# ND21 Flay Non-Domination Aff

## Framework

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

#### In the status quo, workers do not have the unconditional right to strike, NLRB writes

National Labor Relations Board. (n.d.). *The Right To Strike*. The Right to Strike | National Labor Relations Board. https://www.nlrb.gov/strikes.

Section 7 of the National Labor Relations Act states in part, “Employees shall have the right. . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike. It reads as follows:Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. It is clear from a reading of these two provisions that: the law not only guarantees the right of employees to strike, but also places limitations and qualifications on the exercise of that right. See for example, restrictions on strikes in health care institutions (set forth below). ***Lawful and unlawful strikes***. The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay. It must be emphasized that the following is only a brief outline. A detailed analysis of the law concerning strikes, and application of the law to all the factual situations that can arise in connection with strikes, is beyond the scope of this material. Employees and employers who anticipate being involved in strike action should proceed cautiously and on the basis of competent advice.  ***Strikes for a lawful object***. Employees who strike for a lawful object fall into two classes “economic strikers” and “unfair labor practice strikers.” Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs. ***Economic strikers defined***. If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employer. If the employer has hired bona fide permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement. ***Unfair labor practice strikers defined***. Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

If the Board finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the Board may award such strikers backpay starting at the time they should have been reinstated. ***Strikes unlawful because of purpose***. A strike may be unlawful because an object, or purpose, of the strike is unlawful. A strike in support of a union unfair labor practice, or one that would cause an employer to commit an unfair labor practice, may be a strike for an unlawful object. For example, it is an unfair labor practice for an employer to discharge an employee for failure to make certain lawful payments to the union when there is no union-security agreement in effect (Section 8(a)(3). A strike to compel an employer to do this would be a strike for an unlawful object and, therefore, an unlawful strike. Strikes of this nature will be discussed in connection with the various unfair labor practices in a later section of this guide. Furthermore, Section 8(b)(4) of the Act prohibits strikes for certain objects even though the objects are not necessarily unlawful if achieved by other means. An example of this would be a strike to compel Employer A to cease doing business with Employer B. It is not unlawful for Employer A voluntarily to stop doing business with Employer B, nor is it unlawful for a union merely to request that it do so. It is, however, unlawful for the union to strike with an object of forcing the employer to do so. These points will be covered in more detail in the explanation of Section 8(b)(4). In any event, employees who participate in an unlawful strike may be discharged and are not entitled to reinstatement. Effect of no-strike contract. A strike that violates a no-strike provision of a contract is not protected by the Act, and the striking employees can be discharged or otherwise disciplined, unless the strike is called to protest certain kinds of unfair labor practices committed by the employer.

#### For clarity, I provide the following definitions:

Brown University Professor Gourevitch describes what “the right to strike” entails in 2016 when he states,

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; Gourevitch is a Post-Doctoral Research Associate at Brown University's Political Theory Project, a College Fellow at Harvard University, and received his Ph.D in political science from Columbia University

“Is it peace or war:”1 What is a right to strike? **The right to strike is** peculiar. It is **not a right to quit**. The right to quit is part of freedom of contract and the mirror of employment-at-will. Workers may quit when they no longer wish to work for an employer, employers may fire their employees when they no longer want to employ them. Either of those acts severs the contractual relationship and the two parties are no longer assumed to be in any relationship at all. **The right to strike**, however, **assumes the continuity of the very relationship that is suspended.** **Workers on strike refuse to work but do not claim to have left the job**. After all, the whole point of a strike is that **it is a collective work stoppage**, **not a collective quitting** of the job. This is the feature of the strike that has marked it out from other forms of social action. If a right to strike is not a right to quit what is it? **It is the right that workers claim to refuse to perform work they have agreed to do while retaining a right to the job**. Most of what is peculiar, not to mention fraught, about a strike is contained in that latter clause. Yet, surprisingly, few commentators recognize just how central and yet peculiar this claim is (Locke 1984).2 Opponents of the right to strike are sometimes more alive to its distinctive features than defenders. One critic, for instance, makes the distinction between quitting and striking the basis of his entire argument: the unqualified right to withdraw labour, which is a clear right of free men, does not describe the behaviour of strikers…Strikers…withdraw from the performance of their jobs, but in the only relevant sense they do not withdraw their labour. The jobs from which they have withdrawn performance belong to them, they maintain.

