#### **I affirm the resolution resolved, A just government ought to recognize the right of workers to strike**

**We define the right of workers to strike as according to the French Constitution:**

**Morgan**, **Lewis** **&** **Bockius** Llp, 4-23-**2018**, (International Law Firm, "Strikes in France: A Manual for Navigating the Maelstrom," Lexology, https://www.lexology.com/library/detail.aspx?g=ccf252fb-d4f3-406d-9fa6-cdbf0eb2f98c, Published 4-23-2018 Accessed 10-7-2021 Wally)

THE DEFINITION OF **THE RIGHT TO STRIKE** A strike is **defined** under French labor law **as the collective and concerted cessation of work by** the **employees** of one or more companies in order **to make professional claims.** **When** the **strike falls within this definition**, **employees are protected against any sanction or dismissal action**. This protection is, however, lifted in the case of unlawful strike actions or abuse in the exercise of the right to strike. For civil servants and staff with special status, such as those at the SNCF, the conditions for engaging in lawful strikes are more restrictive. For example, they must be initiated by a trade union, and a strike notice must be given. The rules set out below mainly concern private-sector companies. In the private sector, a strike can be triggered at any time and without formality. The employer cannot command compliance with a notice period or specific formalities to exercise the right to strike, including by collective agreement. The suspension of the striker’s employment agreement The exercise of the right to strike suspends the performance of the employment agreement. Therefore, the employer does not have to pay salaries to strikers, provided that the payroll deduction is proportional to the actual working time that was spent on strike. (Otherwise, it will constitute a financial penalty, which is prohibited by French law.) The employer also does not have to provide paid days off or bank holidays that fall within the strike period. The employer cannot unilaterally order the strikers to catch up on the working hours lost due to the exercise of their right to strike. However, the employer whose employees were late or absent because of an external strike (such as a strike in the transport or electricity sectors) may force employees to make up for lost time. If, during the exercise of the right to strike, the employee is on a trial or notice period, this period must be extended for the duration of the strike. The prohibition of sanctions The employer cannot take any discriminatory measure or sanction against strikers because of their strike, in particular with regard to remuneration and social benefits. For instance, a specific bonus cannot be granted to non-striking employees only because they are not on strike. The employer may not dismiss an employee for exercising his/her right to strike, except in case of wilful misconduct intended to cause harm to the employer or disrupt the company. For example, employees who have personally and actively participated in violent and unlawful acts, assault and battery, or sequestration may be dismissed. The replacement of strikers The employer cannot hire employees through fixed-term employment agreements (such as the Contrat à Durée Déterminée, or CDD) or temporary work contracts to replace strikers, subject to criminal sanctions. However, it is possible to reorganize the tasks of non-strikers to cover those of striking employees. A non-striking employee can thus be temporarily placed on the job of a striker. The employer may also use the services of another company (subcontracting, etc.). The lockout ban The temporary closure of the company decided upon by the employer during a strike or lockout is unlawful and requires the employer to compensate the employees for the subsequent loss of salary. An exception is when the employer is unable to provide work to employees and has to close the company, for the safety of staff, customers, and/or property, for instance. Moreover, if the strikers decide to occupy the premises of the company, the employer may file emergency summary proceedings to expel them in the case of risk to the safety of persons and property. (This is generally very difficult to obtain.) RIGHTS AND DUTIES OF THE EMPLOYEE ON STRIKE The notion of lawful strike To benefit from the protection, employees must ensure that the strike falls within the definition mentioned above. The strike must lead to a total cessation of work. Voluntarily defective performance of work is considered an unlawful exercise of the right to strike. In this respect, the plan by employees in the energy sector to switch some cities off-peak or cut off electricity for Carrefour stores is unlikely to be considered lawful. Strikes must be aimed at professional demands. Since strikers must be personally interested in these demands, a solidarity strike is in principle unlawful. A strike is unlawful if it is intended as part of protests of a political movement against government decisions. On the other hand, it would be lawful if the movement includes professional demands concerning all workers, such as pensions. Abuse in exercising the right to strike A lawful strike can degenerate into abuse and can be sanctioned if it causes or threatens to disrupt the company. This is the case, for instance, if strikers decide to perform many successive short strikes in order to disorganize the company or to harm its economic situation. The responsibility of striking employees Striking employees may incur civil liability if they have personally committed unlawful acts during the strike. They may be required to compensate non-strikers for the loss of their wages if access to the company's premises had been blocked. Strikers may also be criminally liabile in the case of sequestration or violence. The French Penal Code also punishes any restriction to the freedom to work with imprisonment and a fine of up to 15,000 euros ($18,421), although such convictions are rare.

