## FRAMEWORK

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

#### Before presenting the substantive affirmative arguments, I will provide a few definitions and clarifications:

#### FIRST, The resolution does not specify a specific state which means that the resolution must be generalized to states as a whole. Disadvantages to specific countries should be weighed against the advantages to the world

#### SECOND, The word Unconditional is defined by

Merriam Webster, No Date(, "Definition of UNCONDITIONAL," https://www.merriam-webster.com/dictionary/unconditional, Accessed 10-7-2021 Wally)

Definition of unconditional 1: not conditional or limited : ABSOLUTE, UNQUALIFIED

#### THIRD, We define the right of workers to strike as according to the French Constitution:

* Employees get to strike, it doesn’t have to be through a union, they can’t incite violence and they can’t be fired or replaced with new workers. You have to stop working, you can’t sabotage the company
* The unhighlighted portions can be highlighted to answer specific negative arguments as they arise

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.

#### The value is morality - it’s derived from the word “ought” which indicates a moral obligation in the resolution.

#### The value criterion is minimizing structural violence

#### First, the concern for the suffering and oppression of others is a prerequisite to ethics and morality.

**Kang 97:**

(Yang Kang is a published philosophical writer in the Tijdschrift Voor Filosofie (Magazine for Philosophy). “LEVINAS ON SUFFERING AND SOLIDARITY. ”Tijdschrift Voor Filosofie, vol. 59, no. 3, 1997, pp. 495–500, JSTOR, September 1997, https://www.jstor.org/stable/40887754).

 Levinas' whole philosophy is, I believe, nothing but a series of unceasing reflections of these questions. As is well-known, he changed the whole framework by which we can think the meaning of suffering, the meaning of God and faith, and the meaning of morality. As a motto for this new framework and a new direction of thinking, Levinas has chosen Plato's expression: the Good beyond Being (epekeina tes onsiaj ; le Bien au dela de l’étre). This means: **the ethical has priority over** the ontological, It could even be said that the ethical **{and} is the foundation of the ontological.** Levinasian distinctions, for instance, between the Same and the Other, Totality and Infinity, the Saying and the Said. Otherwise than Being and Being, all these distinctions indicate this fundamental insight of the priority of the ethical, The ethical, i.e., my responsibility for the Other, one-for-the- Other, is, for Levinas, the source of all and every meaning. After the end of theodicy, i.e., after the collapse of conventional faith and morality, **the ethical alone can give meaning to life,** faith **and moral goodness.** It isn't, therefore, surprising that Levinas **{it} approaches human pain and suffering from an ethical perspective.** As we mentioned earlier, the most primitive reaction to pain and suffering is a cry, a moan, and a groan. This is the spontaneous reaction of a wounded man. In the utmost pain, pain too painful to be expressed in articulated words, there is no other means to express the extreme painfulness of pain other than just crying, moaning, groaning or sighing. This reaction of the patient calls for action: action for help from the other. A cry, a moan, or a sigh is not locutionary, but perlocutionary (if I might make use of Austin’s terminology): it does not describe a fact ; it is a call (appel) for help. Precisely at this point, Levinas is very keen to show that can observe the double face of suffering: suffering is, on the one hand, extreme passivity, impotence, abandonment and solitude (Sl, 109/US, 158); it is an ,, enchainment to oneself" (T A, 36/ TO, 55), an , , impossibility of detaching oneself from the instant of existence” , ,, the very irremissibility of being" , ,, the impossibility of retreat” , an ,, absence of refuge”, and in this sense the ,, impossibility of nothingness" (TA, 55/TO, 69). On the other hand, suffering is unassummable and unassumability itself. Unassumability, or unseizability, this tells us of the existence of an absolute exteriority or absolute alterity which cannot be reduced to oneself by any means whatever. Therefore, in the unassumability, there is a possibility of a half opening, an opening of alterity ,, wherever a moan, a cry, a groan or a sigh happens there is the original call for aid from the other ego whose alterity, whose ex- teriority promises salvation. " (SL. 109-110/US, 158). This is to say that suffering, in its unassumability, in its groan and cry without any possibility of understanding and accepting it, opens up the possibility of a relation with the Other. The opening of a possibility of a relation with the Other is, however, in itself still a possibility, not an actuality. In this sense, Levinas calls this opening ,, a half opening.” **There must be,** therefore, **a reaction.** i.e., an action in answer **to the call of someone who is inflicted by pain.** This response to the call, to the appeal of the inflicted, the dispossessed, the poor, the persecuted or the stranger is to make oneself responsible for the other person. Being responsible for the other person is ,, ethical”  in the pure sense of the word. **The ethical, or being ethical, implies exposing oneself to the other person's pain and suffering.** In this context, Levinas proposes two theses: first, suffering opens upon suffering the ethical perspective of the inter-human; second, the just suffering in me for the suffering of the other person makes suffering meaningful which is otherwise intrinsically useless and unjustifiable (See SI, 110-111/US, 159). This is Levinas' answer to the question: ,, Is there any possibility to make suffering meaningful?"Levinas' answer has relevance, of course, to the question of the meaning of faith and morality after the collapse of theodicy.

