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HIGH LIBERALISM, STRIKES, AND DIRECT ACTION

> "Strikes […], and the trade societies which render strikes possible, are […] not a mischievous, but on the contrary, a valuable part of the existing machinery of society." John Stuart Mill: *Principles of Political Economy* (7th ed), 1871

1. INTRODUCTION

For liberals, liberties take precedence over other distinctively social and political (rather than natural) goods, or at least they do so provided that human needs have adequately been satisfied within society.

A. Not all political rights and liberties, however, are 'created' equal.

i. Rawls uses the term 'basic liberties' to encompass those rights and liberties that are so politically important that any legal restrictions upon them can only be justified by the promotion of an appropriate balance between them within an overall scheme of liberty. For Rawls (1999: 53), these liberties are: freedom to participate in the political process, freedom of association and assembly, freedom of speech, freedom of conscience and freedom of thought, freedom from arbitrary arrest and seizure, and the right to hold personal property (NB: this does not include the right to own and control productive assets; cf. Hsieh 2005, 118).

ii. Freeman (2011: 19) notes two important features of the basic liberties: their non-absoluteness and their inalienability. They are *non-absolute* in that a basic liberty may be limited, albeit only "to protect other basic liberties and maintain essential background conditions for their effective exercise" (Freeman 2011: 19). The *inalienability* of the basic liberties entails that no individual citizen may elect to forsake a basic liberty, or to exchange it for another good (Freeman 2011: 19–21).

B. The contemporary debate about which (laissez faire) economic liberties (of contract, association, property and so on) count as basic reflects a now long-standing tradition of diversity on this question within liberalism.

i. Indeed Freeman (2011: 20) sees 'the nature and status of economic rights and liberties' as the primary locus of disagreement between liberals and, moreover, as the point at which 'high' liberalism diverges from 'classical' liberalism.

ii. (Very) roughly: classical liberalism (John Locke, Adam Smith, classical economics, Bentham, John Mill, more recently, John Nickel, Jessica Flanagan,

John Tomasi) endorses capitalist economic liberties more or less fully, high liberalism (JS Mill, John Rawls, more recently, Samuel Freeman, Jeppe von Platz) has its reservations or are outright critical.

iii. For example, as we saw in A (i) above, Rawls does not list all the economic liberties as basic (freedom of association is listed, but classical economic freedoms such as the right to own the means of protection or freedom of contract are not).

iv. And there also those (William Edmundson, Rodney Peffer) who while reject classical economic rights, want to include socialist economic rights on Rawls's list (most importantly, the right to have an equal share of ownership in the means of production).

C. At the same time, some 'radical' critics of liberalism, to Rawls's left, have recently argued that the right to engage in *coercive* strike action, involving, for example, mass picketing or sit-ins, can take normative precedence, in certain circumstances, over liberal basic liberties (Gourevitch 2016; 2018; Raekstad & Rossi 2021).

i. This radical critique holds that the right to engage in coercive strike action (even excluding secondary picketing) is *not* a liberal basic liberty *and* that the right can 'trump' some rights that *are* liberal basic liberties.

1. *Gourevitch (2018, 906):* "The dilemma is that the right to strike, when exercised by the majority of worst-off worker, seems to conflict directly with the basic economic and civil liberties of large numbers of other people, and with the background legal order that secures those liberties. To resolve the dilemma, we need to know what has moral priority: the basic economic and civil liberties as they are enforced in law, or the right to strike."

2. *Raekstad & Rossi (2021, 1-2):* "Liberals tend to see workers' right to strike as fully compatible with the framework of individual liberties that underpins the capitalist mode of production (Gourevitch, 2018). The flipside of such a view is that workers have no right to use coercive strike tactics insofar as they clash with basic liberties of property, contract, movement, and so on."

ii. It is the first part of the above claim in (i), however, that poses a distinctive threat to liberalism. For, if (contrary to what the radical critique assumes) the right to engage in coercive strike action *is* a liberal basic liberty then it can, at least in principle (see A (ii)), win out over other basic liberties, within an overall scheme of liberties, in situations of *prima facie* moral conflict.