#### **Our Value is Autonomy**

#### **Autonomy is self government via dignity of the rational creature- meaning, each being is an end in itself.**

**Wood 99, Allen. “Autonomy as the Ground of Morality .” Autonomy as the Ground of Morality , Stanford, 1999, www1.cmc.edu/pages/faculty/jkreines/wood%20excerpt%20Autonomy%20as%20the%20ground%20of%20morality%20kant.pdf.**

**Those of us who are sympathetic to Kantian ethics usually are so because we regard it as an ethics of autonomy, based on rational self-esteem and respect for the human capacity to direct one’s own life according to rational principles. Kantian ethical theory is grounded on the idea that the moral law is binding on me only because it is a law proceeding from my own will. The ground of a law of autonomy lies in the very will which is to be subject to the law, and this leaves no room for any issue about why this will should obey the law. The idea of autonomy also identifies the authority of the law with the value constituting the content of the law, in that it bases the law on our esteem for the dignity of rational nature in ourselves, which makes every rational being an end in itself.**

#### **Ethics must start from the noumenal world – it avoids bias and prevents unjust maxims -- the moral question "what should I do?" assumes an agent with a freedom to choose, and not an object subject to causal determination.**

**Korsgaard 92:** Korsgaard, C. (1992). Creating the Kingdom of Ends: Reciprocity and Responsibility in Personal Relations. Philosophical Perspectives, 6, 305-332. doi:10.2307/2214250

Kant's response to this problem is to maintain that the question should not be asked. To ask how freedom and determinism are related is to inquire into the relation between the noumenal and phenomenal worlds, a relation about which it is in principle impossible to know anything. But our understanding of what this response amounts to will depend on how we understand the distinction between the noumenal and phenomenal worlds, and the related distinction between the two standpoints from which Kant says we may view ourselves and our actions. This is a large issue which I cannot treat here in a satisfactory way, I shall simply declare my allegiance. On a familiar but as I think misguided interpretation, the distinction between the two worlds is an ontological one; as if behind the beings of this world were another set of beings, which have an active and controlling relation to the beings of this world, but which are inaccessible to us because of the limits of experience. According to this view, we occupy both worlds, and viewing ourselves from the two standpoints we discover two different sets of laws which describe and explain our conduct in the two different worlds. We act on the moral law in the noumenal world, the law of self-love in the phenomenal world. This view gives rise to familiar paradoxes about how evil actions are even possible, and how we could ever be held responsible for them if they were. On what I take to be the correct interpretation, the distinction is not between two kinds of beings, but between the beings of this world insofar as they are authentically active and the same beings insofar as we are passively receptive to them. The "gap" in our knowledge exists not because of the limits of experience but because of its essential nature: to experience something is (in part) to be passively receptive to it, and therefore we cannot have experiences of activity as such. **As thinkers and choosers we must regard ourselves as active beings**, even though we cannot experience ourselves as active beings, **and so we place ourselves among the noumena**, necessarily, **whenever we think and act. According to this interpretation laws of the phenomenal world are laws that describe and explain our behavior. But the laws of the noumenal world are laws which are addressed to us as active beings; their business is not to describe and explain at all, but to govern what we do. Reason has two employments, theoretical and practical.** We view ourselves as phenomena when we take on the theoretical task of describing and explaining our behavior; we view ourselves as noumena when our practical task is one of deciding what **to do. The two standpoints cannot be mixed because these two enterprises-explanation and decision- are mutually exclusive. These** two ways of understanding the noumenal/phenomenal distinction yield very different interpretations of Kant's strictures against trying to picture the relation between the noumenal and phenomenal worlds. On the ontological view, the question how the two worlds are related is one which, frustratingly, cannot be answered. On the active/passive view, it is one which cannot coherently be asked. There is no question that is answered by my descriptions of how Marilyn's freedom interacts with the causal forces that determine her. Forfreedom is a concept with a practical employment, used in the choice and justification of action, not in explanation or prediction; while causality is a concept of theory, used to explain and predict actions but not to justify them. There is no standpoint from which we are doing both of these things at once, and so there is no place from which to ask a question that includes both concepts in its answer**. So, if I am myself Marilyn, and I am trying to decide whether to do something selfish, reflections on the disadvantages of my background are irrelevant. I must act under the idea of freedom, and so I must act on what I regard as reasons.** Being underprivileged may sometimes be a cause of selfish behavior, but it is not a reason that can be offered in support of it by a person engaged in it.So although we do not necessarily say of Marilyn: "her background gave her some tough incentives to deal with, but still it is up to her whether she treats them as reasons," that is what she must say to herself. I say that we do not necessarily say this, because, as I am about to argue, whether we say it depends on whether we have decided to enter into reciprocal relations with her and so to hold her responsible. But in that case, it is better regarded as something we say not about but to her.