I think it is very important to notice the fact that Levinas does not say, first of all, that suffering can be meaningful, if it is seen from an ethical perspective. Of course, he is concerned with whether a meaning could be found in the intrinsically meaningless suffering. ,, Ethics” could be an answer to that question: an ethical relation to the Other could provide meaning to suffering, Levinas here deviates from our expectation, He says instead: ,, suffering opens upon suffering the ethical perspective of the inter-human.” This means: suffering is not one of several themes which could be approached from an ethical perspective. Suffering is precisely the opening of the ethical perspective. This is to say: the ethical perspective can be opened, if and only if we listen to the cry and the groan of people afflicted with pain. I think this is the most fundamental message of Levinas. **The concern for the other person's suffering must be foresmost ; all other factors,** for example, the respect for the moral law, happiness or the preservation of community **are of minor importance for ethics.** In **this context**, we can understand why Levinas **lays** so **much emphasis on the epiphany of face. The face of which** Levinas is speaking **is not the face of the king, the dictator or the rich, but** the face of the poor, the orphan, the widow, and the stranger: the face of a man or woman in suffering. As far as we are not confronted with this face which is in pain and suffering, we can live without any care for the other, we do our work, we can do business with people, we can have relations with other persons. This dimension of life is basically,, economic”: our way of dwelling in the world (TI, 125-149/ Tal, 152-174). When we are confronted with the face of the Other, and listen to him, then ethics infiltrates our economic life. Levinas writes: , , Ethics is an optics" (TI, xii/TaI, 23; cf.TI, xvii/TaI, 29; TI 51 ; Tal 78). If ethics is an optics, that is, if ethics is a look, what is then the object of this looking? Stars in heaven and the moral law in me? I believe, Levinas {it} intends the suffering face **of the unprivileged** people. Ethics is doing justice. Isn't it strange that all the great ethical systems of Western tradition, for instance, utilitarianism and the Kantian ethics of the modern age, have neglected the suffering of other persons?

#### Second, evaluating structural violence comes first- it prevents moral exclusion and key to just action.

**Winter and Leighton 99:**

(Deborah DuNann Winter and Dana C. Leighton. Winter|[Psychologist that specializes in Social Psych, Counseling Psych, Historical and Contemporary Issues, Peac3e Psychology. Leighton: PhD graduate student in the Psychology Department at the University of Arkansas. Knowledgable in the fields of social psychology, peace psychology, and ustice and intergroup responses to transgressions of justice] “Peace, conflict, and violence: Peace psychology in the 21st century.” Pg 4-5)

