


Essential services, public education workers, and the right to strike

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Cristian Pérez-Muñoz 

Abstract

Essential services are commonly defined as those services whose interruption might inflict substantial harm on the population at large. Police, firefighters, and emergency medical professionals are paradigmatic examples of essential service providers. In recent years, some governments have resolved that formal primary education should be added to this list of essential services. The immediate practical implication of designating education as an essential service is that workers tasked with providing this service will face new limitations or even outright prohibitions on their freedom to strike. This paper analyzes the harm-based justification for declaring formal primary public education an essential service—that is, to consider if education is one service whose interruption might inflict substantial harm on the population at large. I argue that there is no compelling case to be made for changing the status of primary education from *non-essential* to *essential* and discuss why teachers' right to strike should be protected. On the one hand, it is unclear to what extent educators' participation in strikes can produce a type of harm that justifies limiting their right to strike. On the other hand, restricting that right has costs that must be weighed in any plausible harm-based account.

Keywords

Essential Services, Public education, Right to strike, harm

Introduction

Essential services are commonly defined as those services whose interruption might inflict substantial harm on the population at large. Police, firefighters, and emergency medical professionals are paradigmatic examples of essential service providers. In recent years, some governments have resolved that formal primary education should be added to this list of essential services.¹ The immediate practical implication of designating education as an essential service is that workers tasked with providing this service will face new limitations or even outright prohibitions on their freedom to strike. This initiative's main justification is that the *conflictual nature* of the strike itself causes morally significant harm to children and their families. Consequently, there is the potential for a situation in which the rights of workers are at odds with the rights of the general population.

It is far from clear how we should settle conflicts between these sets of rights and, somewhat surprisingly, the normative literature on this subject is almost nonexistent. With very few exceptions, the ethics of strikes is an under-researched topic in normative political theory (MacFarlane, 1981; Locke, 1984; Smart, 1985; Pérez Muñoz, 2014; Gourevich, 2016, 2018; Borman, 2017;

O'Neill & White, 2018; Medearis, 2020). This scholastic oversight is even more noticeable if we look specifically at the academic discussion dealing with workers' strikes in the education sector.² Furthermore, the academic debate that does exist on the topic is predominantly developed in legal or economic rather than normative terms.³

This paper aims to fill this gap in the normative literature on workers' rights and essential services.⁴ In particular, this article examines the harm-based case for considering public basic education as an essential service. Roughly stated, this justification says that all those services whose discontinuity can produce serious harm should be subjected to special forms of labor regulation. Instead, I argue that the harm-based position does not provide a compelling case in favor of changing the status of primary education from *non-essential* to *essential*.

University of Florida, Gainesville, FL, USA

Corresponding Author:

Cristian Pérez Muñoz, University of Florida, Anderson Hall, Gainesville, FL 32605, USA.

Email: cperezmunoz@ufl.edu

I present two main reasons to support this argument. First, it is unclear to what extent educators' participation in strikes can produce a type and level of harm that justifies a limitation on their right to strike. Although the interruption of education at the primary level may result in some forms of harm, those types of harm are not directly commensurate with the potential for immediate and irreparable harm resulting from the interruption of essential services as traditionally defined (e.g., police, health care). Second, restricting the right to strike has costs that must be considered in any plausible harm-based account. To defend the limitation of the right to strike grounded on the idea of harm, it is also necessary to evaluate the costs of *not* striking and the costs associated with not having the opportunity to strike. That is, the costs that a restriction of the right to strike would have on numerous aspects of the educational system and for the various actors involved in that system (e.g., current and future teachers, present and future students).

This argument is provocative in that it contradicts many pending and recently implemented pieces of legislation in countries around the world. It also provides a more developed normative basis for the International Labor Office's (ILO) official position, which declared education a non-essential service without providing an argument.

It is worth noting that my purpose here is not to dispute the complex category of essential services, but to evaluate to what extent that category can regulate public primary education. By assuming the category of essential service as valid, I evaluate whether public primary education should fit within that classification. As a consequence, teacher strikes should be limited because of the level of harm those strikes produce.

Furthermore, I observe that the arguments advanced in this paper are not meant to evaluate teachers' strikes or any other labor action during a pandemic. Instead, they are only suited to analyze a non-pandemic state of affairs in which strikes result in limited interruptions in children's education. How teachers and other professionals should respond to the demands of education during the COVID-19 pandemic is beyond this paper's scope.

The remainder of the article is divided into four sections. Section 1 offers some conceptual and definitional issues surrounding public education, the right to strike, and what we mean by the "essential" nature of a service. Section 2 addresses the harm-based approach in detail. First, it evaluates the position arguing that teacher strikes (no matter the context or situation) produce forms of harm that justify a restriction in that form of labor action. Second, it outlines and critically examines the position stating that a prolonged teacher strike can *in some contexts* create harm for the population at large. Section 3 analyzes four benefits associated with teachers' strikes. It argues that any harm-based justification should take these benefits into account and balance them against the potential

harms related to teacher strikes. The paper ends with a brief discussion section.

Definitions and concepts

Before undertaking the normative analysis, there are three major concepts to clarify: what constitutes the right to strike; what forms of education will be taken into consideration; and what do we mean by the "essentialness" of a service, whether in terms of its potential to infringe on the rights of the population at large or its potential to inflict harm on this same group.