#### **Our Criterion is Categorical Imperative, defined as “the principle that people must always be treated as ends in themselves, never merely as means to the ends of others.”**

#### **You should prefer it- the Categorical imperative is the best ethical framework- it is the only universalizable ethic and the only binding ethic.**

**Johnson & Cureton 16** Johnson, R., & Cureton, A. (2016). Robert Johnson is Professor of Philosophy and Chair of the Philosophy Department at the University of Missouri, Columbia. Johnson's PhD dissertation was written under the supervision Thomas E. Hill, Jr. at UNC Chapel Hill in the late 1980s and early 1990s. Adam Cureton is an Associate Professor of Philosophy at the University of Tennessee. His main research interests are in ethics, Kant, and issues of disability. He is currently co-editing a volume with Thomas E. Hill titled Disability in Practice: Attitudes, Policies and Relationships. Kant’s Moral Philosophy (Stanford Encyclopedia of Philosophy). Retrieved January 8, 2020, from Stanford.edu website: https://plato.stanford.edu/entries/kant-moral/#AutFor

**Although most of Kant’s readers understand the property of autonomy as being a property of rational wills, some, such as Thomas E. Hill, have held that Kant’s central idea is that of autonomy is a property, not primarily of wills, but of principles. The core idea is that Kant believed that all moral theories prior to his own went astray because they portrayed fundamental moral principles as appealing to the existing interests of those bound by them. By contrast, in Kant’s view moral principles must not appeal to such interests, for no interest is necessarily universal. Thus, in assuming at the outset that moral principles must embody some interest (or “heteronomous” principles), such theories rule out the very possibility that morality is universally binding. By contrast, the Categorical Imperative, because it does not enshrine existing interests, presumes that rational agents can conform to a principle that does not appeal to their interests (or an “autonomous” principle), and so can fully ground our conception, according to Kant, of what morality requires of us.**

#### **Non-universalizability is the cause of all oppression since it is willing subjective maxims that serves to benefit a specific group of people – the categorical imperative solves and is the only way to avoid ethical egoism since it’s objective.**

**Farr 02** [Arnold Farr (prof of phil @ UKentucky, focusing on German idealism, philosophy of race, postmodernism, psychoanalysis, and liberation philosophy). “Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative?” JOURNAL of SOCIAL PHILOSOPHY, Vol. 33 No. 1, Spring 2002, 17–32.]

