**Constitutivism**

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

#### The metaethic is constitutivism – ethics must be derived from immutable features of agency

#### Ethics motivated internally fail since they don’t generate universal obligations. Ethics motivated externally fail since they generate nonbinding obligations and beg the question of why these obligations exist and why we care. Constitutivism solves because agency is definitionally universal and binding – it’s inescapable.

#### Practical reason is constitutive of agency – you can shift between different identities, but the only temporally constant feature is your ability to choose. Attempting to escape practical reason is incoherent because you use practical reason to choose to escape it – that’s circular.

#### Violating freedom is non universalizable and thus causes a contradiction in conception.

**Engstrom** [Stephen Engstrom, (Professor of Philosophy @ the University of Pittsburgh) "Universal Legislation as the Form of Practical Knowledge" http://www.academia.edu/4512762/Universal\_Legislation\_As\_the\_Form\_of\_Practical\_Knowledge, DOA:5-5-2018 // recut]

Given the preceding considerations**, it’s a straightforward matter to see how a maxim of action that assaults the freedom** of others with a view to furthering one’s own ends **results in a contradiction when we attempt to will it as a universal law in accordance with the foregoing account of the formula of universal law. Such a maxim would lie in a practical judgment that deems it good** on the whole to act to limit others’ outer freedom, and hence their self-sufficiency, their capacity to realize their ends, where doing so augments, or extends, one’s own outer freedom and so also one’s own self-sufficiency.  Now on the interpretation we’ve been entertaining, applying the formula of universal law involves considering whether it’s possible for every person—every subject capable of practical judgment—to share the practical judgment asserting the goodness of every person’s acting according to the maxim in question. Thus in the present case the application of the formula involves considering whether it’s possible for every person to deem good every person’s acting to limit others’ freedom, where practicable, with a view to augmenting their own freedom. Since here all persons are on the one hand deeming good **both the limitation of others’ freedom and the extension of their own freedom, while on the other hand, insofar as they agree with the similar judgments of others, also deeming good the limitation of their own freedom and the extension of others’ freedom, they are all deeming good both the extension and the limitation of both their own and others’ freedom. These judgments are inconsistent insofar as the extension of a person’s outer freedom is incompatible with the limitation of that same freedom.**

#### And, All agents must accept the state as necessary to enforce rights claims.

**Ripstein 04** [Arthur Ripstein, (University Professor of Law and Philosophy, [University of Toronto](https://scholar.google.com/citations?view_op=view_org&hl=en&org=8515235176732148308)) "Authority and Coercion" Philosophy & Public Affairs, 32: 2–35, 2004, http://onlinelibrary.wiley.com/doi/10.1111/j.1467-6486.2004.00003.x/abstract, DOA:12-16-2017 // WWBW//recut]

Kant explains **the need for** the three branches of **government** in Rousseau’s vocabulary **of the “general will.” Kant finds this concept helpful, since it manages to capture the way in which the specificity of the law and the monopoly on [the law’s] its enforcement do not thereby make it the unilateral imposition of one person’s will upon another. Instead, it is what Kant calls an “omnilateral” will, since all must agree to set up procedures that will make right possible**. All must agree, because **without such procedures, equal freedom is impossible**, and so the external freedom of each is impossible. But the sense in which they must agree is not just that they should agree**; it is that they cannot object to being forced to accept those procedures, because any objection would be nothing more than an assertion of the right to use force against others unilaterally.** Once the concept of the General Will is introduced, it provides further constraints on the possibility of a rightful condition, and even explains the ways in which a state can legitimately coerce its citizens for reasons other than the redress of private wrongs. Kant’s treatment of these issues of “Public Right” has struck many readers as somewhat perfunctory, especially after his meticulously detailed, if not always transparent, treatment of private right. He treats these issues as he does because he takes them to follow directly from the institution of a social contract. The details of his arguments need not concern us here, because he does not claim that these exhaust the further powers of the state. Instead, he puts them forward as additional powers a state must have if it is to create a rightful condition, and it is the structure of that argument that is of concern here.

#### Thus the standard is consistency with the system of equal and outer freedom.

#### Prefer additionally:

#### [1] Solves oppression because it is caused by arbitrary exclusion of others – only universalizability makes sure that we include everyone equally. Farr 02

Farr, Arnold. Can a Philosophy of Race Afford to Abandon the Kantian Categorical Imperative? 2002, blog.ufba.br/kant/files/2009/12/Can-a-Philosophy-of-Race-Afford-to-Abandon-the.pdf. from ben

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 empirical 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 individual 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.

