

The Right to Strike

DON LOCKE

I

Only a fool would attempt to discuss the morality of strikes in twenty-five pages or less, and even he will fail. For one thing he can be sure in advance that whatever conclusions he might come to will be ridiculed as outrageous, prejudiced or self-serving by one party or the other. There is, in particular, the accusation that the attempt to discuss in moral terms what is essentially a political issue, is itself an exercise in bourgeois politics disguised as morals, their morals but not ours. But there is also, and more worrying to my mind, the sheer complexity of the issues. This complexity is, however, simply unmanageable in the space available, and I have gone instead for the simple story, in the hope that the essentials will stand out that much more clearly. Whether I have got the right essentials, whether the elegance of the picture compensates for its lack of realism, is something that will have to emerge.

But even at this level of over-simplification, the topic will have to be restricted. So let me point out first of all that I am concerned only with the moral right to strike, whatever that might be, and not with legal rights. That is, I am concerned with whether and when people are morally entitled to strike, or morally justified in striking, not with what their legal rights in striking are, or even ought to be. No doubt moral rights and wrongs should have some effect on the law, but they are not the only factor when it comes to making a political or legislative decision, and I shall leave such questions strictly alone. This means that I will have little if anything to say about some issues which currently bulk large in discussions of the right to strike, such as immunity from damages arising from strike action, or the law of picketing.

Next, the moral issues might be divided into three. There is first the question of the morality of striking as such, the question of how far and in what circumstances people are justified in doing or are entitled to do those things which a strike inevitably involves. After all any strike is a deliberate attempt to inflict harm on others. As such a

This paper has benefited enormously from discussions at the University of Warwick Political Theory Workshop and the University of Birmingham Philosophical Society. I am grateful to all those, too many to mention by name, who took part.

strike, any strike, must be bad, an evil, and needs justification. This is not of course to say that strikes cannot be justified, only that, unlike drinking beer from a wineglass (or vice versa), they need to be.

Then, secondly, there are questions about the conduct of strikes, the question, for example, of how far strikers are entitled to go in attempting to boycott or blockade their place of work. I imagine that for most of us peaceful picketing and passive protest fall on one side of a dividing line, and force and violence against persons and property fall on the other. But what about verbal abuse, threats and intimidation? What about physical intervention that stops short of violence, e.g. blocking a roadway, or interfering with the supply of needed goods and services?

Third, there are questions about the effects of strikes, especially on third parties, both individuals and the community at large. Any strike worth the calling will presumably have an effect not only on those against whom the strike is directed, but also on others, innocent third parties, whose responsibility for or control over the point at issue may be precisely nil. Sometimes, as with strikes of police or the armed forces, the community as a whole may be at risk; sometimes, as with strikes of firemen or ambulance drivers, individual lives may be in danger; sometimes, as with strikes of sewage or power workers, it may be both. And sometimes it may be part of the strikers' explicit intention to cause maximum public inconvenience, so as to produce maximum public pressure on the other side. Can such things be justified, and how?

As it happens it was the last of these issues which originally attracted me to this topic, but as it turns out I shall have time to discuss only the first: what we might call the nature of strikes, as opposed to their conduct and their effects. Obviously what we have to say about this issue should have implications for what we say about the others, and I shall not always be able to resist pointing these implications out. But a more detailed treatment will have to wait till another occasion.

Finally, a strike is not the only weapon in an employee's armoury. There are also go-slows and work-to-rules, boycotts and refusals to do this or that without, however, refusing to work at all. I remember hearing somewhere of a transport workers' dispute where the 'strikers' continued to work as normal, but neglected to collect any fares. That, presumably, was one form of industrial inaction which commanded public support. But for simplicity I am going to concentrate on the strike proper, and on what I take to be the simplest, central case, the 'terms of employment' strike as I shall call it, i.e. the strike where what is at issue is the employee's terms of employment, including their conditions of work as well as their

wages. Obviously strikes can be and often are of other sorts. Thus, strikes may involve people who are reasonably content with their own terms of employment, but strike in support of colleagues who are discontented with theirs; and strikes can extend in this way not only to other employees but to other employers and even, as in the case of a general strike, to other employments. And from these sympathy strikes it is only a short step to protest strikes, where the strikers' objection is not to their terms of employment but to their employers' policies, for example their trading with or investing in various businesses or countries, or expanding or contracting in various places or directions. From here again it may be only a short step to political strikes, directed not at the employer as such but against some government policy, whether it be nuclear deterrence, immigration controls, the legalization of abortion or anything else. The boundaries between these different types of strike may sometimes be hard to draw, but that need not detain us. My main concern is with strikes over the terms of employment; and I shall deal with sympathy, protest and political strikes only in passing.

II

Having said something about strikes I should now say something about rights. I confess, however, that I have no theory of rights to offer: I do not really know what a right is, or where it comes from; I find the voluminous literature on the topic almost wholly unrewarding, and the manifold distinctions and divisions of rights, into natural and acquired, positive and negative, active and passive, special and general, claims and liberties, privileges and powers, permissions and entitlements, almost wholly unilluminating. It is the fashion in moral philosophy these days to appeal to rights as some sort of trumps, a court of last resort, a point at which the argument must stop: if something is your right, or infringes a right, then there is apparently not much else to be said about it. But if rights are to be invoked in this way then we need to be told what they are and where they come from, how they are to be justified and explained. Without that, it seems to me, the appeal to rights is mere rhetoric, at best a shorthand for what can be said more plainly in other terms. In particular, to say that people ought to retain or be given something because it is their right, is not really to explain why they ought to have it, but merely to repeat, in more resounding terms, the claim that they ought to have it. In fact, personally, this seems to have it the wrong way round: the right depends on the 'ought', not the other

way about; it is their right because they ought to have it, not 'They ought to have it because it is their right'.

There are, however, two important features of rights, as I dimly understand them, which I intend to invoke by using this terminology, despite my qualms. The first is that you can be within your rights and still be wrong, factually or morally. To put it enigmatically, any right must be a right of doing wrong; or more epigrammatically, the function of a right is to make all right what otherwise might not be right at all. If something is already right, either permitted or required, then you need no right to justify your doing it. We claim a right as a justification for doing something only if what we are doing would be morally questionable in the absence of that right. So if, for example, parents have the right to bring up their children in whatever way they think fit, this means that they should be allowed to bring up their children as they please, even if what they do is mistaken or misguided.

This does not of course mean that anything they might propose to do, however wrong, can be justified by that right. For that the right in question would have to be absolute or unlimited. More typically rights have to be weighed against other rights, and against other values more generally; and sometimes other wrongs can outweigh a right: parents' rights may have to be overridden, to prevent a greater wrong. Nevertheless, if a right is to be overridden or infringed in this way, that needs to be justified, and justified not simply by the wrong that is prevented, but by the wrong that is prevented outweighing the wrong of infringing or overriding the right. That is, the infringing of a right has to be justified as the lesser of two evils. And where, conversely, it is the infringing of the right that is the greater evil, then the right in question has to be a right of doing wrong.

Thus a right is best thought of as an entitlement, a permission to do what might otherwise be wrong. But—and this is the second feature of rights I wish to emphasize—a right is also more than a permission: it is what I will call, with due apologies, an 'obligated permission'. That is, to claim a right is, as I see it, to claim that you *ought* to be allowed to do or have something, should you want it: if you have a right to something then others should not attempt to prevent you from doing or having it; and if they do, they are at the very least in the wrong. Indeed the point of an appeal to rights is typically that those who try to prevent you should be prevented in their turn: there is a requirement on others to let you do or have that to which you have a right; and this in turn may involve a requirement on others to prevent anyone who is trying to prevent you from doing or having it. The right to free speech, for example,

does not merely mean that you may say whatever you like. It also means that others should not try to stop you saying whatever you like; and if they do, it is they who should be stopped, not you.