The right to strike

The first concept is the freedom or right to strike.⁵ The right to strike can be defined as "the right that workers claim to refuse to perform work they have agreed to do while retaining a right to the job" (Gourevich, 2016, p. 309). Three key elements define this right. First, workers possess the freedom to withhold their work, meaning that under specific circumstances, workers are free to stop performing their jobs. Second, this right implies that workers have the freedom to withhold their labor without losing their job (Locke, 1984, p. 178, 181). Finally, the right to strike is typically understood to be a collective, not an individual right.⁶ As MacFarlane (1981) points out, "an individual can neither decide to strike nor take strike actions except in association with others" (p. 20). It is a right that can only be exercised collectively (Locke, 1984; Waas, 2014, p. 14; Meadaris, 2020, p. 246).

In legal terms, the definition of the right to strike varies among jurisdictions. Many jurisdictions do not legally define strike actions explicitly (Waas, 2014, pp. 3–5). However, two fundamental elements appear in several statutory definitions worldwide: stoppage of work and concerted action. While some definitions do not consider the purpose of the action, others assume that the objective is to induce "employers to accept or reject terms or conditions of employment" (Waas, 2014, p. 4).

There is no statutory definition of a strike in some other jurisdictions (i.e., Austria, Finland, Germany, Hungary, Israel, Italy, and Spain). Instead, the definition has been developed through the accumulation of case law. It is worth noting that jurisdictions vary considerably in terms of the range of legally permissible motivations for strike activities. While in some countries (i.e., Uruguay), strikes can legally pursue almost any purpose, in other countries (i.e., United Kingdom) strikes are legally protected only for specific objectives such as a trade dispute.

Education

Education, or more specifically schooling, is a service with singular characteristics, three of which are relevant to

this paper. First, public primary education is a service with a wide (almost universal) scope in most countries (UNESCO, 2012). This fact differentiates public primary education from other public services with more limited coverage and a lower frequency of citizenry usage. For instance, the momentary suspension of activities in the service of civil registry and identification will certainly produce inconveniences for an important number of people, but the proportion of the population ultimately affected by employers of the civic registry office is much smaller than that affected by strikes in public primary schools. Second, primary education is mandatory in most countries (UNESCO, 2012). Generally speaking, public primary education consists of at least 6 years of schooling, and children are expected to attend school daily.

Third, and related to the previous point, compulsory education is believed to have several important consequences for key quality-of-life variables. Let me mention just a few examples: while some studies suggest that compulsory education increases economic growth (Eckstein & Zilcha, 1994), annual adult earnings (Angrist & Krueger, 1991; Acemoglu & Angrist, 2000), and life expectancy (Lleras-Muney, 2005), others argue that it may also contribute to reducing wage dispersion (Brunello et al., 2009) and even reduce the probability of incarceration (Moretti, 2004). All of these characteristics make education a crucial service for contemporary societies.

Essential services

According to the International Labor Office (ILO), essential services are those “services whose interruption could endanger the life, personal safety or health of the whole or part of the population” (2006, p. 112). For example, a stoppage of police service or emergency health services is likely to produce serious and immediate problems for the whole or part of the population. In order to identify an essential service, it is crucial to determine whether or not there exists a “reasonable probability and not a mere possibility” that an interruption of service produces serious harm or violates a person’s rights (Pillay, 2012, p. 807). While many democratic governments have declined to designate education as essential, thereby protecting the right of teachers to strike, some others believe that strikes in the education sector interfere with the regular provision of important services to children. Proponents of this latter position have adopted a harm-based justification for this essential designation.⁷

This justification asserts that a given service can be considered essential when its non-provision will likely cause significant harm. Work stoppages in essential services can likely lead to bodily or other personal harm to the population at large. If my house catches fire and firefighters are on strike, there is a high probability that I

may suffer serious harm. A similar result is expected if I have a stroke during a neurologists’ strike or if police cease patrolling the city where I live. Striking workers do not directly cause harm, but their work stoppage indirectly facilitates the occurrence of that harm.

John Stuart Mill’s (1869) harm principle provides a simple account of both the perpetrated wrong and the grounds for penalizing these actions. According to Mill, “the only purpose for which power can be rightly exercised over any member of a civilized community against his will is to prevent harm to others.” The harm principle is what Feinberg delineates as a “liberty-limiting principle.” In this case, harm “refers to those states of setback interest that are the consequence of wrongful acts or omissions by others” (Feinberg, 1984, p. 215).⁸

Only wrongful setbacks to an individual or group’s interests count as harmful. As Feinberg says, the prevention of harm to third parties, or the “harm to others” principle, always constitutes a morally relevant justification of state coercion. However, differences and difficulties emerge when it comes to determining whether harm constitutes the “only valid liberty-limiting principle” (Feinberg, 1985, p. ix).

Work stoppages in essential services do not constitute necessary and sufficient conditions for harm. A policemen’s strike is neither a necessary nor a sufficient condition for the occurrence of crime. Likewise, emergency doctors’ strikes do not necessarily and sufficiently lead to patients’ deaths in emergency care. However, these are facilitating factors for the occurrence of harm. Since unrestricted freedom to strike for police officers can potentially produce mobs and other social problems that affect the security and well-being of the general population, we place a moral obligation on those who provide those services.

