### CP – Statutory Protections > Rights (0:30)

#### CP Text – we defend a statutory protection of workers to strike passed through legislature enforced by the Department of Labor

#### Legal rights work through the courts and statutory protections work through legislature

Suzanne Fitzpatrick, School of the Built Environment, Heriot-Watt University, Edinburgh, Scotland, and Beth Watts, Centre for Housing Policy, University of York, England, HOMELESSNESS RESEARCH IN EUROPE, “The 'Right to Housing' for Homeless People,” pp. 105-122, Brussels: FEANTSA, 2010, accessed 2-5-2017: Google Scholar.

A key distinction must be drawn between legal or positive rights to housing on the one hand, and programmatic rights on the other. Legal rights are enforceable via domestic court systems at the behest of individual citizens, whereas a programmatic approach ‘binds the State and public authorities only to the development and implementation of social policies, rather than to the legal protection of individuals’ (Kenna and Uhry, 2006, p.1). Programmatic rights are thus important in so far as they ‘express goals which political actors… agree to pursue’ (Mabbett, 2005, p.98). In this vein, Bengtsson (2001, p.255) describes the right to housing as a ‘political marker of concern’, arguing that rights to housing can only be understood within specific national contexts, with legalistic rights implied by selective welfare regimes, and programmatic rights (which he terms a more social concept of rights) associated with more universalistic regimes. Interestingly, Bengtsson highlights that this interpretation of the right to housing reflects Marshall’s (1949) original (but often misunderstood) conception of social rights as obligations of the state to society as a whole, rather than as claims that must be met by the state in each individual case. It is important to note that programmatic rights to housing, although unenforceable by the individual citizen, can find legal expression, very often in constitutional provisions (Fitzpatrick and Stephens, 2007). For example, in a number of European countries, including Belgium, Finland, Portugal, Spain and Sweden, there is a ‘right’ to housing contained in the national constitution, although there are seldom legal mechanisms provided to enable homeless individuals to enforce that right. The Swedish constitution ‘includes the word “right” but this was never interpreted to mean that there was an enforceable right to housing for the individual citizen’ (Sahlin, 2005, p.15).

#### It competes – net benefits which will be read on case and different agent – the aff uses the court system, the neg uses legislature

#### Your solvency authors talk about the courts and how your AC is tied to the courts which proves competition – I’ll read the blue rehighlights of your evidence –

Harvard Law Review, 19 - ("Striking the Right Balance: Toward a Better Understanding of Prison Strikes," Harvard Law Review 03/8/2019, accessed 10-28-2021, <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/)//ML>

