional right to strike provides the necessary alternative – it reverses power relationships and challenges domination created by the economic system, Gourevitch continues:

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Quitting the work not the job We now have a way of explaining the right to strike as something decidedly more modern than just residual protection of some feudal guild privilege. **The right to strike springs organically from** the fact of **structural domination**. **Striking is a way of resisting** that **domination** at the point in that structure at which workers find themselves – the particular job they are bargaining over. It is not that workers believe they have some special privilege but quite the opposite. **It is their lack of privilege, their vulnerability, that generates the claim. Structural domination makes its** most immediate appearance in the **threat of being exploited** by a particular employer, even though the point of structural domination is that workers can be exploited by any potential employer. **The sharpest form that the structural domination takes is through the threat of being fired,** or of never being hired in the first place. The claim that **strikers make** to their job is therefore, in the first instance, a dramatization of **the fact that their relationship is not voluntary**, it is not accidental and contingent. **They are always already forced** to be **in a contractual relationship** with some employer or another. **The refusal to perform work** while retaining the right to the job is a way of **bring**ing to the fore **this social and structural element in their condition.** **It** **vivifies the real nature of the production relationship** that workers find themselves in. **Quitting the work but not the job is a way of saying that** this **society** is not and **cannot be just a system of voluntary exchanges**. There is an underlying structure of control, maintained through the system of contracts, that even the ‘most voluntary’ arrangements conceal. This is not just a dramaturgical fact about strikes, though the drama has, in many cases, been nearly Greek in its intensity and tragedy**. It is a point about power**. It would not have the drama if it were not a power play. By demanding the job as a matter of right workers do not just publicize their domination, **they attempt to challenge the forcing to which they are subject**. **Limiting the employer’s ability to make contracts with others, and preventing other workers from taking those jobs, is a way of reversing the power relationship**. It is a way of neutralizing the threat of losing the job, which is the most concrete, immediate point of contact with that background structure of domination. **If you cannot lose your job, you are less vulnerable, less immediately economically dependent. Of course, this does not do away with the background structure itself, but a particular strike can never do that**. Though even here, there are times when a strike, as it becomes a more generalized rejection of structural domination – say in large-scale sympathy strikes or **general strikes** – **can** begin to **challenge** the **broad structure of economic control itself** (Brecher 2014). As we have said, this is a challenge to the market logic that begins from within, at the location of the strike itself. At that point in the system, **strikers temporarily reverse the relationships of power by eliminating that employers’ ability to use the threat** of job-loss against them. They do that not just by claiming the job but by claiming it as a matter of right. The thought is that the **exploitation** of **workers is unjustifiable**, an unjustifiability that appears in the terms of the employment itself. Workers have the right to the job, and therefore to interfere with the employer’s property rights and other workers’ contract rights, because it is unjustifiable to subject workers to exploitative conditions. To be sure, many strikes and many strikers never articulate the argument in this language. But the point is not what workers always explicitly say, but rather what they do and what that doing presupposes. I am reconstructing the ideal presuppositions of a strike, and in particular, how to think about the peculiar set of assumptions about the right to a job. We have seen that it is no atavistic recovery of traditional rights and guild privileges but is a way of resisting a thoroughly modern form of social domination from a point within that structure of domination. Again, **facing a freedom to quit the job but not the work, workers assert a right to quit working but keep the job**. To put this all another way, **though strikes are still about bargaining**, and in that sense like market exchanges, **they are simultaneously a challenge to the market as the appropriate standard by which to judge the fairness of workers’ compensation**. The market is unfair because of workers’ structural disadvantage. Over and against the market value, strikers argue that there are shared, or at least shareable, standards of fair compensation that employers should adhere to. While here again we see the echoes of feudal theories of ‘just price’ and equity jurisprudence (Horwitz 1977, 160-211), we must note that in principle the claim is not, or does not have to be, based on special privilege. Rather, it begins by challenging the view that labor ‘freely’ finds its value on the market. **Workers are always already in relationships with employers and they cannot leave the basic relationship of earning money only by selling labor-power, no matter how many jobs they might quit**. The standards we use for evaluating those kinds of forced relationships, like the state, are different, based on shared conceptions of justice and human need, not private agreement. Two final observations before we move to the workplace itself. If the foregoing analysis is correct then we can get a better sense of the way a right to strike relates to the rights of employers and replacement workers. The right to strike does not have to include the claim that employers have no right to use their property to pursue their own interests. It just means employers have no right to use their property in ways that allow them to exploit workers. That is why, from within the theory of the right to strike, employers do not have a unilateral right to hire whomever they please on whatever terms they please. If that latter right is permitted then, of course, employers may take advantage of the fact that every propertyless worker needs a job. Further, the right to strike does not have to mean replacement workers have no right to pursue their interests and make labor contracts. Rather, it means they do not have a right to use that power to reproduce the system of structural domination that puts all workers at an unfair disadvantage. That is why they may not take jobs that striking workers refuse to perform.