**One of the most popular criticisms of Kant’s moral philosophy is that it is too formalistic.13 That is, the universal nature of the categorical imperative leaves it devoid of content. Such a principle is useless since moral decisions are made by concrete individuals in a concrete, historical, and social situation. This type of criticism lies behind Lewis Gordon’s rejection of any attempt to ground an antiracist position on Kantian principles. The rejection of universal principles for the sake of emphasizing the historical embeddedness of the human agent is widespread in recent philosophy and social theory. I will argue here on Kantian grounds that although a distinction between the universal and the concrete is a valid distinction, the unity of the two is required for an understanding of human agency. The attack on Kantian formalism began with Hegel’s criticism of the Kantian philosophy.14 The list of contemporary theorists who follow Hegel’s line of criticism is far too long to deal with in the scope of this paper. Although these theorists may approach the problem of Kantian formalism from a variety of angles, the spirit of their criticism is basically the same: The universality of the categorical imperative is an abstraction from one’s empirical conditions. Kant is often accused of making the moral agent an abstract, empty, noumenal subject. Nothing could be further from the truth. The Kantian subject is an embodied, empirical, concrete subject. However, this concrete subject has a dual nature. Kant claims in the Critique of Pure Reason as well as in the Grounding that human beings have an intelligible and empirical character.15 It is impossible to understand and do justice to Kant’s moral theory without taking seriously the relation between these two characters. The very concept of morality is impossible without the tension between the two. By “empirical character” Kant simply means that we have a sensual nature. We are physical creatures with physical drives or desires. The very fact that I cannot simply satisfy my desires without considering the rightness or wrongness of my actions suggests that my empirical character must be held in check by something, or else I behave like a Freudian id. My empiri- cal character must be held in check by my intelligible character, which is the legislative activity of practical reason. It is through our intelligible character that we formulate principles that keep our empirical impulses in check. The categorical imperative is the supreme principle of morality that is constructed by the moral agent in his/her moment of self-transcendence. What I have called self-transcendence may be best explained in the following passage by Onora O’Neill: In restricting our maxims to those that meet the test of the categorical imperative we refuse to base our lives on maxims that necessarily make our own case an exception. The reason why a universilizability criterion is morally signiﬁcant is that it makes our own case no special exception (G, IV, 404). In accepting the Categorical Imperative we accept the moral reality of other selves, and hence the possibility (not, note, the reality) of a moral community. The Formula of Universal Law enjoins no more than that we act only on maxims that are open to others also.16 O’Neill’s description of the universalizability criterion includes the notion of self-transcendence that I am working to explicate here to the extent that like self-transcendence, universalizable moral principles require that the individ- ual think beyond his or her own particular desires. The individual is not allowed to exclude others as rational moral agents who have the right to act as he acts in a given situation. For example, if I decide to use another person merely as a means for my own end I must recognize the other person’s right to do the same to me. I cannot consistently will that I use another as a means only and will that I not be used in the same manner by another. Hence, the universalizability criterion is a principle of consistency and a principle of inclusion. That is, in choosing my maxims I attempt to include the perspective of other moral agents. … Whereas most criticisms are aimed at the formulation of universal law and the formula of autonomy, our analysis here will focus on the formula of an end in itself and the formula of the kingdom of ends, since we have already addressed the problem of universality. The latter will be discussed ﬁrst. At issue here is what Kant means by “kingdom of ends.” Kant writes: “By ‘kingdom’ I understand a systematic union of different rational beings through common laws.”32 The above passage indicates that Kant recognizes different, perhaps different kinds, of rational beings; however, the problem for most critics of Kant lies in the assumption that Kant suggests that the “kingdom of ends” requires that we abstract from personal differences and content of private ends. The Kantian conception of rational beings requires such an abstraction. Some feminists and philosophers of race have found this abstract notion of rational beings problematic because they take it to mean that rationality is necessarily white, male, and European.33 Hence, the systematic union of rational beings can mean only the systematic union of white, European males. I ﬁnd this interpretation of Kant’s moral theory quite puzzling. Surely another interpretation is available. That is, the implication that in Kant’s philosophy, rationality can only apply to white, European males does not seem to be the only alternative. The problem seems to lie in the requirement of abstraction. There are two ways of looking at the abstraction requirement that I think are faithful to Kant’s text and that overcome the criticisms of this requirement. First, the abstraction requirement may be best understood as a demand for intersubjectivity or recognition. Second, it may be understood as an attempt to avoid ethical egoism in determining maxims for our actions. It is unfortunate that Kant never worked out a theory of intersubjectivity, as did his successors Fichte and Hegel. However, this is not to say that there is not in Kant’s philosophy a tacit theory of intersubjectivity or recognition. The abstraction requirement simply demands that in the midst of our concrete differences we recognize ourselves in the other and the other in ourselves. That is, we recognize in others the humanity that we have in common. Recognition of our common humanity is at the same time recognition of rationality in the other. We recognize in the other the capacity for selfdetermination and the capacity to legislate for a kingdom of ends. This brings us to the second interpretation of the abstraction requirement. To avoid ethical egoism one must abstract from (think beyond) one’s own personal interest and subjective maxims. That is, the categorical imperative requires that I recognize that I am a member of the realm of rational beings. Hence, I organize my maxims in consideration of other rational beings. Under such a principle other people cannot be treated merely as a means for my end but must be treated as ends in themselves. The merit of the categorical imperative for a philosophy of race is that it contravenes racist ideology to the extent that racist ideology is based on the use of persons of a different race as a means to an end rather than as ends in themselves. Embedded in the formulation of an end in itself and the formula of the kingdom of ends is the recognition of the common hope for humanity. That is, maxims ought to be chosen on the basis of an ideal, a hope for the amelioration of humanity. This ideal or ethical commonwealth (as Kant calls it in the Religion) is the kingdom of ends.34 Although the merits of Kant’s moral theory may be recognizable at this point, we are still in a bit of a bind. It still seems problematic that the moral theory of a racist is essentially an antiracist theory. Further, what shall we do with Henry Louis Gates’s suggestion that we use the Observations on the Feeling of the Beautiful and Sublime to deconstruct the Grounding? What I have tried to suggest is that instead of abandoning the categorical imperative we should attempt to deepen our understanding of it and its place in Kant’s critical philosophy. A deeper reading of the Grounding and Kant’s philosophy in general may produce the deconstruction35 suggested by Gates. However, a text is not necessarily deconstructed by reading it against another. Texts often deconstruct themselves if read properly. To be sure, the best way to understand a text is to read it in context. Hence, if the Grounding is read within the context of the critical philosophy, the tools for a deconstruction of the text are provided by its context and the tensions within the text. Gates is right to suggest that the Grounding must be deconstructed. However, this deconstruction requires much more than reading the Observations on the Feeling of the Beautiful and Sublime against the Grounding. It requires a complete engagement with the critical philosophy. Such an engagement discloses some of Kant’s very signiﬁcant claims about humanity and the practical role of reason. With this disclosure, deconstruction of the Grounding can begin. What deconstruction will reveal is not necessarily the inconsistency of Kant’s moral philosophy or the racist or sexist nature of the categorical imperative, but rather, it will disclose the disunity between Kant’s theory and his own feelings about blacks and women. Although the theory is consistent and emancipatory and should apply to all persons, Kant the man has his own personal and moral problems. Although Kant’s attitude toward people of African descent was deplorable, it would be equally deplorable to reject the categorical imperative without ﬁrst exploring its emancipatory potential.**