Finally, to recognize the operation of structural violence forces us to ask questions about how and why we tolerate it, questions which often have painful answers for the privileged elite who unconsciously support it. A final question of this section is how and why we allow ourselves to be so oblivious to structural violence. Susan Opotow offers an intriguing set of answers, in her article Social Injustice. She argues that **our normal perceptual cognitive processes divide people into in-groups and out-groups. Those outside our group lie outside our scope of justice. Injustice** that would be instantaneously confronted if it occurred to someone we love or know **is barely noticed** if it occurs to strangers or those who are invisible or irrelevant. We do not seem to be able to open our minds and our hearts to everyone, so **we draw conceptual lines between those who are in and out of our moral circle. Those who fall outside are morally excluded, and become either invisible, or demeaned in some way so that we do not have to acknowledge the injustice they suffer.** Moral exclusion is a human failing, but Opotow argues convincingly that it is an outcome of everyday social cognition. To reduce its nefarious effects, we must be vigilant in noticing and listening to oppressed, invisible, outsiders. Inclusionary thinking can be fostered by relationships, communication, and appreciation of diversity. Like Opotow, all the authors in this section point out that **structural violence is not inevitable if we become aware of its operation, and build systematic ways to mitigate its effects.** Learning about structural violence may be discouraging, overwhelming, or maddening, but these papers encourage us to step beyond guilt and anger, and begin to think about how to reduce structural violence. All the authors in this section note that the same structures (such as global communication and normal social cognition) which feed structural violence, can also be used to empower citizens to reduce it. In the long run, reducing structural violence by reclaiming neighborhoods, demanding social jus- tice and living wages, providing prenatal care, alleviating sexism, and celebrating local cultures, will be our most surefooted path to building lasting peace.

## Contention 1: Exclusive Representation

#### Contention 1 is ending Exclusive Representation in the United States

#### FIRST, The US model of a Right to Strike focuses too heavily on the exclusive representation of singular unions – that undermines union effectiveness and detracts from substantive labor movements, 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?**

#### There are two impacts:

#### The First Impact is Minority Progress: Exclusive representation results in racial and gender disparities caused by majoritarian union power and prevents more radical and 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 color24 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

#### The Second Impact is Economic Inequality and collective action – Red for Ed and Fight for 15 prove that strikes are effective and popular – as traditional union density decreases, actions like the resolution are key to decreasing economic inequality

Kate Bahn, 8-29-2019, (Director of Labor Market Policy and Interim Chief Economist Equitable Growth, "The once and future role of strikes in ensuring U.S. worker power," Equitable Growth, https://equitablegrowth.org/the-once-and-future-role-of-strikes-in-ensuring-u-s-worker-power/, Published 8-29-2019 Accessed 10-7-2021 Wally)