This, then, is what I mean by an 'obligated permission'. I apologize for the barbarism, but it seems to me to imply—what 'obligatory permission' does not—that the obligation is not on the person who has the right, but on others, to see that he is allowed to retain or acquire that to which he has the right. No doubt some will object that this is true only of rights in the stronger sense of 'protected' rights, or privileges, not in the weaker sense of rights as permissions or liberties. The idea here seems to be that anything which is permissible or allowed is something to which we have a right, on the grounds, apparently, that if something is morally neutral or indifferent then we need no further authority or permission to do it. Thus we have a right to do anything which is not explicitly forbidden: all behaviour is innocent until declared guilty, not the other way around. But it seems clear to me that a right must be more than a mere permission. It may, for example, be permissible for me to join a certain club or organization, in the sense that I do no wrong if I do, without my having the right to belong. This is because if other people, e.g. the existing members, wish to prevent my joining, they may. If instead, I were to claim that they ought to let me join, and therefore should not be blackballing me, I would be claiming not merely that it is permissible for me to join, but the right to belong. Similarly any student is permitted to get First Class Honours, in the sense that they do no wrong if they do, but they none of them have the right to a first class degree, not even those who do get one. All that they have—and it should enough—is the right to be awarded First Class Honours if their work is of the appropriate standard. And that is not just a permission, it is their right.

One reason for confusing rights with permissions may be that a difference in the content of various rights is mistaken for a difference in the nature of those rights. Imagine a university, unfortunately not my own, where a number of car-parking spaces are available to all, on a first-come first-served basis, but where each professor has his own designated place. The sense in which I would then have the right to park in this particular place, which has my name on it, seems obviously stronger than the sense in which you, poor mortal, have the right to park wherever else you can find room. Indeed the latter, it seems, is not a right in my sense at all, i.e. not an 'obligated permission', since there is no requirement on others not to prevent you from parking in this place or that, for example by getting there before you. Your right, it seems, is merely a permission or a liberty,

not a protected right or privilege like mine. But the difference lies not in the nature of our two rights, but in their content: yours is a right to park there, provided you get there first; mine is a right to park here, whenever I arrive (perhaps not such a good idea after all, as it tends to make absences conspicuous). Apart from that the two rights and their implications are the same. In particular, if you do have a right to park in any undesignated space, provided you get there first, then others ought to allow you to do so: they ought not prevent you, and if they do they should be prevented in their turn, provided, that is, that you did get there first. Your right, no less than mine, is an obligated permission. It is just more limited than mine.

Thus the right to strike, if such there be, should consist in the fact that people ought to be allowed to go on strike. That is, they should not be prevented from going on strike, if that is what they want to do; and if others do try to prevent them, e.g. by restrictive legislation, then it is those others, not they, who are in the wrong. Moreover, and more crucially, they ought to be allowed to go on strike even if they are in the wrong, whether mistaken or misguided, at least up to the point where the wrong that they do by going on strike is greater than the wrong involved in infringing or overriding that right to strike. This, as I understand it, is what is claimed by the moral, as opposed to the legal, right to strike.

But where does this right come from, how is it to be explained or justified? And what, more exactly, is it a right to do? The right to strike is, of course, a right to *strike*. But what, more exactly, is a strike, and a terms of employment strike in particular?

III

One swallow does not make a summer, nor does one non-worker make a strike. Even if any number of employees get fed up, give up, get up and go home, that need not be a strike. They may merely be abandoning this job for another, or for no job at all. Even if they then attempt to persuade others not to take that job in their place, even if they put pressure on others so as to prevent that job from being done at all, even that is not necessarily a strike. Workers in a medical laboratory who, sickened by what they are asked to do, join the Anti-Vivisection League and picket their former place of employment in the hope of preventing such experiments from being carried out in future are not, strictly, on strike. It would be a strike only if they claimed that the jobs in question were still theirs, so that anyone else who did that job in their place would be taking their job from them. What the striker objects to, apparently, is not the job as

such, but the conditions under which it is done or the reward that it brings, what I am calling 'the terms of employment'. This distinction between the job itself and its terms of employment may not always be clear, but in going on strike as opposed to resigning in protest, the striker in effect draws it: he accepts, indeed retains, the job as such, but he rejects the terms of employment.

Now what, in this, requires justification? The mere withdrawal of labour, the refusal to continue working on the terms currently on offer, I take it does not: particular contracts and special agreements aside, there seems no general requirement that people work on terms they find unacceptable, or for that matter that they work at all. Admittedly there is in the meagre philosophical and moral literature on this topic a double argument, 'perhaps too slender to be pushed unduly', that no man can lay claim to the right to refuse work at all times and on any grounds, however, trivial. Stating this largely in the author's own words (Kirk, 1927, pp. 355–356), one argument is that inasmuch as an artist or statesman is not justified in depriving the community of his talents by withdrawing into a life of cultured or selfish ease before his period of active work could reasonably be thought to have ended, the same requirement should also apply to the less talented artisan. The other argument starts from the assumption that those who withhold their labour have no right of being supported in voluntary idleness except from private means (!) or savings previously accumulated, and then argues that since society tolerates, approves and in some small measure legislates that each man should have an income in excess of his immediate needs in order to provide for sickness, old age and the requirements of family life, the use of these savings to enable him to cease work on insufficient grounds or before his normal time of retirement therefore constitutes an abuse—though not perhaps, in an ordinary and isolated case a serious abuse—of the tolerance and approval which society has conferred upon his opportunities for saving. These arguments date, significantly, from the time of the General Strike. They are, I take it, the sort of thing which gives casuistry (see the book's sub-title) a bad name.

But a strike is not simply a refusal to do some job yourself. Typically it also involves the withdrawal of labour by a body of employees acting in consort. So in the traditional terminology a strike is a combination, perhaps even a conspiracy. But combinations, similarly, do not seem to need justifying, at least not in principle: surely people are entitled to combine, even conspire, together in all sorts of ways, whether it be to throw a party or play Beethoven's Fifth? What will need justification, if anything does, is what they combined to do, not the fact of combination itself.

So the objection has to be not that strikes are combinations, but that they are combinations in restraint of trade, monopolistic interferences with the free market economy. One obvious reply to this is that the free market economy is not necessarily, in and by itself, a good thing, nor are cartels and monopolies necessarily bad: the free market economy is good only because of the benefits it brings, and interferences with it can easily be justified, either because they avoid the disadvantages or harms which free markets also produce, or because they bring even greater benefit. But to argue in this way, that some combinations in restraint of trade can be justified, is of course to concede the main point at issue, that combinations in restraint of trade do need to be justified. The more radical objection would be that the free market is not, even in general, a good thing, so that what need to be justified are the occasions on which it is allowed to operate, not those on which it is prevented from operating. Such an argument is of course possible, indeed familiar, but I will not pursue it here. After all it seems perfectly possible for one man to go on strike all by himself, either because he is a firm's only employee, or because he is the only employee who objects to his terms of employment. If that is so then the objection to combinations must be an objection to the way strikes are conducted, in particular to unionization, and not to strikes as such. In other words these issues of combinations, monopolies and cartels in the supply of labour, seem to relate more directly to the question of unions, and especially the closed shop, than to the question of strikes as such. Not that the two are entirely distinct: strikes and unions ultimately depend on each other for their power and effectiveness. But the issues now being raised are becoming too complex and too general to be dealt with here, and I pass by, hurriedly, on the other side.