#### I define a “just government” as a government that treats everyone as consistent with their freedom. Therefore, my value is freedom.

#### All agents are internally motivated to act in the best interest of those around them, as this assures that they have the right to freedom and can pursue their own ends. Gerwirth84

[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 [Bracketed for gendered language]]

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.

#### There are two possible conceptions of freedom: non-domination and non-interference. Freedom as non-domination is freedom without being dependent on another person’s will. Non-domination is thus the only conception that can legitimize state interference. Pettit 12

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.

#### Therefore, my value criterion is consistency with non-domination, defined as establishing institutional constraints that eliminate the capacity for arbitrary interference.

#### Politics will always fail unless it engages first from the perspective of protecting freedom – the reason people may care about consequences is because of reciprocal relations. Nicholas 21

\*bracketed for grammar\* Nicholas, L. (2021). Remembering Simone de Beauvoir’s “ethics of ambiguity” to challenge contemporary divides: feminism beyond both sex and gender. Feminist Theory, 22(2), 226–247. doi:10.1177/1464700120988641

What does this morality and the picture of agency mean for political action and strategy to get to this aim of freedom? For Beauvoir, there is a keen attentiveness to both means and ends without privileging one over the other. Arguably, both GCF and GIF are privileging means over ends, stopping short of dismantling the actual root cause of gender oppression in the service of strategy in the given world. This is both understandable and, for Beauvoir, a core part of her political approach. For example, in discussing how to prioritise political struggles and aims, she says that ‘the question is political before being moral: we must end by abolish- ing all suppression [. . . but] What order should be followed? What tactics should be adopted? It is a matter of opportunity and efficiency’ (Beauvoir, 1976: 89). However, her normative distinctions mean that **one should not undertake actions that subordinate** another in the **prioritizing of means over ends**, and one never loses sight of the ends: a key binary that Beauvoir seeks to evade or negotiate beyond is that of means and ends. A key text here is Beauvoir’s essay ‘Moral Idealism and Political Realism’ from 1945, which treads this precise line between rigid strategies, arguing against an ethics that remains ‘at the level of generality and abstraction’ but also against the conservativism of reductionist anti-utopian real- ism (2004: 178). She illustrates this with the example of those ‘**Frenchmen** [who] **accepted** **collaboration with Germany** in the name of realism’ (Beauvoir, 2004) in 1940, **and** in doing so **lost sight** **of** the ideal of **human freedom**. Likewise, can those ‘gender critical’ feminists who are allying with the Christian conservative right (McCann and Nicholas, 2019) against trans rights in the name of realist strategy be said to have maintained their feminist ethic of freedom? I have emphasised that, in the current context, sex/gender **identity** **is** compulsory for intelligibility (Butler, 2008). Indeed, if one attempts to individually eschew it, it will be **imposed upon you by others and institutions, and imposition undermines subjecthood.** It is for this reason that identity politics is not just understandable, but unavoidable. However, Beauvoir’s utopianism means that in ‘using gender to undo gender’ (to borrow a phrase from Lorber, 2000), either by appealing to the category of woman or by creating new categories, it is important not to reify the means. This is an ethos echoed later by Judith Butler in her critique of identity politics, one foreshadowed by Beauvoir who observed that ‘no group sets itself up as the One without at once setting up the Other over against itself’ (Beauvoir, 1997: 17). This underpins much feminist theory that advocates for ‘strategic essentialism’ (Spivak, 1994), making Beauvoir a proto-strategic essentialist. Stavro (2007) uses Beauvoir to argue that we do not need to wholly embrace identity politics to use identity. Collectively creating new situations of freedom may entail what I have called elsewhere fostering new cultural resources through which to place oneself and read one another (Nicholas and Clark, 2020). This means that the availability of new identities such as non-binary may well represent progress towards new ‘cultural resources’ for the self and other that allow for some relief from the immanence of binary gender. But, heeding Beauvoir, I also caution that these are not inherently enabling. It is how they are used that is important (Nicholas, 2014; Nicholas and Clark, 2020). Indeed, a key tenet for Beauvoir’s discussions of strategy and realism is that ‘**We have to respect freedom only when it is intended for freedom’** (Beauvoir, 1976: 90). In this context, then, the GCF freedom to claim that diverse gender identities are ‘false’ does not need to be respected. Additionally, the charges that GCFs make about trans people reifying gender and capitulating to stereotypes are unfounded. Like all people, trans peo- ple’s relationships with norms are ambiguous, given that norms are both enabling and limiting for everybody. Indeed, rejecting either a wrong-body essentialism or a crude deconstructivism, Chu argues that ‘The most powerful intervention scholars working in trans studies can make, at this juncture within the academy, is to defend the claim that transness requires that we understand, as we never have before, what it means to be attached to a norm—by desire, by habit, by survival’ (in Chu and Harsin Drager, 2019: 108). Additionally, Hines’s empirical research found that most of the trans women interviewed ‘aligned themselves with feminist politics and sought to construct gendered expressions in contrast to stereotypical models of femininity’ (2019: 145). Davy also found in her empirical research that ‘trans- sexual and genderqueer people, regardless of their desire for particular bodily aesthetic interventions and gender recognition, productively flee, elude, flow, leak and disappear from categorising legal statutes and healthcare protocols’ (2019: 180). The overly zealous policing of new gender categories that sometimes emerges in gender diverse communities identified by Fury (2017) and Roffee and Waling (2016) likewise does not represent a use of freedom intended for freedom. Intersectional coalitional: the ‘universal cause of freedom’ (Beauvoir, 1976: 90) I must . . . strive to create for men [sic] situations such that they can accompany and surpass my transcendence. (Beauvoir, 2004: 137) With this pragmatism in mind, then, what would a politics of reciprocity and freedom for all look like? Here I turn to Beauvoir’s proto-intersectional politics. The ideal of otherness alongside the need for political strategy presents ‘the dual task of productively accounting for difference and articulating modes of common- ality’ (Hines, 2020: 36). Alterity is fundamentally an intersectional concept (Stavro, 2007), allowing for the perspective that ‘**oppression has more than one aspect’** (Beauvoir, 1976: 89). As argued elsewhere (Stavro, 2007; Nicholas, 2014), Beauvoir’s ontological ethics can be used to argue for a **politics of commonality** and coalition **based on ‘experience of subordination’** (Stavro, 2007: 453) or of alterity, rather than identity. Given Beauvoir’s ethical position, ‘Coalitions that emerge are not based upon identity, nor are they simply strategic; they evolve from our commitment to improving existing human relations and organisations’ (Stavro, 2007: 452). If, for Beauvoir, **freedom is to be found in collective**, purposive projects with others, and **our freedom is contingent on that of others**, then coalitional politics with others in a state of alterity helps us to all transcend immanence. In Marso’s reading, ‘**collective** political **action** towards enhancing freedom for others, and hence for ourselves, **emerges** **as the best way to embrace human existence’**

