

Liberalism and the Right to Strike

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Although trade union membership in the UK went into serious decline in the decades following the Conservative election victory of 1979, [recent years have seen an increase](#). Strikes nowadays are typically lesser in scale and duration than the [big strikes of the twentieth century](#). The law on ballot thresholds under the [Trade Union Act 2016](#) represents a formidable obstacle. Nevertheless, strikes remain common. In the first ten weeks of 2022, [BBC News](#) reported on strikes by [gritters in Carmarthenshire \(GMB\)](#), [stationary manufacturers in Dalkeith \(Unite\)](#), [bin lorry drivers in Coventry \(Unite\)](#), [staff in higher education \(UCU\)](#), [teachers at a private school in Norwich \(NASUWT\)](#), [confectionary makers in York \(GMB\)](#), [workers on the London Underground \(RMT\)](#), and [refuse collectors in Wiltshire \(GMB\)](#). (The European Trade Union Institute [strike map of Europe](#) shows that in the two decades to 2019 strikes generated higher average numbers of lost work days per 1,000 employees in many Mediterranean and Nordic countries than in the UK.)

Within the small body of philosophical work on strikes, to participate in a strike is commonly seen as to refuse to do the job while retaining one's claim upon it (Locke 1984; Pike 2012; Gourevitch 2016). What is the relationship, though, between liberalism and the right to strike? This is our main question.

Liberalism's cornerstone is the idea that rights and liberties of individuals are of supreme political importance (Freeman 2011: 19). Rights and liberties, however, are not created equal. The *basic liberties* are those that are so politically important that legal restrictions upon them are unjustified unless to protect other basic liberties within an overall scheme of liberties, such as under a bill of rights (McLeod & Tanyi 2021). The basic liberties are *non-absolute*: a basic liberty may be limited 'to protect other basic liberties and maintain essential background conditions for their effective exercise' (Freeman 2011: 19). They are also *inalienable*: a basic liberty may neither be forsaken nor exchanged for another good (Freeman 2011: 19–21).

According to some 'radical' critics of liberalism, the effective exercise of the right to strike commonly requires coercive methods, and it can trump the liberal basic liberties (Gourevitch 2016; 2018; Raekstad & Rossi 2021). This view assumes that the right to strike is not a liberal basic liberty: for, if it were, then its effective exercise could (for liberals) justly limit other basic liberties. While the right to strike does not typically feature in liberal lists of the basic liberties, there is little or no work on this issue within avowedly liberal theory. Moreover, liberals of different stripes disagree about which economic liberties qualify as basic (Freeman 2011: 22–30; McLeod & Tanyi 2021).

Let us approach the relationship between liberalism and the right to strike from two directions. From a negative direction, why might liberalism be considered *inconsistent* with a right to strike? From a positive direction, why might liberalism be thought to *favour*, or to *require*, recognition of such a right?

Here are four reasons (that one of us has encountered while striking) for thinking that liberalism might be inconsistent with the right to strike, and our responses to them.

Reason: Striking is a collective activity; liberalism gives supreme political importance to political rights and liberties of the individual.

Response: It is not a foregone conclusion that the right to strike is a collective right. (MacFarlane 1981 and Pike 2012 think so; Smart 1985 thinks not.) Even if collectivism about the right to strike, or the act of striking, is correct, the view that only individual rights, or actions, are possible is inessential to liberalism.

Reason: Strikes involve intentional harm to third parties that can outweigh the benefits to workers that striking achieves.

Response: If (contrary, we think, to the historical evidence, and to Mill 1871) strikes tended to do more harm than good then they would, from a utilitarian point of view, tend to be morally impermissible. Liberalism, however, obviously need not be of utilitarian stripe. The view that strikes ‘necessarily involve intentional harm’ (Locke 1984: 173; Pike 2012: 250) to third parties is also questionable: it is not evident that workers must, when they go on strike, *intend* to inflict harm, rather than merely *foreseeing* that they will do so. Of course, the underlying *doctrine of double effect* here, according to which there is a moral difference between intending and merely foreseeing the bad consequences of an act, can be rejected, and is typically rejected by utilitarians. Still it need not be rejected and, again, liberals need not be utilitarians. Moreover, the view, if intended to apply beyond strikes that threaten life or limb, seems to require a conception of harm as ‘setbacks to interests’ (Feinberg 1987). That conception, while popular among liberals, is not required by liberalism. Liberals can hold that strikes that do not threaten life or limb inconvenience, but need not harm, third parties.