Monopsony power is a situation in the labor market where individual employers exercise effective control over wage setting rather than wages being set by competitive forces (akin to monopoly power, where a limited number of firms exercise pricing power over their customers.) In a new Equitable Growth working paper by Mark Paul of New College of Florida and Mark Stelzner of Connecticut College, the role of collective action in offsetting employer monopsony power is examined in the context of institutional support for labor. Paul and Stelzner construct an abstract model with the assumption of monopsonistic markets and follow the originator of monopsony theory Joan Robinson’s insight that unions can serve as a countervailing power against employer power. Their model shows that institutional support for unions, such as legislation protecting the right to organize, is necessary for this dynamic process of balancing employers’ monopsony power. In an accompanying column, the two researchers write that they “find that a lack of institutional support will devastate unions’ ability to function as a balance to firms’ monopsony power, potentially with major consequences … In turn, labor market outcomes will be less socially efficient.” In short, **policies and enforcement that support collective action such as strikes not only creates benefits for workers directly but also addresses a larger problem of concentrated market power**. The return of strikes in the U.S. labor market Within the past few years, strikes have been revived as a bargaining tool. “Red for Ed” became the name referring to teachers strikes that took place across traditionally conservative right-to-work states. Beginning with the closure of all schools in West Virginia in 2018 following 20,000 teachers across the state walking out, this movement spread to Oklahoma, Kentucky, Arizona, and Colorado, among other places. **These strikes were led by rank-and-file union members, rather than by union leadership, rendering them illegal under the Taft-Hartley Act,** which prohibits so-called wildcat strikes. **These strikes led to significant gains for these public-sector workers through organizing against policymakers rather than direct management**. Before Red for Ed, the “Fight for Fifteen” movement starting in 2012 and “OUR Walmart” starting in 2010 exemplified labor organizing in new mediums by conducting worker-led actions against large corporations that directly employ or control the employment (as in the franchisor-franchisee model) of low-wage workers. **The efforts of Fight for Fifteen directly impacted New York state’s minimum wage increase to $15 per hour and has paved the way for a national movement for a higher minimum wage.** OUR Walmart led walkouts and Black Friday protests in the years leading up to Walmart’s decision to increase wages. Many structural changes, such as the fissuring of the workplace, have reduced the ability of private-sector unions to make gains against employers, yet these strikes and labor actions represent an opportunity for growth. With the U.S. labor market increasingly dominated by the services sector, these strikes were conducted by workers whose jobs cannot move elsewhere and whose work we interact with in our daily lives. Ruth Milkman of the City University of New York describes these labor actions as similar to those that existed before the Fair Labor Standards Act of 1938 protected the right strike (before these rights were subsequently chipped away by the Taft-Hartley Act 20 years later) in order to unionize. With popular and successful strikes in unexpected places, what will the role of strikes be in the future? Will workers continue recognize the strength of the strike and other labor actions, and will policymakers and enforcers make it a successful tool for increasing worker bargaining power? Research by Alex Hertel-Fernandez, Suresh Naidu, and Adam Reich of Columbia University looked at the response to strikes following the Red for Ed movement in conservative states and found that **residents of areas affected by the teacher walkouts broadly supported the strikes**, with 39 percent saying they strongly supported the walkouts and another 27 percent somewhat in support of the walkouts, including half of self-identified Republicans supporting the strikes. **What’s more, the three researchers found that families that learned about them from their teachers or directly from the union had even stronger support for the strikes, compared to those who learned about them from other sources, such as talk radio**. First-hand knowledge of strikes increases support for them. In addition to Hertel-Fernandez’s work showing broad support for unions generally and increasing support for bold labor actions, more policymakers and advocates are providing much-needed proposals on how to foster a robust U.S. labor market and strengthen institutions that would make collective action more successful. Emblematic of this is Harvard Law’s Labor and Worklife Program’s Clean Slate Project, led by Sharon Block and Ben Sachs of Harvard University, which gathers academic experts and labor organizers to develop strong proposals that would increase worker bargaining power. Multiple 2020 presidential campaigns have followed suit, with new proposals to boost unions. Conclusion Unions in the United States are at their lowest level of density since they became legal around 80 years ago, with 6.4 percent of private-sector workers in unions today. **Yet there is increasing energy for bringing back this crucial force to balance the power of capital and ensure the fruits of economic growth are more broadly shared among everyone who creates it. Strikes are a compelling tool for dealing with rising U.S. income and wealth inequality—just as they were in an earlier era of economic inequality, when unions first gained their legal stature in the U.S. labor market.**

## Contention 2: International Human Rights

#### The recognition of a right to strike is a prerequisite to the protection of every other human right – it’s direct approach and potential challenge to economic growth makes it particularly effective in changing the social order to protect the human rights of all

Jacob Samuel Bartholomew-Smith, 2021 (LLM Candidate at University of Oslo. “The Right to Strike In International Human Rights Law” <http://urn.nb.no/URN:NBN:no-88660> Published 2021; Accessed 10-07-2021; Wally)