#### Non-domination is the most important part of freedom. Pettit 5:

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 One: Structural Domination

#### Economic necessity puts workers in a place of subordination in the labor market. Gourevitch 2:

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

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 labor – 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.

#### Employers have dominating power in the workplace. Gourevitch 3

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

**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.

## Contention Two: Workplace Domination

#### Allowing the right to strike reverses power relations. Gourevitch 5:

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

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 retainingthe right to the job is a way of bringing 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.

#### Only an unconditional right to strike reduces domination, Gourevitch 6:

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**The worker’s interest in not being subject to** continuously **arbitrary authority is expansive**. The question of **compensation cannot be separated from** the organization and **control over work**. **Nor can the expansiveness** of this interest **be reduced to the** fact that workers cannot **fair**ly **bargain** for basic terms if they cannot also contest the wider range of managerial prerogatives. **All members of a democratic society have an independent interest** **in self-rule**. They have that latter interest whenever they find themselves in the kind of ongoing, formally coordinated, rule-bound relationships that are backed by coercive law. **This is just what a government is** (Dahl 1986, 111-135). Absent an actually democratic workplace, **the right to strike remains the primary way for workers to resist these arbitrary forms of authority.** **Strikes are** in many ways **superior to** protective **legislation**, **labor arbitration, and the courts** **because those formal** **processes are slow and can cover only a limited number of issues**. **Strikes are more immediate**, **powerful and reliable ways for workers to contest the employer’s otherwise arbitrary power.** In the process of challenging that form of authority **they challenge the very idea that** their **labor** power **is** properly seen as **a commodity**. They reject the notion that in making a labor contract they have alienated rights of control over their minds and bodies.