D. Raekstad & Rossi (2021) extend the radical critique, beyond the case of coercive strikes, to other forms of direct action (outside of industrial disputes) that have avowedly moral or political goals. These could include workplace occupations, street blockades, hacktivism, counter-economics, tax resistance and more. (Generally, 'direct action' is anything that aims to achieve its aim directly instead of relying on a 'higher authority' to do it for them. So strikes can be a form of direction action, too.)

The connection between liberalism and the right to strike is thus complicated. Our. claim is that liberalism has the resources to accommodate not only (i) a general right to engage in strike action, but also (ii) the right to engage in some forms of coercive strike, and, more tentatively, also (iii) the right to engage in direction actions.

However, this talk concentrates on (i), and - more briefly - discusses (ii) and (iii). [I am not sure I want to include in the paper direct action, other than strikes, at all. I suppose the paper's argumentation will decide how easy this could be. There is a chance that once we can accommodate (ii), the rest will just follow.]

E. Two terminological notes before we proceed.

i. We understand *coercion*, following Gourevitch (2018, 907), as the "removal of reasonable alternatives to a course of action and making it known to the coerced agent that she has no reasonable alternatives."
   1. Thus, there is a strong connection between coercion and (non-)*voluntariness* (Olsaretti 2004, 139).
   2. The connection to *violence*, on the other hand, is less clear. Traditionally, coercion included such things as direct forcing, (physical) violence, even economic deprivation (Anderson 2023), but since Nozick (1969), it is often considered only to include the *threat* (Nozick: proposal) of such things. Hence, on this approach, it is possible to speak of coercive strikes and direct action which are not violent (as does Gourevitch).
   3. Similarly, we do not aim to argue for a right to violent forms of direct action or strikes such as assault, arson, sabotage, property destruction. These obviously raise special questions, which we cannot face here. [Nor do Raekstad & Rossi or Gourevitch include them. Hardman (2021) argues that violently coercive direction action is permissible to prevent wrongful harm, but this does not cover, we think, the case of strikes, for example.]

ii. We take 'the right to strike' to refer to the putative collective *moral* right of a body of workers to withdraw their labour, towards attainment of an industrial goal, within a liberal-democratic social order. The idea is not being entertained that the right to strike is a *human* right, for striking, if a right at all, is a right that can only be exercised by workers. Similarly, the right to strike is not to be taken to be a *civil* right, that is, we don't consider it to be a form of protection of the individual against infringement by governments.

2. IS HIGH LIBERALISM CONSISTENT WITH THE GENERAL RIGHT TO STRIKE?

Within the relatively small body of specifically philosophical literature on strikes, there is a consensus that to strike is to refuse to do the job ('quit the work') while retaining one's claim upon it ('but not the job') (e.g., Locke 1984; Pike 2012; Gourevitch 2016 who uses this as title).

What is the relationship, though, between liberalism and the right to strike?

We agree with the suggestion implicit in previous writings (such as Locke 1984) and made explicit in the work of the radical critique's proponents, that the anti-liberal potential lies in the *coerciveness* of coercive strike action.

The question of whether there is a liberalism-defeating moral right to engage in *coercive* strike action becomes redundant, however, if liberalism is inconsistent with the recognition of a *general* right to strike (even if certain industries or activities, must, for moral reasons, be excluded), coercive or non-coercive.

[At this point, it is worth thinking more about what strikes are: we obviously hold that coercion is *not* an essential/intrinsic feature of strikes. This seems fairly evident insofar as strikes are first and foremost instances of withdrawing one's labour without quitting the job. This can be done, at least in better circumstances, without any coercion. For example, in the Nordic corporativist model this is the standard way of striking.]

Why might liberalism be considered inconsistent with recognition of a such a right? Here are four reasons and our responses to them.