#### **Also Consequentialism fails for 4 reasons-**

#### **1)** **Infinite regression- Each consequence creates a new set of consequences so there’s no start or end point**

#### **2)** **Sequencing- Intents chronologically come first so they’re a prerequisite to consequences and we can only be morally culpable for what we will for, or else there is no reason to be moral if I’m being punished for something I can’t control.**

#### **3)** **Value- Consequentialism justifies killing people arbitrarily- it is the basis of all oppressive systems like slavery and capitalism. This means even if they win that deontological frameworks aren’t perfect, they are still a prerequisite to establishing ethical systems that prevent oppression which should be your tie breaker.**

**4)There IS an act omission distinction or else you would be held morally culpable for everyone else dying in the status quo: ie you didn’t donate to my dying grandpa’s go fundme so you’re responsible for his death. That doesn’t make sense**

## Contention **1: Exclusive Representation**

#### **FIRST, The US model of a Right to Strike focuses too heavily on the exclusive representation of singular unions – that creates a dignity distinction between majoritarian unions and laborers, only affirming the resolution can solve**

James Gray **Pope et. Al.**, 11-22-**2017** (James Gray Pope. Distinguished Professor of Law Emeritus, Rutgers University. Ed Bruno, labor attorney. and Peter Kellman is a lifelong trade union activist who participated in the Civil rights and Anti-war movements of the 1960s, the anti-nuclear/safe-energy, environmental movements of the 1970/80s and is currently part of the New Agriculture Movement of the twenty-first century. The Right to Strike and the Perils of Exclusive Representation (2017). Boston Review, Forum 2, 2017, at 107, Available at SSRN: <https://ssrn.com/abstract=3074092> Accessed 10/7/2021 Wally)