In any case it seems to me that the relevant objection is not that strikes are a combination or conspiracy, but that they are a boycott. Boycotts, like cartels, may be good and they may be bad, though with boycotts it is, as we shall see, a matter more of causes than effects. But at least it seems clear that boycotts need to be justified, not because they interfere with the free market economy, but because they involve the deliberate infliction of harm and suffering on their object, and perhaps others as well. And that is not all.

What is boycotted in a strike is not goods or services, but a job, or set of jobs. Typically the strikers attempt to see to it that a particular job is not done, perhaps by persuading others not to do it, perhaps by preventing it from being done at all. Hence the familiar apparatus and ideology of strikes, the picket line and the appeal to union solidarity, the attempt to prevent not only blacklegs but essential

goods and services from going into the place of employment, and the attempt to ensure that those not directly involved in the dispute at least do nothing in their own employment to enable the disputed job to be carried on. In practice a strike is often not so much a boycott as a blockade.

But this is not strictly necessary to a strike. For one thing, the strikers may be positively relieved to find that essential and emergency services, in particular, do continue in their absence, provided that the arrangement is explicitly understood to be temporary, for the duration of the dispute only, and preferably conducted only at great inconvenience—and, even better, cost—to their employers. For another, they may be positively delighted to discover that the jobs which they object to have to be done in their absence by the management, who for these purposes get cast in the role of bosses. What the strikers insist on, rather, is that even if the job has still to be done, even if they are prepared to permit it to be carried on in their absence, it nevertheless should not be taken from them, because it is still their job. Thus strikers may or may not attempt to prevent that job from being done at all, but what they must certainly object to, what they must certainly attempt to prevent, if they are to count as striking in the first place, is others taking that job from them, whether it be by employing other people in their stead, or by moving the work, and therefore the job, to another place, or even, as in the case of multinationals, another country.

So what is distinctive about a strike is, as I suggested before, the refusal to do a particular job, combined with the insistence that that job is none the less still yours. Now this in itself seems curious enough to require some explanation: how can someone be entitled to claim a job as his, when he isn't willing to do it? Surely if he doesn't want to do it and others do, then it should be their job, not his? But what seems to require justification is the apparent consequence of this, the attempt to prevent others from taking that job, even though they might be willing, even eager, to do it in the striker's place. Surely this is an unjust restriction of liberty, the liberty of employers to employ, the liberty of workers to work? If there is, as many claim, a right to work, how can there be a right to strike, a right, that is, to prevent others working, when they are both willing and able?

Thus a strike is not just a boycott, it is an enforced boycott, an attempt to force others to join in the boycott, even though they might be perfectly willing to take that job on the terms which the striker rejects. Of course, if it were simply a matter of persuading others not to take that job, that would hardly need justification. Presumably one man may attempt to persuade another of just about, but not quite, anything he pleases. Indeed, if strikers succeed in

persuading someone not to take a job, they are not in any obvious sense preventing them from taking it. What needs justifying, rather is the attempt to prevent someone from taking a job, after you have failed to persuade him not to. Much depends, of course, on the form which the prevention takes: for most of us there will be some limit somewhere, beyond which we think strikers should not go; and I have already said that I will not attempt the perhaps impossible task of determining where that limit should be. But what does seem clear to me is that, of necessity, a strike goes beyond merely attempting to persuade people not to break the strike; to use a suitably vague phrase, it involves putting pressure on those who would break the strike, to make it difficult or unpleasant for them to do so. That, surely is what the apparatus and ideology of strikes is for: not just to persuade non-strikers so that they willingly accept whatever restrictions the strikers seek to impose; but to put pressure on them so that unwillingly, if needs be, they decline to break the strike, for fear of public criticism and condemnation, of calumny and obloquy, to put it no higher.

There are of course those who think that a strike should be restricted to the attempt to persuade. But if I am right this attempt to restrict strikers to friendly persuasion is an attempt to prevent a strike from being a strike, and therefore an infringement on the right to strike as such, if such there be. Indeed, since the right to persuade seems, like the right to withdraw your labour and the right to combine, at least in some things, a right which we surely have whether there is a right to strike or not, it is only this right to prevent which provides a distinctive, substantive component to the right to strike as such. (More accurately, it is a right to attempt to prevent. The right to persuade, similarly, is a right to attempt to persuade, or else those who are not persuaded have infringed your rights!) So this is the right which needs to be explained and justified: not just the boycott, but the enforced boycott.

IV

What I have said so far will seem to many unnecessarily vague and theoretical. Whatever it might be in theory, a strike is in practice a war, or at any rate a battle, between opposing forces, with each side using whatever means it can to inflict maximum damage on the other, in the hope of bringing it to its knees or at least to the negotiating table. More exactly, each side hopes to gain more in the long term, and not necessarily for itself alone, than it stands to lose in the short run. But to achieve this, each side hopes to inflict more

damage on the other than it does on itself. Thus strikes are bad not only in their effect, which is the infliction of harm on both parties, but also in their intention, the intention being precisely that: the infliction of harm. Moreover, those who suffer this harm need not be restricted to the other party to the dispute; and as we have seen even this may be part of the strikers' explicit intention. This, surely, is what needs to be justified, not simply the attempt to prevent some few people from taking a job that they want?

Not surprising, therefore, that the most popular justification of strikes, in the meagre moral literature on the topic, is by analogy with a just war: the 'just war' justification, as I shall call it (cf. Manning, 1891; Kirk, 1927). Traditionally this doctrine of a just war has two parts: the *jus ad bellum* or justice of waging a war, and the *jus in bello* or justice in waging a war. We are here concerned only with the first of these, which is in turn traditionally divided into three components: a just cause, a good intention, and proper authority. Let us, for simplicity, take the second and third of these for granted; so a war, or a strike, will be justified if the cause is just. But what, exactly, constitutes a just cause?

Traditionally there is no general answer to this question. What happens instead is that particular causes are specified as just, case by case. The most familiar of these is self-defence, but there are others: provocation which stops short of actual aggression, the breaking of treaties, the protection of nationals in foreign territories. If we had to provide some general characterization I suppose it would involve something like the right of each nation to protect its vital national interests. But this does not by itself necessarily justify war: the interests at stake also have to be sufficiently important, the breach of them sufficiently grave, to justify so extreme a measure as war.

Notice too that the just cause justification appears to allow that both sides can be justified in fighting. It at first seems that if one side is in the right, the other must be in the wrong. But there is of course the possibility that both sides are in the wrong; and even the possibility, explicitly allowed by some just war theorists, that both causes might be just. Typically, of course, both sides will claim that their cause is just, and it may be difficult for an impartial outsider to decide between them. But since vital national interests can and do conflict, will there not be cases where both sides can claim, quite correctly, to be defending vital national interests? Or if one side is provoked into invading the other, is not the other justified in fighting back? Or if the claim to some piece of territory is obscure, and arguable on both sides, might not both sides be justified in waging war over it, in defence of their sovereignty? You might think, perhaps, of certain windswept islands in the South Atlantic.