A. Striking is a collective activity (MacFarlane 1984; Pike 2012); liberalism gives supreme political importance to political rights and liberties of the individual.

   i. It is debatable as to whether striking qualifies (in the relevant sense) as collective action (Smart 1985). A collectivist action is one the performance of which is attributable to a group, and which does not distribute over the members of the group. A union is a collective in that, for example, the calling of strike action is not something that distributes over the members of the union, even though the withdrawal of labour itself does. Does this make *striking* – that presumably is composed of both (and other acts, perhaps) - a collective action?

   ii. If it does, then the right to strike would clash with liberalism if liberalism required that only individual actions are possible. It does not seem to us, however, that liberalism does require this. Regarding strikes as collective action in the relevant sense (which is metaphysical, not moral) might clash with methodological individualism as an approach to social theory, or with individualism as a view in social ontology, but it would clash with liberalism in moral and political theory only if liberalism required that rights and liberties always belong to individuals and never to social entities with individuals as members, such as groups or organizations.

   iii. Nor does Pike's (2012) claim that the right to strike is a collective right because it is the right to withdraw one's labour *with others*, need worry us. For, it is not clear that this marks out a significant difference with the core liberal rights. Freedom of speech is freedom to *address others*; freedom of assembly is freedom to assemble *with others*; freedom of association is freedom to associate *with others* (cf. Smart 1985: 34).

   iv. [Another possible line to take here, although we are somewhat reluctant, is to endorse the claim that Rawls, for example, accepting freedom of

association as a basic liberty seems to be comfortable with, is that collective rights are compatible with liberalism *insofar as* they are rooted in individual rights (Croucher, Kely & Miles (2012) for this interpretation). Thus, the rights mentioned in (iii) above, can be considered collective rights that are rooted in individual rights: they are a sort of pooling of individual rights into collective rights. Why would striking be different? In fact, Croucher, Kely & Miles (2012: 310) argue just this: that the right to strike is such a pooling via the individual right to associate with our peers (a right Rawls (1999: 53) puts on his list of basic liberties).]

B. Strikes involve intentional harm (even if they are not coercive), including to third parties; this harm can outweigh the benefits to workers that a strike achieves.

i. This is best read as a utilitarian point, and liberalism need not be utilitarian, i.e., it need not see the morality of strikes, including whether we have a right to strike, in terms of such consequences. [In response to this, though one can reinterpret the point of being merely about costs and use it more as an efficiency or economic side constraint However, this does reduce the potency of the objection, and it is also questionable how much such economic considerations can really serve as side constraints.]

ii. The view that strikes 'necessarily involve intentional harm' to third parties rests upon two controversial theoretical claims. Implicit in it is either a rejection of the doctrine (whatever its merits) of double effect, or exceptionalism about strikes in relation to it: 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 (cf. MacFarlane 1981: 126). It is more plausible that what workers intend is to achieve their aims, which need not, and typically does not, involve causing harm to anyone.

iii. Perhaps more significantly, the view, if it is indeed intended to apply to strikes in general (rather than just those that, to put the point extremely, threaten life and limb, and are more likely to be violent, not even merely coercive), seems to rest on a conception of harm as 'setbacks to interests' (Feinberg 1987). However, any account of harm has to deal with the scope problem (that they get the extension of 'harm' wrong). In this particular case, this raises the following question about *economic* liberties: surely, market competition hurts interests, so why are they not considered harmful? [One possible response is to focus on legitimate or justified interests, but then, the next question is, which violation is, as it were, legitimate or justified? This might connect to point (v) below.]

iv. Moreover, this account of harm, although popular among liberals, is by no means required by liberalism. In another paper, we advance an account of harm that is needs-based. On this view, a needful being is objectively harmed by an agent's conduct when that agent's conduct prevents it from satisfying, or prevents the satisfaction of, its absolute needs (as an organism, person, or citizen), including by preventing, stunting, constraining, or diminishing its need-meeting capabilities or capacities. It seems certain that there is no

sufficiently broad conception of absolute needs (that is, needs that are not merely instrumental to some other aim, desire etc. of the agent) that would allow strikes *as such* to be harmful, to employers or to third parties, on this account of harm.

v. There is also the question whether the harm strikes (supposedly) cause is *wrongful* harm (imprisoning people for their (proven) crimes also causes harm, it can even be violent, still, it is not wrongful harm that should be prevented from taking place). To decide this, we need to first decide about, among other things, whether the right to strike is a basic right.

vi. None of this, of course, rules out that strikes should be used as last resort or in combination with other forms of protection giving workers a Hirschmannian 'voice', i.e., a capacity to express dissent without exiting their work (Hirschmann 1970, 30-43). For example, one could list here workplace democracy (Young 1979) or workplace republicanism (Hsieh 2005) as such options that could be put in place in part to avoid, as much as possible, strikes. We come back to this in the next section.