But in order to ensure that the Constitution truly does not stop at the prison walls, courts cannot simply accept prison administrators’ fears regarding strikes at face value and instead should rigorously test their credibility and basis in fact.143 And more importantly, by over-deferring and failing to engage in any analysis of the merits of prison strikes, courts miss an important opportunity. As this Note has argued, prison strikes represent an underappreciated aspect of prison life — the means by which prisoners have, throughout the course of American history, surfaced pressing problems of our carceral state and initiated important transformations in our prison system. Therefore, it is imperative to meaningfully consider why and how such strikes merit legal protection — even if such protection appears to fly in the face of the current state of the law and to defy conventional wisdom. To that end, this Part first explores the First Amendment as one potential avenue for considering the merits of prison strikes, by presenting three critical First Amendment values contained within prison strikes,144 and it then briefly discusses other potential legal avenues for courts and scholars to consider. A. Considering the First Amendment Values of Prison Strikes The right to strike within prisons may be conceptually viewed as a composite of three separate fundamental First Amendment freedoms: the freedom to peacefully associate, the freedom of speech, and the freedom to assemble and petition for redress of grievances.145 Each is considered in turn. 1. Association. — The right to peaceful association is one that captures the right of individuals to commune with others for the expression of ideas and for effective advocacy.146 Strikes, like prison unions, represent an important means of association for prisoners — allowing them to “lay claim to a social identity as ‘workers’ . . . and in doing so generate claims to respect and solidarity.”147 This identity and solidarity can, in turn, enable inmates to engage in productive and peaceful bargains with prison officials for better conditions, higher pay, and other reform desires. Bargaining is, in many respects, already very common in prisons, “for the simple reason that [prison] administrators rarely have sufficient resources to gain complete conformity to all the rules.”148 However, such bargaining typically happens in an informal, ongoing, private process;149 in their recurrent, day-to-day contact with inmates, prison administrators use their arsenal of tools150 to “negotiate” only with select inmate leaders,151 with the central goal of maintaining “short term surface order.”152 This informal bargaining is “dysfunctional” to the long-term stability of prison institutions and “the real needs of those incarcerated within” them153 — creating hierarchical relationships154 that breed mistrust155 and leave many inmates powerless and feeling aggrieved.156 As a result, inmates often feel that they have to resort to violence to protect themselves from exploitation, express their dissatisfaction, and obtain redress.157 Alternatively, peaceful, collective prison strikes avoid these harmful consequences by allowing for “open” and “formal” negotiations between all inmates and prison staff.158 Such transparent and legitimated bargaining benefits both inmates and prisons as a whole. By initiating peaceful protests such as work stoppages, all inmates are able “to solve problems, maximize gains, articulate goals, develop alternative strategies, and deal with [administrators] without resorting to force or violence.”159 And by permitting peaceful strikes, prison administrators “provide inmates with a channel for airing grievances and gaining official response . . . giv[ing] the institution a kind of safety-valve for peaceful, rather than violent, change”160 — avoiding potentially expensive and time-consuming litigation and even helping rehabilitate inmates,161 all while deemphasizing hierarchical structures in prisons that harm institutional order.162 2. Speech. — A prison strike also represents a critical way by which inmates can express themselves.163 First, as alluded to above, a strike allows inmates to claim and communicate an identity — as more than just marginalized, ignored convicts with little to no self-determination, but instead as workers and human beings entitled to basic dignity. Such collective actions represent the “performative declaration and affirmation of rights that one does not (yet) have.”164 And, as Professor Jocelyn Simonson discusses, these strikes are collective contestations to “demand dignity, calling attention to the ways in which [prisoners] are treated as less than human and in the process reclaiming their own agency.”165 Such dignitary considerations, which courts have sought to protect under First Amendment principles, should therefore naturally extend to prisoners attempting to, through strikes, express their basic selfworth.166 Beyond representing a form of inherent, individual expression for inmates, prison strikes also represent a broader form of expression, allowing inmates to be visible to and heard by the public at large. Over the course of American history, inmates — by virtue of being locked up in isolated, impregnable penitentiaries — have largely been a silent and ignored segment of the American population.167 Through peaceful protests like the 2018 national prison strike, however, their suffering, their calls for reform, and their voices are, for the first time, directly expressed on a large scale, ringing out loudly beyond the prison walls and jumpstarting important conversations of criminal justice reform. It is critical to protect such expression; “[i]ndeed, it is from the voices of those who have been most harmed by the punitive nature of our criminal justice system that we can hear the most profound reimaginings of how the system might be truly responsive to local demands for justice and equality.”168 3. Petition for Redress. Inmates’ strikes can be seen not only as expressions of their dignity and general efforts to express their voices beyond prison walls but also as significant methods of assembly to call attention to specific grievances and seek redress from the government.169 While in theory “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,”170 in practice, “prisons often escape the daily microscope focused on other American institutions such as schools, churches, and government.”171 Courts grant prison administrators wide deference not only in running day-to-day life within prisons but also in restricting press access to prisons.172 Therefore, much of the American public — already closed off from and largely indifferent to the lives of prisoners — is kept even more in the dark about prison conditions and the state of our carceral system as a whole. Prison conditions, from what has been documented, are horrendous across states. Many prisons are severely overcrowded and seriously understaffed;173 inmates routinely experience physical abuse and even death at the hands of prison guards,174 receive inadequate protection from guards, are deprived of basic necessities,175 are given substandard medical care,176 and are forced to live in squalor and tolerate extreme circumstances;177 most prisoners have minimal, if any, access, to rehabilitative or mental health services;178 and prisoners have little legal recourse, as internal prison grievance procedures are often stacked against inmates,179 and judicial deference and federal legislation have effectively shut the courthouse doors on prisoners’ civil rights claims.180 And across prisons, criminal sentencing laws not only have contributed to an unprecedented era of mass incarceration, but also have forced African Americans and people of color broadly to bear much of this burden.181 As the Marshall Project states, “[s]ociety won’t fix a prison system it can’t see”;182 peaceful prison strikes like the 2018 strike, however, draw back the “iron curtain” of prison walls, bringing to light many of the pressing issues described above. Through these strikes, inmates are able not only to express their grievances to their prison administrators, but also to “publicize their on-the-ground realities to the larger world”183 and, in turn, gain attention from and access to the political branches able to implement policy reforms.184 As recent history has shown, inmates have experienced some success by pressing their claims against the government through publicized strikes. For example, as described above, the California strikes in 2011 and 2013 generated public outcry that eventually resulted in transfor- mations to the California prison system’s solitary confinement policies.185 In Alabama, inmates’ participation in the 2016 nationwide prison strike helped prompt the Department of Justice to open an investigation into the state’s prison conditions.186 And more broadly speaking, strikes like the 2018 strike have begun to “remedy power imbalances, bring aggregate structural harms into view, and shift deeply entrenched legal and constitutional” barriers to critical prison reforms.187 B. Considering Additional Legal Avenues for Protecting Prison Strikes The foregoing analysis suggests that the First Amendment is a critical, worthwhile vehicle for considering the merits of a right to strike for prisoners. As Justice Black recognized, the importance of such analysis likely transcends prisoners themselves. He wrote: “I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”188 But this Note acknowledges that judicial recognition of prison strikes’ First Amendment values requires significant doctrinal change. Convincing the Supreme Court to overturn its Jones and Turner precedents, and instead to adopt a test with less deference than is currently afforded to prison administrators, is unlikely. As a result, future research is necessary to identify other potential avenues to consider the legal status and merits of prison strikes. As alluded to above, labor law presents one such promising avenue, as does state constitutional and statutory law. Drawing from the broader j jurisprudence around hunger strikes, and this area of the law’s focus on the body, may present yet another avenue to consider.