#### [2] Consequentialism fails – A] Induction fails – 1. saying that induction works relies on induction itself because it assumes that past trends will continue, which means it’s circular and unjustified 2. It assumes specific causes of past consequences which can’t be verified as the actual cause B] Butterfly effect - every action has infinite consequences so it is impossible to evaluate an action; one government policy could end up causing nuclear war in a million years. C] Aggregation is impossible – pleasure and pain are subjective – we have no idea how many headaches equal a migraine D] Infinite obligations – I have infinite obligations to maximize pleasure with no way to order them which freezes action.

#### [3] A priori ethics are the only stable epistemology –

#### a] Cartesian Skep – there’s no way of verifying the truth of our experience since we could be getting tricked by an evil demon. Only a priori ethics avoid this because they are not derived empirically

#### b] Uncertainty – every person has different experiences so we can’t have a unified perspective on the good if we have different conceptions of it. Aggregation doesn’t solve because there will be times it fails.

#### c] Prerequisite – in order to interpret space around us we need to represent it in the a priori.

#### [4] Practical reason hijacks –

#### a] Regress – any principle can be infinitely questioned which proves its base non-binding but only reason solves because when you question something you concede to the authority of reason

#### b] Action theory – any action can be split into infinite smaller actions. When I am moving my arm it is infinitely small connected movements. Only the intentionality of the action can solves meaning intentions outweigh.

#### c] Hijacks – when we set ends we attempt to achieve what is good, so we must regard the capacity to set and pursue ends as intrinsically valuable.

#### Negate:

#### [1] Strikes fail to fulfill duty

Fourie 17 Johan Fourie 11-30-2017 "Ethicality of Labor-Strike Demonstrates by Social Workers" <https://www.otherpapers.com/essay/Ethicality-of-Labor-Strike-Demonstrates-by-Social-Workers/62694.html> (Johan Fourie is professor of Economics and History at Stellenbosch University.) JG

Kantian Ethics Kantian ethics suggest that actions are morally permissible based on **whether it fulfils a person's duty** (Banks, 2006). To further the concept of duty, Kantian ethics held the notion of Categorical Imperatives which is believed to determine the morality of duties as it enforces and commands adherence, complicity and application. The Categorical Imperatives consist of three formulas. Once such a formula is to "act only on the maximum whereby at the same time you can will that it become a universal law" (Parrott, 2006, p. 51). Through this perspective, Kant held that persons are to engage in actions that they are willing to allow others to engage in as well without conditions and exceptions. Applying this formula to the ethicality of social workers **participating in labor strike** demonstrations, it becomes evident that such an action is **not morally permissible or executing its duty**. Arguably, as much as social workers are trained professionals and rendering services that are crucial to the functioning and well-being of society, they remain ordinary citizens who also at some point will **require crucial services**. Examples of these crucial services that may cause significant harm because of its absence due to labor strike action are **medical personnel, suicide watch centers, mental health care professionals, law enforcement, court systems**, municipal service delivery, etc. With these services not available, social workers will experience suffering, frustration, unhappiness, harm as the clients will do with their absence from the office. To this regard, participating and demonstrating labor strike action is not adhering to duty or morally permissible.

#### [2] Uses others as a mere means to an end

Fourie 17 Johan Fourie 11-30-2017 "Ethicality of Labor-Strike Demonstrates by Social Workers" <https://www.otherpapers.com/essay/Ethicality-of-Labor-Strike-Demonstrates-by-Social-Workers/62694.html> (Johan Fourie is professor of Economics and History at Stellenbosch University.) JG

A further formula of the Categorical Imperative is "so, act as to treat humanity, whether in your own person or in that of any other context, never solely as a means to an end but always as an end within itself' (Parrott, 2006, p. 51). By this Kant meant people should be valued and respected as an individual and not used for the benefit of others. Participating in a labor-strike demonstration/action is **a direct violation of this** categorical perspective as it would not be ethically permissible because the severe dependence and well-being of clients, the effective functioning of the employer organization, and society **is used to duly and unduly influence the bargaining process for better working conditions**. In participating in the labor strike demonstration, the humanity, and well-being of clients and society **is not seen as crucial** **and as an 'end'**, but rather used to demonstrate the undeniable need for the skills and expertise of social workers. Furthermore, through withholding services, social worker professionals demonstrate that the well-being and welfare of society have lost its inherent importance/value. Though the value of overall well-being is taught throughout the social work training process and is enshrined in the professional ethical codes.