C. 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 them. (In other words: The end does not justify the means.)

i. The end might justify the means – there is nothing in liberalism that would rule this out. [There are, again, strands of liberalism but not 'liberalism' as such that would rule this out. 'Liberalism' is more like an umbrella term or family resemblance term.]

ii. When 'life and 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 one's terms and conditions of employment).

iii. A possible difference is that 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 not the ends of these others.

iv. This does not seem, however, to pose a credible threat to the general right to strike unless there is an independent reason to think that workers are duty-bound to promote those other ends come what may. That seems unlikely, particularly given that the workers have entered into a contract with the employer and not with the third parties. Which raises our last objection…

D. Workers who strike breach a contract into which they have freely entered; liberalism takes such contractual obligations seriously.

i. Striking workers breach their contracts and breaching a contract into which one has freely entered is, akin to the breaking of a promise, plausibly a *bad* thing to do. It can be right, and therefore permissible, however, to do a bad

thing. It is *wrong* actions, not ones that are merely bad, that are morally prohibited.

ii. Is striking simply then morally wrong if it involves a breach of contract? This is far from obvious since it is not clear why contracts are more morally important than striking. To put this in the language of reasons, acting morally requires balancing moral reasons against each other and there is, perhaps, a *pro tanto* reason not to break a promise/not to breach a contract. But this reason, being *pro tanto*, can be overridden. We agree with Locke (1984) that striking is, or at least includes, a form of *moral protest* – and this is exactly its point. So, one could just say that we are balancing two considerations against each other, both *pro tanto*, with a certain weight. Which one wins in which situation, however, remains undecided and requires further consideration.

iii. Furthermore, as Gourevitch (2014, 2016, 2018, 2019, 2020) argues (anticipated by Mill 1871), the contracts into which workers enter under capitalism are not fully voluntary, at least not in the way that 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 work, and the contract that governs it is, even though not *coerced*, not exactly *voluntary* either, but (unlike 'voluntary work') chosen under the force of a social necessity. In addition, the necessarily incomplete nature of contracts (Gourevitch 2014: 301; 2019: 177), the dynamics of the labour market and the broader economy, and the vulnerability of workers to the whims of the bosses, undermine the idea that breach of contract is relevantly akin to the breaking of a promise in a personal relationship.

iv. This is something to delve into deeper. Dobos (2022: 252-3], for example, argues that (i) not all non-voluntary agreements are invalid, (ii) if contracts were indeed non-voluntary, workers would lose their privileged position vis a vis their employer, a position that is essential and is assumed by the right to strike: that employees when they strike 'quit the work, but not the job', i.e., they retain their right to the job. As for (i), it appears right that if non-voluntary means 'no acceptable alternative', then the condition is just too broad. Dobos is not clear what should be added to make it narrow enough, but he does point to causal responsibility as a possibility. What he does not consider is the wider social dimension. The *particular* employer the employee is contracted with may not be responsible for the lack of alternatives, but the system (capitalism) of which the employer *is a part* might well be. As for (ii), Dobos seems to assume that the contract is what grounds workers' right to the job. But why would this be so? This is exactly, in part at least, what is in question.

v. Lastly, 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. [A point akin to Rawls's on broader property rights: they are not prior to justice but arise

out of a just system.] This is significant also because no doubt, again given some of the conditions in some places at least in late capitalism, many workers are willing to enter into contracts without the right to strike. But the issue is exactly whether we should allow such contracts to exist – assuming that because they do, they also should, is begging the question. [In fact, Croucher, Kely & Miles (2012: 310) argue that since no contract can literally force labour – this would be against the freedom from slavery – all contracts can do is to schedule (financial) penalties, where labour is not performed. In our reading, this means that the right to strike should be part of contracts albeit perhaps accompanied by financial penalties.]