This analysis has demonstrated that the right to strike is an international human right. However, in Chapter 1 it was shown that there are those who fear that rights discourse would do damage to labour rights by depoliticising the structural causes of workers’ oppression and eroding the basis of solidarity on which the labour movement was built. What has this analysis revealed about these claims? The right to strike has its roots in workers’ struggle against the injustices of capitalism. It is premised on the imbalance of power between worker and employer. That the freedom of association has been interpreted to include a right to strike in the supervisory bodies of the ILO, ECHR and to a lesser extent the ICCPR, shows that the struggle between labour and capital has a role to play in shaping the meaning of human rights. To this end, O’Connell’s claims that human rights should not dismissed as an “ideological mask for the status quo” is correct, and human rights 326 **can be deployed in ways which challenge the logic of capital.** 325 Ibid, 223-224 O’Connell (2018b: 983) 326 48 of 54 Candidate No.7015 Moyn expressed his **concern that human rights are a “powerless companion**”, rather than a “threatening enemy” which will prompt a new social bargain. It is suggested here that the development of the human right to strike, especially **the right to take political strike action discussed in Chapter 4, might contribute to assuaging this concern**. As Novitz observes, **the ability to inflict economic damage means that the right to strike “is a more effective form of protest than marching in the streets.” If international human rights law is able to provide a source of protection for such** 328 **action, then workers will find themselves better equipped to seriously challenge the extant social order**. **Furthermore, it is a weapon which workers can deploy on their own, without reliance on lawyers and NGO**s. Youngdahl and Kumar expressed their concerns that the discourse of human rights would be unable to encompass the most important value of the labour movement, solidarity. In order to eval 329 - uate this concern, Chapter 4 examined the extent to which solidarity strikes are permitted under international human rights law. It is in this area that human rights discourse is found wanting. **The RMT judgment shows that courts steeped in the liberal tradition have not provided the right to strike with its fullest expression**. Even in the ILO, where the representatives of workers’ join those of States and employers, it is the principle relating to solidarity action that remain the most underdeveloped. Youngdahl and Kumar have good reasons to be concerned and, as the Germanotta recognises,330 developing solidarity will be of fundamental importance in the struggle against globalised capital. **However, the convergence of labour law and human rights law remains a promising site for developing transformative practices which challenge the extant social order**. Although we should be concerned with what labour law has to lose, **we must also pay attention to what human rights stand to gain. The right to strike has at its core the demand for social justice, the reduction in disparities of economic power. If the convergence of labour rights and human rights impresses the importance of social justice on the later, then the human rights community would do well to pay close attention to developments in this area. If the convergence of labour law and human rights law is to teach us anything, it must be that “human rights cannot exist without social justice.”**

#### International Human Rights and structural violence are inherently linked – material increases in one result in material decreases in the other

Kathleen Ho, 2007 (Kathleen Ho has her MA degree in Human Rights from the University of Essex. “Structural Violence as a Human Rights Violation” Essex Human Rights Review Vol. 4 No. 2 September 2007. [http://projects.essex.ac.uk/ehrr/V4N2/ho.pdf Accessed 10-07-2021](http://projects.essex.ac.uk/ehrr/V4N2/ho.pdf%20Accessed%2010-07-2021); Wally)

Paul Farmer posits, ‘human rights can and should be declared universal, but the risk of having one’s rights violated is not universal’.62 This observation is at the heart of structural violations of human rights. **There are systemic and structural causes that place some populations at a greater risk of human rights violations than others**. This inequality in risk can be traced to uneven distributions of power. This central tenet of structural violence reveals the pattern of human rights violations that manifest themselves as economic and social inequalities. Structural violence, as this essay has shown, exists when there is an avoidable gap between actual and potential abilities to meet human needs. **This framework is applicable to human rights violations in that constrained agency plays a pivotal role in how individuals experience this gap between the actual and the potential**. When economic and social structures conspire to limit one’s agency to the extent that fundamental human needs cannot be met then structural violence becomes a structural violation of human rights. This essay used poverty to exemplify how **structural violence is a useful theory to locate the origins of structural violations of human rights**. After an examination of the nature of poverty distributions and how structures are responsible for the persistence in poverty, it was shown that poverty not only causes human rights violations, but, under the formulation of Amartya Sen, also itself constitutes a violation of human rights as it exemplifies constrained agency. Finally, when **applying structural violence to the human rights discourse**, there emerges a clear emphasis on social and economic rights. The centrality of the principle of equality in structural violations resonates with the focus on equality in the foundations of social and economic rights (as distinct from freedoms and liberties in civil and political rights). The recent formulation of the right to development fully captures the implications of the structural violence theory. The emphasis on international assistance and cooperation and the integration of all the human rights into the concept of a vector indicates a holistic approach to addressing global inequality that the human rights regime lacked before. However, the puzzle presented at the start of this paper, how to attribute responsibility for widespread disease and poverty, remains. Chapman’s violations approach provides a preliminary answer. States which sign international human rights covenants have a legal obligation to uphold these rights. However, changing the ‘pathologies of power’ to which Farmer refers requires seriously committing to international assistance and cooperation and, among many other changes, adjusting the rules of international financial institutions, as outlined by Arjun Sengupta in his Fourth Report. **The rigorous accountability of these rights lies in the human rights regime’s ability to address the shortcomings of enforcement mechanisms for states and creating incentives for other actors in the international community to participate in its efforts.**