The important point, however, is that a just cause justification has to be distinguished from what I will call a 'lesser evil' justification. That is, the mere fact that war would involve less evil than the failure to fight does not by itself provide a just cause. In particular, one country is not justified in interfering in the internal affairs of another, not even to right a wrong: one country is not, for example, justified in invading another to protect the latter's citizens against an unjust and despotic government (think of Russia under Stalin, Germany under Hitler, Uganda under Amin). Even today, when a small Caribbean island is invaded by the most powerful nation on earth, the official justification, at least initially, has to be that it was necessary to protect the citizens of the larger power who happened to be on that island.

Moreover, the appeal to the lesser of two evils is not only not sufficient to provide a just cause justification, it is not even necessary. That is, provided that a nation has a just cause then, by the just war doctrine, it is entitled to go to war even if the result is to produce more harm, not less, i.e. even if less harm would be done, all things considered, by peacefully submitting. In particular, if a war is to be justified as the lesser of two evils then it must first and foremost be successful: a war which failed to secure the good or right outcome would merely compound the evil. But this too is no part of the just war doctrine: a war is justified not by its results, nor even its success, but by the justice of the cause. This means explicitly that a nation can be justified in going to war, in self-defence or in defence of some vital interest, even when it stands no chance of winning. Thus the British invasion of the Falklands, if justified by a just cause, would still have been justified even if the results had been much more disasterous than, thank God, they were; and would have been no less justified if it had failed, or even if—as at one time seemed likely—it was bound to fail.

Turning now from wars to strikes, the most obvious justification, once again, seems to be self-defence. It may not be the only one: exploitation, victimization, unfair dismissal, the non-recognition of unions, and so on, might all be seen as providing a just cause, and hence as justifying strike action. And if the just war analogy can thus justify protest strikes, it seems that it can also justify sympathy strikes, provided that common interests are at stake, just as one nation may ally itself with another even if it is not itself attacked, or even provoked (I think of New Zealand in both world wars). Even so there will be limits. To adapt what was said in the case of wars: a just cause seems to involve something like the right of employees to protect their legitimate interests, but the breach of this right does not by itself constitute a just cause: the interests at stake have to be

sufficiently important, the breach of them sufficiently grave, to justify so extreme a measure as a strike. Moreover some protest strikes, having to do for example with the employers' trading with or investing in various countries, would seem not to be justified, as not involving matters which directly affect the employee's interests, as opposed, perhaps, to their desires. Nor would purely political strikes be justified, not only because the point at issue is not strictly an issue between employees and employers, but also—to invoke a feature of the traditional *jus ad bellum* which I earlier put to one side—because it is not clear that either side has proper authority in the matter.

But I am now trespassing into areas I promised not to invade, so let us concentrate on the most obvious and for our purposes most relevant just cause, self-defence. A man's wages 'must be sufficient to enable him to maintain his wife and children in reasonable comfort', said Pope Leo XIII in 1891, and seemed to imply that if they are not, then he is entitled to strike. But this seems to apply only to those whose terms of employment do not allow them even an adequate standard of living. It is not clear that anyone who already enjoys a reasonable standard of living could justify a strike in the name of self-defence, no matter how unjustly he might regard himself as treated by comparison with others: unfair treatment does not in itself constitute an infringement of vital interests, nor justify a response in the name of self-defence. So it might seem that in a welfare state, which guarantees for everyone whatever is currently regarded as the minimum acceptable standard of living, no one could have this justification for striking. Certainly Kenneth Kirk, Bishop of Oxford, writing before the welfare state but after a general strike, comes explicitly to the conclusion that

We may indeed doubt whether, under modern conditions, the worst grievances of any existent body of workmen approximate even remotely to such a degree of gravity as would justify 'war' on the scale of a general strike (1927, p. 361),

and if no existing grievances could justify a general strike then, it is not clear that any current grievances could justify so much as a local strike now.

However, Cardinal Manning, interpreting Leo XIII, is prepared to be more generous:

A man has a right and an absolute liberty to work for such wages as he thinks just, and to refuse to work for less. Men have both the right and liberty to unite with others of the same trade or craft and to demand a just wage for their labour. If this just wage is refused, he has both right and liberty to refuse to work—that is to strike.

Leo XIII fully recognizes this liberty. So long as the cause is just, the right to strike is undeniable. He 'is free to work or not' (1891/1901, p. 14).

Unfortunately Manning here fails to distinguish between the right to refuse to work and the right to strike: does the fact that you have a right not to work for wages you consider unjust mean that you have a right to go on strike if you think your wages unjust, or only if they actually are unjust? He also greatly exaggerates Leo's position: *pace* Manning (1891/1901, p. 15), 'On the liberty of strike, Leo XIII is equally explicit', it might be more accurate to say that, on such matters, the encyclical is explicitly inexplicit. Leo does insist that because of the necessity for, and the natural law of, self-preservation, workers are entitled to a basic subsistence wage ('remuneration ought to be sufficient to support a frugal and well-behaved working man' (1891/1928, p. 40)), and that 'all may justly strive to better their condition' (1891/1928, p. 35). But rather than drawing the conclusion that workers are therefore entitled to strike if these conditions are not satisfied, Leo says instead that 'the law should be beforehand and prevent these troubles from arising' (1891/1928, p. 36). Moreover, and one gets the impression more importantly, as well as intervening and so taking away the need for strikes, the law should also intervene to prevent strikes getting out of hand ('neither justice nor the common good allows any individual to seize upon that which belongs to another, or, under the futile and shallow pretext of equality, to lay violent hand on other people's possessions...' (1891/1928, pp. 35–36)). So for Leo, evidently, industrial disputes should be settled by legislation, not strike action: 'If by a strike, or other combination of workmen, there should be imminent danger of disturbance to public peace; ... or if employers laid burdens upon their workmen which were unjust, or degraded them in conditions repugnant to their dignity as human beings'—or for that matter in any number of other conditions, including 'if in workshops or factories there were danger to morals through the mixture of the sexes or from other harmful occasions of evil'—then 'in such cases there can be no question but that, within certain limits, it would be right to invoke the aid and authority of law' (1891/1928, pp. 34–35).

Nevertheless it is clear that Manning believes—and believes that Leo XIII believes—that if your wages are unjust you have a just cause, and are therefore justified in striking. But what constitutes a just wage? Here too Manning believes that

The Encyclical has given a very explicit and definite answer. It is impossible to define the maximum. It is only necessary to define the minimum... It must be sufficient to maintain a man and his

home . . . Beyond this it is impossible to go. Every kind of industry and labour, skilled and unskilled, in all the diversities of toil and danger, will have its special claims; but the lowest line is the worker and his home (1891/1901, pp. 14–15).

Manning glosses this, however, as meaning that the minimum just wage must therefore be the same for all: ‘This does not mean a variable measure, or a sliding scale according to the number of children, but a fixed average sum’ (1891/1901, p. 14). He notices one consequence of this: ‘It follows, therefore, that an employer who would take single men without homes at a lower wage would commit a social injustice, full of immoral and dangerous consequences to society’ (1891/1901, p. 15); but seems not to notice, or at any rate does not discuss, another more obvious consequence, that by this reckoning the minimum just wage will inevitably be below the level needed to support any family which is larger than average. There is of course an argument that larger than average families deserve to be penalized, but this is not an argument you would expect to occur to someone in 1891, and to a Cardinal least of all.