We see no convincing reason, then, and certainly no decisive reason to think that liberalism *per se* is inconsistent with recognition of a moral right to strike.

3. DOES HIGH LIBERALISM FAVOUR THE GENERAL RIGHT TO STRIKE?

Moreover, we suggest that high liberalism *favours*, and (under social conditions that include those familiar in current liberal democracies) perhaps even *requires* regarding such a right as a basic liberty.

A. Initially, we have been drawn to – we still are positive about, in fact – the following argument:

i. Being a worker already compromises personal autonomy because work is distinct from voluntary activity. When we work for money within a capitalist firm, we give not only of our labour; in respect of our work, we submit our will, as subordinates, to our *de facto* superiors.

ii. In the absence of the social recognition of our ability, and moral right, to withdraw our labour, an imbalance of power is created under which unacceptable forms of domination have free reign, workers are at the mercy of their bosses (even if they are benevolent), and our status as the free and equal peers of our fellow citizens—already arguably under suspension in a hierarchical workplace—is put in jeopardy, and along with it, our self-respect.

iii. To deny the moral right of the worker to strike is arguably to reduce the worker's status not only as a person, but in socio-economic terms as well. For it is the increased *de facto* autonomy of the worker that partly distinguishes the worker from the serf, and from the slave. This autonomy consists not only in the freedom to sell one's labour in the labour market, but also in the freedom to withdraw it.

Our worry is that the argument is perhaps too inclusive with elements from anarchism, socialism, republicanism, and perhaps other views. We do think that it uses elements central to higher liberalism. Still, it would be good to see if a specifically high liberal argument could also be put forward. Here is our attempt to do so.

B. Rawls is going to be our test case as the most important representative of high liberalism who, however, had very little to say about labour rights (cf. Croucher, Kely & Miles 2012; Hsieh 2005).

Our approach focuses on the first principle of justice, according to Rawls. There can be other approaches, namely those that try to bring in the right to strike via the second principle of justice. Arguably, this would be the second part of the principle: the so-called difference principle. We have no quarrels with such a move since it helps our case if it turns out the right strike is also supported under the second principle of justice.

[Croucher, Kely & Miles (2012: 312) argues that labour rights are to the advantage of the worst off. Arnold (2012) argues, in a long and complex argument, for a certain level of occupational equality and complexity.]

However, we think our approach is superior at least inasmuch as, if we are right, we can show the right to strike is a *basic* liberty the distribution of which is thus governed by a principle of justice that enjoys lexicographical priority over the second principle in Rawls's system.

[There potentially are other advantages: that Rawls needs a list of basic liberties is a claim he himself supports and both ways of deriving the list, discussed below, are also supported by Rawls. At the same time, the approaches connected to the difference principle are either empirically contestable and hence contingent (Croucher, Kely & Miles), or conceptually very demanding and may not in the end have anything to say about the right to strike (Arnold).]

Rawls set out three ways 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). We are to examine democratic regimes and identify which liberties commonly play, or approximate to playing, that functional role within them.

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.

C. Proceeding *historically*…

Democracy is a matter of degree. Also, universal suffrage and (at least notional) equality in the eyes of the law are, like holidays with pay, young phenomena.

- Nevertheless, across the various regimes that more or less embody a liberal ideal of democracy, going on strike tends to be within the law.
- Indeed, MacFarlane (1981: 196) sees the right to strike as among 'the great keystones of democratic political society'.

This gives some encouragement to the view that the right to strike might qualify, via historical specification, as basic. [Anything more on this, perhaps?]