We propose that the **unionism** decreed **by the NLRA is fatally flawed**; that although we tend to think today of the thirty-plus per cent union density of the 1950s as the good old days, it wasn’t; and that if it becomes politically possible to amend the NLRA sufficiently to make possible union revival, then it will also be possible to jettison the Act’s crabbed definition of unions. **At the heart of the difficulty lies** the system of **exclusive representation**. **Unions** that enjoy the government-conferred status of exclusive representative **have little incentive** and few legal avenues **to build the movement as a whole**. As amended by the Taft-Hartley Act of 1947, the NLRA carves workers up into government-defined “bargaining unit” boxes, anoints **a single union as the exclusive representative** of the workers in any particular box, and **restricts that union to bargaining over “terms** and conditions **of employment**,” a category that does not include a host of issues of vital concern to workers, including plant closings, automation, and control of pension funds.36 **Unions** stand on relatively solid legal ground when they attend to the immediate self interest of workers in a single box, but **risk** employer **retaliation and** legal **sanctions if they act on** the view that the **fortunes of all workers** rise and fall together.37 This fits right in with the flat ban on secondary boycotts, which blocks the workers in each bargaining unit box from acting in solidarity with workers in other boxes. But it gets worse. Unlike corporations, which must compete in the marketplace to retain their investors, **Taft-Hartley unions enjoy** government-conferred **monopolies over their workers**. (The fact that union busters repeat this point ad nauseum does not make it any less true.) Once a union establishes itself as the exclusive representative in a bargaining unit, it **extinguishes the freedom of workers** in that unit **to shift their allegiance to another union** except through an arduous process of “decertification” that **presents the employer with** a golden [**The] opportunity to dispense with unions altogether**. Union democracy can provide workers with considerable control in some settings (especially single-facility local unions, sites of some of the most vigorous popular democracy anywhere in the United States), but the law gives national union leaders enormous latitude to suppress or avoid democracy.38 This kind of power presents union leaders with an almost irresistible temptation to offer, in Bob Fitch’s memorable phrase, “solidarity for sale” to employers and politicians.39 When a union achieves the status of **exclusive representative**, it **takes ownership of the workers’ right to strike**. From that point on, **the union may trade the right away** **and** – even if it doesn’t – the **workers may be fired for striking without** the **union’s** **approval**.40 (**Compare France, where the right to strike belongs to workers**, not unions, **and is often exercised in support of class-wide demands**.) Even the most militant labor leaders have difficulty resisting the temptation to accept a blanket nostrike clause in exchange for stability in their bargaining unit boxes, whence all dues flow. As a result, most union workers are prohibited by contract from striking during all but the window periods between contracts. Because contracts expire at various times, sympathy strikes and political strikes are effectively precluded.41 Exclusive representation encourages the sale of solidarity not only to employers, but also to politicians. For a vivid illustration, we need look no further than the response of labor leaders to Bernie Sanders’ presidential campaign. As Rich Trumka acknowledged after the fact, Sanders “elevated critical issues and strengthened the foundation of our movement.” In campaign season, however, the overwhelming majority of national labor leaders (not including Trumka, who remained neutral) bowed down to the candidate backed by Wall Street, Hillary Clinton. Given the system of exclusive representation, they could imagine that it would better serve their members to curry favor with the likely winner. Exclusive representation also opens the door to special restrictions on labor rights. Unionists (including us) routinely complain that unions are denied constitutional rights enjoyed by other voluntary associations, for example the rights to engage in secondary picketing and political boycotts.42 But exclusive representation gives courts a plausible response, namely that because government confers the special privilege of exclusive representation on unions and not other associations, it can impose special restrictions as well.43 Finally, **exclusive representation undermines** organized **labor’s claim that unionism serves as a vehicle** not only **for higher wages**, but also for industrial democracy.44 At the time of Sweeney’s victory two decades ago, nobody imagined that anti-labor interest groups were about to launch a successful cultural offensive against unionism, presenting themselves as defenders of democracy in the fight over EFCA (Save our secret ballot!), and of workers’ constitutional rights in the combined legislative and litigation campaign for the “right to work” without paying union dues.45 Only the unexpected death of Justice Antonin Scalia stopped the Supreme Court from terminating the union shop in the public sector, an obstacle likely to be removed when Trump appoints Scalia’s successor. For most unionists, resistance to the “right to work” is almost as instinctive as respect for picket lines. This is justified as necessary to solve the free-rider problem. But there are plenty of solutions to that problem that do not involve forcing workers to pay dues to a union that owns their bargaining unit box solely because it mustered majority support at some point in the past.46 It would be possible, for example, to require a payment but leave it up to workers to decide what union should receive it.47 Such a system would fit well with a collective bargaining structure modeled on those of France or Italy, where employers are required to bargain over wages at the national level with the most representative union in the industry, but other unions co-exist and compete with that union and can displace it if workers so choose.48 Given the current political situation, questioning exclusive representation might seem academic.49 But we need to be thinking long-term. In a recent book, for example, Tom Geoghegan suggested that the movement might consider bargaining away exclusive representation in exchange for rights protections like the Employee Empowerment Act.50 One might disagree about the particular quid pro quos, but this is the kind of discussion that the movement needs now, not only to shape the long-term campaign for legal reform, but also to inform present-day organizing. If, as expected, the Supreme Court strikes down the union shop in the public sector, organized labor will be presented with the opportunity – and necessity – of developing new systems. In states where labor remains strong, it might be possible to experiment with alternatives, for example solving the free rider problem by requiring workers to pay a representation fee, but giving them a choice of organizations. In the private sector, we might put more energy into members-only or non-majority unionism. As Charles Morris has shown, there is a strong legal case to be made that the NLRA requires employers to bargain with non-majority unions over the wages and conditions of their members only.51 Earlier this year, NLRB Member Kent Hirozawa endorsed this position in a concurring opinion.52 And for years, observers have predicted that the Board would reverse its current rule that, in the absence of an exclusive representative, a worker can be fired for insisting on bringing a representative into a disciplinary meeting. With or without assistance from the Board, non-majority unionism – already under way in some locations – offers promising opportunities to build unions while operating outside the system of exclusive representation. Prior to the NLRA, this was the standard path to union recognition. As the best organizers testify today, organizing is inevitably a process of building power in the face of employer resistance.53 What better way to accomplish that than to begin functioning as a union?