More curiously still, Leo XIII accepts that a minimum wage should permit a man to save, and even acquire property; but instead of seeing this as a reason for fixing the minimum somewhere above what is necessary for subsistence, he insists instead that it should be possible for ‘a sensible man to study economy’ even within a subsistence income: ‘he will not fail, by cutting down expenses, to put by some little savings and thus secure a small income’ (1891/1928, p. 40)! But it would be unfair to poke too much fun for scorn at these thinkers from another era. Although Leo XIII is much less explicit than Cardinal Manning, both on the right to strike and on what Manning calls ‘the despotism of capital’, the concern of both men for the condition of the working classes as they saw it is real and manifest, especially in their rejection and condemnation of the idea that a just wage might be determined by the ‘free’ but binding consent of both parties, in accordance with the laws of supply and demand. This argument, says Leo, is ‘by no means convincing’ (1891/1928, p. 39). Manning, typically, is much more outspoken (1891/1901, pp. 15–16).

But what hardly needs emphasizing in all this is that the concern seems to be with the bare minimum necessary for survival: not so much self-defence as self-preservation, or what the lawyers call necessity. Admittedly Manning explicitly allows that a just wage may be greater in some employments than in others, but he gives no indication how to determine a just wage in these other cases, and the implication still seems to be that it is only when your terms of

employment are just about as bad as they can possibly be, that you are justified in striking.

This brings me to a second, more general difficulty with the just war justification, as applied to strikes. According to this analogy a strike is justified when its cause is just, and the means adopted no more than is justified by the justice of that cause. But there is first the difficulty, and often the impossibility, of deciding whether the cause is just, let alone sufficiently just to justify the strike. This is particularly obvious in the case favoured by Manning, the demand for a just, or fair, wage. Whether a particular rate for the job is or is not fair, of course, something on which people may legitimately differ: in most actual cases, a wage which seems manifestly unjust by comparison with others more favoured, can also be made to seem manifestly more than just, by comparison with others even less favoured still. It says something for society's view both of women and the caring professions that the one clear exception to this general rule, the profession whose claim to be under-rewarded seems invariably to be indisputable, having regard either to its social importance or the terms of its employment, is the profession of nursing.

More typically, however, it is by no means clear whether a wage is unjust, and a strike therefore justified. This might not seem to matter: is it not just a fact of life that people do disagree, radically and sometimes violently, about whether a particular strike is justified? Is this not just the sort of thing which is, and has to be, ultimately a matter of opinion? But the question is not whether a particular group of strikers is in the right—that, assuredly, is something over which there can be radical, irresolvable disagreement—but what they are entitled to do. It is no help to society or the law to say that they are entitled to strike if their wage is unjust, but not if the wage they reject is a fair rate for the job, if there is then no agreed method for determining what a just or a fair wage might be. Indeed, if there were some agreed method for determining a just or fair wage, e.g. an appeal to some wages or incomes authority, then surely the appeal to that authority ought to take the place of strike action, since no strike could be justified which contravened its decisions!

Behind this difficulty lies a more fundamental one: that this just war or just cause justification does not, in fact, provide a right to strike at all. 'So long as the cause is just', said Cardinal Manning, 'the right to strike is undeniable' (1891/1901, p. 114); and implies thereby that where the cause is not just, there is no right to strike. But in that case it is not, strictly, a right at all: if something is already right, you need no right to justify doing it; you need a right

to justify what you do only if what you do would otherwise, in the absence of that right, be wrong. As I put it earlier, a right is a right of doing wrong, and the right to strike therefore means that people are entitled to strike even if they are not in the right, even if they are mistaken or misguided. And this is precisely what the just cause justification does not provide: people are justified in striking if, but only if, their cause is just.

Now there is a way (suggested to me by Barrie Falk) of solving both these difficulties together, by trading them off one against the other. It is, it may be said, precisely because it is a matter of opinion about which people may legitimately disagree, whether or not a particular cause is just, that individuals are entitled to act on the belief that their cause is just, even if they happen to have got it wrong, at least in our opinion. In the absence of a suitable authority, individual opinion must reign supreme, and people are therefore entitled to act on their own opinion, right or wrong. But this seems to me a rather weak justification of the right to strike, a justification out of ignorance as it were. It may be significant that there seems no corresponding right to war. Various people may or may not have the right to declare a war, just as various people may or may not have the right to declare a strike. This is presumably the requirement of proper authority, referred to above. But there seems to be no right to war as such: nations are not entitled to go to war, right or wrong, or just because they think they have a just cause, whether they really have one or not; in going to war over some issue a nation can be doing what it has no right to do, not because it infringes other rights, but because it had no right to fight over that issue in the first case. But I admit I am not clear about this, and there are other justifications of the right to strike to consider.

V

In the previous section I distinguish a 'just war' justification from a 'lesser evil' justification of strikes and wars. The traditional just war doctrine would not regard a war, or a strike, as justified merely because it is necessary to avert a greater evil; and conversely, you might be justified in waging a war, or a strike, even though there would be less harm or suffering if you did not. In particular, the justification for fighting a war or a strike does not depend on the likelihood of success: if your cause is just you are entitled to fight, even if it seems certain that you will fail. But having distinguished the two, we should now consider a lesser evil justification of strikes: the claim that bad though they may be, strikes can nevertheless be

justified as the lesser of two evils, in that the effect of not striking would be even worse. Note that this means that a strike can be justified only if it seems likely to succeed, or at least likely to result in better terms than could be achieved without strike action, though it also means that those terms must be sufficiently better to outweigh any damage caused by the strike itself.

This might at least seem to have the advantage of realism. Surely no one is going to fight a strike which they seem bound to lose; surely neither side will embark on a strike unless they feel sufficiently confident of gaining more than they stand to lose. But there is a crucial difference here. What actually motivates a strike may be some calculation, on both sides, of the likely costs and benefits, if not to themselves alone then at least to those who might broadly be construed as being on the same side, employers or employees as the case may be. But the moral justification will depend on a calculation of the costs and benefits to all affected parties, and innocent third parties as well as those directly involved in the dispute. So a strike might be sound sense, in the sense of rational self-interest, yet not be morally justified as the lesser of two evils. And, just possibly, vice versa.

Now a lesser evil justification, it seems to me, is in some respects more generous than a just war justification, but in others less so. It is more generous in that it sets no limits in principle to either the issues or the terms on which a strike may be fought, provided always that the end result is better than would otherwise have been the case. There is therefore no reason why strikes should be restricted to points at issue between employers and employees: a purely political strike could still be justified, provided that the results are good overall, where this good could consist merely in bringing some matter to public attention, and not necessarily an immediate change in the disputed policy. Similarly there seems no reason why strikers should restrict themselves to peaceful or even lawful means: since, on this justification, success is the essence, strikers will be justified in using whatever means may be necessary to ensure victory, always provided that any harm is in the end outweighed by the good that is achieved thereby. On this justification it is the results that count, and anything can be justified, provided it is necessary to achieve the best possible balance of good over bad.

But while this lesser evil justification may be more generous in principle, it may also be more restrictive in practice. Remember that no strike seems likely to succeed unless it inflicts unacceptable damage on the other side and, inevitably therefore, on third parties as well; remember too that the lesser evil justification depends on a calculation of harms and benefits to all affected parties, and not just

those directly involved in the strike; and it begins to seem doubtful whether any strike, other than a purely token one, could ever be justified in this way. No doubt those who take strike action would often suffer unfairly if they did not. But if the justification of strike action is in terms of the lesser evil overall, and not the justice of the cause, it is not at all clear that the disadvantages they suffer could justify, i.e. outweigh, the disadvantages which a strike inevitably imposes on others. I do not say that it is impossible ever to justify a real, as opposed to a token, strike in this way; but I do say that it is going to be difficult. This is why it is important to distinguish the just cause from the lesser evil justification.