D. Proceeding *analytically*…

We have argued for our own account elsewhere (McLeod & Tanyi 2021 that discusses the analytical specification of what counts as a basic liberty in the Rawlsian system) and this is what we intend to apply now to the case of the right to strike. We think an entitlement is a basic right or liberty if and only if at least one of the following conditions holds:

i. the likelihood is above a certain threshold that, in its absence, and partly due to social conditions, the possession and/or the full and informed exercise of one or both of the moral powers will be prevented, stunted or atrophied;

ii. any legal restriction upon it that did not promote the weighting of liberties in a scheme of liberty would be arbitrarily coercive, i.e., an arbitrary exercise of political power.

Consider condition (i):

We already mentioned the two moral powers, but let us specify them now in bit more detail (following Rawls 2001: 18-19)? The first is that of *rationality*. More precisely, it is to have the capacity to form, revise, and pursue a conception of the good. The second is that of *reasonableness* (especially after Rawls's political turn). More precisely, it is to have the capacity to have a sense of justice. [Rawls (2005: 307) also states that citizens have corresponding 'fundamental interests' in developing these powers, plus a third 'subordinate interest' in being able to pursue whatever determinate life plans they happen to hold.] The two powers are applied in two fundamental cases, moreover. The fundamental case in which the capacity for a sense of justice is exercised is in 'the application of the principles of justice to the basic structure and its social policies' (Rawls 2001: 112). The fundamental case in which the capacity for a conception of the good is exercised is in 'forming, revising, and rationally pursuing such a conception over a complete life' (Rawls 2001: 113).

We think that the right to strike would qualify as basic given prevalent conditions in contemporary liberal democracies and late capitalism. Appeal to the *first moral power* might already do the job on our definition but we are undecided about this since so many other liberties could come into view here as relevant for 'forming, revising, and rationally pursuing such a conception over a course of life', and important or even essential for the exercise of this power. Since we operate with a probability threshold it would take us far into analysis to establish a positive result, we fear. [Gourevitch (2020), in his own justification of the right to (coercively) strike, focuses on eliminating/reducing oppression and on self-emancipation. It is possible that these considerations could be connected to the first moral power as well.]

We are on a more solid basis with the *second moral power*. Given that striking is, or includes, a form of moral protest, it is an example of the full exercise of this power. Under conditions in which it has not become socially redundant (see below), the right to strike is intimately connected with the full and informed exercise of the capacity for a sense of justice, because strikers make their demands as demands of

justice. 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*, and therefore not basic: it could be rendered redundant by some other right, like the right to some level of workplace democracy (Young 1979), or to some form of workplace republicanism (Hsieh 2005), or to a universal basic income (van Parijs 1991) or to unemployment benefit so high that the only ones working are those who are *not* doing it for the money. Under such – more than favourable social conditions as compared to what we have in the present in most societies - workers could permissibly trade the right to strike for one of these other rights, or a combination of them. The right that would arguably be inalienable (for capable citizens of working age) would then be a complex, *disjunctive* one: to strike *or* to a sufficiently democratic workplace *or* to a substantial universal basic income *or…*

But even in this – very unlikely case – note the following:

1. The availability, in principle, of affording the status of basic liberties to one of these other options, that could in principle play a similar social role to the right to strike means, however, that *none* of them pass muster when the basic liberties are analytically specified.
2. The difference between the right to strike and the other options is that the right to strike is the only one of the three that arguably qualifies via the *historical* method of specification. Accordingly, the possibility that the right to strike qualifies as a high-liberal basic liberty can only be discounted if the analytical method of specification, exclusively, is adopted.
3. 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.
4. This conclusion is not changed by the possibility that the alternatives might be less costly (Hsieh 2005, 137 makes this point about his own workplace republicanism). On the one hand, cost considerations can come into the picture only *after* we have established what basic rights we have, not before (unless we think that cost serves as a side constraint on what basic rights are admissible, but this is far from obvious, nor does Hsieh provide any argument to this effect) . On the other hand, even if the claim is empirically verifiable, it disregards the costs of bringing about such systems: the possible complete re-organization of our economic and social systems that would be necessary.