#### [3] Violates the commitment to not cause harm

Fourie 17 Johan Fourie 11-30-2017 "Ethicality of Labor-Strike Demonstrates by Social Workers" <https://www.otherpapers.com/essay/Ethicality-of-Labor-Strike-Demonstrates-by-Social-Workers/62694.html> (Johan Fourie is professor of Economics and History at Stellenbosch University.) JG

In addition to the above, engaging in a labor strike demonstration is a gross violation of the **prima facie duty of the social worker**, nonmaleficence: **to not cause harm**, and display a commitment to the well-being of the client, organization as well as society. As Social Workers withdraw their labor, services are ceased, and automatic disruption occurs which can inflict serious harm on clients, organizational functioning as well as society. According to Mehta and Swell (2014), examples of the harm caused to clients and organizational functioning include severe and fatal delays in executing or developing timeous interventions **for at-risk clients,** miscommunication, and no service delivery. Moreover, by withdrawing their labor in a strike demonstration, ethical principles such as beneficence and social justice are also not adhered to as no acts of kindness, empathy is shown, and the most vulnerable members of society **will be impacted the most**.

#### [4] Strikes in essential services hurt the patient but not the employer which reduces the patient to a mere means to an end.

Loewy 2K, Erich H. "Of healthcare professionals, ethics, and strikes." Cambridge Q. Healthcare Ethics 9 (2000): 513. (Erich H. Loewy M.D., F.A.C.P., was born in Vienna, Austria in 1927 and was able to escape first to England and then to the U.S. in late 1938. He was initially trained as a cardiologist. He taught at Case Western Reserve and practiced in Cleveland, Ohio. After 14 years he devoted himself fully to Bioethics and taught at the University of Illinois for 12 years. In 1996 he was selected as the first endowed Alumni Association Chair of Bioethics at the University of California Davis School of Medicine and has taught there since.) JG

“Essential” Work and Strikes Healthcare professionals, garbage collectors, and other “essential” workers have a responsibility that is considered to be different from, say, the responsibilities of workers in a supermarket chain. There are almost certainly other supermarkets, but there is generally only one municipal garbage collection service**, one police force, and one fire department; and in general, only one healthcare system available to us. In the medical setting, furthermore, workers are much more apt to deal with identified lives**: they know their patients and often have known them for some time. Striking against their employer (even if it is done in part to benefit the patient) is **denying meaningful and often essential services to some of these identified lives**. We tend to relate differently with those lives we know and therefore call “identified” from those whom we consider “unidentified” or statistical lives, in part, because we have obligations as a result of relationships; in part because we fail to recognize that these so-called unidentified lives are not in fact unidentified but are merely not identified by us.4 When strikes are called by healthcare professionals, both types of lives are apt to be injured or, at least, severely inconvenienced. Except in the pocketbook, strikes in the healthcare setting generally do not directly hurt the employer. The employer **is hurt through the** **patient**. The patient thus becomes a **means toward the employees’ ends**, a football being kicked between two contending parties—**even if one of the employees’ goals is to serve the good of patients in general.** Theoretically, patients will then bring pressure on the employer (be it the government or a managed care organization), thus, quite frankly, using the patient as a means toward the ends of the health professionals.5 The dilemma, of course, is that without significantly inconveniencing or even endangering patients, no pressure is likely to be brought and, therefore, no amelioration of working conditions is effected. To be effective, a strike of healthcare professionals has to “hurt” patients and often patients known to the healthcare professionals.