The harm principle does not need to demonstrate that the non-prohibition of a given action will always produce considerable harm. Rather, it needs to show that banning a particular action will prevent potential damage. For instance, it is possible to identify a police or firefighters’ strike that does not lead to tragic results, but unique cases do not invalidate the general rule that limitations on the right to strike by firefighters and police will prevent harm. This is what Ripstein (2006) calls an “indirect strategy” (p. 222). That is a strategy for allowing the harm principle to justify the general prohibition of a particular course of action, even when we can find examples of actions that do not produce actual harm. The high probability that a given action causes harm is a sufficient reason to regulate or prohibit such action from keeping the chance of risk at morally acceptable levels.⁹

Harm and the right to strike

In this section, I outline the argument that teachers’ strikes can produce morally relevant harm. I describe the types of

harm associated with teachers' strikes and ultimately explain why the most plausible defense of that argument is based on the idea of *context contingency*: the idea that there are particular contexts in which a strike's potential to inflict harm is more significant than in others. I conclude this section by explaining the shortcomings of the context contingency argument.

Do strikes in education produce harm?

For advocates of the essentialness of education, the burden of the proof lies with those demonstrating that teacher strikes may cause morally significant harm. However, to do this, we require some heuristic or metric to judge whether or not the inconveniences and damages caused by a teacher strike sufficiently constitutes morally relevant harm. To address this problem, we must navigate a problematic empirical and moral terrain.

On the one hand, we must define at what point a strike may produce morally significant harm; on the other hand, we require some means of relating the act of the strike itself to the variables we might employ as proxies for this morally significant harm. Without taking a position on the ongoing debate about what the orienting goal of education should be, it is safe to assume for present purposes that justice in education at least demands elevating students to a certain level of educational achievement.¹⁰

Although there is growing empirical literature on the effects that teachers' collective action have on educational achievement outcomes, research on the particular effect of teacher strikes on students is scarce and inconclusive. As Jaume and Willen (2019, pp. 1106–1107) highlighted, there are two important problems with most scholarship that analyzes this phenomenon. First, available studies were conducted through a cross-sectional analysis. That is a form of observational study design in which subjects are observed at a single point in time rather than over time. These studies were designed to show the prevalence of students with poorer educational achievements among those who were exposed to teachers' strikes (e.g., Caldwell & Jefferys, 1983; Zirkel, 1992; Johnson, 2011). Data were collected with respect to exposure to strikes and educational outcomes at a specific point in time to evaluate the difference between those students who were exposed to strikes and those who were not.

However, these studies are susceptible to omitted variable bias. Omitted independent variables may explain the outcome identified. As Jaume and Willen (2019) argued, "students, teachers, and schools subject to strikes may be different from those that are not subject to strikes on dimensions that we cannot observe" (p. 1106). In addition to this methodological shortcoming, these cross-sectional studies offer mixed evidence about the impact of teachers' strikes on students' educational outcomes.

Consequently, it is difficult or inappropriate to judge based on the limited evidence they presented.

The studies of Belot and Webbink (2010) and Baker (2013) constituted two efforts to estimate the effect of teachers' strikes using a non-cross-sectional analysis. They concluded that strikes may have deleterious consequences for student educational achievement. For instance, in their evaluation of the long-term effects of teacher strikes in Belgium, Belot and Webbink (2010) found strikes that lasted from May to November of 1990 in the Francophone community negatively affected the development of the students involved, leading to higher grade-level repetition rates.

Similarly, Baker (2013) showed that primary teacher strikes (on average 10 days) in the province of Ontario, Canada, had a negative effect on the reading and math scores of students. He found that strikes that last 10 instructional days or more have significant negative effects on student performance in math, where "the impact of a strike in grade 6 is a reduction in test scores of 29% of the standard deviation of scores across school/grade cohorts" (Baker, 2013, pp. 1015–1016).

As Baker (2013, p. 1019) pointed out, these findings are consistent with what we know about teacher absenteeism and student achievement (Miller, Murnane, & Willett, 2008; Herrmann & Rockoff, 2012; Roby, 2013; Tingle et al., 2012). For example, Miller, Murnane, and Willett (2008) found a non-trivial effect of teacher absences. They estimated that "10 additional days of teacher absence reduce student achievement in fourth-grade mathematics," and this effect is "large enough to be of policy relevance" (p. 196). Likewise, Tingle et al. (2012) found a negative relationship between teacher absences and standardized achievement scores: "the more teacher absence, the lower their student standardized achievement scores" (p. 377).¹¹

It is worth noting that although both phenomena lead to a stoppage in providing a service, there are some crucial differences between teacher absenteeism and teacher strikes. To begin with, absenteeism is mainly an individual phenomenon that does not involve any coordinated effort among teachers to withhold their labor. Among other things, this means that the causes (and purposes) of absenteeism are different from those that motivate strikes, and that absenteeism is a solo and not a collective act. More importantly, in contrast to stoppages due to strikes, the non-provision of education due to absenteeism is not typically taken as cause to change the conditions of education itself.

Furthermore, studies like those of Belot and Webbink (2010) and Baker (2013) have only considered the potential impact of teacher strikes on students' standardized test performance. It is at least a matter of debate whether that type of heuristic is appropriate to evaluate students'

educational achievements. Furthermore, these studies have analyzed contemporaneous effects in students' test scores after being affected by teacher strikes. This limits the temporal scope of these studies to the short term. In order to evaluate the potential harm of strikes on students, we should be able to identify long-term effects in relevant variables (Jaume & Willen, 2019, pp. 1106–1107). For instance, students can underperform on a specific test but overperform on later tests.

A more promising approach to understanding the impact of teacher strikes on students was presented by Jaume and Willen (2019). These authors examined teacher strikes in Argentina between 1983 and 2014. They presented empirical evidence of the impact caused by teacher strikes on student long-term labor market outcomes. In particular, they evaluated how exposure to strikes at the primary education level affected the labor market and sociodemographic outcomes when the exposed students were between 30 and 40 years old. They analyzed how “education and market outcomes changed among adults who were exposed to more days of teacher strikes during primary school compared to adults who were exposed to fewer days of strikes” (p. 1098).