#### **Exclusive representation results in racial and gender disparities caused by majoritarian union power and prevents industry wide bargaining**

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Government protection of labor organizing came with government regulation of labor organizations. The labor organizations to which the NLRA gave a special role in the self-regulation of industry were no longer just private-membership organizations but were now imbued with the public interest.18 Law therefore created a tangle of incentives towards less radical, less political, more self-interested behavior.19 The Norris-LaGuardia Act20 and the NLRA reduced outright repression of labor as a social movement, but they channeled union activism towards a state-preferred goal—collective bargaining—and away from more radical movement objectives. 21 The **NLRA’s** promotion of union organizing on a certain **model changed** **the structure under which unions organized**. 22 As Andrias and others have argued, it did this by requiring unions to adhere to the NLRB’s determination of what constituted an appropriate bargaining unit (typically based in a single location of a single enterprise), rather than what the union considered best for its organizational objectives and worker interests (which could have been industry-wide or sectoral).23 The protection of worker power through mandated union security based on **exclusive representation** **enabled racist unions to exclude people of colo**r24 **while empowering conservative and quiescent unions to push out more radical unions**.25 And, **as we now see with police**, **legal protections for majority unions** have **enabled** union **leaders to thwart challenges from reform-oriented or minority groups**.26 Antilabor interpretations of the NLRA increased the costs of movement activism, including sitdown strikes (which had been crucial to organizing Detroit in 1937), slowdowns (useful for workers who fear being fired for striking), and secondary picketing or boycotts (which are necessary to exert effective power in supply chains and in the service economy).27 Courts and, to a lesser extent, the NLRB, imported pre-NLRA notions from master-servant law into the new labor law in ways that **constrained the rights of workers to act collectively**.28 Regulation of the internal affairs of unions increased financial transparency but did not invariably make unions more democratic and in fact increased the power of government and union opponents to channel union activity.29 The vast literature on twentieth-century labor and civil rights shows how business skillfully **deployed the menaces of radicalism, socialism, and communism to tar** **ambitious** labor and civil-rights **organizing**. The Taf-Hartley Act’s anticommunist oath requirement removed all NLRA protections from unions whose leadership refused to sign oaths repudiating communism, and refused access to the NLRB for such unions.30 The statute thus leveraged the protections of law and administrative processes to force unions to push radicals out of leadership positions.31 The National Association for the Advancement of Colored People and some other civil-rights groups sought to preserve their legitimacy and influence by taking a strong stance against communists in their ranks.32 Although there is plenty of blame to go around—indeed, some American communists did the cause of labor and civil rights no favors33—the **purge of progressives and radicals reduced the vigor of organizing and derailed** certain **efforts to end race and sex discrimination on the part of employers and unions**.34 History invites us to think about what happens after unions or other social movement organizations gain power. At the end of World War II, just as unions were poised to win (through a massive strike wave) the wage increases that had been long delayed by wartime wage and price controls, business used the labor upsurge as a wedge issue to win Congress for the first time since 1932. Congress scaled back labor protections over President Truman’s half-hearted veto, insisting that labor had become too powerful. The Taf-Hartley Act of 1947 adopted a multipronged approach to reducing union power. It granted legal protections to workers who resisted unionization (thus enabling employers to undermine solidarity).35 It denied unionization rights to independent contractors and lowlevel supervisors, even though they historically had belonged to unions and needed the protections of collective representation.36 It prohibited certain forms of labor protest.37 It forced lefists out of leadership positions.38 It made unions subject to suit as entities.39 It made collective-bargaining agreements enforceable by judges40 who used that power to enjoin strikes in violation of collectively bargained no-strike clauses and to award damages against unions that were insufficiently vigorous or competent in enforcing contracts against employer breach.41 The Landrum-Griffin Act continued the work of the Taf-Hartley Act by eliminating legal protection for secondary protests and by regulating internal union affairs.42 The ostensible purpose of this legislation was to curb union abuses of power and corruption, and make unions more responsible to their members and to their contracts with employers.43 But an important purpose and effect was also to weaken unions and reduce labor protest. As I have documented elsewhere, the legislation used unions’ institutional power as leverage to reduce their activism by punishing union picketing with crushing damages liability and injunctions.44 This, in turn, required union lawyers to protect the union by counseling against certain forms of protest, reviewing the content, timing, and location of union picket signs and other protest tactics, and even censoring union newspapers.45