#### [5] Freedom to strike cannot come at the expense of others AND they might not have ethical motivations.

Muñoz 14, Cristian Pérez. "Essential Services, Workers’ Freedom, and Distributive Justice." Social Theory and Practice 40.4 (2014): 649-672. (Assistant Professor of Political Science at the University of Florida) JG

The second objection suggests that the freedom to strike is a fundamental value for a liberal society. Restrictions or prohibitions on this par ticular freedom are equivalent to interfering with basic freedoms such as the freedom of speech and association. This objection presupposes, of course, that preserving individual freedom **possesses a value of high priority.** But it is difficult to defend this idea when the respect for this freedom **potentially causes harm to the recipient populations of essential services**. The only way to defend this position is to show that the benefits of protecting the freedom to strike (for the specific workers under question) are comparatively larger than the harm (for the recipient populations) it might potentially cause. For example, it should be shown that the objectives of a strike among physicians are in the best interest of the patients they service. The idea is that this bargaining instrument might aid physicians in obtaining the resources they require to improve the services they provide to their patients. However, **that is not always the case**. The motivation behind strikes may **not be directly associated** with the objective of improving the quality of the service that physicians provide.

#### [6] An unconditional right to strike is unethical since it treats all strikes as morally neutral which is incorrect.

Loewy 2K, Erich H. "Of healthcare professionals, ethics, and strikes." Cambridge Q. Healthcare Ethics 9 (2000): 513. (Erich H. Loewy M.D., F.A.C.P., was born in Vienna, Austria in 1927 and was able to escape first to England and then to the U.S. in late 1938. He was initially trained as a cardiologist. He taught at Case Western Reserve and practiced in Cleveland, Ohio. After 14 years he devoted himself fully to Bioethics and taught at the University of Illinois for 12 years. In 1996 he was selected as the first endowed Alumni Association Chair of Bioethics at the University of California Davis School of Medicine and has taught there since.) JG

#### It would seem then that the ethical considerations for workers striking in an industry such as a shoe factory or a chain grocery store are quite different from the ethical considerations for workers in sanitation, police, or fire departments, or for professionals such as teachers or those involved directly in healthcare. Even in the latter “professional” category, there are subtle but distinct differences of “rights” and obligations. However, one cannot conclude that for workers in essential industries strikes are simply ethically not permissible, whereas they are permissible for workers in less essential industries. Strikes, by necessity, injure another, and injuring another cannot be ethically neutral. Injuring others is prima facie ethically problematic—that is, unless a good and weighty argument for doing so can be made, injuring another is not ethically proper. Striking by a worker, in as much as doing so injures another or others, is only a conditional right. A compelling ethical argument in favor of striking is needed as well as an ethical argument in favor of striking at the time and in the way planned. It remains to delineate the conditions under which strikes, especially strikes by workers in essential industries and even more so by persons who consider themselves to be “professionals,” may legitimately proceed and yet fulfill their basic purpose.

#### [7] Violence is intrinsic to certain strikes and are uniquely unethical

Mlungisi 16, Ernest Tenza. The liability of trade unions for conduct of their members during industrial action. Diss. 2016. (lecturer in the field of Labour Law at the School of Law. He holds a LLM Degree) JG

When expressing themselves through one or more of these forms of expression, they are expected to be peaceful.20 However, over the past few years, workers attempted to heighten the impact of their industrial action by using various tactics during industrial action, tactics which have a negative impact on the **lives and property of other people**. These include the **trashing of cities, vandalising property**, forming picket lines **at supermarkets**, and preventing shoppers from doing business with their chosen businesses.21 There have been strike-related disruptions in almost every sector of the economy.22 There have been several incidents where industrial action resulted in violence and disruption of the public peace.23 Other examples include the torching of employers’ property, intimidation and even the killing **of non-striking workers**.24 During the truck drivers’ strike which took place in September 2012, a number of drivers were attacked and killed during violent demonstrations.25 During security workers’ strikes in 2006 and 2013, shops were looted and damage was caused to the property of innocent bystanders, street vendors, spaza-shop owners and employers.26 The Business Times reported that violent strikes in the country’s platinum sector resulted in the death of more than 50 people.27 In April 2016 SATAWU members on strike torched trains in Cape Town.28 These strikes are counter-productive and destructive not only because they are violent but the parties, namely the employer and employees take long to resolve their dispute(s) or reach settlement. This **create health hazards**. For example, a strike by municipal workers could lead to the non-collection of waste and this poses a serious health risk.29 The burning of tyres by demonstrators also leads to pollution and resultant health risks. The harmful conduct resulting from industrial action affects not only the strikers or picketers, but also innocent members of the public, non-striking employees, employers and the economy at large.30 In Garvis & Others v SATAWU & others, 31 it was held that the majority of the population was subjected to the tyranny of the state in