However, the main objection is that like the just war justification, this too fails to justify a right to strike. On this account a strike is justified when, but only when, striking produces less harm, less evil, all things considered, than the failure to strike. At first sight this too seems to be something on which different individuals will have very different opinions, with no obvious way of deciding between them. But as I have just suggested, if we lift our eyes from the details of the particular calculation and consider instead what the overall result seems likely to be, all things considered, we might find it surprisingly easy to agree that, on those grounds at any rate, no strike is justified. The objection is, rather, that if there is a right to strike then it is a right to strike even if you have got it wrong, even if you are mistaken in thinking that the harms which will result for you if you do not strike outweigh, and therefore justify, the harms that will result for others if you strike.

Where both the just war and the lesser evil accounts go wrong, it seems to me, is in failing to distinguish between the justification of particular strikes, and a justification of the right to strike; or to use the terminology which I will prefer, between justification and entitlement. The right to strike does not, of course, mean that every strike is justified. As I have insisted, the right to strike is a right to strike right or wrong. In other words, you can be entitled to strike, even when a strike is not justified. An adequate account of the right to strike must therefore be in two parts: first, a justification of what in strikes needs justifying; and second, an explanation of what entitles people to strike even when no strike is justified.

VI

Earlier we noticed two things in the very nature of strikes, as opposed to their conduct and effect, which seemed to require moral justification. The first was that strikes are a boycott, involving the

deliberate infliction of harm on others, including innocent third parties. The second was that strikes are an attempt to enforce this boycott, and therefore an attempt to prevent people doing what they would otherwise be minded to do. These, apparently, are what have to be justified, if there is to be any such thing as the right to strike.

I want to suggest now that we can see both of these things as justified, or any rate justifiable, if we think of the strikers as making, in effect, a certain sort of moral or quasi-moral, claim: a strike is not simply a refusal to continue working on the terms currently on offer; it is also, in effect, a claim that those terms are unacceptable, and it is because they are unacceptable that the strikers refuse to accept them. Now if this claim were understood purely descriptively, as meaning that nobody can be expected to do that job on those terms, then it could be easily tested, by seeing whether sufficient people are prepared to do the job on the terms which the strikers reject. And this would have interesting, if somewhat unexpected, implications for the practice and conduct of strikes. On the one hand strikers would not be entitled to prevent those who are willing to accept those terms, from doing their job in their place. They could, of course, attempt to persuade others not to take that job, i.e. persuade them that those terms are, as they claim, unacceptable. But if they fail, if those others are willing to accept the job on those terms, then those others must be allowed to do so. Significantly, but unsurprisingly, many are prepared to accept this first implication, but not the next. For on the other hand the success or failure of the strike should not be allowed to depend on extraneous factors, such as the strikers' ability to hold out. It should be settled instead by whether or not sufficient people are willing to accept the disputed terms. There should therefore be some form of financial support for those who are on strike for as long as their proposition, that their terms of employment are unacceptable, is up for public testing. So perhaps employers should be required to pay strikers even during a strike, up to (but not beyond) such time as somebody else can be found to do the job instead; so that if that time does not arrive they will eventually have to concede the strikers' demands, the strikers having thus proved the truth of their proposition!

But, of course, the strikers' claim is to be understood prescriptively, not descriptively: not as meaning that nobody can be expected to do that job on those terms, which, human weakness being what it is, is unlikely to be true, however justified their claim; but as meaning that nobody should be expected to. And it is this moral or quasi-moral claim, which I shall now suggest, justifies both the boycott and the enforcement of it. On both points I will have to be brief.

Boycotts, first of all, can be of two kinds. On the one hand there are boycotts which are intended to right some wrong, or at any rate punish some evil, even if, as it sometimes turns out, the disapproval expressed is merely token. We might call these 'punitive' boycotts; examples might be the boycott of South African oranges or Californian grapes. In these cases the intention, at any rate, is to inflict harm, but this harm is deserved, and the justification is the hope of doing good or the justice of the cause. But on the other hand there are boycotts which consist in the refusal to do something because it would be wrong to do it. For want of a better word we might call these 'exculpatory' boycotts: examples might be a boycott, by governments, unions or individuals, on supplying arms for external use to an aggressor nation, or supplying arms for internal use to a despotic one. In these cases the intention need not be to inflict harm—quite the opposite in fact—and if harm is inflicted, intentionally or not, the justification is not the hope of doing good or the justice of the cause but simply that to do otherwise would be wrong. If the workers at Auschwitz had refused to man the gas ovens their boycott would, I suppose, have inflicted harm of sort on some, in the minimal sense that it frustrated their desires; but their boycott would have been justified not as a form of punishment, but as a refusal to do what was manifestly wrong.

Now because strikes clearly do involve the deliberate infliction of harm on the other side, it is tempting to assume that they constitute punitive boycotts, and therefore require justification of the sorts we have already considered and rejected, in terms of the lesser of two evils or a just cause. But I think we can now see that strikes are exculpatory boycotts: the claim, at any rate, is that in refusing to work on the terms currently on offer the strikers are refusing to do what nobody should be expected to do, what it would therefore be wrong for them to do and, for that matter, wrong for anyone else to do in their stead.

But although this may justify the boycott, as necessary to avoid doing what it would be wrong to do, it does not by itself justify the enforced boycott. Inasmuch as a strike is a declaration that certain terms of employment ought not to be accepted, then obviously anyone who does accept those terms is, in the strikers' opinion, mistaken and misguided, a fit object of criticism, complaint and condemnation. But criticism, complaint and condemnation are one thing, or perhaps three things; actually preventing someone from doing what *we* regard as wrong is something else again. Normally the fact that we regard what someone does as mistaken or misguided, or even immoral, does not by itself justify our stopping him from doing it. If he genuinely believes that he is right and we are wrong then, as

often as not, he must be allowed to act on that belief. That is what a belief in human autonomy, liberty or freedom largely comes down to: we must each of us be allowed to go to the Devil in our own way. Once again there are limits, there are some things which we believe people should not be allowed to do, even if those people themselves genuinely believe that what they do is right. But generally, any restriction of individual liberty seems to require some further justification, beyond the fact that what that person proposes to do is, in your opinion, mistaken, misguided or immoral. And this is what we still need in the case of strikes. The right to strike, as we noted, puts a restriction on the right to work. But why should this right override the other?

The answer, I suggest, is that a strike is a Prisoners' Dilemma situation. Human weakness being what it is, the fact that something ought not to be accepted will have little or no bearing on whether or not people actually do accept it. Even if it will eventually be to the advantage of everyone that they refuse to accept this job on those terms, there will always be those who can find some personal or short-term advantage in taking a job on terms which others have rejected, especially where the alternative is no job at all. Or to put it in the familiar terms of the Prisoners' Dilemma: individuals can gain an advantage over others if they compete for what is available; but everyone will do better, collectively if not individually, if they co-operate; provided, that is, that everyone does co-operate, and that some do not seek to gain an advantage over the rest.

The equally familiar solution to a Prisoners' Dilemma is to enforce co-operation, which is precisely what a strike attempts to do. But this enforced co-operation can be justified in either of two ways. The first is by an appeal to self-interest: each individual will do better for himself if everyone co-operates, himself included, than if some compete. True, it will be better still for each individual if others co-operate and he competes, and the more who co-operate when he competes, the better he may do; but in a situation where if one competes, all compete and all do worse, it will be better for each individual if co-operation is enforced, on himself as well as on others. But this justification does not apply to the case of strikes. For one thing it is not the case that if one competes, all compete and he does worse: if he competes he gets the job, and the strikers lose it, so he does better than they. For another it is not the case that he will do better for himself provided everyone co-operates: if he co-operates the strikers keep the job, and he goes without. Rational self-interest, if that is what counts here, demands the competitive move.