According to the authors, their study identified adverse labor market effects for those exposed to strikes during their schooling time. These negative effects were observable when these students were between 30 and 40 years old, 20–30 years after the exposure to teacher strikes. Wages for this population were reduced by 3.2% for male and by 1.9% for female students. They hypothesized that “these adverse labor market effects are driven, at least in part, by declines in educational attainment: being exposed to the average incidence of strikes leads to a reduction in years of schooling by 2.02% and 1.58% for males and females, respectively” (p. 1099).¹²

However, as they recognized, their study did not fully evaluate the costs and benefits associated with teacher strikes. Instead, they provided a partial equilibrium analysis that measured how strikes could negatively affect students' outcomes. Among other things, this implied that the benefits and costs are not evaluated in a dynamic logic, which can limit our understanding of how teacher strikes can produce more benefits than costs (i.e., how their ability to strike can improve working conditions, which can positively affect the educational experience for a future cohort of students) (Jaume & Willem, 2019, p. 1104). In other words, their estimation strategy did not allow them to identify what impact of different variables associated with teacher strikes (e.g., teacher effort, resource allocation, changes in the composition of teachers) may have on future student cohorts. This uncertainty should be adequately

accounted for in any proposal for limiting teachers' right to strike.

From this brief summary of the literature, it is evident that it is a complex task to determine the net effects of teachers' strikes on students. First, to properly assess these effects, we must recognize that strikes produce both negative and positive results. We cannot merely justify a limitation on the right to strike based on negative outcomes of one particular variable. Second and relatedly, it is crucial to consider the temporal dimension. Strikes that happen in 1 year may negatively affect the students that are directly affected by them. Still, the results of those labor actions can improve the education of future students. For instance, strikes can improve teachers' working conditions and, as a result, the kind of education they can offer to students.

By focusing only on the students whose instruction is interrupted by teacher strikes, we may overlook the positive effects that strikes may have on other students who can make use of a service improved by teachers' labor actions. Considering the evidence presented to this point, it is difficult to argue that the type of harm associated with teachers' strikes on public primary education is commensurate with those paradigmatic cases of essential services such as firefighters, police, and emergency doctors. Strikes in education do not typically produce immediate and irreparable harm analogous to the case of standard categories of essential services.

It is challenging to define what constitutes significant harm in the case of teachers' strikes. In this context, a possible broad interpretation is that teacher strikes cause significant harm when, for example, students' opportunities are affected by the exercise of this labor right. For instance, present and future students affected by teacher strikes will have fewer opportunities to pursue the kind of lives they could have followed had those strikes not occurred. Not only will affected students perform worse on specific standardized tests than unaffected students, but the fact that strikes disrupted their formal education will end up affecting their opportunities to pursue a specific future career or other life options. A narrower alternative interpretation, as previously discussed, is that we can take a measure like children's educational achievement as a measure of significant harm. That is, we speak of significant harm from strikes if they dramatically affect students' standardized test scores.

However, it is difficult to defend either of these two interpretations given the existing empirical evidence. If we think that the moral benefits and harms associated with teachers' strikes should not be reduced to a measure of educational outcomes, then we must show how the occurrence of strikes generates more harms than benefits in some broader measure than educational outcomes. However, such an analysis cannot be done without taking

into account all the benefits and harms suffered by students and their families, as well as by teachers themselves when the right to strike is restricted. The evidence is sufficiently mixed for restricting the right to strike based on the effects of this type of practice on both children's future opportunities (broadly understood) and on children's educational achievement.

Context contingency and teachers' rights

Interruptions in the provision of education at the primary level may negatively affect many children's educational opportunities, particularly the most socioeconomically vulnerable. Since there may be costs associated with prolonged teachers' strikes in particular, we should analyze whether primary public education may at times move from non-essential status to essential status.

This might mean that governments should regulate (but perhaps not outright restrict) teachers' ability to strike once the collective bargaining process becomes harmful to children's education. Put differently, this is the possibility that governments could regulate teacher strikes in some contexts but not in others. This is what we can call a *context contingency* defense of education as an essential service.

For many types of public service, the essential versus non-essential dichotomy is too stark and unrealistic. For this reason, we may think of essentialness in dynamic terms. The essentialness of a given service always depends on its *potential* to inflict harm on the population at large (ILO, 2006; Pillay, 2012). In this case, we must consider that external environments or contexts mechanically shape this potentiality.

Consider, for example, one important contextual variable: the temporal. A non-essential service can switch to essential status when its prolonged interruption endangers the personal safety of part or the whole population (ILO, 2006, p. 119). A classic example is garbage collection. This particular service's interruption is a major sanitary hazard, but only if it is discontinued for a *sufficiently long period*. There are no major problems if garbage collection workers decide to strike for a day or two, but prolonged non-provision can quickly become hazardous to people's health. There is a point of inflection in the essential nature of this service. Contingent upon the context of time, garbage collection moves from the non-essential into the essential category.

Another example of context dependency is jurisdictional. As Morris (1986, p. 8) suggested, there can be very large differences between countries (or states, cities, municipalities, etc.) when defining which services count as essential and which do not. The reason for this is simple: there are services whose provision is more essential in some jurisdictions than in others.