## Contention 2: Domination

**The workplace is a site of domination that forces workers to listen to the arbitrary will of their employers with no current checkback**

Alex **Gourevitch** **16** (Assistant Professor of Political Science at Brown University). “Quit‐

ting Work but Not the Job: Liberty and the Right to Strike.” American Political Science

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perspectives‐on‐politics/article/abs/quitting‐work‐but‐not‐the‐job‐liberty‐and‐the‐

right‐to‐strike/27B690FEDDBCF002FB20FB50E852D6A3

**Strikes** are ways of **resist**ing **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, everchanging 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.62A 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 con‐trolled 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 entrepreneurial con‐trol” 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.63 A general set of of‐ten 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**, for their **sexual orientation**, for being too sexually appealing, or for not being appealing enough.64 Workers **face being given more tasks than can be performed** in the allotted time, being **locked in the workplace overnight**, being **forced to work in extreme heat or** physically **hazardous but not illegal conditions**, **or** being **ar‐bitrarily isolated from** the rest of one’s **coworkers**.65 **Some** workers **are forced to wear diapers rather than go** **to the bathroom**, **are refused lunch breaks** or pressured to work through them, are forced to keep working after their shift is up, are denied the right to read or turn on air conditioning during break, or are forced to take random drug tests **and to perform other humiliating or irrelevant actions**.66 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.

**If the right to strike is coercive, that coercion is justified because it's**

**the only way that workers can meaningfully enforce their rights.**

**Gourevitch 21**, Alex. “Quitting Work But Not The Job: Liberty And The Right To Strike.”

Perspectives on Politics 14:2. June 13, 2016. Web. October 12, 2021.

<https://www.cambridge.org/core/journals/perspectives-on-

politics/article/abs/quitting-work-but-not-the-job-liberty-and-the-right-to-

strike/27B690FEDDBCF002FB20FB50E852D6A3>.

A second problem follows on the first. If **workers have rights to the jobs they are striking then they** must **have** some **powers to enforce those rights**. Such powers might include mass picketing, secondary boycotts, sympathy strikes, coercion and intimidation of replacement workers, even destruction or immobilization of property— the familiar panoply of strike actions. While workers have sometimes defended such actions without using the specifically juridical language of “rights,” in many cases they have used that kind of appeal.21 **Even when** they have **not employed rights discourse**, they have **invoked** some **related notion of demanding fair terms to their job**.22 Each and any of the above listed activities of a strike—**pickets, boycotts, sympathy actions**—**are** part of the **way workers** not only **press their demands** but claim their right to the job. Strikers regularly implore other workers not to cross picket lines and take struck jobs. These are more than speech acts. At the outer edges, they amount to intimidation and coercion. Or at least, **workers claim the right to intimidate and coerce if the state will not itself enforce this aspect of their right to strike**. Liberal societies rarely permit agroup of individuals powers that come close and even cross over into rights of private coercion.It is no surprise that regulation and repression of these strike activities have been the source of some of the most serious episodes of labor related violence in U.S. and European history.23 So, alongside the unclear basis for the strikers’ rights to their jobs, the problem for a liberal society is that this right seems to include private rights of coercion or at least troubling forms of social pressure.