## Contention 2: Workplace Domination

#### Authority within the workplace itself arbitrarily resides in the hands of employers, which dominates workers, Gourevitch 2:

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The commodification of labor 2: contracts and government of the workplace Strikes are ways of resisting structural domination at its most immediate, concrete point – the job. But that is only one aspect of the unfreedom that produces strikes. **The other arises from personal domination in the workplace itself**. Most modern work is a continuous, coordinated activity of workers in a workplace. This **coordination is only possible through a system of authoritative decisions and standards that cover the complex, ongoing, ever changing set of workplace activities**. Here we meet the second way in which a contract-based social theory is not up to the task of giving an adequate account of the actual relationships in which workers find themselves. Though there are attempts to explain and justify the arbitrary authority that employers possess by reference to the labor contract, these fail, leaving an analytic and moral void. The view of the workplace as a product of private contracts makes it difficult even to grasp the political structure of the workplace itself, let alone understand the range of issues against which **workers** might **strike when resisting an employer’s arbitrary authority** (Anderson 2015; Gourevitch 2013; Hsieh 2005). **A workplace is a site of personal domination because workers are subject to the arbitrary authority of bosses**. **The bosses’ authority is arbitrary because it is not sufficiently controlled by workers.** The ruling legal and social assumption is that decisions about how to run the workplace are up to employers and their managers. **Workers are expected simply to obey**. In American law, this is enshrined as the “core of managerial prerogatives” regarding hiring and firing, work schedules, design of tasks, introduction of new technology and the like – and they extend to prerogatives of capital regarding purchase of goods, plant location, and other investment-related decisions. 11 A general set of, often poorly enforced, labor laws establish specific reservations against what an employer may order workers to do or require them to accept. But the very fact that these are **specific reservations only reinforces the fact that the assumption is one of dependence on the arbitrary will of managers and owners**. For examples, consider the fact that **in many states employers have been within their rights when firing workers for comments** they made **on Facebook** (Emerson, Huffington Post, October 17, 2011), for their sexual orientation (Velasco, San Gabriel Valley Tribune, October 7, 2011), for being too sexually appealing (Strauss, ABC News, August 2, 2013), **or for not being appealing enough** (Hess, Slate Magazine, July 29, 2013). **Workers** **face** being given **more tasks** **than** **can be performed** in the allotted time (JOMO, Dissent, Winter 2013; Greenhouse 2009, 53-55, 89, 111-112), **locked** in the workplace **overnight** (Greenhouse 2009, 49-53), forced to **work in extreme** **heat or physically hazardous** but not illegal conditions (Urbina, New York Times, March 30, 2013; Hsu, Los Angeles Times, September 19, 2011), **or arbitrarily isolated** from the rest of one’s coworkers (Greenhouse 2009, 26-27). **Some workers are forced to wear diapers** rather than go to the bathroom, **refused lunch breaks or pressured to work through them** (Jamieson, Huffington Post, May 8, 2013; Wasserman, Mashable, July 25, 2012; Vega, New York Times, July 7, 2012; Egelko, San Francisco Chronicle, February 18, 2011; Greenhouse 2009, 11-12), **forced to keep working after their shift is up, denied the right to read or turn on air conditioning** during break (Bennett-Smith, Huffington Post, August 14, 2012; Little, ABC News, August 15, 2012), or **forced to take random drug tests** and to perform other humiliating or irrelevant actions (Bertram, Robin and Gourevitch, Crooked Timber, July 1, 2012). Notably, in these cases and in many others, **the law protects the employer’s right to make these decisions without consulting workers and to fire them if they refuse**. **The bitterness of this experience of subjection is old and used to carry the complaint of “wages-slavery**.” As an American labor agitator once wrote in 1886, once **Liberty consists in being able to satisfy all one’s wants, to develop all one’s faculties, without** in any way **depending upon the caprice of one’s fellow-beings**, which is impossible if man cannot produce upon his own responsibility. **So long as the workman works for a boss**, a master, **he is not free**. ‘You must obey,’ the master will say, ‘for since I assume the responsibility of the undertaking, I alone have the right to its direction.’ (Journal of United Labor, July 10, 1886, 2109– 2111) The point of greatest interest to us here is that **the employer’s claim to exercise this authority is intimately bound up with the commodification of labor**-power and the free exercise of property rights. As the quotation above suggests, the employer’s authority is supposed to derive from the way in which he “assumes the responsibility of the undertaking.” He is the agent, putting his idea and money on the line, taking all the risk. The worker, on the other hand, already received her reward. She has sold her commodity – her labor-power – to the employer, who pays her a wage in exchange for rights to that commodity. **To have a property-right in something is to have some kind of exclusive authority over it; therefore, the boss should not have to consult with the worker about how to use the labor-power he bought**. However, as labor reformers have long observed, the special thing about the sale of labor is that “**Labor is inseparably bound up with the laborer**.” A labor contract “assumes that labor shall not be a party to the sale of itself beyond rejecting or accepting the terms offered. **This purchase of labor gives control over the laborer-his physical intellectual, social and moral existence**. The conditions of the contract determine the degree of this rulership” (Journal of United Labor, January 7, 1888, 2554). In other words, **there is no way for the boss to enjoy his property right in the purchased labor-power without also exercising that arbitrary power over the person of the laborer. But this is just the kind of power that the exchange of property is not supposed to give over the seller of property since the seller’s will is supposed to be separable from the commodity.** The employer’s arbitrary authority is derived from the view that the worker has sold his property, his labor-power, but that **same theory of property seems to deny that such arbitrary control may be claimed when the seller cannot withdraw his will from the property.** There are a few ways that a contract-based social theory might respond to this challenge, but we shall focus here on the most important:12 the incompleteness of contracts. It is a well-known fact that all **contracts are incomplete** (Hart 1995). But in the case of the workplace, **this incompleteness is intensified and magnified by the fact that the contract is to take part in a dynamic, continuous activity with other people**. No matter what a worker has agreed to at the point of the contract **it is impossible for a contract to specify all of the eventualities** that arise in the complex, ongoing process of running a workplace. Something else has to explain who exercises control over all these unanticipated matters. This means, no matter how freely made a contract is, **we cannot say that the authority to which a worker is subject is justified by that free consent.** At most, the radical incompleteness of labor contracts is what allows the many aspects of law and cultural assumption to fill the void. For instance, **in American law, employers enjoy a “core of managerial prerogatives” over issues like hiring, firing, investment, and work organization**. Strikers may not strike to contest these decisions and employers may not be forced to bargain about them. They need not give any account of why such production decisions have been made, even if they have dramatic consequences for employees – like producing plant closures or changing the organization and definition of tasks. Courts have defended this managerial control and the narrowing of the right to strike by importing older, status-based ideas about contract and property to fill the void of incompleteness. Only by (often semi-articulated) reference to quasi-feudal master-servant law have they been able to fill out the authority that the contract leaves open. Courts have argued that worker deference to managers of a “common enterprise” is implied in the contract or by arguing that employers enjoy uninfringeable property rights in the worker’s labor or wider enterprise (Atleson 1983, 84-109). In other words, courts themselves have acknowledged the incompleteness and thus indeterminacy of the contract with respect to the organization of work, but generally resolved this authority in favor of employers by appeal to something outside the contract itself. So, to put the problem another way, the point about structural domination was that workers might be forced to make a variety of explicit concessions on any number of issues – wages, hours, conditions, stultifying jobs. But the point **about personal domination in the workplace is that the contract also seems to involve the tacit concession of generic control over a further set of unknown issues**. The problem from the standpoint of contract theory is that **the contract itself cannot adequately explain why this power is assumed to devolve to the employer** nor why law should support this assumption. At most, we can only say the worker agreed to give up this control, not that she in any way agreed to the various decisions about her work. Usually, however, **we do not think a human being has a right to such blanket alienation of their liberty.** In the case of work, the only reason supporting that worker’s alienation of control as authoritative seems to be that the worker sold her property – her labor-power – and therefore has no right to control that property for the duration of the work (within the reasonable boundaries of protective labor legislation) or that she owes obligations of deference to the employer.