Reason: Striking involves treating affected third parties as mere means towards the strikers’ ends; this is incompatible with the kind of respect for their autonomy as persons that liberalism would encourage us to extend to them. (The end does not justify the means.)

Response: When life or limb are not at stake, it is difficult to see why the provision of labour as a means to an end (earning a living) would enjoy any moral advantage over the withdrawal of that labour as a means to a similar end (the improvement, maintenance, or protection of terms and conditions of employment). In doing the job one promotes not only one’s own ends but the ends of those that, when exercising one’s labour, one directly or indirectly serves; withdrawal of the labour, however, promotes the workers’ ends but at least inconveniences these others. Unless there is independent reason to think that workers are morally required to promote others’ ends even in the face of threats to workers’ interests, this does not seem to pose a credible threat to the right to strike.

Reason: Strikers breach a contract into which they have freely entered; liberalism takes contractual obligations seriously.

Response: Striking is, or includes, a form of moral protest (Locke 1984; Smart 1985). Acting morally requires balancing moral reasons against each other, and liberalism does not require an absolute prohibition on breaching contracts. The present objection seems to beg the question: what is at stake is exactly whether contracts or the broader legal/regulatory environment in which they are embedded *should* recognize the right to strike. While the appeal

to breach of contract directs us to some morally interesting features of strikes, it undermines neither the right to strike nor its liberal credentials. As the great liberal Mill (1871) and the ‘radical’ critic of liberalism Gourevitch (2016) argue, workers’ contracts under capitalism are not fully voluntary, at least not as they would be if selling one’s labour were not, given one’s economic circumstances, a necessary means of attaining a living. When we are working for the money, and not wholly for the love of the job, our contract of employment is, even though not typically *coerced*, not exactly *voluntary* either, but chosen under the force of a social necessity. Moreover, the necessarily incomplete nature of contracts (Gourevitch 2016), the dynamics of the labour market and of the broader economy that change the contract’s real terms, and the vulnerability of workers to the whims of their bosses, undermine the idea that contracts of employment are sacrosanct. When the contract of employment exists under a legal order in which going on strike is within the law, the contract does not usurp that, and it is made with it as a background condition that both parties understand. Moreover, strikes often arise to counteract employers’ attempts unilaterally to change the (real or written) terms and conditions of employment.

Liberalism, or at least a left-leaning form of it, emerges from these considerations as consistent with recognition of a right to strike. Might liberalism *favour*, or even (under prevalent social conditions in contemporary liberal democracies) *require*, regarding such a right as a basic liberty?

The influential liberal theorist John Rawls (1921–2002) recognized three methods of drawing up a list of basic liberties (McLeod & Tanyi 2021). Proceeding *historically*, ‘we survey various democratic regimes and assemble a list of rights and liberties that seem basic and are securely protected in what seem to be [...] the more successful regimes’ (Rawls, 2001: 45). Proceeding *analytically*, ‘we consider what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers of free and equal persons’ (Rawls, 2001: 45). These two powers are the capacity to have a sense of justice and the capacity to have a conception of the good (Rawls, 2001: 18–19). We can also mix the two methods, giving a *hybrid* method.

While deeper legal and social-scientific analysis is needed, it puts no great strain on credulity to think that the right to strike might emerge as basic via the historical method. Democracy is a matter of degree. Universal suffrage and equality in the eyes of the law are, like holidays with pay and other significant improvements to the lot of workers, relatively recent historical developments. Nevertheless, across the various regimes that approximate to a liberal ideal of democracy, including the most successful liberal-democratic regimes (whether measured by the [Democracy Index](#) or [V-Dem](#)), going on strike is within the law. Indeed, MacFarlane (1981: 196) sees the right to strike as among ‘the great keystones of democratic political society’.

A full grasp of analytical specification of the basic liberties involves subtle theoretical issues (McLeod & Tanyi 2021). We think that the right to strike would qualify as basic given prevalent conditions in contemporary liberal democracies. Given that striking is, or includes, a form of moral protest, it is an example of the full exercise of the moral powers. The right to strike diminishes the threat to the full and informed exercise of those powers that a ban on striking would impose. Where we see a possible problem is that the right might not be inalienable: it could be rendered redundant by some other right, like the right to some level of workplace democracy or to a universal basic income. These other rights, however, differ from the right to strike in that they are evidently not favoured by the historical method of specification. Therefore, the hybrid approach, which Rawls (2005 [1993]: 340–356) thought

apposite to the evidently less controversial case, for liberals, of freedom of expression, arguably favours recognition of the right to strike as basic.

While this is far from being the end of the story, we are moderately optimistic that liberalism and the right to strike can enjoy a healthy relationship.

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