#### Your underview Purdy ev says the same – you READ the supreme court line out loud

#### Same with the underview Delgado evidence

[1] Your plan is vague without an actor in the USA – thus default to the neg’s interp that the aff defends the courts (which is THEIR EVIDENCE TOO, as we read the rehighlight)

Spec is good

[2] Normal means – criminal justice reform (which is what the aff talks about) is a court issue

### Th – Test Case Fiat (1:15)

#### Interpretation

#### The affirmative debater must not fiat a court case be created and/or ruled upon

#### The affirmative defines their position as a legal right. Legal rights work through the courts and statuatory rights work through legislature – crossapply the Fitzpatrick evidence from the CP

#### B is the violation – legal rights such as the affirmative necessitate the creation of a court case to establish the legal right

Ornstein et al 11( – Continuity of Government Commission made up of Norman J. Ornstein political scientist and resident scholar at the American Enterprise Institute, Thomas E. Mann Averell Harriman Chair and a senior fellow in Governance Studies at the Brookings Institution, John C. Fortier research fellow at AEI, and Jennifer K. Marsico AEI, 2011, “Preserving Our Institutions: The Third Report of the Continuity of Government Commission-The Supreme Court.” American Enterprise Institute, https://www.aei.org/wp-content/uploads/2011/10/Supreme-Court-Continuity.pdf)

First, in ordinary times the Court does not typically move on a quick timetable. And even more relevantto the issues we are discussing, it is not obvious that¶ the Court would need to act immediately in the¶ midst of a national security crisis.¶ For the presidency, the country needs an¶ immediate answer to the question of who is acting¶ as president after an attack. If the president is dead¶ or grievously wounded, there must be a successor¶ who can initiate immediate emergency actions in¶ dealing with the aftermath of a catastrophe or strike¶ back against foreign or domestic foes.¶ For the legislative branch, the Continuity of Government¶ Commission has argued the need for a¶ reconstituted, fully functioning, legitimate Congress¶ days after an attack. In the several days, weeks, and¶ months after 9/11, Congress authorized military¶ action in Afghanistan; appropriated funds for military,¶ homeland security, and rebuilding; created new¶ institutions and legal powers for transportation security;¶ and passed the Patriot Act. Congress does not need to act minutes after an attack, but a reconstituted¶ Congress is essential in the weeks and months¶ after an attack.¶ By contrast, an argument can be made that the¶ Supreme Court is not as necessary for immediate¶ action, even after an attack. The process of a typical court case reaching the Supreme Court is a long one.¶ Ordinarily, when the Supreme Court agrees to hear a¶ case, it is several months before oral arguments are made before the Court and several more months before the Court issues a decision. And this lengthy process does not include the course of cases in lower courts, which can add years to the time from when a¶ case is first filed until the Supreme Court renders a¶ judgment. Furthermore, many cases never reach the¶ Supreme Court but are decided with finality by other¶ federal courts. And even though there have often¶ been some who push for Court action in the midst of¶ an emergency, the Court has frequently decided¶ these sorts of cases years later after the emergency has¶ passed or receded. For example, a number of recent¶ and older cases dealing with military commissions¶ were decided years after initial detainment.

#### C. Standard

#### 1. Predictability-

#### We can’t predict agents outside the resolution that are necessary to bring the case to lower courts and up to the Supreme Court. This destroy any uniqueness for negative positions.

#### 2. Ground-

#### We can’t run specific links to test cases if they don’t specify what case they rule on. This would require fiat-ing the lower court ignore the current Rule of Law and then the appellate court doing the same and then fiat-ing again the SCOTUS grant cert and then their decision. This also assume that they would need to first fiat the existence of a case to push through the courts. This swamps the negative ground as the affirmative attempt to fiat through circumvention arguments and disadvantages – this process also takes forever meaning I can’t make uniqueness claims about the squo which kills substantive education

#### 3. Limits-

#### There are enough cases currently in front of the court- there are an infinite number that could possibly work up to the supreme court. This is the internal link to education via clash.

#### D. Voter for fairness and education

#### Fairness is a voter- 1) metaconstraint to your ability to evaluate the rest of the round objectively because it skewed my strategy – 2) fairness is constitutive of a competitive activity such as debate

#### Education is a voter – it’s the only long term impact to debate

#### Competing interps to set the best norms through weighing standards- you cant be reasonably topical

#### Drop The Debater- there’s no argument to drop, it indicts the entire aff

#### No RVIs

#### Encourages being abusive to bait arguments

#### Illogical- you don’t win for being fair

#### Education- forces me to go all in on T in the 2nr, which kills the only portable impact to debate