

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 the society.

- A. Not all political rights and liberties, however, are equal.
 - i. Rawls uses the term ‘the 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.
 - 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 economic liberties 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. Roughly: classical liberalism (John Locke, Adam Smith, classical economics, Bentham, John Mill) endorses capitalism fully, high liberalism (JS Mill, John Rawls) has its reservations or are outright critical.
- 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.
 - ii. It is the first part, however, that poses a distinctive threat to liberalism. For, if (contrary to what the radical work assumes) the right to engage in coercive strike action *is* a liberal basic liberty then it can, at least in principle, 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 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, anything that aims to achieve its aim directly instead of relying on a ‘higher authority’ to do it for them.)

The connection between liberalism and the right to strike is thus complicated. In the paper we suggest that liberalism has the resources to accommodate not only (i) a general right to engage in non-coercive strike action, but also (ii) the right to engage in some forms of coercive direct action, whether (iii) as part of an industrial dispute or (iv) not.

However, in my talk I will concentrate on (i), and much more briefly discuss (ii) and say very little about (iii) and (iv). [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.]

The paper does not aim to argue for a right to *violent* forms of direct action such as assault, arson, sabotage, property destruction. These obviously raise special questions, which we cannot face here. [Nor do Raekstad & Rossi include them.]

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

Within the small body of specifically philosophical literature on strikes, there is a consensus that to strike is to refuse to do the job while retaining one’s claim upon it (e.g., Locke 1984; Pike 2012; Gourevitch 2016).

What is the relationship, though, between liberalism and the right to strike? (Now, analytically speaking.)

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 (without using such coercive means as mass picketing or sit-ins).

[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.]

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* 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 as such 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. [We should elaborate further.]
 - iii. Pike (2012) says that the right to strike is a collective right because it is the right to withdraw one's labour *with others*. 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* (cf. Smart 1985: 34).
- B. Strikes involve intentional harm, including to third parties; this harm can outweigh the benefits to workers that a strike achieves.
- i. This is a utilitarian point and of course liberalism need not be utilitarian.
 - 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.
 - 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), seems to rest on a conception of harm as 'setbacks to interests' (Feinberg 1987). That conception, although popular among liberals, is by no means required by liberalism. [Besides, take economic liberties: surely, market competition hurts interests?!]

- 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, which 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.
- 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. 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: REF) that striking is, or at least includes, a form of moral protest – and this is exactly its point.
 - ii. Furthermore, as Gourevitch 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), 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.

- iii. 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 property rights: they are not prior to justice but arise out of a just system.] This is significant also because no doubt, also 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.

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.

[Two further reasons-objections are implicit in MacFarlane (1981: Chapter 6): that coercive strike action may be considered inconsistent with the rule of law and that strikes may be in tension with freedom of expression. His discussion suggests that the latter would not present a serious threat to liberalism. In connection with the former, it is somewhat unclear whether by 'coercion' he is specifically referring to secondary picketing, which is certainly at the forefront of his discussion, or whether he would include non-secondary mass picketing and sit-ins.]

3. DOES 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.

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.

A. 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.

- i. Nevertheless, across the various regimes that more or less embody a liberal ideal of democracy, going on strike tends to be within the law.
- ii. 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.

B. Proceeding *analytically*...

We have argued for our own account elsewhere (McLeod & Tanyi 2021). 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.

We think that the right to strike would qualify as basic given prevalent conditions in contemporary liberal democracies. 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, important or even essential for the exercise of this power ('forming, revising, and rationally pursuing such a conception over a course of life'). Since we operate with a probability threshold it would take us far into analysis to establish a positive result, we fear.

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 or to a universal basic income 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 – 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:

- iii. 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.
- iv. The difference between the right to strike and the other two 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.

- v. 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.

There might be a further, very 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).

- vi. 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).
- vii. 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.
- viii. 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.

C. Strikes and justice

The base of 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 in 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. 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.

So, to return to the original question and pose it somewhat differently: Would any law that put a blanket ban on striking, within an economy in which there is neither substantive workplace democracy nor a generous universal basic income, be morally unjust? Yes: such a law would be an unjust violation of the autonomy of persons:

- 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, 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.

4. CAN LIBERALISM ACCOMMODATE COERCIVE STRIKES AND DIRECT ACTION?

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

This could be considered particularly important if one also takes note of the ideal/non-ideal theory distinction. 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 wants property-owning democracy but capitalism, market pricing e.g., plays a role in it still; it is a kind of market socialism). 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.

So, what can we say? First, a rough definition: 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).

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).

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.

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).

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.

We don't think 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.

Would the fact that these strikes are coercive influence our assessment of probability thresholds? Recall condition (i) we are using here. This is the second phase of specification, 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.

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

The thought would be 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.

5. REFERENCES

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