<u>Consider condition (ii):</u>

There might be a further, more tentative consideration. Our condition above for basic liberties is disjunctive. It might be that condition (ii) applies to the right to strike even if condition (i) does not or is not decisive (for the just discussed reason). In this regard, not the following:

5. Arbitrary coercion in the Rawlsian system is connected to his principle of legitimacy which in turn uses the requirement of reciprocity (giving public reasons for otherwise coercive practices).

6. It is possible that, given the conditions as we describe them in today's late capitalism, without the right to strike workers would be exposed to objectionable, because arbitrary work practices (i.e., for which no good public reasons could be given), or because without the right to strike they would not have the opportunity to express their own public reasons to oppose and thereby question those practices.
7. This idea would work on its own as added to the appeal condition (i)'s second moral power, but, insofar as workplace democracy and basic income don't work this way, also as a way of showing the particular need for the right to strike.

However, note that, according to its originator, Hsieh (2005), workplace republicanism derives from the basic right to protection from arbitrary interference. Thus, presumably, condition (ii) would be fulfilled in this case presumably throwing us back to our original points made with regard to condition (i) (points 1-4 above). [Or would it?]

E. Strikes and justice

The basis for our reasoning regarding condition (i) is that workers exercise their sense of justice when they make use of their right to strike: they are demanding justice. But are they, really? Now, strictly speaking it is not important whether they are right: it is enough if they *think* they are. Still, we think there would be some unease in qualifying the right to strike as a basic liberty if it turned out that it is pretty much *never* done for a justified cause.

Here a feature of the Rawlsian framework we are working with becomes important: that there are two phases of specification. In the first, we determine basic liberties under general headings; in the second; we further specify and concretize them (for a clear depiction of this process, see Nickel (1994), and McLeod & Tanyi (2021)). It is in this second phase that the right to strike we think appears, for instance, under what Rawls calls the liberties of the person such as the right to work (choose and pursue one's occupation). Here, however, it has stiff competition (other specifications of the right to work such as the right to avoid slavery) and it wouldn't look well if what it is used to fight for had turned out to be entirely unfounded upon closer inspection.

It is hard to see, though, how could this be the case. Perhaps if one is a hardened libertarian (of Nozickian or similar leanings, say), or one is a Hayekian classical liberal (an old-fashioned whig, Hayek would say), one could try to argue that no strike can be used to demand justice, to instantiate moral protest. Otherwise, though, there seem to be many, at least eligible, reasons of the relevant kind. One could strike in order to achieve fairer work conditions, equitable wage, justice-driven reform of labour relations, and so on. Few would deny that these are legitimate concerns raising questions that many, including liberals, socialists, anarchists, republicans and so on, answer in different ways. Can *all* these answers be wrong? Perhaps, but the onus of proof is on the 'other' side.

So, to return to the original question, it seems difficult to deny that at least some of the reasons why workers can use strikes to demand justice can be valid.

4. CAN HIGH LIBERALISM ACCOMMODATE COERCIVE STRIKES AND DIRECT ACTION?

Let us return, then, to our starting point: the radical critique's contention that the putative right to engage in *coercive* strike action does *not* qualify as a liberal basic liberty.

A. This could be considered particularly important if one also takes note of the ideal/non-ideal theory distinction.

   i. For then one could say that the general right to strike (and the need to strike) would be a particular preoccupation of ideal theory, especially assuming that capitalism is at least to an extent kept as an institutional framework (Rawls, for example, wants property-owning democracy but capitalism, market pricing e.g., plays a role in it still; it is a kind of market socialism).

   ii. But non-ideal theory, that deals with the world more or less as it is, i.e., with our world, would be particularly interested in coercive strikes, direct action and their ilk. This is also probably what the radical critique is particularly interested in and if we want to say something interesting about our world and the possible transition from it to a more ideal world, we will need to address coercive strikes and (nonviolent) direct action head on.

B. So, what can we say? First, to repeat:

   A coercive strike consists not merely in the withdrawal of labour, but in a campaign in support of this that involves coercive elements that might sit ill with respect for the autonomy of union members, and other workers. Such coercive elements can include, for example, putting pressure on union members to observe the strike, pressuring non-union members not to do their work, mass picketing that restricts the freedom of movement of others, occupations, and the like (Gourevitch 2016, 2018).