#### Strikes challenge the notion of labor as a mere commodity which the previous card proves is the source of domination within the workplace – that empowers workers and resists arbitrary managerial domination, Gourevitch 6:

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As we have seen, **workers resist** these accounts **on the grounds that their capacity to labor is not a commodity at all.** Or at least, labor-power cannot operate as a commodity in this case because a crucial feature of the sale of property – separability of the seller’s will from the commodity sold – is impossible. Therefore, **whatever** the status **the labor contract** has, the **authority** relations **of the workplace** itself **cannot be derived from the contract** – at least not from the contract conceived as a sale of property. Workers nevertheless find themselves in a world in which employers do legally possess this arbitrary authority. **The strike is**, again, one way of **challenging this authority by attacking the idea that labor-power is a mere commodity to be used as the employer sees fit**. The strike is a way of pressing the claim that **workers, too, should exercise control rather than submit passively to managerial prerogatives**. **Historically we can think of ‘control strikes,’ strikes over the introduction of new technology, and even strikes over seemingly lesser issues like “abolition of the luncheon** **privilege**” (Report of the Industrial Commission on the Relations and Conditions of Capital and Labor vol 7 1901, 116). The general point being that **strikes** that target decisions usually falling under the domain of “core of entrepreneurial control” (Burns 2011, 123-126; Lambert 2005, 132) **are not just** about **instrumental considerations** regarding compensation and conditions **but about resisting the very logic of contract and property that supports the manager’s authority in the first place**. It is worth noting the way in which the two kinds of domination are intertwined. Resistance to managerial discretion is not just about objecting to arbitrary power as a matter of principle, nor just about challenging a particularly nasty manager. Rather, the point is that, **in a modern capitalist economy, the manager’s authority is tied to the problem of exploitation itself.** Structurally dominated workers are not just threatened with exploitation at the moment of contract but in the workplace. **The core interest of the employer is in extracting as much labor as possible,** which is why **employers**, **regardless of whether they are benevolent or cruel, tend to seek unchallenged authority over the work process**. Seemingly petty actions, like denying bathroom breaks or imposing dangerous work speeds, are not, on this account, isolated instances of abuse, but rather moments when the structural imperatives of maximizing profits translate into the exercise of managerial authority and organization of work. **Uncontested managerial authority is of concern to workers not just because those who have power tend to abuse it, but because this power is directed to a systematic purpose**: it is used **to exploit workers**. **These prerogatives** are, in effect, a way of **unilaterally alter**ing the terms of **employment**. Threatening to introduce new technology, speed up work, relocate plants, or reduce and redistribute tasks, is typically part of an interconnected process in which structural and personal elements of domination fold into each other to guarantee maximum effort for minimum compensation. That is why **confining strikes narrowly** to issues regarding wages, hours, and conditions **is so problematic**. Such **limitations rely on analytically groundless** **or morally dubious attempts to derive entrepreneurial authority from the contract**, and they fail to understand why managerial prerogatives with respect to hiring, firing, investment and organization are just as significant to the basic interests of the worker as ‘bread and butter’ issues like wages and hours (Burns 2011, 47-55; Atleson 1983, 67-96).

#### Thus, I strongly affirm the resolution and stand open for cross-examination.