This context depends on variations in terms of population, environment, geography, and technology. In consequence, as Pillay (2012) correctly suggested, "whether a service is essential is a question of facts" (p. 808) derived from a setting's context. Interpreting different sets of contextual facts can lead analysts to differing conclusions about a given service's essentialness in different and dissimilar jurisdictions. For example, across the United States, certain types of flood relief may be essential across the southern coastline of Louisiana, but inessential in the mountains of Colorado. Emergency earthquake assistance may be considered essential in parts of California that are especially susceptible to earthquakes but inessential throughout large parts of Midwestern states where earthquakes tend not to occur or, when they do, cause comparatively little damage to property and homes.

Using this same reasoning, we could claim that the prolonged discontinuity of formal education harms people. We could also argue that education's importance and functions—and, thus, its essentialness—varies considerably across jurisdictions. The problem with the more traditional, dichotomous conception of essential service is that it does not take some serious measure of the contextual contingency of the action of striking. While it is true that teacher strikes do not cause immediate irreparable public harm, it may also be plausible that under certain circumstances, this form of collective action does cause a form of non-life-threatening irreparable public harm.

This possibility implies that public education should neither be designed a priori as either an essential or non-essential service. Instead, it should be envisioned as an important service whose non-provision can cause morally significant harm to many people. Thus, if this interpretation is correct, ILO's (2006) more categorical argument that the "education sector does not constitute an essential service" (p. 127) should be rejected.

However, even a contextual defense of essentialness in primary education should consider all the variables related to teachers' strikes. The contextual case for designating primary education as an essential service can be objected to with the same criticisms of a general case against limiting the right to strike. We can argue that the contextual case still needs to weigh all costs and benefits for all the actors involved (e.g., teachers, students, parents), and that weighing process is likely to produce mixed or uncertain results.

Furthermore, the contextual case for education as an essential service is not as straightforward as the case for the garbage collection service. While it is reasonably possible to estimate when a stoppage in garbage collection can lead to a health emergency, it may be more difficult to estimate when a teachers' strike needs to be called off because of the level of harm it may be producing—that is,

when a strike in primary education exceeds a given threshold and triggers the argument for essentiality. Governments should monitor teachers' strikes and their potential costs in terms of harm to declare it an essential service and, by consequence, restrict the right to strike. But, as mentioned previously, the evidence of the negative consequences of strikes both in the short and long terms is still limited and mixed.

One potential option would be to limit a priori the number of days teachers could strike in a given period, but the case for limiting the number of days faces two challenges. On the one hand, if we take a harm-based argument seriously, it is difficult to predetermine a specific number of days. That specification should consider multiple variables such as the number of days, the time of the academic year in which the strikes occur, the number of students affected, the grades affected, the measures adopted to make up lost classes, and so on. On the other hand, a predetermined number of days for allowing teacher strikes can notoriously debilitate the instrument. Unless the number of days is sufficiently higher, the bargaining process would be distorted by this type of arrangement. Therefore, it is possible to argue that the context contingency defense of education as an essential service faces significant challenges and does not improve the case for restricting the right to strike.

Four benefits to be considered

The previous section argued that teachers' strikes fail to produce a type of harm that is morally equivalent to other standard essential services. In the following pages, I explain in more detail the idea that teacher strikes can produce benefits both for teachers and students, and these benefits may well overwhelm the harms associated with this labor action. The plausibility of the essential service argument depends on a proper evaluation of the harms and benefits of restricting workers' right to strike. The potential costs and benefits for students and their parents need to be weighed against teachers' costs and striking benefits. For instance, the right to strike helps workers avoid, fight, and minimize the harms they may suffer in their professional lives. I also explain why the benefits that teachers obtain by striking (or have the possibility to do so) in many cases have positive consequences for students as well.

Strikes as an instrument to improve educators' working conditions

Strikes are a valuable instrument to improve educators' working conditions.¹³ Recent research shows how the presence of strong unions and labor actions lead to better salaries and working conditions for teachers (Cowen &

Strunk, 2015). Some scholars believe that this outcome is evidence in support of the rent-seeking hypothesis. That is the idea that "teachers' unions prefer different inputs than parents do because the union's objective is not purely maximization of student achievement" (Hoxby, 1996, pp. 676–675). According to this view, teachers' unions' goal of negotiating increases in their salaries and other working conditions (smaller classes, fewer courses, friendlier methods of evaluation, etc.) can come at the expense of students' interests (Moe, 2007, 2009).

However, these findings are disputed. It is unclear that teachers' unions and collective bargaining agreements explain fiscal and academic outcome variations. For instance, in her analysis of how collective bargaining agreements impact district resource allocation and student performance in California, Strunk (2011) found those districts that adopt more restrictive contracts have higher overall spending. However, that spending did not translate into higher compensation for teachers, "but by greater expenditures on administrators' compensation and instruction-related spending" (p. 354).

In a review of three decades of research on teacher's unions in the US, Cowen and Strunk (2015, p. 218) pointed out that the evidence available seems to support the idea that the average teachers' salaries are higher in unionized districts (at least as high as 5%). Likewise, unionization can increase district spending levels, even when that does not affect teachers' salaries per se. However, they concluded that from the available evidence, it was not possible to determine "the directionality of CBAs' impact on resource distribution or student achievement" (Cowen & Strunk, 2015, p. 220). The available literature studying the relationship between unions and student outcomes does not help us determine whether collective bargaining agreements (CBAs) drive lower student achievements or if stronger CBAs exist in lower-achieving districts.

This, of course, does not imply that the only justification for improving teachers' working conditions lies in whether those improvements can have positive effects on students' educational experiences. Teachers' working conditions matter for reasons that are independent of students' educational achievements.