C. Here is how we reason (for now):

   i. Although such practices are illegal in many jurisdictions, striking in the absence of resort to such tactics, arguably becomes 'toothless' when the workers involved are *easily replaceable* (Raekstad & Rossi 2021 after Gourevitch 2016, 2018).

   ii. The case of strikes by easily-replaceable workers means that coercive tactics are not merely necessary means to the success of such a strike, but that they are, other things being equal, *necessary* if such workers are to have more than a merely notional right to strike at all.

   iii. If easily-replaceable workers are debarred from deploying coercive strike tactics, then they are in effect debarred, short of resignation, from declaring 'their terms of employment unacceptable', and from the entitlement to 'act on that declaration, whether those terms really are unacceptable or not' (Locke 1984: 199).

   iv. That seems to be a formidable constraint upon their capacity fully to exercise their first moral power: for the predicament in which they find themselves

means that they have to suffer what they take to be an injustice whilst being denied the right fully to express their judgement about that injustice.

v. We don't think the role easily-replaceable workers play in our argument leads to a reduction in scope. It does not look realistic and would lead to practical as well as moral problems, we reckon, if the right to use coercive strike would be limited to a particular subset of workers. How would we identify workers who qualify as easily-replaceable? Their situation changes in time as the industry changes. In the past, ordinary factory workers were not easily-replaceable but with the introduction of robotics, they become so; white-collar workers have never been easily-replaceable but with the introduction of AI systems, they might become so, and so on. It would also be morally problematic to discriminate positively – as perhaps some kind of affirmative action – easily-replaceable workers. For these reasons we think that the argument above is generalizable and should lead to the granting of the right to (coercive) strikes to *all* workers.

vi. Would the fact that these strikes are coercive influence our assessment of probability thresholds? Recall condition (i) that we are using here. This is the second phase of specification (recall the two phases mentioned in 3E), and we are considering the competition of different right-specifications where their relative significance is determined by how high a risk (probability-wise) their absence would cause to the possession and exercise of the second moral power. Would the fact of coercion (coercive methods of striking) disadvantage the right to strike in this competition? We don't think so since, as we argue above, it is a feature needed to make striking effective and, in many cases, it is therefore a necessary feature that we can't do without short of giving up work etc.

vii. There is also an important connection to Gourevitch's argument against what he calls - somewhat misleadingly - the 'classical liberal theory of the right to strike'. Gourevitch (2018, 911) takes it that the liberal defense of the right to strike derives the right from the basic liberties of contract and association. For this reason, he argues, coercive strikes cannot be permitted: being merely derivative, the right strike is "subordinate to the basic liberties from which it is derived. […] Any such permission would render this account of the right strike incoherent or contradictory since it would permit violation of some of the basic liberties from which this right is derived."

viii. However, a lot depends on what 'derivation' exactly means here. As we saw in Rawls's account (3E), derivation could just stand for 'specification': where we are still dealing with a basic liberty and what we are doing is specifying its scope, primary areas and so on. According to Rawls, it is at this stage (typically in the constitutional and legislative stages) that we should begin talking about the importance and significance of these specifications. This, however, does not rule out that the right to strike comes out as more important than other specifications of the basic liberties of contract and association (e.g.). In fact, this is just what we would argue for.

D. Perhaps it is now suspected how this could be extended to cover other forms of direct action.

i. [To repeat: Strikes qualify as direct actions, but do not exhaust them. Other forms of direct action that are also coercive (but not violent) include street blockades, hacktivism, counter-economics and tax resistance, recall. Further conceptual matters (e.g., the difference from civil disobedience) are treated well in the literature and we don't have anything to add to it.]

ii. The thought is that boycotts, blockades, sabotage, or occupations are also such that their agents do not have a real alternative to express their sense of injustice and must therefore be granted coercive means in addition to the usual non-coercive ones. But there are complications here, also having to do with the massive diversity of these actions, so more thinking is needed.

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