The second justification of enforced co-operation in a Prisoners' Dilemma appeals to morality or the collective good: it is the group as

a whole which does better if all co-operate, and the more who co-operate the better the group will do, even though particular individuals might be able to do better for themselves by competing. This means, first, that anyone who does co-operate is doing the right, morally best, thing; second, that anyone who competes at the expense of those who do co-operate is gaining an unfair advantage; and third, that those who co-operate when others compete are actually penalized, disadvantaged, for doing the correct, i.e. moral, i.e. co-operative, thing. In such a situation enforced co-operation is justified not in the name of self-interest but in the name of justice: it has been plausibly argued (Ullmann-Margalit, 1977) that moral norms emerge precisely from the need to ensure the right, morally correct outcome in a Prisoners' Dilemma situation. And this, similarly, is what justifies enforced co-operation, i.e. the enforced boycott, in the case of a strike: if the terms of employment are, as the strikers claim, unacceptable then enforcement is necessary, not merely to ensure the right or best result overall, but to avoid injustice to those individuals who rightly refused to accept employment on terms which nobody ought to accept.

This, then, is my justification of the enforced boycott. But as I am sure you have noticed, this justification depends on an assumption which I have so far avoided making explicit: that when the strikers in effect claim that their terms of employment are unacceptable, and then act on that claim, what they claim is correct, i.e. those terms are unacceptable. If this claim is correct, it justifies both the boycott, as an exculpatory boycott, i.e. as necessary to avoid doing something wrong; and the enforced boycott, as necessary to avoid a bad outcome, and in particular injustice to individuals, in a Prisoners' Dilemma situation. But if this claim is incorrect—if these terms are not such that no one ought to accept them—then neither conclusion follows, and neither the boycott nor its enforcement have been justified.

In short, we are no better off now than we were with the 'just war' and the 'lesser evil' justifications. For one thing there is liable to be every bit as much irresolvable disagreement over whether these terms of employment really are unacceptable, as the strikers in effect claim, as there is over whether a particular wage is fair or a particular cause is just, and for much the same reasons. For another this justification justifies only particular strikes, and not the right to strike as such. What still needs to be shown is how employees can be entitled to strike even when the particular strike is not justified, i.e. how they can be entitled to make that quasi-moral declaration and act on it, even when that declaration is false.

So we need another argument, to justify the right to strike as such.

The general form of this argument is familiar enough, and I will have to be briefer still. So let me remind you first, in my own self-defence, of what I said at the outset, about the inevitable simplicities of my discussion.

VII

We can begin with the familiar point that labour, like any other commodity, is subject to the laws of supply and demand. If there is a surplus of jobs over takers the terms of employment, including conditions of work as well as wages, will tend to improve, as employers compete for the scarce commodity, employees. If there is a surplus of takers over jobs the terms of employment will tend to worsen, as employees compete for the scarce commodity, jobs. Thus under full employment the terms of employment will tend to improve until they reach the point where it is not worth employers' while to employ: they may be unable or unwilling to provide the necessary terms, and so go out of business; or they may find it cheaper to install machines instead. But a surplus of jobs over people wanting them has always been the exception, limited to particular times, places and occupations. The norm throughout history and as far as the eye can see, especially at a global level, is a surplus of people over jobs: if not actually unemployment, then at any rate underemployment. Under these more familiar conditions the terms of employment will tend to worsen until they reach the point where it is not worth employees' while to accept a job on the terms currently on offer. If it really were the case that any job is better than none, that point would never be reached. But sooner or later there will come a time when there is actually no advantage, financial or otherwise, in taking a job: you might as well stay at home and starve, as go to work and starve just the same.

In practice this lower limit is set not by starvation, but by the extent to which others in the family or community are willing or able to support those who cannot find acceptable employment. In a welfare state this support is institutionalized, in the form of unemployment relief. So in Britain it will be the level of unemployment relief, and ultimately supplementary benefit, which in effect sets the lower limit to wages, by establishing a point, above or below it, where it becomes more sensible not to work at all. The mythology is that unemployment benefit is a form of compensation for those who really want to work but cannot find a job—society should not penalize those who are out of work through no fault of their own—and that anyone who actually prefers living on the dole to

working for a living is a scrounger and abusing the system. Admittedly we hear much less of scroungers now than we used to, now that the potential candidates include our friends, neighbours and colleagues, to move no nearer home. But since voluntary unemployment is surely to be preferred to involuntary employment, such scrounging ought actually to be encouraged: it is positively desirable that some people would rather live at the minimum level ensured by unemployment benefit than take a job which someone else would rather have. Ideally, unemployment benefit should function not as compensation but as an incentive; and under conditions of moderate unemployment—where, curiously, complaints about scroungers tend to be loudest—this ideal was probably realizable. But as jobs become ever more scarce, and we want more and more people to prefer voluntary idleness to enforced labour, the more tempting the level of unemployment benefit will have to be—until, perhaps, we reach the point where the only ones working are those who are *not* doing it for the money! But there are obvious difficulties here, most notably the cost of all this to an already hard-pressed economy, and the danger that unemployment benefit will eventually approach the point where employers prefer not to employ at all, and I must return to my argument.

So, an upper limit to the terms of employment will be set by the point at which employers prefer not to employ, and a lower limit by the point at which employees prefer not to be employed. Under full employment the pressure will be upward; under unemployment the pressure will be downward. Now I take it that the favourite fiction of the philosophers, the impartial spectator, will agree that the former is more desirable, if less likely: if human satisfaction is our goal, then the terms of employment ought to be the best that they can be, not the worst. I am saying, notice, that a wage ought to be not just just or fair, but the best possible, the best the market can bear. I admit that this is little more than intuition on my part, for which I have no argument beyond an appeal to your own impartial spectating. So, in case you have your doubts, let me remind you that there are limits to what this best can be, a limit set by the point at which employers prefer not to employ; and so far as I can see this point will be determined, in the last analysis, by each employer for himself. I hope to be saying no more than that, ideally, the terms of employment should be the best the employer can manage, not the worst.

Now this in turn means that we need something to counteract those equally beloved market forces, something to push the terms of employment up, not down. But the most obvious devices, like a statutory minimum wage, or welfare payments for those who prefer

not working at all to working on the terms currently available, merely provide a floor for the market forces to push against: they do not provide pressure in the opposite direction. What can provide this pressure, however, is people's refusal to work on terms they consider unacceptable. Moreover, what counts as unacceptable terms is, of course, a relative matter, relative to time, place and occupation. And with increasing prosperity, or the spectacle of others, or merely possible, wealth to goad you on, the trend tends to be upwards, so much so that we in the developed world have come to take virtually for granted that our terms of employment, our standard of living and our conditions of work, must inevitably improve, even annually. In that case pressure will be ever upwards, at least to be best that the market can bear, which is as much as we can reasonably demand.

There are, however, obvious difficulties. The fact that one person considers his terms of employment unacceptable, and therefore refuses to work on them, does not of course mean that others will find them unacceptable too, or refuse to work on them even if they do. And if it is merely individuals who refuse to work on those terms, then so long as there are others willing and able to take their place, the pressure will still be down, not up. It is only if everyone refuses to accept the terms which they reject, that the pressure will be up, not down. So what we need is some mechanism or device which will ensure, as best it can, that other people do not take a job whose terms those whose job it is have rejected as unacceptable. And this, as we have seen, is precisely what a terms of employment strike is.