In any case, we have reasons to believe that better working conditions for educators will translate into better educational conditions for students (Lindy, 2011, p. 1143). Thus, the protection of children's access to education is not well served by prohibiting teachers from using the collective bargain instrument to secure better working conditions (Gibson, 1983, p. 114).

There are multiple mechanisms associated with this outcome. For instance, we could expect that if teaching becomes a well-paid profession with good benefits, it will attract talented individuals who will see it as a career to

advance their life goals. The best-trained and well-skilled teachers should have an impact on children's education. Likewise, we would foresee that good salaries and benefits should positively affect teacher recruitment and retention (Guarino, Santibañez, & Daley, 2006, pp. 199–201).¹⁴

Strikes as an instrument to oppose reforms that are detrimental to teachers' professionalism and students' education

A second potential benefit of teacher strikes is that this form of collective action is an important and effective instrument to oppose reforms in the education curricula that are detrimental to both teachers and students (Lindy 2011, p. 1144). Put differently, strikes are powerful instruments to resist educational reforms driven by non-educational motives.¹⁵

Some authors as McAlevey (2016) argue that teachers and educators, in general, are mission-driven workers. They not only work for material benefit, but "they also labor for something deeply purposeful; they are called to their labor" (p. 102). Mission-driven workers understand the effects of withdrawing their labor on those they are called to serve. Schools provide more than academic instruction. They provide care, protection, and nourishment for children.¹⁶

For instance, recent strikes in the U.S were not only based on demands for better compensation and work conditions, but also for reevaluating the impact of the excessive use of standardized tests in education, the need for better social welfare policies focused on poor students, the unregulated expansion of charter schools, and even the immigration status of public school students (McAlevey, 2016, 2020; Shelton, 2017; Casey, 2020, p. 8).¹⁷

Consider, for instance, some of the main claims behind Chicago's teachers' strike in 2012. These recommendations included the following points: recognizing that class size matters; stressing the importance of a rich curriculum that incorporates art (music, dance, theater, etc.), physical education, and other activities; facilitating access to a broad array of services that help children to come and stay in school (e.g., free transit fares, school nurses); reach out to students with a variety of special needs (e.g., bilingual and special education); improving the infrastructure of educative facilities; and increasing school funding (McAlevey, 2016, pp. 131–132).

Strikes as an educative instrument

Since strikes have been historically associated with fights for social rights and better living conditions for people in general, they may in themselves be considered an educational instrument—that is, as an opportunity to teach not

only students but other workers and the public how to fight for their rights. Accordingly, the example of a strike teaches important values and useful lessons such as organizing against regulations or policies that might be unfair.

For example, according to Hertel-Fernandez, Naidu, and Reich (2021, p. 73), the teachers' strikes that took place in the U.S during 2018 were able to build strong public support for the striking workers became an inspiration to labor action of other workers too. By emphasizing the public good provided by teacher strikes, unions could obtain support from parents and other workers in general. These labor actions successfully conveyed to parents "information about what teachers and their unions were doing to fight for public goods that would improve public schools and their broader communities (Hertel-Fernandez, Naidu, & Reich, 2021, p. 85).

Strikes can then be understood as a democratic form of collective action that promote and instill important political values. Medearis (2020) put it eloquently; strikes need to be recognized as "more than just cessation or refusal - as a positive statement about the effort, skill, and agency of workers, and as a multifaceted collective action of a particular egalitarian kind" (p. 238). As such, this kind of political work is functional in a positive way to democracy. The idea that strikes successfully promote behaviors and values that are ultimately beneficial for the quality of democracy is a hypothesis to be tested. Nonetheless, it is evident that this kind of activity involves a form of political work that requires cooperation, collective effort, and reflective activity (Medearis 2020, p. 238).

Strikes as an instrument against domination

Strikes in general can be thought of as a crucial instrument in the fight against social domination and arbitrary power (Hall, 1987, p. 165; Gourevitch 2016, 2018).¹⁸ According to Gourevitch (2016), a right to strike should be understood as a "right of human freedom claimed against the social domination that the typical modern worker experiences" (p. 308). Drawing on the republican tradition, Gourevitch believes that this right is fundamentally a political right to resist social domination. It is a right to resist being subject to the "uncontrolled or arbitrary power of another" (Gourevitch, 2016, p. 312).

Although recognizing the right to strike, Gourevitch (2016) said that we should not conclude that "employers have no right to use their property to pursue their own interests. It just means employers have no rights to use their property in ways that allow them to exploit workers" (p. 316). Since it is impermissible to exploit workers, a right to strike is justified as an instrument to resist arbitrary power in the workplace and the labor market in general. It

is a powerful and immediate instrument to contest employers' arbitrary power. Strikes in the education sector are no exception to this idea; rather, they are a potentially powerful tool that militates against domination.¹⁹

There is a potential objection to the non-domination benefits of strikes. According to this argument, strikes constitute an important instrument against social domination, but they can also produce arbitrary interference. In contrast to Gourevitch, one could argue that a conception of justice as minimizing domination (or maximizing non-domination) provides good reasons to worry about the potential misuse of the right to strike. Gourevitch's argument is compelling for those situations in which work stoppage exclusively affects employers; in this case, workers' stoppage results in nothing more than a lack of profit for the employer.

However, the situation is different when workers fight employers' arbitrary interference by arbitrarily interfering with other parties. The right to strike imposes inconveniences on people who are not a party to the direct labor dispute between workers and employers (MacFarlane 1981, p. 126). This is particularly true for the provision of essential services and any other bargaining situation in which third parties are affected by the strike.