Notice here that this involves more than merely ensuring that nobody else accepts the terms which the strikers reject. If that were all, the strikers should have no complaint if others take that job on better terms, and in particular on terms which the strikers themselves would regard as acceptable. But that would not be meeting the strikers' demands; it would only be rubbing salt in their wounds! As we have already seen a strike attempts to ensure, instead, that nobody takes that job from them, not even on better terms. This too is easily explained and justified. If those who strike can be replaced with impunity, even if it has to be on better terms, then no one will dare to strike in the first place, and people will not refuse to work on terms which they regard as unacceptable. That is why the strikers, in striking, insist that the job they refuse to do is none the less still theirs.

Thus strikes—or, preferably, the threat of strikes—can provide the desired upward pressure on the terms of employment, not just at the bottom, where the terms of employment are most obviously unacceptable, but at any point, wherever people regard their terms of

employment as unacceptable and, therefore, refuse to accept them. Take away the weapon and the threat of strikes and there may be nothing beyond the benevolence and charity of individual employers to prevent the terms of employment sinking to that level, wherever it might be, that people would prefer not to work at all, with all that that involves, than do that job on those terms. This, as I see it, is the ultimate justification of the right to strike. It is, moreover, a justification of the right to strike, right or wrong: the argument does not depend on strikers being in the right when they declare their terms of employment unacceptable, and therefore refuse to accept them; on the contrary it is explicitly an argument that they should be allowed to declare their terms of employment unacceptable, and to act on that declaration, whether those terms really are unacceptable or not.

VIII

As I approach the end of this paper I am more than ever conscious that my argument sacrifices realism for simplicity, but I do not have time to complicate my story now. Instead I should like to say something about the limitations to the argument so far, and its possible development.

The gist of my argument has been that (1) employees are justified in refusing to work on unacceptable terms, this (exculpatory) boycott being justified on the grounds that it would be wrong for them to do so; that (2) they are also justified in attempting to prevent others taking that job from them, even though they are not prepared to do it themselves, this enforced boycott being justified in the name of justice, not self-interest, in what is a Prisoners' Dilemma situation; and that (3) the need to maintain some upwards pressure on the terms of employment, particularly in conditions of unemployment, means that employees ought to be allowed to declare their terms of employment unacceptable, and to act on that declaration as justified above, whether those terms really are unacceptable or not. That is, they are entitled—they ought to be allowed—to do those things, whether they are justified in the particular case or not. Or to put it in a phrase, they have the right to strike, which means a right to strike, right or wrong.

Nevertheless, this justification of the right to strike clearly has its limits. There is first the fact that the argument has explicitly been limited to the terms of employment: there is nothing here to justify sympathy strikes, protest strikes or political strikes. Again, the argument has explicitly been limited to boycotting the jobs whose

terms of employment are at issue. Obviously, ensuring that the disputed jobs are not done, or are done only to the extent that the strikers are prepared to let them be done, is not the only way of putting pressure on an employer. It might well be simpler, and almost certainly more effective, to try to prevent him from functioning in any way at all. But any extension of a strike beyond boycotting, blockading or blacking the jobs in question, has not been justified by my argument.

On the other hand, to say that these, and other, things have not been justified by my argument, is not of course to say that they cannot be justified at all. For one thing, we have already seen that a justification in terms of a general right to strike is not the only justification of strike action: there are, for example, the just war and the lesser evil justifications as well. Admittedly these further justifications apply only when strikers are actually in the right; but when they do apply they may justify more than is justified by the right to strike alone. And for another thing, there is the further possibility of finding other justifications for the right to strike as such, in particular justifications for strikes of other sorts, sympathy, protest and political strikes as well as strikes over the terms of employment. There is not time to develop such arguments in detail here, but an argument for a right to political strikes, for example, could begin from the claim that parliamentary democracy is an uncertain beast at the best of times, and that it is good, right and proper that citizens be able to bring their opinions to the attention of their representatives by whatever means seem necessary to ensure that they will be taken into account. What is a political strike but one way of lobbying the legislature; and if other forms of lobbying are permissible, why not this one? This is not, of course, to say that political strikers are entitled to force their opinions on parliament, only that they are entitled to bring those opinions, and the strength with which they are held, to its attention. In other words this argument would justify only a publicity-raising token strike, not a strike based on non-negotiable demands. But even here there may be other arguments as well.

But at this point I want to concentrate on a rather different limitation to my argument. My defence of the right to strike has been based on the assumption that it is, on the whole, a good thing that the pressure on the terms of employment be up, not down. But what if it so turns out that this pressure is no longer a good thing, or is misapplied, so that it actually makes things worse, not better? What happens then to the right to strike?

Two such cases spring immediately to mind. One possibility is that the upward pressure exerted by strikes and the threat of strikes

may eventually push the terms of employment up to the point where employers prefer not to employ, either because it is not worth their while, or because it is cheaper to install machines instead. At that point the upwards pressure will succeed in making things worse, not better, unless provision for the unemployed is more generous than there seem any reason to expect. At that point the right to strike seems to lose, indeed to destroy, its own justification. Another possibility is that since the effectiveness of strike action is something which will vary widely from one group of employees to another, the effects of an upwards pressure exerted by strikes and the threat of them is bound to be extremely uneven. So while it may result in improved terms for some employees, it may also produce a distribution of rewards which is excessively unfair, having regard to any criterion other than sheer industrial muscle. At this point it may no longer be so obvious to the impartial spectator that upward pressure, exerted in this particular way, is a good thing.

Both these possibilities are real enough, and both seem to me to affect the right to strike. More exactly, the mere possibility does not mean that there is no right to strike after all. But at the point where the right to strike destroys its own rationale, or produces evils which outweigh the good on which it depends, then at that point, it seems to me, there is no longer a justification of the right to strike as such, a right to strike right or wrong. Of course it will be difficult to say when that point has been reached: any such balance of competing goods and evils is a difficult matter, on which individuals may legitimately disagree. In particular, the mere fact that one particular strike may make things worse, not better, for others or even for those directly involved, does not mean that the general right to strike therefore disappears. The right to strike is an entitlement to strike even though the particular strike is not justified; and it is a right to be foolish, as well as a right to be in the wrong. But where the results of the general practice are more bad than good then the general practice, the entitlement, will lose its justification. Not that I think, for all the publicity, that we are quite at that point yet.

So I have barely scratched the surface, even of the one of the three aspects of this problem that I chose to discuss. But this is the point at which I, for one, lay down my tools. No doubt you went on strike long ago.

Postscript

This paper was written and delivered before the miners' strike of 1984, in which the conflict between the right to strike and the right to work

Don Locke

was illustrated dramatically. If I had written it then the emphasis would no doubt be different: in particular I would probably not have chosen as my central case a terms of employment strike within a private enterprise. But although the events of that strike have caused me to think long and hard about what this paper says, I do not think that I now want to change its arguments, or even its conclusions.

References

- K. E. Kirk, *Conscience and Its Problems: An Introduction to Casuistry* (London: Longmans, Green & Co., 1927).
- Leo XIII, *Rerum Novarum* (1891) published as *The Condition of the Working Classes* by the Catholic Social Guild (Oxford, 1928).
- H. E. Manning, 'Leo XIII on the Condition of Labour', *Dublin Review* (1891), reprinted as *Leo XIII on Labour* by the Catholic Truth Society (London, 1901).
- E. Ullmann-Margalit, *The Emergence of Norms* (Oxford: Clarendon Press, 1977).