Nonetheless, it is unclear that this objection can be applied to the case of primary school teachers. If we accept that teachers' strikes do not produce a similar level of harm as a stoppage in other essential services, and that strikes can be potentially beneficial to those who are affected by the interruption of the service (i.e., parents and students), then the objection based on the idea of domination does not have enough appeal. Furthermore, to be valid, that objection needs to demonstrate that teacher strikes produce arbitrary harm for children and their parents. This is, of course, a possible result that we should not rule out, but the current evidence does not provide enough support for such an objection.

Discussion

This paper discussed to what extent the harm-based essential service argument could be applied to the case of primary educators' strikes. It argued that there is no good cause to apply that justification in regulating public primary education. The crucial reason is that the essential service justification is empirically dependent on the likelihood of significant harm. Based on what we know about the effect of teachers' strikes on students' educational achievements, we do not have enough evidence to justify a limitation or suspension of teachers' freedom to strike.

Furthermore, harms associated with strikes need to be weighed against the benefits this type of instrument can provide for teachers and students. The right to strike not only helps workers to avoid harms that they may suffer in

their professional lives, but its use can help to improve children's education on different levels. For instance, it is necessary to evaluate how weakening the right to strike may impact variables such as the supply of teachers in schools and a subsequent lowering of educational standards, as well as the preparation that novice and prospective teachers receive.

Strikes are often a response to unfavorable events and outcomes that can affect both teachers and students. The freedom to strike has been historically defended and conceived as an instrument to further a progressive agenda and has played a crucial role in the history of labor movements. By leveling the playing field between the employers and the employed, workers' freedom to strike coincides with the redistribution of resources and the improvement of workers' labor conditions.

Two interpretations can be drawn from this case. The first is to conclude that there is always a net benefit when the right to strike is protected. Although plausible, we do not have robust empirical evidence to show that this is always the case; indeed, we can find examples of strikes that indicate otherwise. A more plausible interpretation is that limiting the right to strike on the presumption that such actions generate unacceptable harms requires establishing a standard of proof that teacher strikes often produce significant harm to students. Such a standard is not currently available. Governments need to obtain more definitive evidence before undertaking such a drastic limitation on teachers' freedom based on a harm-reduction approach.

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ORCID iD

Cristian Pérez Muñoz  <https://orcid.org/0000-0002-6071-6073>

Notes

- Whether education should be considered an essential service is a debate that takes place in various contexts. For example, in some jurisdictions of Canada such as British Columbia and Quebec, public school teachers have a restricted right to strike based on this essential service justification. Similar arguments for limiting teachers' right to strike have recently been put forth in other countries like Argentina, South Africa, and Uruguay. For instance, in 2010, South Africa experienced a traumatic teachers' strike that seriously affected public education. This event generated fierce political and academic debate on whether the government should designate public education as an essential service, restricting teachers' right to strike. Similarly, in 2015, in response to an ongoing teachers' strike, the Uruguayan government issued a decree that designated public education as an essential service. More recently, at the beginning of 2017, the Argentinean government appealed to the same arguments when discussing the possibility of limiting teachers' right to strike.
- There is, however, a growing interest in the study of teachers' strikes from a political perspective. See, for example, [Ashby and Bruno \(2016\)](#), [McAlevey \(2016, 2020\)](#), and [Givan and Schrage \(2020\)](#).
- For references to the legal debate, see [Appleton \(1984\)](#), [Calitz and Conradie \(2013\)](#), [Ewing \(1991\)](#), [Horsten and Le Grange \(2012\)](#), [Lindy \(2011\)](#) and [Younger \(2007\)](#). For examples of the economic debate, see [Baker \(2013\)](#), [Belot and Webbink \(2010\)](#), [Cowen and Strunk \(2015\)](#), [Frandsen \(2016\)](#), [Johnson \(2011\)](#) and [Jaume and Willem \(2019\)](#).
- In this paper, I use "education" and "formal schooling" synonymously. My focus is on whether or not the state should guarantee the provision of uninterrupted schooling at the primary level. It is a truism, however, that schooling is only a part of children's education. For a brief discussion on the key differences between schooling and education, see [Brighouse \(2006, pp. 6–9\)](#).
- For this paper, I use the terms "freedom" and "right" interchangeably. However, it is important to keep in mind that the legal literature distinguishes between the terms. For a discussion of this distinction, see in particular [Novitz \(2003\)](#) and [Waas \(2014\)](#).
- However, as [Waas \(2014\)](#) suggests, legal scholars disagree about who exactly bears the right to strike. For instance, it is not clear "whether the right of a trade union derives from the right of individual workers to strike or whether, on the contrary, the right of workers to strike is derived from the trade union's right" (p. 8).
- There are three additional arguments in favor of regulating teachers' right to strike that I will not consider here. The first, a right-based justification, asserts that the right to service provision for the population at large allows for restrictions on essential service workers' freedom to strike. Our right to not be hurt or harmed by others justifies a complete restriction on, for example, policemen's freedom to strike. That particular right supersedes policemen's right to strike. Similarly, some argue that children's right to be educated—which enjoys a universal human right status—supersedes teachers' right to strike ([Horsten & le Grange, 2012](#)). The second argument asserts that teachers' strikes are "unprofessional." That is, teachers' strikes go against what the profession itself perceives as its main responsibility: to teach students. Strike actions can be "subversive of the teacher-pupil relationship, based as it is on the twin concepts of service and concern" ([MacFarlane, 1981, p. 140](#)). For a critical discussion of this argument, see [Lieberman \(1965\)](#). The third argument says that public educators should not have a right to strike by virtue of being public employees because public employees' special relationship to the state and the government justifies particular labor rights arrangements. The arguments cannot be developed here in detail, but are widely discussed in the literature (i.e., [Burton and Krider, 1970](#); [Novitz, 2003](#); [Younger, 2007](#)).
- There is no consensus about what harm means or how it should be best measured. For a discussion on the notion of harm, see, for instance [Shiffrin \(1999\)](#), [Hanser \(2008\)](#), and [Thomson \(2011\)](#).
- [Ripstein \(2006, p. 195\)](#) argues that the indirect strategy is under inclusive by failing to "identify a significant class of wrongs that a liberal state would want to prohibit: harmless trespasses against person and property." Given the scope of this manuscript, it is impossible to examine this possibility in detail. For a reply to Ripstein's argument, see [Bird \(2007, pp. 181–182\)](#). For my present purpose, it suffices to say that strikes in essential services are analogous to the case of dangerous driving and not to harmless trespasses against persons and property. I can drive home under the influence of alcohol or drugs without causing any harm, but that specific instance where I did not cause harm does not invalidate a general prohibition on dangerous driving. As [Ripstein \(2006, p. 222\)](#) recognizes, "the only practicable way of reducing the harm caused by dangerous driving is to prohibit it outright, rather than waiting for harm to actually occur." Nonetheless, Ripstein believes that this kind of situation cannot be generalized to justify coercion over harmless wrongdoing.
- There are at least two additional forms of potential harm produced by educators' strikes. The first one is related to childcare resulting from teachers' strikes. Many public schools

- provide children not only with education but also childcare and food assistance (Appleton, 1984, p. 870; MacFarlane, 1981, p. 140). Educators' strikes affect the childcare arrangements of schoolchildren to the point that they can be costly for families (particularly for single, employed mothers). However, as some recent experiences in the U.S. have shown, striking teachers have guaranteed meals for those students who rely on schools for meals, which can explain the level of support they received from the population (McAleevey, 2016, p. 101; Casey, 2020, p. 6; Hertel-Fernandez, Naidu, & Reich, 2021, p. 86). A second potential harm is related to mental health issues related to social isolation due to school closures. This is a salient factor in the context of the COVID-19 pandemic. See, for example, Racine et al. (2021). For simplicity, in this paper I will focus exclusively on the educational impact teachers' strikes produce.
11. These more recent empirical findings argue against older literature that asserts teachers' strikes are never sufficiently detrimental to the population at large. Wellington and Winter (1970), for example, claimed that "a strike by teachers may never create an immediate danger to public health and welfare" (p. 442), while Appleton (1984) argued that strikes in public education produce "massive inconvenience without immediate emergency" (pp. 855–856).
 12. It could also be argued, for example, that if a strike has an effect on the future earning capacity of students, that effect is likely to have disparate consequences between the most vulnerable students and those who are more economically advantaged. This may happen not only because those students who are more economically disadvantaged are likely to be those who need better educational opportunities, but also because the teachers working in those schools are likely to face worse working conditions. I thank an anonymous reviewer for making this point.
 13. It is worth noting, however, that it is unclear whether antigovernment strikes are more likely to occur under strong, moderate, or weak unions. For example, Lindvall (2013) argued that there exists a curvilinear, inverted U-shape relationship "between union density -net union membership as a proportion of all wage and salary earners in employment- and the likelihood of political strikes" (p. 539). While strong unions may not need strikes to persuade governments, weak unions may not have the resources or the basic organizational capacity to carry out strikes. Accordingly, we should expect more strikes in a scenario with moderate unions. In any case, a strike (and the possibility of using it) is one of the more-if not the most-powerful instruments that unions use in collective bargaining situations.
 14. However, it is worth mentioning that although recent research suggests that teachers' quality affects student achievement, the results about what observable characteristics of effective teachers influence that outcome is mixed (Guarino, Santibañez, & Daley, 2006, p. 176).
 15. The literature on the history of education policy shows examples of how specific teacher labor struggles may not be beneficial to students; see, for example, Perlstein (2004) and Podair (2008). Therefore, teachers' strikes should not be seen as an absolute good. However, it is important that teachers' unions as democratic organizations can collectively retain their work, given the multiple benefits that the right to strike can have on balance for both students and teachers. I thank an anonymous reviewer for this point.
 16. It may be argued that in the context of a global pandemic, teachers in many parts of the world prioritize their personal safety over students' education. This is an important point that requires further discussion, but that exceeds the scope of this manuscript. As I mentioned on the introduction, the discussion of this article applies to a non-pandemic world.
 17. For an overview of the most recent teachers' strikes in the U.S, see Casey (2020). A discussion of the history of teachers' strikes in that country can be found in Shelton (2017). A thorough examination of the 2012 Chicago strike and the 20 Los Angeles strikes can be found in McAleevey (2016, 2020). Hertel-Fernandez, Naidu, and Reich (2021) offer an empirical analysis of the public perception of the 2018 strikes in six U.S states.
 18. My intention is not to argue that harm and domination are equal, but simply that domination produces various forms of harm. By being subjected to arbitrary power, we may suffer different forms of harm or at least risk of harm. Domination causes moral harm to its agents, and the subjects of domination are likely to suffer the harms of exploitation, insecurity, and so on. Accordingly, domination should be minimized, among other things, because of the harms it produces or may eventually produce.
 19. It is unclear how the ideal of non-domination can be applied to the provision of education. See Macleod (2015) for a philosophical discussion of the relationship between freedom from domination and educational justice.

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